

IN THE MATTER OF THE ARBITRATION BETWEEN

WASHINGTON FRATERNAL ORDER)	
OF POLICE,)	
)	
)	ARBITRATOR'S
)	AWARD
GUILD,)	
)	
and)	CASE #137407-P-23
)	
WASHINGTON STATE LIQUOR AND)	
CANNABIS BOARD)	GOLMAN
)	TERMINATION
)	
)	
EMPLOYER.)	
)	

APPEARANCES FOR THE PARTIES

Thenell Law Group, PC, *Paige M. Chrz*, Attorney at Law, for the guild.

Attorney General of Washington, *Kelly Oshiro and Lynn Allan*, Attorneys at Law, for the Employer.

Procedural History

Washington Fraternal Order of Police (Guild) represents a bargaining unit of employees working for the Washington State Liquor and Cannabis Board (Employer). The parties entered into a Collective Bargaining Agreement effective July1, 2021 through June 30, 2023 (CBA) The parties selected me to arbitrate their dispute.

I conducted the virtual hearing in this matter, on March 7-8, 2024. The parties agreed the grievance is properly before me for a final and binding decision. The hearing proceeded in an orderly manner with both parties having full opportunity

to call witnesses, present and argue their position on the issue, and introduce documents into the record. A court reporter transcribed the proceedings and made a copy available to the parties and myself. The Parties entered seventeen joint exhibits numbered consecutively 1-17. The Employer presented eleven exhibits numbered E-1 through E-11. The Guild presented eleven exhibits which were numbered 501-511. The witnesses were sworn under oath by the court reporter and were subject to cross examination. Six witnesses testified at the hearing. The advocates did an excellent job of presenting their individual cases. At the end of the hearing the parties agreed to file post-hearing briefs electronically. I received both briefs on April 16, 2024, and closed the hearing.

ISSUE

Did the Washington State Liquor and Cannabis Board have just cause to terminate the Grievant on May 8, 2023?

APPLICABLE CONTRACT ARTICLES & POLICIES

Article 30.1 Just Cause: the employer will not discipline any permanent employee without just cause.

Policy 110 Ethical Conduct and Outside Employment:

1. WSLCB employees must perform duties and responsibilities in a manner that maintains standards of behavior that promote public trust, faith and confidence.
2. WSLCB employees shall serve the best interests of the public.
 - Exercising fair, independent and impartial judgment.
 - Placing the public's interest before any private interest or outside obligation.
 - Protecting public resources and funds against misuse and abuse.
 - Practicing open and accountable government.
3. WSLCB employees are expected to adhere to the following standards of behavior and conduct:
 - Serve the public with respect, concern, courtesy, and responsiveness, recognizing that service to the public is the primary mission of state government.

- Promote an environment of public trust free from fraud, abuse of authority, and misuse of public property.
- Strengthen public confidence in the integrity of state government by demonstrating the highest standards of personal integrity, fairness, honesty, and *compliance with the law, rules, regulations* and WSLCB policies. (Emphasis mine.)
- Read, understand, and follow all agency policies including but not limited to policies in the areas of conflicts of interest...

LCB Enforcement & Education Policy Manual

Law Enforcement Code of Ethics

...I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be *exemplary in obeying the law* and the regulations of my department (Emphasis mine.) ...

...

Section 320.4 GENERAL STANDARDS

Division employees shall conduct themselves, whether on- or off-duty, in accordance with the United States and Washington Constitutions and all applicable laws, ordinances and rules enacted or established pursuant to legal authority. (Emphasis mine.) Division employees shall familiarize themselves with policies and procedures and are responsible for compliance with each. Division employees should seek clarification and guidance from supervisors in the event of any perceived ambiguity or uncertainty. Discipline may be initiated for any good cause. It is not mandatory that a specific policy or rule violation be cited to sustain discipline. This policy is not intended to cover every possible type of misconduct.

320.5 CAUSES FOR DISCIPLINE

The following are illustrative causes for disciplinary action. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for violation of other rules, standards, ethics and specific action or inaction that is detrimental to efficient division service.

320.5.1 LAWS, RULES AND ORDERS

...

(c) Violation of federal, state, local or administrative laws, rules or regulations.

RCW 77.15.450(1)

A person is guilty of spotlighting big game in the second degree if the person hunts big game with the aid of a spotlight, or other artificial light, or night vision equipment while in possession or control of a firearm, bow and arrow, or cross bow. (Emphasis mine.) For purposes of this section, "night vision equipment" includes electronic light amplification devices, thermal imaging devices, and other comparable equipment used to enhance night vision.

Agency Policy #265 – Administrative Investigations

1. The LCB considers a complaint to be an allegation of circumstances amounting to a specific act or omission that, if proven true, would amount to employee misconduct. An expression of dissatisfaction with a policy, procedure, or practice of the agency will be reviewed and addressed as appropriate.

Misconduct is an act or omission by an employee which, if proven true, would normally result in some form of disciplinary action. This would include:

- *commission of an unlawful act.* (Emphasis mine.)
- ...
- conduct which may reflect unfavorably upon the employee or agency.

...

On-Duty Compliant: An Off-Duty Complaint is a complaint associated with any actions an employee took off-duty that would:

- *be a violation of any local, state, or federal law;* (Emphasis mine.)
- compromise the reputation and standing of a public safety employee within the community, which in turn compromises the employee's ability to maintain the trust and confidence necessary to continue providing public safety services effectively.
- Negatively impact the reputation and standing of the LCB within the community, making it more difficult for the agency and its employees to maintain the trust and confidence of the community; and/or

- Compromise the ability of the employees to interact with other local, state, or federal law enforcement agencies or court officials in providing public safety services.

BACKGROUND

The Grievant was employed by the Washington Liquor and Cannabis Board (LCB) as a Law Enforcement Officer 2, also known as a Liquor Enforcement Officer 2 (LEO2). The Grievant had been employed for approximately 27 years by the Spokane County Sheriff's Department. He laterally transferred to the LCB and was employed by LCB for about seven years as an LEO2 in the retail liquor division in Spokane, WA.

The LEO2 position description states the employee enforces state cannabis, liquor, tobacco, and vapor laws as a limited authority law enforcement officer. This position is involved in educating licensees, investigating allegations of violations, and issuing arrest citations and administrative violation notices for those violations in licensed businesses and in non-licensed venues; effect custodial arrests; effect arrest citations, infractions notices. Administrative violation sanctions for violations; and educate licensees, law enforcement and the public. This position is required to testify in court and administrative hearings and may participate in vehicle stops and felony arrests.¹

The Incident

On November 14, 2021, the Grievant was hunting with a friend. An officer with the Washington Department of Fish and Wildlife (WDFW) saw the Grievant shooting at a decoy deer. The decoy was put in place by WDFW to see if hunters were complying with hunting regulations. The friend testified in court that he looked at his phone and saw the time was three minutes before the "end of shooting light" (4:55pm).

¹ Joint Ex. 16, page 1.

The Grievant was suspected of committing the crimes of “unlawful hunting of big game, hunting after hours, and spotlighting big game”. WDFW alleged the Grievant had his truck headlights turned on which illuminated the decoy. Big game hunting after hours and spot lighting big game are both gross misdemeanors.

In September 2022, the Grievant was tried in Stevens County Court for the above crimes. The Grievant stated that he shot the deer during legal hunting hours and that he did not notice his truck headlights were on. He also testified that there was adequate daylight to see the decoy without the headlights.

In November 2022, the Grievant had a jury trial in Stevens County. The jury found him guilty of one count of spotlighting big game in the second degree, a gross misdemeanor.

In December 2022, the WSLCB opened an Administrative Investigation. The LCB collected all the relevant information concerning the trial and the conviction. The Grievant was given the opportunity to provide relevant information. The information was then sent to the Director of Enforcement and Education, who reviewed the information. The Director held a meeting with the Grievant and his union representative. The Grievant had an opportunity to present information for the Director to consider.

The Director determined that dismissal was the appropriate discipline because the Grievant was expected to enforce laws and have high ethical standards to preserve the public’s trust of a law enforcement officer. The Grievant was separated from service on May 8, 2023.

THE FACTS

1. On November 14, 2021, a Fish and Wildlife Officer placed a decoy deer in the woods near the road at about 4:55 pm. He then stepped back into the thick brush and waited.
2. The Grievant was hunting with a friend that day.

3. The WDFW officer saw the Grievant driving down from the mountain at approximately 5:00 pm with his headlights on.²
4. The Grievant saw a deer off to the side of the road and stopped the truck.
5. The Grievant opened his truck door, attempted to fire his rifle, however the safety was on and prevented the rifle from firing. He fired the rifle a second time and hit the deer decoy.
6. The WDFW officer approached the Grievant who was wearing camouflaged style hunting pants and a gray long sleeved short over what appeared to be a bright orange shirt.³
7. The WDFW officer asked the Grievant what he was shooting at, the Grievant responded that it was still shooting hours.
8. Shooting hours on November 14, 2021, ended at 4:46 pm.⁴
9. The WDFW officer stated it was five minutes after shooting hours ended.
10. He added that the deer would not have been able to be seen without the headlights directly on it.
11. The officer asked the Grievant to turn off his headlights. He did so.
12. The officer's citation report⁵ states that when the Grievant turned off his headlights the decoy could not be seen. The decoy disappeared in the dark.
13. On or about November 14, 2021, WDFW charged the Grievant with Unlawful Big Game Hunt and Spotlighting Big Game violations while the Grievant was off-duty.
14. On September 8, 2022, the Grievant notified the Employer that he would not be at a training class because he would be in court.
15. The Grievant was found guilty of Spotlighting Big Game in the 2nd degree which is a gross misdemeanor.⁶

² The WDFW citation report. Union Ex.501, page 7.

³ See Union Exhibit 501 pages 9-13.

⁴ I did some online research, suntoday.org. and found that shooting hours in November 2021 were ½ hour before sunrise(6:54 am) and ½ hour after sunset (4:16 pm).

⁵ Union Ex. 501, page 10.

⁶ RCW 77.15.450 (3)(a).

ANALYSIS

LCB Policy 110 states in relevant part:

WSLCB employees must perform duties and responsibilities in a manner that maintains standards of behavior that promote public trust, faith and confidence.

- Strengthen public confidence in the integrity of state government by demonstrating the highest standards of personal integrity, fairness, honesty, and *compliance with the law*, rules, regulations and WSLCB policies. (Emphasis mine.)

LCB Enforcement & Education Policy Manual states in relevant part:

320.4 Division employees *shall conduct themselves, whether on- or off-duty*, in accordance with the United States and Washington Constitutions and *all applicable laws, ordinances and rules⁷ enacted or established pursuant to legal authority*. (Emphasis mine.)

320.5 CAUSES FOR DISCIPLINE

320.5.1(c) Violation of federal, *state, local or administrative laws, rules or regulations*.

The WDFW Officer had no reason to not be truthful about the time of day that the Grievant fired his rifle at a deer.

I find the Grievant was not credible in his testimony that he did not notice his headlights were on when he fired his rifle at the deer.

The jury found the Grievant guilty of spotlighting big game.

I carefully considered all the evidence and testimony presented at the hearing and the post-hearing briefs in making my decision. I disregarded any information, evidence, and/or testimony not included above as immaterial to my decision.

⁷ The applicable rule is WAS 220-413-101. Hunting before or after hours.

CONCLUSION

The Grievant knew or should have known he was violating the laws and rules concerning spotlighting. Law Enforcement officers must follow the state laws and rules. The hunting rules stated that deer hunting stopped at 4:55 pm.

The LCB had just cause to terminate the Grievant's employment.

AWARD

For the reasons set out in in this Opinion that accompanies this Award:

The grievance must be and is **DENIED**.

Dated this 29th Day of April 2023.


Starr H. Knutson
Arbitrator