

ARBITRATION AWARD SUMMARY

OCB Award Number: 292  
OCB Grievance Number: 27-23-890419-0013-06-10 } Charlene  
27-23-890419-0014-06-10 } Payne  
Union: SCOPE/OEA  
Department: R&C  
Arbitrator: Andrew Love  
Management Advocate: Ted Durkee  
Union Advocate: Henry Stevens  
Arbitration Date: 6-8-89  
Decision Date: 6-21-89  
Decision: Granted

**ARBITRATION**

**OHIO DEPARTMENT OF REHABILITATION AND CORRECTION**

**and**

**OEA/SCOPE (Grievance of Charlene Payne)**

**FOR DRC: Thomas E. Burkee  
FOR GRIEVANT: Henry Stevens  
ARBITRATOR: Andrew J. Love  
GRIEVANCE NO.: 27-23-(4/19/89)-013-06-10  
GRIEVANCE NO.: 27-23-(4/19/89)-014-06-10**

**DECISION AND AWARD**

The issues presented in this proceeding on June 8, 1989, are: (1A) whether the written reprimand in respect to the grievant on April 13, 1989, was for just cause; (1B) whether the written reprimand was in violation of the contract between the State of Ohio and OEA; and (2) if the written reprimand was for just cause, or if the written reprimand was in violation of the contract between the State of Ohio and OEA, what should the remedy be?

The following items were admitted into evidence:

Joint Exhibit 1: Contract between the State of Ohio and OEA  
Joint Exhibit 2: Grievance trail  
Joint Exhibit 3: DRC standards of employee conduct  
Management Exhibit 1: Investigation report and related matters  
Management Exhibit 2: Affidavit of Steven Mutchler  
Management Exhibit 3: Affidavit of Harvey Howison, Regional Education Administrator  
Management Exhibit 4: Affidavit of Richard Armanini regarding the use of GED manuals during orientation  
Association Exhibit 1: Draft of procedure for security and administration of GED testing, dated February 15, 1989

Certain facts were stipulated by the parties:

1. Grievant was appointed February 23, 1987, as a Guidance Counselor at Ross Correctional Institution (hereinafter "RCI").
2. Grievance prior disciplinary record includes:  
November 2, 1988 - failure to follow post orders, administrative regulations, written orders, policies and procedures (6c) - oral reprimand  
February 24, 1988 - failure to follow post orders, administrative regulations, written orders, policies and procedures (6c) - written reprimand  
July 9, 1987 - unauthorized absence (1a) - written reprimand
3. Grievant was GED test examiner at RCI during 1988.
4. The GED test materials were secured in the Guidance office.
5. The Standards of Employee Conduct became effective on October 23, 1987.
6. Grievant was on maternity leave from June 13, 1988 to September 26, 1988.
7. Inmate Duane T. Thompson was the Guidance office aid.
8. Inmate Thompson was admitted October 7, 1987, and sentenced for receiving stolen property C/S with Theft 3 counts.
9. The grievance is properly before the Arbitrator.

This matter came before this Arbitrator pursuant to an alleged violation of the Standards of Employee Conduct Rule No. 24 to wit: failure of supervisor to properly supervise or enforce work rules.

The evidence is as follows: The Grievant, who holds a PHD in guidance and counseling, was assigned the responsibility of administering GED testing to inmates who were attempting to receive high school equivalent diplomas. Inmate Thompson was designated as her aid to assist her in administering such tests. Immediately prior to her leaving on maternity leave in June, 1988, the Grievant was responsible for answer sheets for an upcoming GED test. It should be noted that the test booklets were contained in the office

of Dr. Susan Davis, RCI Deputy Warden, because the security in the grievant's office was not satisfactory inasmuch as the grievant only had one file cabinet which could be locked. Moreover, the grievant had previously requested that a bar lock be placed on her file cabinet for maximum security of all documents related to GED testing.

During the grievant's maternity leave, an investigation revealed that a GED test administered by Mark White, who acted in the absence of the grievant was compromised. The result of the investigation by Allen Toops and Richard Armanini, State Chief GED Examiner, revealed that inmate Thompson had obtained the answers for said test and sold them to other inmates who took the test. Inmate Thompson indicated that, because of his relationship with the grievant, he had access to her file cabinet. Moreover, this inmate stated that he asked the grievant what she wanted to do with copies of the answer sheets that had been saved. This inmate would take the blank answer sheets and fill in the marks from one of the ten passing tests. The inmate further stated that, during the grievant's maternity leave, he obtained score sheets for the testing period while she was away. Because Mark White realized that inmate Thompson was trusted by the grievant, Mr. White let the inmate work alone in the office with the file cabinet in the grievant's office open. All of the answer sheets were removed by this inmate at that time. During the investigation by Mr. Toops and Mr. Armanini, the grievant gave a statement to them while in

the presence of Dr. Susan Davis to the effect that the grievant had either given the inmate a set of xeroxed answered sheets or had given him access to a xeroxed set of answer sheets and instructed him to destroy them. The grievant, however, denied that she made that statement. She testified that she was offering conjecture that perhaps inmate Thompson managed to get into her file cabinet, which from the evidence indicates that it was not as secure as it could be, and obtained xeroxed copies of answer sheets, thereby enabling him to obtain answers during her maternity leave.

Dr. Davis testified that, although she is not the immediate supervisor of the grievant, she is her supervisor from the standpoint of chain of command. She stated further that each employee, including the grievant, was given a copy of the Employee Standards of Conduct at RCI. She could not state, however, whether the grievant had signed for a copy of these standards and rules and could not state whether the grievant actually had received such standards and rules.

Allen Toops, Chief GED Examiner for the DRC Bureau of Education and Training, stated that, in addition to his investigation of the selling of answers to the GED test, there was no policy on security measures or GED testing in force. He did state that manuals for GED test materials have been submitted to each person who would administer such tests to inmates at various orientation meetings. These manuals outline security measures required to ensure the integrity of the documents and the testing itself.

Stephen Sunker, President, SCOPE, stated that the employee standards of conduct were never submitted to the association as per Article 14 of the contract between the State of Ohio and OEA. Section 14.01 of that article states in pertinent part that:


"The Association will be furnished with a copy of the work rules in advance of their effective date."

The parties stipulated to Association Exhibits 2, 3 and 4, which were notices by other institutions of policies submitted to OEA prior to the date in which they would be effective.

Turning to the issues, this Arbitrator disagrees with the contention of the Association that the grievant was discriminated against. Clearly, the investigation conducted by Mr. Armanini and Mr. Toops did not result in any discriminatory impact on the grievant. In addition, this Arbitrator can find no evidence that supports the idea that the grievant was a scape-goat for RCI's subsequent suspension for GED testing purposes as a result of inmate Thompson's theft of materials. However, ~~this arbitrator does find that RCI and DRC are in violation of the contract, which requires Employee Standards and Conduct policy to be submitted to the Association prior to the effective date of its approval. There is no ambiguity in Article 14 of the contract, which clearly states the obligation of the State of Ohio to submit such policy drafts to the Association prior to their effective date. This Arbitrator cannot agree with the State of Ohio that this omission is irrelevant or unimportant. Because of the clarity of language~~

stated in Section 14.01 of the contract between the State of Ohio and OEA, the integrity of that portion of the contract is not subject to an otherwise interpretation.

Accordingly, this Arbitrator finds for the Association. The grievance is UPHELD.

  
Arbitrator