

#1565

VOLUNTARY LABOR ARBITRATION TRIBUNAL

In the Matter of Arbitration	*	
Between	*	
	*	OPINION AND AWARD
OHIO CIVIL SERVICE	*	
EMPLOYEES ASSOCIATION	*	Anna DuVal Smith, Arbitrator
LOCAL 11, AFSCME, AFL/CIO	*	
	*	Case No. 04-00-001030-17-01-07
and	*	
	*	
OHIO DEPARTMENT	*	Krystyna Gasior, Grievant
OF AGRICULTURE	*	Removal

APPEARANCES

For the Ohio Civil Service Employees Association/AFSCME Local 11/AFL-CIO:

Steven W. Lieber, Staff Representative
Ohio Civil Service Employees Association/AFSCME Local 11/AFL-CIO

For the Ohio Department of Agriculture:

John H. Hix, Human Resources Administrator
Ohio Department of Agriculture

Neni Valentine
Ohio Office of Collective Bargaining

I. HEARING

A hearing on this matter was held at 9:35 a.m. on May 9, 2001, at the Lausche State Office Building, 615 West Superior Avenue in Cleveland, Ohio, before Anna DuVal Smith, Arbitrator, who was mutually selected by the parties, pursuant to the procedures of their collective bargaining agreement. The parties stipulated the matter is properly before the Arbitrator and presented one issue on the merits, which is set forth below. They were given a full opportunity to present written evidence and documentation, to examine and cross-examine witnesses, who were sworn or affirmed and excluded, and to argue their respective positions. Testifying for the Ohio Department of Agriculture (the "State") were Mahmood Sabihi, DVM, Veterinary Supervisor; and William E. Choate, Jr., Meat Inspection Supervisor. Testifying for the Ohio Civil Service Employees Association/AFSCME Local 11/AFL-CIO (the "Union") was the Grievant, Krystyna Gasior. A number of documents were entered into evidence: Joint Exhibits 1-7 and Union Exhibits 1-4. The oral hearing was concluded at 1:25 p.m. following oral summations, whereupon the record was closed. This opinion and award is based solely on the record as described herein.

II. STATEMENT OF THE CASE

Chronology

This case concerns the removal of a twelve-year Meat Inspector of the Ohio Department of Agriculture for poor performance. The record does not reveal any job performance issues for the Grievant until after the State changed its meat inspection system from results-oriented after-the-fact detection to a focus on prevention during the production

process. The new program (known as “Hazard Analysis of Critical Control Points,” or “HACCP”) requires inspectors to verify that their assigned producers follow their hazard plan at every step. Under this new system the total list of inspection tasks (“PBIS” for “Performance Based Inspection System” tasks) for a given facility is sampled by computer every two weeks and a list of those to be performed in the following two weeks at the site is generated. Producers are unaware of which elements are on any given bi-weekly list at the time their facility is inspected. The inspector’s job is to determine whether there is a deviation from plan and, if so, what is being done to correct it. Sometimes it is not possible to perform a given task as, for example, when a particular product on the inspection list is not being produced on the inspection date. In such a case, the inspector marks the task as “not performed” and moves on. But if a product is produced on an inspector’s shift, according to District Veterinary Supervisor Mahmood Sabihi, the inspector is responsible for performing the related tasks on the list before leaving the plant.

According to Sabihi, this new system required a complete change for inspectors, who received both off-site and on-the-job training to help them perform effectively. Some inspectors adapted, others did not. Departmental records establish that the Grievant, who was hired in 1988, underwent HACCP training in 1999. Her performance evaluations were not submitted, but she did have two disciplinary actions for poor performance on her record: a written reprimand issued May 3, 1999, and a five-day suspension issued May 13, 1999. In March of 2000 she was reassigned to Ashland, Ohio, but she grieved this and was returned to Cleveland on August 1, 2000, where she was re-assigned to three facilities on the west side of the city. By August 10 she had produced written records leading her supervisors to believe her

August 10 Failure to perform the 03B02 PBIS task at Blue Ribbon Meats, thus allowing two lots of Italian sausage to enter the food chain without inspection.

A grievance protesting this termination was filed on October 30 and duly processed through the grievance procedure without resolution, finally coming to arbitration as aforesaid, free of procedural defect, for final and binding decision.

The Incidents

Regarding the Blue Ribbon lamb racks, company records for the August 8 day shift show that lamb racks were produced that day at 1:00 p.m. The sign-in sheet showed the Grievant's supervisor, William Choate, that the Grievant was in the plant from 10:05 a.m. until 2:00 pm. The Grievant testified that she did not perform the required task for this product because she did not know it was being produced. Ordinarily, she said, this product is produced during the evening shift and the room that is used was being cleaned all that morning. Although she is not given a copy of the production schedule, she does have access to it. Employees do not tell her what they are doing and do not come to get her unless she tells them that she needs to observe a particular task. She may have been working on something else, such as paperwork, at the time of this incident, and her office is on the other side of the plant from the room in which lamb racks are cut.

With respect to Maher Poultry on August 9, this is a two-shift plant with the first shift cleaning the process area for the second shift's production. Since no product was produced during the first shift, the Grievant testified that her pre-op inspection (01B02) was abbreviated. Her inspection was based on the pre-op done by the day shift manager and so was limited to the freezer and lunchroom and possibly the bathroom and locker. Also, since the plant was

was un rebutted by the State, as was her claim about the shipping labels at the other producer. Here is where an investigation would have been helpful. As for August 10, her supervisor erroneously read "5:10 a.m." as "6:10 a.m." and thus falsely concluded the first run of Italian sausage happened when she was in the plant. Since she was not there until 6:00 a.m., she could not have performed the associated task for this particular batch. However, the same does not hold true for either the 1:15 p.m. run on August 10 or the lamb racks produced by Blue Ribbon at 1 p.m. on August 8. The Grievant was on duty for both and was thus responsible for the PBIS tasks associated with their production. It appears to me that the Grievant needs to know how to find out what is being produced on her watch and perhaps also how to make better decisions.

Turning now to the level of discipline, the purpose of discipline is correction. To that end it must be progressive and give the employee a reasonable chance to reform. I have scrutinized the Grievant's discipline record and see that although both incidents are performance-related, neither discipline was for missing an inspection task. Moreover, this is the Grievant's third recorded performance-related violation (not her fourth), for which the discipline grid suggests a suspension. As a long-term employee she should be given another chance, but should receive some discipline to impress upon her the need to improve her performance. I also note that an earlier attempt to provide her with training via a transfer did not work out. The Grievant, herself, complains that her computer training was inadequate because she lacked a computer password until shortly before her termination, and the pre-disciplinary hearing officer, too, thought retraining was in order. Returning her to her job without providing for training would seem to be a futile act. Therefore, while I am converting