ROBIN HAMMER **DOCKET NO. 94-CORR-1084**

v.

DIVISION OF CORRECTIONS/

HUTTONSVILLE CORRECTIONAL CENTER

D E C I S I O N

This grievance was filed at Level IV (See footnote 1) by Grievant, Robin Hammer, against Respondent, Division of Corrections/Huttonsville Correctional Center ("HCC"), on November 30, 1994, following his dismissal on November 14, 1995. The grievance, as originally submitted, claimed a violation of W. Va. Code §§ 6C-1-1, et seq. (the "Whistle-Blower Law"), and alleged common law retaliatory discharge. The grievance essentially claimed Grievant's dismissal from employment at HCC was in retaliation for exercising his right to file grievances and for reporting allegedly illicit activities at HCC to higher authorities. With the consent of Respondent, Grievant modified his grievance statement on April 19, 1995, stating he had engaged in "numerous protected activities while employed" by HCC, including filing grievances and representingcoworkers in grievances, and union activity. As relief, Grievant sought:

> (1) Reinstatement with back-pay and benefits, (2) guarantee that I will never be involuntarily transferred to any other institution either temporary or permanent, and (3) establish a uniform written policy in regard to personal weapons at the facility. (4) cease all discriminatory treatment toward Mr. Hammer.

Grievant also sought "(1) continuous assignment to the south gun tower on 6 a.m. to 2 p.m., Monday through Friday, and (2) parking space behind the south gun tower", pending the outcome of a civil action he has apparently filed against Respondent.

Due to the serious illness of Warden William Duncil, this grievance could not proceed to hearing until May 19 and 22, 1995. A third day of hearing was held July 19, 1995. (See footnote 2) This matter became mature for decision on September 8, 1995, with the receipt of the parties' Proposed Decisions.

Grievant was employed by HCC as a Correctional Officer for nine years prior to his dismissal on November 14, 1994. Grievant's evaluations for 1989 through 1993 showed he was a very good employee. Prior to his dismissal, Grievant had never been disciplined. Warden Duncil, however, characterized Grievant as being a disgruntled employee for the last three to four years.

HCC is a medium security prison located in Randolph County, housing 700 inmates. It is staffed by 178 employees. All inmates at HCC are assigned a classification of from one to four. Theclassification is dependent upon a number of factors, including a risk assessment and whether the inmate has been a "good" prisoner. Those inmates classified as "ones and twos" (trusties), are allowed to work outside the prison building on the prison grounds, including in the employee parking area, without continuous armed staff supervision. The employee parking area is not manned by a guard, nor is there a guard station at the prison entrance.

On October 18, 1994, Grievant arrived at work shortly before 1:45 p.m. He brought a loaded .357 Magnum revolver to work with him, and left it in his truck on the front seat, concealed from view by his coat. The truck was locked, and the gun had a safety security trigger lock, and had five rounds in it, with no round under the hammer. Grievant has a permit to carry a concealed weapon.

An inmate trusty was sitting on a bridge near the employee parking area as Grievant parked his truck. This inmate was assigned to cut brush along the river, and was sitting on the bridge with a scythe nearly every day around 2:00 p.m., all summer and into the fall of 1994. I pp. 91-92, 242-243. The inmate was unsupervised, but because of the shift change at 2:00 p.m., there were a lot of employees in the parking area around this time of day. Grievant disagreed with the HCC policy of allowing trusties to work in the parking area unattended, and had expressed his disagreement.

Grievant brought the gun to work with him because his truck's water pump needed to be replaced, and he was concerned his truckwould break down in a rural area. He believed he needed to carry the gun for protection due to threats he had received from inmates, and because his neighbor had been beaten by two men when his vehicle was stopped along the road. HCC disputes this was the reason Grievant brought the gun to work.

HCC maintains locked weapons boxes for visitors to check their weapons. Until May 19, 1993, HCC employees had been allowed to leave their personal weapons in these weapons boxes while they were on duty. So many employees were using the weapons boxes there were none available for visitors to use. For this reason, HCC employees are no longer allowed to use the weapons boxes.

Although it was clear many employees were carrying weapons to work, when employees were told they could no longer use the weapons boxes HCC did not adopt a policy on what employees were to do with personal weapons while at work. At least one shift commander told his shift to either leave their weapons at home, or secure them in the trunk of their car.

At the end of roll call, at approximately 1:50 p.m., Grievant told his shift commander, Captain Roger Arbuthnot, that he had left a loaded .357 Magnum laying on the seat of his truck, and there was an unsupervised inmate in the area. Grievant asked Capt. Arbuthnot what he should do. Capt. Arbuthnot directed Grievant to immediately retrieve the gun from his vehicle and secure it in a locked weapons box within the facility. Grievant responded that it was against policy for an employee to use the weapons boxes, andCapt. Arbuthnot stated he would accept responsibility for the violation of policy.

Grievant went to his vehicle, retrieved the gun, and placed it in a weapons box as directed by Capt. Arbuthnot. No one saw the gun in Grievant's vehicle, nor did anyone see him place the gun in the weapons box.

Capt. Arbuthnot prepared an incident report. An incident report is prepared by Capt. Arbuthnot on any event which is out of the ordinary. On October 21, 1995, Warden Duncil directed Lieutenant John Murphy to conduct an investigation of the incident. On October 23, 1994, Grievant gave a statement to Lt. Murphy in which he gave his reason for telling Capt. Arbuthnot he had a weapon in his vehicle. Grievant told Lt. Murphy he had left his lunch in his truck and was afraid it would spoil. Instead of asking if he could return to his vehicle to get his lunch, Grievant decided to bring to the attention of his supervisor his belief that it was not a good practice to allow inmates to be unsupervised in the parking area, when employees are provided no place to secure personal weapons inside the facility. Grievant stated he did not ask if he could get his lunch because he was running late and "this was a spontaneous idea plus I have been parinoid [sic] about inmates being in the parking lot unsupervised." When asked by Lt. Murphy why he brought the weapon if he was paranoid about inmates being unsupervised in the parking lot, Grievant's statement was:

> I bring the weapon because I have been carr[y]ing the weapon for about 4 yrs and I wished to express my concern to the shift commanders about unsupervised inmates and this is not a good practice and see if something can beresolved on this date (reported). That inmates be supervised in the parking area or a place be provided for employees to secure there [sic] weapons (weapons boxes).

It is apparently this statement which HCC relies upon to support its reason for firing Grievant.

Lt. Murphy asked Grievant during the interview:

> If you had forgotten your lunch and wanted to get it why make the statement about the weapon where someone would have to break policy[?]

Grievant responded:

> They wouldn't have to break policy. There's no policy where the weapon can't be secured in the switchboard area or locked in the cabinet at the switchboard. I've done it for others and I've seen it done before the gun boxes were there.

When asked if he had ever tried to check the weapon at the switchboard, Grievant responded he had not, and he had quit carrying the gun to work when he was on day shift because they could not use the weapons boxes.

Lt. Murphy also asked Grievant later in the interview, "[w]hy were you carrying the gun that day?" Grievant responded,

> The morning before work my brother told me my water pump was going bad. I ask[ed] him what the consequence would be if it quit going to work. He said it would set [sic] there until it was fixed. I didn't want to be defenseless if stranded.

Grievant continued that he was aware of a neighbor being beaten while stopped along the road, and that inmates had threatened him and his wife. Grievant further stated to Lt. Murphy that, approximately two years ago, Sergeant Verl Simmons had told him tokeep his gun in his vehicle. R Ex 6. (See footnote 3) Sgt. Simmons denied making this statement.

Lt. Murphy turned his investigation report in to Warden Duncil on November 1, 1994. Attached to the report were the statements made to him by the employees he interviewed about the incident. His report concluded that around 1:50 p.m., on October 18, 1994, Grievant had made the statement "that there was a loaded [.]357 revolver lying on the seat of his truck and there was an inmate working unsupervised in that area." R Ex 6.

Warden Duncil made the decision to terminate Grievant. The dismissal letter stated the reason for dismissal as follows:

> the specific reason for your dismissal is that on October 18, 1994, you did knowingly,

> intentionally, and in total disregard of institutional security leave a loaded .357 magnum pistol on the front seat of your personal vehicle in an area you knew that inmates classified as 'outside' could access. This action by you constitutes gross misconduct and is a flagrant violation of a Division of Corrections policy 400. Section C8 'violating safety rules where there is a threat to life', and C22 'breach of facility security or failure to report any breach or possible breach of facility security.' R Ex 8.

Warden Duncil testified at the Level IV hearing that Grievant was not dismissed simply because he brought a gun to the work place. He was terminated from employment because he knowingly and intentionally, and in total disregard for security procedures, created a dangerous situation, by leaving a weapon visible on the seat of his truck, for the purpose of testing the policy of inmates being in the parking area unsupervised. He further believed thatGrievant brought the gun with premeditation, because Grievant had inquired of another officer as to the nature of the offense committed by the inmate who was sitting on the bridge. Warden Duncil chose to dismiss Grievant rather than suspend him because Grievant's action was knowing and intentional, in total disregard for security procedures that Grievant was well aware of, and "by his statement, because he wanted to make an issue out of the fact -- This is not my words. These are his. I'm paraphrasing. Out of the fact that inmates were permitted out in front of the building without supervision." I pp. 193-4. Warden Duncil did not speak to Grievant himself prior to making the decision to dismiss him, but relied totally upon the investigation report.

Grievant's dismissal was effective immediately. The dismissal letter stated the Shift Commander and the Deputy Chief Correctional Officer believed his continued presence would disrupt the operation of the institution. (See footnote 4) The dismissal letter stated Grievant could request a meeting with Warden Duncil by November 29, 1994.

Discussion

Pursuant to W. Va. Code § 29-6A-6, the burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. Ramey v. W. Va. Dept. of Health, Docket No. H-88-005 (Dec. 6, 1988). "The preponderance standard generally requires proof that a reasonable person would accept assufficient that a contested fact is more likely true than not." Leichliter v. W. Va. Dept. of Health and Human Res., Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the employer has not met its burden. Id. One of the charges against Grievant is gross

misconduct, which has been defined as implying "a willful disregard of the employer's interest or a wanton disregard of standards of behavior which the employer has a right to expect of its employees." Graley v. W. Va. Parkways Econ. Dev. and Tourism Auth., Docket No. 91-PEDTA-225 (Dec. 23, 1991).

The employer must also demonstrate that misconduct which forms the basis for the dismissal of a tenured state employee is of a "substantial nature directly affecting rights and interests of the public." House v. Civil Service Comm'n., 380 S.E.2d 226 (W. Va. 1989). "The judicial standard in West Virginia requires that 'dismissal of a civil service employee be for good cause, which means misconduct of a substantial nature directly affecting rights and interests of the public, rather than upon trivial or inconsequential matters, or mere technical violations of statute or official duty without wrongful intention.' Syl. Pt. 2, Buskirk v. Civil Service Comm'n, 332 S.E.2d 579, 581 (W. Va. 1985); Oakes v. W. Va. Dept. of Finance and Admin., 264 S.E.2d 151 (W. Va. 1980); Guine v. Civil Service Comm'n, 141 S.E.2d 364 (W. Va. 1965)." Scragg v. Bd. of Dir. W. Va. State College, Docket No. 93-BOD-436 (Dec. 30, 1994). "[T]he work record of a long time civil service employee is a factor to be considered in determining whetherdischarge is an appropriate disciplinary measure in cases of misconduct." Buskirk, supra.

In this case, Respondent's disciplinary policy, Policy Directive 400, must also be taken into account. The Policy provides examples of types of misconduct, and recommends sanctions. The Policy establishes three levels of violations referred to as Class A, Class B and Class C offenses. The listing of offenses within each category is extensive, but not all inclusive. Among the Class B offenses is "[v]iolating safety rules where there is no threat to life." Among the Class C offenses are "[v]iolating safety rules where there is a threat to life", "[g]ross negligence on the job which results in the escape, death or injury of an inmate or the death or injury of any other person", "[t]rafficking in contraband", "[b]reach of facility security or failure to report any breach or possible breach of facility security", and "[o]ther actions of similar nature and gravity." It is clear that intentional acts are included within Class C offenses.

The recommended punishment for the offense is also specified by Policy 400. For a Class C first offense the recommended punishment is a 16 day to 30 day suspension, and for a second offense a 31 day to 6 month suspension. According to the Policy, an employee's gross negligence could result in death three times before he was dismissed. Class B offenses likewise follow a progressive

disciplinary policy beginning at a five to 15 day suspension for a first offense, then a 16 to 30 day suspension for a second offense, and a 31 day suspension to a dismissal for athird offense. For all Classes of offenses mitigating circumstances may reduce the recommended sanction. An employee's long record of satisfactory service is defined as a mitigating circumstance by the policy. Gr Ex 7. (See footnote 5)

The reason given to Grievant in his dismissal letter for his dismissal was that he knowingly and intentionally, and in total disregard of institutional security left a loaded gun in his truck, in an area he knew unsupervised inmates could access. Grievant was charged with gross misconduct, flagrant violation of Division of Corrections policy 400, Sections C8 "violating safety rules where there is a threat to life", and C22 "breach of facility security or failure to report any breach or possible breach of facility security." Warden Duncil added at the Level IV hearing that it was his belief Grievant had brought the weapon for the purpose of testing a policy, and it was for this reason he was fired. (See footnote 6)

HCC has proven Grievant left a loaded gun on the front seat of his truck. However, the gun was not visible as Warden Duncil assumed in making his decision. The undersigned does not find Grievant planned to bring the gun to work to test an HCC policy as Warden Duncil concluded. Even if the undersigned found this intent on Grievant's part, however, it would not affect the result of this Decision.

Except for the statement he gave to Lt. Murphy quoted above which indicates Grievant brought the weapon because he had been carrying it for four years and wished to express his "concern to the shift commanders about unsupervised inmates", Grievant's explanation that he brought the gun to work for protection was believable and consistent. This statement conflicts with the questions subsequently asked by Lt. Murphy during his interview with Grievant, and the responses to him by Grievant. Further, Lt. Murphy did not conclude after his interview with Grievant that he had brought the gun to work with the intent of testing a policy. He concluded that Grievant had made the statement in roll call for a reason, but suggested Grievant wanted everyone in roll call to know he was carrying a gun. For these reasons, the undersigned concludes this part of Grievant's statement recorded by Lt. Murphy during his investigation should not be taken literally or accorded great weight.

HCC presented as other evidence of premeditation that Grievant had inquired about the crime committed by the inmate who was sitting on the bridge. Grievant explained he was gathering this

information to provide to a judge by November 1, 1994, in connection with a lawsuit.

The undersigned does find that it is more likely than not that Grievant intentionally left the gun on the seat of his truck for the purpose of testing the policy of allowing inmate trusties to work unsupervised in the employee parking area. Grievant denied this, and insisted he had simply forgotten his lunch. It is clear that Grievant made a conscious decision to leave the gun in his truck. Grievant stated to Lt. Murphy during his investigation that he believed weapons could be kept at the switchboard and he had helped other employees secure their weapons at the switchboard, yet he chose to leave the gun in his vehicle instead of securing it at the switchboard. Grievant's statement that he "spontaneously" thought of the idea of stating he had a gun in his truck so he could go get his lunch does not ring true. Grievant also gave a different explanation to Lt. Murphy than he gave at the hearing for simply not asking if he could go get his lunch. He told Lt. Murphy he didn't ask to get his lunch because he was running late, and the idea to point out the inmate near the parking area was a spontaneous idea. Grievant testified at hearing that he was afraid to ask for any special favors.

Grievant's intentional act falls within a Class C violation under Policy 400. Although the dismissal letter characterizes theoffense as gross misconduct, breach of security, and a violation of safety rules, three separate violations, there was only one occurrence, and thus one offense. The recommended punishment per the Policy is a 16 to 30 day suspension, which may be tempered by mitigating circumstances, such as Grievant's nine year spotless employment record. HCC argues that the Policy 400 sanctions are only recommended, and that "Respondent maintains the discretion for the imposition of sanctions."

The undersigned may mitigate the discipline imposed if the penalty assessed is clearly excessive or clearly disproportionate to the offense. Factors to be considered in this analysis include the employee's past disciplinary record, the clarity of notice to the employee of the rule violated, and whether the employee was warned about the conduct, and mitigating circumstances. Stewart v. W. Va. Alcohol Beverage Control Comm'n, Docket No. 91-ABCC-137 (Sept. 19, 1991).

Capt. Arbuthnot testified that Grievant's act had endangered lives, and that he was testing policy, but that he believed dismissal was too severe a punishment. He believed a stiff suspension was appropriate. Several officers would not comment on the punishment, deferring that decision to Warden Duncil.

The discipline imposed is clearly excessive in light of the Policy 400 guidelines, and Respondent

has provided no reason why the guidelines should not have been followed in this case. The Policy states as its purpose, "[t]he Standards of Conduct in this policy are designed to protect the well-being and rights of allemployees; . . .", and that the Standards of Conduct serve to, among other things, "[e]stablish a fair and objective process for correcting or treating unacceptable conduct . . .". When the Policy provides for three-step progressive discipline, and the first two steps are ignored on the first offense, the Policy's objectives are not being followed.

The discipline imposed is clearly excessive in light of Grievant's spotless nine year employment record. Grievant's evaluations for the years 1989, 1990, 1991, 1992, and 1993, all showed Grievant's overall rating as very good, with a low mark of 7.7 in 1989, and a high of 8.8 (See footnote 7) in 1991. Gr Exs 53, 52, 29, 22 and 25. The evaluations were signed by Warden Duncil. The 1990 Evaluation stated as a strong point, "[f]irm and formal in dealing with inmates." Lt. John Murphy performed the 1991 evaluation, describing Grievant's strong points as:

> R. Hammer is a very good employee. Is a very self-motivated individual and has exceptional knowledge of his job duties. He excels out of his way to help other employees. Hammer generates a 100% of his work expectancies. He is very concerned when policy fails to meet his expectations.

In the 1992 evaluation, Sgt. Verl Simmons stated Grievant worked harder than any other employee on the 7 to 3 shift, and described him as, "always alert and conscientious in his assigned tasks." The 1993 evaluation done by Sgt. Simmons and Sgt. Grover Rosencrance on December 20, 1993, less than 11 months preceding his dismissal, described Grievant's strong points as, "does a very goodjob on any assignment given him. He is a very unselfish person, and he is well liked by his fellow officers." At the hearing Lt. Murphy described Grievant as a conscientious employee who would never intentionally make a weapon available to an inmate.

Warden Duncil has in the past considered an employee's potential for developing into a good officer in determining the appropriate penalty. He chose to place an officer who pled guilty to a misdemeanor battery offense on a one-year improvement plan because he was young, aggressive, and a good officer. That officer was a new officer with a lot of promise, and he "wanted to deal with him". While the offense itself cannot be compared to Grievant's, Warden Duncil offered no reason why Grievant's stellar work history should not also have been considered in assessing the penalty in this case.

Further, it was not clear to employees that they could not leave their weapons in their vehicles. At least one supervisor told employees they could do so if secured in the trunk of the vehicle. Grievant believed the gun was secured because it had a security trigger lock, was concealed, and the truck was locked. Many witnesses testified that it was common practice to bring guns to work and leave them in vehicles, and that a weapon secured in a trunk was not a problem. Warden Duncil stated he would not punish an employee who forgot and left a gun in his vehicle. (See footnote 8)

Warden Duncil was aware that many employees carried weapons to work when he decided to issue the memorandum forbidding employees from using the weapons boxes, yet he made no alternative arrangements for employees to secure their weapons. Although he stated that "[t]here's no reason for you [an employee] to have it [a personal weapon] at work", Warden Duncil has brought his own gun to the institution on occasion, and checked it at the switchboard or put it in a weapons box. Warden Duncil's residence is only 300 yards from the prison facility. When asked what employees who wish to use the firing range before or after work should do with their weapons, his response was that most employees live within 20 miles of the institution and should "go home and get your firearm, just like I do". After stating that he assumed employees would not bring their weapons to work after being told they were not to use the gun boxes, and therefore it was not necessary to tell employees not to bring weapons, Warden Duncil finally stated:

> No one would say anything if you carried that firearm in, took it to the switchboard and said here, would you put this up for me, and they would put it in the wooden cabinet directly behind the switchboard, and they would lock it up, and they would let you have it that night. I p. 234.

Warden Duncil has three pistols at his residence, out of sight and locked in a box. Inmate trusties maintain the residence and grounds and live in cottages 150 yards from the Warden's residence.

Another factor in evaluating whether the penalty was excessive is that Grievant left the gun in the truck for a period of ten to fifteen minutes, during a time when employees were in the parking lot during the shift change. Once it is accepted that Grievant intentionally left the gun in his vehicle for the purpose of testing a policy, it must also be accepted that the gun was left during the time it was because during that time period it would be unlikely that unsupervised inmates would be trying to get into employee vehicles.

Finally, and of significance to the undersigned, the inmate sitting on the bridge was provided by

HCC with a **scythe**! This inmate was using the scythe without continuous supervision. While a scythe is not dangerous at long range as a gun may be, it is by design a large sharp instrument which could easily be used to cause fatal injury. Clearly HCC did not see this inmate as much of a risk. While Grievant's action cannot be condoned and was a serious violation, this entire incident appears to the undersigned to have been blown out of proportion given the practices at the institution.

The conclusions to be drawn are that Grievant committed a Class C offense and Policy 400's recommendations should have been applied. Grievant's dismissal should be reduced to a suspension without pay. Because of Grievant's nine years of excellent service, the suspension should be less than the maximum 30 days. However, because Grievant's act was intentional, the suspension should be more than the minimum 16 days. The undersigned findsthat a 25 day suspension without pay is appropriate. Grievant's other claims need not be addressed.

Findings of Fact

1. Grievant has been employed nine years by Huttonsville Correctional Center as a Correctional Officer.
2. Grievant was a conscientious employee who had received good evaluations during his employment, and, prior to his dismissal, had never been disciplined by HCC.
3. On October 18, 1994, Grievant brought a gun to work for protection on his way to and from work. He left it concealed on his truck seat, secured by a security trigger lock, with the truck locked, while he went to roll call, with the intent of testing the policy of allowing inmate trusties to work unsupervised in the employee parking area.
4. An inmate trusty was sitting on the bridge near the employee parking area on October 18, 1994, when Grievant left the gun in his truck, and Grievant was aware of this. This inmate was provided by HCC with a scythe, and worked all summer cutting brush with it, without continuous supervision.
5. Division of Corrections Policy 400 is applicable to Grievant's act, and classifies it as a Class C offense for which the recommended punishment is a 16 to 30 day suspension.
6. It was not clear to employees that they could not leave their weapons in their vehicles. At least one supervisor told employees they could do so if secured in the trunk of their vehicle.
7. Grievant believed the gun was secured because it had a security trigger lock, was

concealed, and the truck was locked.

8. Warden Duncil believed the gun was visible when making the decision to terminate Grievant.

9. It was common practice to bring guns to work and leave them in vehicles.

10. Warden Duncil would not punish an employee who forgot and left a gun in his vehicle.

11. Warden Duncil was aware that many employees carried weapons to work when he decided to issue a memorandum forbidding employees from using the HCC weapons boxes, yet he made no alternative arrangements for employees to secure their weapons.

12. Warden Duncil described Grievant as a disgruntled employee for the past three or four years.

13. Warden Duncil considered in punishing another officer that he was young, aggressive, and a good officer, a new officer with a lot of promise, and he "wanted to deal with him".

14. An officer who forgot he had left a weapon in the trunk of his vehicle and brought it to work was punished by a verbal reprimand.

Conclusions of Law

1. Pursuant to W. Va. Code § 29-6A-6, the burden of proof in disciplinary matters rests with the employer, and the employer must meet that burden by proving the charges against an employee by a preponderance of the evidence. Ramey v. W. Va. Dept. of Health, Docket No. H-88-005 (Dec. 6, 1988).

2. Respondent has proven Grievant knowingly and intentionally left a gun in his vehicle for the purpose of testing an HCC policy.

3. The undersigned may mitigate the discipline imposed if the penalty assessed is clearly excessive or clearly disproportionate to the offense. Factors to be considered in this analysis include the employee's past disciplinary record, the clarity of notice to the employee of the rule violated, whether the employee was warned about the conduct, and mitigating circumstances. Stewart v. W. Va. Alcohol Beverage Control Comm'n, Docket No. 91-ABCC-137 (Sept. 19, 1991).

4. The punishment imposed was clearly excessive.

Accordingly, this grievance is **GRANTED in part, and DENIED in part**. Grievant's discipline is reduced to a 25 day suspension without pay. Grievant is hereby **ORDERED REINSTATED** to his position, and is entitled to back pay, less an offset for interim wage earnings, and restoration of all

attendant employee benefits. Respondent is further **ORDERED** to reevaluate whether a written policy is needed to provide guidance to employees on whether and under what circumstances they may carry personal weapons to work, and if so, how they are to be secured.

Any party may appeal this decision to the circuit court of the county in which the grievance occurred and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

BRENDA L. GOULD

Administrative Law Judge

Dated: November 30, 1995

Footnote: 1 Grievant bypassed the lower levels of the grievance procedure as allowed by W. Va. Code § 29-6A-4(e).

Footnote: 2 References to the transcripts of each of the three days of hearing are made as "I p. __", "II p. __" and "III p. __" respectively, with the page number in the blank.

Footnote: 3 References to Respondent's Level IV exhibits are made as follows: "R Ex __", with the exhibit number appearing in the blank.

Footnote: 4 Grievant did not raise as an issue the failure to provide 15 days' notice of the dismissal, and therefore it will not be addressed.

Footnote: 5 Grievant's exhibits admitted at the Level IV hearing are referred to as "Gr Ex __", with the exhibit number appearing in the blank.

Footnote: 6 Employers are required to provide employees being dismissed with notice of the reasons for dismissal "specific enough that the employee can understand the basis for the dismissal and respond thereto without having to file a grievance to determine the reason(s) for the termination." Davis v. W. Va. Dept. of Motor Vehicles, Docket No. 89-DMV-569 (Jan. 22, 1990). See also Mackin v. Civil Service Comm'n, 155 W. Va. 139, 181 S.E.2d 684 (1971); and Yates v. Civil Service Comm'n, 154 W. Va. 696, 178 S.E.2d 798 (1971) ("[i]t does not satisfy the requirements of law relating to civil service coverage to supply the reasons for dismissal for the first time at an appeal before the Civil Service Commission"). Grievant did not argue that Respondent had at Level IV changed the reason for his dismissal without notice, and

Respondent, accordingly, did not address the issue. Grievant presented evidence in rebuttal to all charges. For these reasons, the undersigned finds Grievant has waived his right to challengewhether Respondent changed its reasons for dismissal at the Level IV hearing.

Footnote: 7 The highest rating an employee may achieve is a 10.0.

Footnote: 8 In fact, in April of 1995, Warden Duncil found no violation of policy or law by an employee who had inadvertently left a gun in a locked box in his trunk while parked at Cass Work Camp in August of 1994. Warden Duncil found only that the employee had exercisedpoor judgment. The employee was verbally admonished and instructed that this was not to occur again. Gr Ex 23.