Labor Arbitration Awards: 1986 - Present, Aspirus Keweenaw Hospital & Clinics, Inc. and Michigan Nurses Association, 25-1 ARB ¶8557, (Oct. 21, 2024)

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25-1 ARB ¶8557. LEE HORNBERGER, Arbitrator. Selected by the parties. Case No. FMCS 230630-07342. Hearing held in Laurium, Michigan, on August 23, 2024. Post-hearing submissions received on October 11, 2024. Award issued on October 21, 2024.

Headnote

Discharge from employment: Personal conduct: Safety.–
The union filed a grievance contesting the termination of a registered nurse, arguing that the penalty was excessive and inconsistent with just cause. The arbitrator denied the grievance. The grievant violated the employer's no-weapons policy by bringing a firearm onto hospital premises, which is prohibited by both hospital policy and Michigan law. Despite the nurse's otherwise unblemished 13-year record, the arbitrator determined that the policy breach and associated safety risks justified termination. The arbitrator concluded that the penalty was neither arbitrary nor capricious and upheld the discharge as consistent with the collective bargaining agreement.

Kevin Terry and Kurt F. Ellison, Attorneys, for the Employer. Benjamin Curl, Associate General Counsel, for the Union.

[Text of Award]

DECISION AND AWARD

INTRODUCTION

HORNBERGER, Arbitrator: This arbitration arises pursuant to a Collective Bargaining Agreement (CBA) between Aspirus Keweenaw Hospital & Clinics, Inc. (Employer) and the Michigan Nurses Association (Union). The Union contends that the Employer violated the CBA when it discharged Grievant. The Employer maintains that it did not violate the CBA when it discharged Grievant.

Pursuant to the procedures of the Federal Mediation and Conciliation Service, I was selected by the parties to conduct a hearing and render a final and binding arbitration award. The hearing was held on August 23, 2024, in Larium, Michigan. At the hearing, the parties were afforded the opportunity for examination and cross-examination of witnesses and for the introduction of relevant exhibits. The hearing was transcribed. The transcript was received by me on September 10, 2024. The dispute was deemed submitted on October 11, 2024, the date the post-hearing submissions were received.

The parties stipulated that the grievance and arbitration were timely and properly before me and that I could determine the issues to be resolved in the instant arbitration after receiving the evidence and arguments presented.

Both advocates did an excellent job in representing their clients. All involved in the arbitration were courteous and professional. The post-hearing submissions were very helpful.

ISSUES

Was there just cause for the discharge of Grievant? If not what is the remedy?

RELEVANT CONTRACTUAL LANGUAGE

ARTICLE 3

RECOGNITION OF ASPIRUS KEWEENAW'S RIGHT TO MANAGE

3.1 The Association recognizes and agrees that Management has the right to govern all aspects of operating Aspirus Keweenaw and to direct its entire work force at all times, provided, however, that such right shall not be construed as authorization to violate any provision of this Agreement. The MNA agrees it will not disrupt or interfere with the sole and exclusive right and responsibility of Management to manage and operate Aspirus Keweenaw. Generally, this includes, but is not limited to the right to: hire, suspend, discipline, discharge with cause, promote, demote, assign, layoff, recall or relieve Registered Nurses; determined by interview, performance, written test or other objective means to measure the ability, aptitude, and/or qualifications of individual Registered Nurse for assignment to, employment in or promotion to, the various positions and job classifications; enforce and maintain discipline and efficiency among Registered Nurses; determine the nature, scope, and type of facilities and services provided by Aspirus Keweenaw Hospital & Clinics and alter and install new facilities.

3.2 Further, the Association recognizes Aspirus Keweenaw's right to publish policies and regulations governing the Registered Nurses and others using Aspirus Keweenaw, and to revise, change, or institute new policies, rules and regulations provided it does not conflict with the Collective Bargaining Agreement.

3.3 A Registered Nurse shall not be required to carry out any order or instruction by Aspirus Keweenaw if so doing would jeopardize the health or safety of themselves, patients or others beyond the risks inherent in the occupation. In reviewing a practice, Aspirus Keweenaw will consider the Registered Nurse's professional obligations and responsibilities to the patient, to their profession, to Aspirus Keweenaw, and to themselves.

3.4 The parties agree that staffing decisions, including but not necessarily limited to the determination and selection of adequate staffing of Aspirus Keweenaw, the filling of position vacancies, and the determination of how best to utilize the training and competence of all personnel, is a managerial right, subject to the terms and conditions of this agreement. Jx. 1, p. 2-3.

ARTICLE 14

SAFETY

14.1 Every Registered Nurse will observe all applicable and reasonable safety rules and instruction established by Aspirus Keweenaw Hospital and applicable safety laws and governmental regulations.

Aspirus Keweenaw maintains a number of committees to address the safety rules and instruction applicable in the hospital. Aspirus Keweenaw encourages engagement on these committees and will work with any Registered Nurse interested in participating in appropriate committees. Jx. 1, p. 11.

ARTICLE 24

CORRECTIVE ACTION

24.1 Adequate and safe care of patients at reasonable costs require maximum efficiency. Ins striving for maximum efficiency, Management may find it necessary to use disciplinary measures. In the event Management believes a nurse is not fulfilling the responsibilities of their position the following process will be followed:

24.2 A bargaining unit Registered Nurse who has completed the probationary period will only be disciplined for just cause. Aspirus Keweenaw Hospital & Clinics will make a reasonable effort, as appropriate, to precede formal discipline with an informal coaching session. Corrective Action shall consist of a documented counseling, written warning, final written warning, decision making leave, or discharge commensurate with the severity of the offense and consistent with the Hospital progressive discipline policy. All Corrective Action will be subject to the grievance procedure. Jx. 1, p. 20-21.

FACTUAL OUTLINE

List of participants

Senior Human Resources Business Partner JE.

Director of Nursing DD.

Regional Pharmacy Manager RG.

Director of Facilities JB.

JH is a nurse who was employed by the Employer for “about a year” until May 5, 2023. Tr. 98.

RP is an RN.

Medical Director BJ is an MD.

MP is employed by the Michigan Department of Natural Resources.

Grievant is an RN who was employed by the Employer from 2010 to May 5, 2023.

House Supervisor GB.

Testimony of the Witnesses

Testimony of Senior Human Resources Business Partner JE

Senior Human Resources Business Partner JE, Tr. 23, was hired in 2017. She testified that the Employer has a policy against weapons in the workplace. There are several policies against weapons in the workplace. These policies are to protect employees, patients, and visitors, and comply with law Michigan law. Employees are aware of this policy. Each year employees are required to review and acknowledge these policies. There are the Handbook and Code of Conduct. These policies are in place.

The incident in question occurred on Saturday, April 29, 2023, at the Hospital. JE was not at work that day. On Monday morning, JE became aware of the incident. JE was in a meeting with the CEO and others. They made JE aware of the situation of a gun in the Hospital. JE decided to investigate the situation. No decisions were made in that meeting other than to do an investigation. Video footage was looked at. A determination was made of who was working at time of the incident. There were meetings with employees who were witnesses. There was a meeting with Grievant, witnesses, and several other nurses. There were meetings with relevant staff members. Notes were taken. Rx. 15. There was a meeting with JH. Rx. 16. JH was remorseful. There was a meeting with the House Supervisor GB. Rx. 17. There was a meeting with the witness who saw the gun. Jx. 10. Video from the ambulance garage was viewed. Video from the parking lot was viewed. JH was in the video. Grievant came into the side door entrance. Jx. 11. Grievant was coming through the side door from Emergency Department parking with a fire arm case. The ambulance bay interior door has windows. Grievant was holding

a gun. There were no patients in the ED at this time. Jx. 12. Grievant was carrying the rifle case to her personal vehicle in the hospital parking lot. JE was not the sole decision maker concerning the discharge. It was a joint decision. JE supported the decision. The bringing of the gun into the Hospital violated Employer policies and state law. Jx. 13. There was a fair and objective investigation. Grievant was in possession of a fire-arm while on the clock. JH was terminated as well. The Employer has had no prior fire-arm situations. In making the discharge decision, the Employer considered the entirety of the whole situation. Grievant had no prior disciplines.

Testimony of Director of Nursing DD

Director of Nursing DD, Tr. 63, was hired in 2017. There are 60 to 70 persons on the nursing staff. DD was familiar with Grievant. Grievant reported indirectly to DD. The Employer had a no-weapon policy. Weapons are not permitted on the premises. This is in the Code of Conduct and the workplace violence and corrective action policy. Upon hire employees are required to sign the Code of Conduct and this is repeated annually. The Employer is committed to providing a safe work environment. Weapons do not create a safe environment. DD learned of the events on the Monday morning after the event. DD wanted more information and to get more facts. Staffing assignments were reviewed. Videos were reviewed. They met with Grievant first. Grievant was looking into purchasing a weapon from JH. JH brought the gun into the Hospital. Grievant looked at the weapon in the ED. Grievant had the gun in the ED at the nurses station and the ambulance garage. Grievant did not feel it was serious. Grievant understood the Employer forbids weapons in the workplace. DD testified, “I do not believe she had any mal-intent.” JH was interviewed over the phone. From her vehicle, the gun was brought into the ED. JH very aware of the “no fire arms” rule. JH said Grievant encouraged her to bring it into the building. DD reviewed the video. Grievant's conduct in the video in ambulance bay was very concerning. DD reviewed policies with HR, including the “corrective action policy.” DD did not feel there was “fear.” The Employer took that into consideration but did not affect the decision. There had been no prior weapons issue with the Employer. Grievant's judgement in the workplace was considered. Grievant had cared for DD's children in ED before. The gun in the Hospital action led DD to question Grievant's judgement. During the investigation, it was learned that the weapon was an antique shotgun. The Employer learned it was an antique gun before making the discharge decision.

Testimony of Regional Pharmacy Manager RG

Regional Pharmacy Manager RG, Tr. 87, worked on April 29, 2023. Approximately eight employees report to RG. A staff member of RG reported she saw a firearm in the Hospital. RG saw the weapon and reported this to RG's supervisor. It was a duty of RG to report it. The gun in the Hospital was a violation of Employer policy. RG has years of experience being in a healthcare setting. There are postings at the entry ways about no guns. RG saw the firearm in the ED behind the nurses’ station. There were four or five employees around the firearm. Human Resources met with RG concerning the firearm situation about a week or so later. BG prepared a statement. Rx. 18.

Testimony of Director of Facilities JB

JB is the Director of Facilities for the Employer. Tr. 167. He has been with the Employer for six years. There is signage at the Hospital. Rx. 19. He is familiar with this signage. There have been firearms and weapons not allowed signage since JB has been there. Signage have been at doors 1, 2, 6, 7, and 8 since at least 2018.

Testimony of JH

JH is a nurse who worked for the Employer for “a little over a year.” Tr. 98. JH was a Nurse Tech with the Employer. She knew Grievant. She worked with Grievant. She talked with Grievant about Grievant purchasing a specific kind of fire arm. JH's father is a gun collector. The firearm in question was a lightweight gun. JH and Grievant had discussed this in past. Grievant is an avid hunter. Rx. 16. Nothing in Grievant's behavior made JH feel unsafe. No patients were there. The gun was checked and not loaded. There might not be any bullets for

this firearm. Grievant is JH's boss at Baraga Hospital. It was a bird hunting gun. According to JH “it's common sense” not to have a gun in a hospital “but this is the UP.” JH testified that she had never seen a no-weapons sign in the window. Rx. 19.

Testimony of RN RP

RN RP, Tr. 109, knew Grievant. KP saw the firearm at the nurses’ station. RP had “absolutely” no safety concerns. KP thought there was no reason to be concerned. RP was aware of gun safety. Hunting is a common subject of conversation in the ED. Dr. BJ was there. Grievant was there. RP did not examine the gun. No one expressed any concern for safety. RP's supervisor GB said, “Take it out. ….” It is not permissible for an employee to have a gun in the hospital.

Testimony of Medical Director BJ, MD

BJ, MD, Tr. 116, was the Medical Director. He is a Professor at a Downstate Medical School. He works for the Employer a quarter of a year. He had worked with Grievant many times. BJ usually works the night shift. He was aware of the gun incident. It was toward the end of his shift. The gun was on top of the gun case at the employee desk. He had no concern for his own safety. There were no patients. It was an older shotgun. He has been around guns all his life. He goes on hunting trips. He writes for sporting magazines. There is a vast difference between the UP and the Downstate hospital where he also works. The Downstate hospital has metal detectors. It is a much bigger metropolitan area. At the Downstate hospital, the gun would not get past the metal detector. Grievant took the gun into the ambulance bay. BJ did not observe anyone ask Grievant to remove the gun. Firearms in Michigan are prohibited in hospitals by statute.

Testimony of MP, Michigan Department of Natural Resources employee

MP is employed with Michigan Department of Natural Resources law enforcement. Tr. 130. MP's wife works for the Employer. MP stops in at the Hospital many days. On April 29, 2023, MP took a look at a firearm that day on the grounds of the Employer. MP carries a firearm for his job. The gun was not loaded. There was no ammo. Michigan law says it is illegal to have a firearm in a hospital unless the carrier is a law enforcement person.

Testimony of Grievant

Grievant, Tr. 136, has been an RN for 33 years. She was hired by the Employer in 2010. She was a “House Nurse.” She has taken hunter safety courses. She uses fire arms on a regular basis. She hunts. She trains dogs for hunting purposes. She runs a volunteer kennel. Co-employees supported Grievant in her gun and hunting endeavors. Hunting and guns are typical topics of conversation in the Hospital.

JH said her father had some guns to sell. Grievant asked, “Do you have any good bird guns?” Ammunition would be difficult to obtain. JH brought the gun to the Hospital parking lot. Grievant said, “Bring it on in.” There were no patients there. Grievant took possession of the gun in the nurses' station. Then she took the gun to the ambulance garage. She made sure it was unloaded. She was disappointed in the age of it. It was common sense that a “loaded weapon” in a hospital is wrong. She did not see a shotgun as a weapon. She was asked to remove the gun from the department. She was told this sternly “right now.” The following week the Employer had a meeting with Grievant . Rx. 15. The notes of the meeting with Grievant are “accurate but not complete.” After she was discharged, she began seeking work elsewhere. Grievant found work elsewhere. Grievant told the new Employer what happened to end her employment with the prior Employer. Grievant was hired as an ER nurse by the new Employer, then became Director of Nursing. She would not work for the Employer again. Grievant testified that “I don't see a shotgun as a weapon.” Grievant received annual Code of Conduct training. Jx. 9.

Testimony of House Supervisor GB

House Supervisor GB, Tr. 156, is a bargaining unit member. He was hired in 1996. He was working on April 29, 2023, in the ED nurses station. There was a vintage shotgun. The gun should not be in the Hospital but it

was not loaded. GB told Grievant to get the gun out of the Emergency Room. This was because it should not be there. GB repeated this directive. Grievant put the gun back in its case. GB did not have a safety concern. There was no ammo available. He could tell it was not loaded. The breech was open. Guns and hunting are common conversation topics for staff. Rx. 17. The Human Resources notes of his interview with GB are “fairly accurate.” GB heard no concerns in the ER of the gun that day. When GB took the CPL course, hospitals were mentioned. Stickers are near the door handle.

CONTENTIONS OF THE PARTIES

Employer Contentions

This arbitration concerns the discharge of Grievant for violating the Employer's Code of Conduct and Workplace Violence No-Weapons policies by requesting a nurse technician to bring a firearm Grievant was hoping to purchase into the Emergency Department, and then wielding the weapon at the Nurses' Station and in the Emergency Department Ambulance Bay. Grievant and the Union challenge Grievant's discharge. The issue to be decided in this case is whether there was just cause for Grievant's discharge. The evidence presented overwhelmingly establishes just cause. Grievant violated clearly enumerated policies of the Employer, basic expectations of safety and judgment, and likely violated Michigan law. MCL 28.425o(1)(g)(prohibiting concealed carry at a hospital); 750.234d(1)(g)(possession of a firearm at a hospital a misdemeanor criminal offense).

The Employer's policies are clear that firearms are not permitted on the premises and that this conduct must be immediately reported. The Union does not dispute that these policies are in place or the validity of having such a rule. Rather, the Union seeks to prevent enforcement of the rule on the basis of a “no harm, no foul” argument. The fact that Grievant instructed a subordinate nurse technician to violate this policy also by bringing a weapon into the Emergency Department makes the violation even more egregious. While thankfully no serious harms occurred as a result of this incident, things could have gone much worse. The Employer cannot possibly be required to avoid the application of a policy designed to protect its workforce merely because no actual harm resulted. Arbitrational jurisprudence (even before the rise in mass shooting incidents) has taken a dim view of weapons policy violations, and justly so. In today's environment in which mass shootings are unfortunately common, there is simply no place for inviting the potential for substantial tragedy to occur, particularly in a hospital setting. The grievance is without merit. The Employer requests that I deny the grievance and find that the Employer had just cause to terminate Grievant pursuant to its reasonable work rules.

Union Contentions

The Union has never disputed the validity of the rule prohibiting the possession of firearms on Employer property. The Union has not disputed that in many instances termination will be the appropriate penalty. However, the Union has argued since the filing of the grievance, and maintains now, that the penalty of termination exceeded the reasonable bounds of just cause when the facts of this case are considered.

The relevant policies cited by the Employer provide for consideration of the context and circumstances for each violation. This is not a case of a “zero-tolerance” policy. Since the policies explicitly provide for consideration of mitigating circumstances, the Employer is bound by the principles of just cause to apply these considerations.

Arbitrators have reduced or overturned the penalty of discharge in similar cases. These cases stand for the proposition that context matters when considering the nature of the violation, even in cases dealing with firearms.

There are mitigating factors in this case. They demonstrate that termination was excessive, not consistent with progressive discipline, and thus violative of just cause.

The Employer has failed to carry its burden of proof that the termination was for just cause. The Union requests that I reduce the discipline to a penalty less than termination and award Grievant full back pay for all lost earnings. The Union is not requesting reinstatement, since Grievant has secured employment elsewhere that she does not wishto forfeit.

DISCUSSION AND DECISION

Introduction

The CBA provides that an employee cannot be disciplined without just cause. It is well established in labor arbitration that where, as in the present case, an employer's right to discipline an employee is limited by the requirement that such action be for just cause, the employer has the burden of proving that the discipline was for just cause. “Just cause” is a term of art in CBAs. “Just cause” consists of a number of substantive and procedural elements. Primary among its substantive elements is the existence of sufficient proof that the employee engaged in the conduct for which the employee was disciplined. Other elements include a requirement that an employee know or could reasonably be expected to know ahead of time that engaging in a particular type of behavior will likely result in discipline; the existence of a reasonable relationship between an employee's misconduct and the punishment imposed; and a requirement that discipline be administered evenhandedly, that is, that similarly situated employees be treated similarly and disparate treatment be avoided.

For the following reasons, I conclude that the Employer did not violate the CBA when it discharged Grievant.

Discipline

Grievant was disciplined for having a firearm in the Hospital.

The Employer contends that Grievant violated the Employer Code of Conduct and Workplace Violence/ No Weapons Policy when she had a firearm in the Hospital. The Union contends that there are “unusual circumstances [that should] prevail to warrant consideration of a lesser corrective action being imposed ….” Jx. 6, p. 6.

The CBA states:

> The MNA agrees it will not disrupt or interfere with the sole and exclusive right and responsibility of Management to manage and operate Aspirus Keweenaw. Generally, this includes, but is not limited to the right to: hire, suspend, discipline, discharge with cause … Registered Nurses. CBA, pp. 2-3.
>
> Every Registered Nurse will observe all applicable and reasonable safety rules and instruction established by [the Employer] and applicable safety laws and regulations. CBA, p. 11.
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> The Code of Conduct says,
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> … [a]s part of our commitment to a safe workplace for our employees, **we prohibit employees from possessing firearms,** other weapons, explosive devices or any other dangerous materials **on Aspirus' premises**. Jx. 3, p.10. Emphasis added.

The Workplace Violence/No Weapons Policy states that any employee in violation of the policy is “ **subject to disciplinary action up to and including termination**.” Jx. 5, p. 2. Emphasis added.

The Corrective Action Policy says:

> **Termination:**
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> …
>
> **The infractions in this category ordinarily are sufficient cause for termination of employment, unless unusual circumstances prevail to warrant consideration of a lesser corrective action being imposed, within the discretion of management and Human Resources.**
>
> …

> 3. Conduct of an indecent or seriously inappropriate nature that creates an adverse impact on any Aspirus employee or group, included may be illegal acts that result in a criminal conviction.
>
> 4. **Possessing, transporting,** selling, or using firearms, **or other weapons** (knives greater than 3' blade length, tasers, pepper spray, etc.) or any forbidden item or contraband (drug paraphernalia, illegal substances) **in an Aspirus building.**
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> …
>
> 10. Any willful action which jeopardizes the safety or well-being of a patient, visitor, physician, or fellow employee, or which may contribute to an injury of such person(s).
>
> …
>
> 17. Any other conduct deemed to be very severe in nature. Jx. 6, pp. 6-7. Emphasis added.

Burden of proof

The Employer has the burden of proof in a discipline case. Elkouri & Elkouri, *How Arbitration Works* (8th ed.), pp. 15-26 to 15-32; Abrams, *Inside Arbitration* (2013), pp. 206-209.

Grievant knew of the no-weapons policy

It is undisputed that Grievant knew of the no-weapons policy. Grievant knew or could reasonably be expected to know that having a weapon on Hospital premises could subject her to discharge.

The no-weapons policy was a reasonable work rule

"… [T]he employer may promulgate and enforce rules dealing with dangerous weapons." Elkouri & Elkouri, p. 17-133.

The no-weapons policy was applied evenly and without discrimination There is no evidence that there has been any other allegations of violations of the no-weapons policy.

There is a preponderance of proof that there was a violation of the no-weapons policy

I have considered all the circumstances of all the witnesses when assessing testimony. I have considered the totality of the circumstances. Abrams, pp. 189-192; Elkouri & Elkouri, pp. 8-93 to 8-98. See generally WD Mi Civ JI 2.07.

Furthermore:

> The arbitrator's decision in discharge and discipline cases must reflect the parties' values and interests, not the arbitrator's personal conception of how the workplace should be run." Abrams, p. 202.

"[A]rbitrators frequently give employers significant latitude in disciplining employees who … have jeopardized workplace safety." Elkouri & Elkouri, p. 16-3.

Grievant admits having a gun on Employer premises.

I find that Grievant violated the no-weapons policy.

Gun cases cited by Union

The Union's Post-Hearing Brief cites several arbitration awards concerning situations where employees were discharged for allegedly having a gun at the worksite. I have carefully read those cases.

The Union cites *Labor Arbitration Decision*, 151350-AAA (Jason, 2009), where the award provided for reinstatement with a short suspension. Arbitrator Jason stated,

> … when these or similar rules were in effect prohibiting guns on Company property, employees did bring hunting weapons to the facility and store them with the Plant Protection officers. Also, there was testimony that while these rules or similar rules were in effect, employees with federal firearms licenses sold guns to fellow employees and made deliveries at the plant. Although this behavior was not authorized, no one was disciplined for it. This, perhaps explains the reason why when a Company supervisor witnessed A disassemble grievant's weapon, he did not report the incident to management.

Unlike 151350-AAA, in the case before me there is no evidence of prior violations of the no-weapon rules.

The Union cites *Amerada Hess Corp*., 77 LA 139 (Donoghue, 1981). *Amerada* involved possession of a "starter gun" on employer premises. The award provided for reinstatement with a short suspension. Arbitrator Donoghue stated, "While the company is justified in strong feelings concerning the production of firearms on its premises, **the instrument possessed by this employee was not, in truth, a firearm of any kind.**" Emphasis added. In the case before me, there was a real gun [an "870 Remington lightweight 28-gauge," Tr. 140/5], not a "starter gun."

The Union cites *Koopers Company, Inc*., 69 LA 613 (Harkless, 1977), where Arbitrator Harkless provided for reinstatement without back pay. The award stated,

> There is no doubt that the grievant used extremely poor judgment in having a loaded gun in his possession in the shop. But the Arbitrator believes the generally **lax atmosphere concerning guns in the plant, together with the absence of any written rule on the subject,** serve to mitigate the grievant's serious misconduct. Emphasis added.

In the case before me, there was no lax atmosphere concerning guns in the Hospital and the Employer has several written no-weapons rules and no-weapons signage.

The Union cites *Johnston Wire Technologies*, 111 LA 216 (Franckiewicz, 1998). In *Johnston*, Arbitrator Franckiewicz provided for reinstatement with a long suspension. Arbitrator Franckiewicz stated:

> The second reason why the absence of any mention of possible termination in the rule is significant, is the issue of fair notice to employees. On February 16, the Grievant apparently did not realize that bringing a gun into the plant could have serious employment consequences. It may well be that if the rule had explicitly stated that discharge would (or could) result from its violation, the rule would have made a greater impression on him, and he would have been careful to leave the gun outside the plant, or even at home.

Unlike *Johnston Wire*, in the case before me the Employer's rules and policies gave Grievant fair notice that she was subject to discharge if she had a gun on Hospital premises.

Gun cases cited by Employer

The Employer's Post-Hearing brief cites a number of arbitration awards concerning the discharge of employees for violating a no-weapons policy.

The Employer cites *Goodyear Aerospace Corp*., 86 LA 403 (Fullmer, 1985). *Goodyear* stated:

> Firearms have no place in an industrial setting and lives have been lost by the tragedies following hasty resort to their use following arguments. While it may be true that 'Guns don't kill people, people do', it is also true that 'People without guns don't use guns to kill people'."

The Employer cites *Airport Authority of Washoe County*, 119 LA 920 (Staudohar, 2004). In *Airport Authority*, a termination was upheld where a loaded firearm was found in the grievant's truck during a consensual search of the truck taking place during a workplace investigation. The grievant was terminated for violating the company's policy prohibiting firearms. Arbitrator Staudohar in *Airport Authority* upheld the discharge despite many of the same arguments advanced by Grievant as potentially mitigating her termination decision. Like Grievant, the grievant argued a lack of real harm, because the firearm was in his locked vehicle and concealed behind a seat in his truck. Like Grievant, the grievant also argued his tenure as an employee and overall good work record.

In *Bi-State Development Agency*, 104 LA 460 (Bailey, 1993), Arbitrator Bailey upheld the termination where a bus driver inadvertently brought a loaded pistol onto the bus, noting that:

> [t]his grievance must be denied as the Grievant knew he possessed a firearm on his bus and he did not correct this violation of Agency rules. The Agency has a vital interest in protecting public safety on its buses and a no weapons rule is most reasonable. The Grievant violated this rule and must now suffer the consequences.

In *Gardner Denver*, 76 LA 26 (Witney, 1980), the grievant brought an unloaded collectible derringer pistol (with no shells) to the manufacturing floor with the plan to sell it to another employee. The transaction fell through. When the employer learned of the gun, the grievant initially denied that it was in his lunch box and stated it was in his car. The grievant ultimately admitted he brought the gun on premises and was escorted off premises. The grievant was permitted to continue working while the employer investigated the incident. The grievant was ultimately discharged for violating the employer's policy prohibiting weapons on the premises. Arbitrator Witney rejected the Union's argument that the gun posed no threat, stating:

> In its indefatigable search for a valid basis for the Grievant's reinstatement, the Union loses sight of the purpose of Rule No. 5. It is designed not only to protect the Company interests, but also serves to protect all persons in the plant from being injured or killed by a gun.
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> …
>
> Conclusions: To put it up front, and in all candor, the Arbitrator refuses to dilute the enforcement of the Rule in question. He refuses to take the first step by establishing a precedent which could conceivably result in the injury or death of a person by gunfire. Such would be the potential consequences by the reinstatement of the Grievant. With his reinstatement, other employees would be encouraged to bring guns into the plant. In no way does the Arbitrator desire to be a party to such a state of affairs which could result in tragedy to a person and the family involved.

Arbitrator Witney expressed his regret for the impacts of the decision on the grievant, who he believed was a "good person, certainly not dangerous, and he certainly meant no harm when he brought the gun to the plant," but explained that he "must support the full integrity of a Rule designed to protect the plant community from injury or death by gunfire."

Metropolitan Transit Authority, 122 LA 945 (Baroni, 2006), stated:

> Even without regard to Grievant's credibility, arbitrators have uniformly held than employee's intent to violate a no-weapons rule is immaterial, particularly where, as in this case, the rule has been consistently applied. Arbitrators routinely uphold discharges for no-weapons rule violations even where it is shown that the discharged employee inadvertently brought a weapon onto company property.

In *Van Wold-Stevens Co.*, 79 LA 645 (Flagler, 1982) (cited at Elkouri & Elkouri, p. 17-133, fn 726]. the grievant was hit by a driver in his work truck. While the accident was being investigated, loaded firearms were found in the grievant's vehicle. The grievant had a permit to carry the guns and was a known gun collector. The grievant claimed he had forgotten the guns were there and it was an inadvertent mistake. The grievant was discharged for carrying the weapons in his vehicle. In denying the grievance, Arbitrator Flager rejected the Union's "energetic" and "impressive" defense of the grievant on these grounds, stating "[t]he dispositive considerations, however, are that its arguments, including every due consideration to the Grievant's creditable work record, have been factored into the discharge decision arrived at by the Employer." The Arbitrator refused to disturb the employer's "painful decision."

Union arguments

The Union argues that the intent of Grievant precludes discharge. This argument does not control. Grievant intended to and did have another employee bring a gun unto Employer premises and intended to take possession of and handle the gun on Employer premises. This violated several Employer rules and signage on the Hospital doors. There is nothing in the no-weapon rules that gives an employee a first-bite of the apple. *Metropolitan Transit Authority*, 122 LA 945 (Baroni, 2006). Grievant did not know the gun was unloaded until she had removed it from its case, walked it from the nurses' station to the ambulance bay, and wielded the weapon for a minute or two, pointing it at the patient entrance to the ambulance bay.

The Union argues that there was a lack of an actual safety risk. This argument does not control. Having a gun out in the open in the Hospital is inherently a safety risk. If someone with a gun, such as a peace officer, who believes in "stand your ground" had seen Grievant holding her gun in the Hospital that would have been an unsafe situation to at least the Grievant. Numerous employees saw the gun at the nurses' station. All of these employees arguably had a duty to report the gun situation to the Employer. Only one employee ordered Grievant to remove the gun from the premises and only one employee reported the gun situation to the Employer. The other employees were arguably at risk for not reporting the gun situation to the Employer and hence subject to corrective action. Grievant having the gun in the Hospital put not only her but also the employee who was selling the gun in jeopardy. In addition, there was "a door that was propped open that was supposed to be secured." Tr. 75. See Tr. 44-45. Grievant was not operating in a vacuum when she had the gun in the Hospital.

The Union argues that there was a lack of perceived risk to others. This argument does not control. There is nothing in the no-weapons rules that requires that there be a perceived risk to others. Arguably one reason for these rules is that Michigan law forbids weapons in hospitals. MCL 28.425o(1)(g)(prohibiting concealed carry at a hospital); 750.234d(1)(g)(stating possession of a firearm at a hospital a misdemeanor criminal offense). Neither of these statutes says that a person can possess a firearm in a hospital as long as there is no perceived risk to others. *Gardner Denver*, 76 LA 26 (Witney, 1980).

The Union argues Grievant's honesty is a mitigating factor. This argument does not control. Grievant was not discharged for dishonesty. She was discharged for violating the Employer's no-weapons rules.

The Union argues that Grievant's thirteen year work record precludes the discharge. This argument does not control. The no-weapons rules apply equally to both short-term and long-term employees; to both good employees and less than good employees.

The Union argues that the cultural context of the geographic area precludes the discharge of Grievant. This argument does not control. The cultures at issue in this case are the culture of the CBA and the culture of the State of Michigan. The CBA culture is enunciated in the no-weapons rules appropriately promulgated by the Employer. The Michigan culture is enunciated at MCL 28.425o(1)(g) and 750.234d(1)(g). The "cultural context" argument asks me to substitute my judgment for that of the Employer in making a difficult decision, even though this factor has already been considered by the Employer. Tr. 61:17-62:8.

The Union argues that the purpose of the no-weapons rules precludes discharge. This argument does not control. The purpose of the no-weapons rules is to comply with state law and to keep weapons off Employer premises. The purpose of the no-weapons rule is not to send a "mixed message." Sending a "mixed-message" runs the risk of compromised ability to enforce the rule in the future. Elkouri & Elkouri, p. 17-135.

Penalty

It has been said that, when an employee "has violated a rule or engaged in conduct meriting disciplinary action, it is the function of management to decide the proper penalty." *Park Geriatric Village*, 81 LA 306, 311 (Lewis, 1983). The fact that the employer may have imposed a somewhat different or more severe penalty than the arbitrator might have fixed "had he had the decision to make originally is not justification for [the] arbitrator to change the penalty." *SA Slenk and Co*., 26 LA 395, 396 (Stouffer, 1956). An arbitrator "should not substitute his personal judgment for that of management because he does not agree with management in its disciplinary decision." *Parkview-Gem Inc*., 59 LA 429, 431-432 (Dugan, 1972). *Emerson Electrical Co*., 89 LA 512, 515 (Traynor, 1987) (once "the evidence demonstrates just cause exists for discipline, an arbitrator is not warranted in overruling its decision to discharge unless the evidence shows management acted in an arbitrary, capricious, discriminatory or inequitable manner"). Elkouri & Elkouri, pp. 15-32 to 15-35. Abrams, p. 212. *Rabanco Ltd*, 137 LA 328, 337-338 (Latsch, 2017). It has been said that arbitrators should not alter the employer's choice of penalty unless the employer's actions have been arbitrary or in violation of a statute or the CBA. This principle is summarized in *Davison Chemical Co*., 31 LA 920, 924 (McGuiress, 1959), as follows:

> Where proper cause for a disciplinary action exists, a penalty imposed in good faith by management should not be disturbed by the arbitrator. It is not for the arbitrator to substitute his judgment for that of one having proper authority to discharge, where there has been no abuse of discretion or no conduct forbidden by statute or the labor agreement.

Arbitrator Whitley P. McCoy summarized management's discretion to determine the appropriate level of discipline. Where an employee has violated a rule or engaged in conduct meriting disciplinary action, it is primarily the function of management to decide upon the proper penalty. If management acts in good faith upon a fair investigation and fixes a penalty not inconsistent with that imposed in other like cases, an arbitrator should not disturb it. The mere fact that management has imposed a somewhat different penalty or a somewhat more severe penalty than the arbitrator would have, if he had had the decision to make originally, is no justification for changing it. The minds of equally reasonable people differ. A consideration which would weigh heavily with one person will seem of less importance to another. A circumstance which highly aggravates an offense in one person's eyes may be only light aggravation to another. If an arbitrator could substitute his judgment and discretion for the judgment and discretion honestly exercised by management, then the functions of management would have been abdicated, and unions would take every case to arbitration. The result would be as intolerable to employees as to management. *Vertex Aerospace, LLC*, 120 LA 767, 768 (Kilroy, 2004) (quoting *Stockham Pipe Fitting Co*., 1 LA 160 (McCoy, 1945)).

There is no argument or evidence that Grievant is not a good person. There was just cause for the discharge.

Conclusion

The crucial points in this case include:

1. The Employer has the burden of proof;
2. Grievant possessed a gun on Hospital premises;
3. The Employer rules clearly forbid having a gun on Hospital premises;
4. The Employer rules provided fair warning that discharge could occur;
5. There was no evidence of lax enforcement;
6. An “870 Remington lightweight 28-gauge,” Tr. 140, is a real gun;
7. The weight of arbitral authority concerning discharge for violation of no-weapons rules;
8. The totality of the circumstances; and
9. The CBA.

This decision neither addresses nor decides issues not raised by the parties.

AWARD

Having heard or read and carefully reviewed the evidence and argumentative materials in this case and in light of the above discussion, I deny the Grievance.

Dated: October 21, 2024

/s/ LEE HORNBERGER

Lee Hornberger

Arbitrator