

OFFICE OF THE ARBITRATOR

#313

August 14, 1989

In the Matter of the Arbitration between:

THE STATE OF OHIO	)	
OFFICE OF COLLECTIVE BARGAINING	)	
Columbus, Ohio	)	
	)	
and	)	Grievance No.
	)	23-19-061788-13-02-11
OHIO HEALTH CARE EMPLOYEES UNION)	)	Maude A. Wolfe Demotion
DISTRICT 1199, WV/KY/OH	)	
NATIONAL UNION OF HOSPITAL AND	)	
HEALTH CARE EMPLOYEES	)	

APPEARANCES

For the State

Rodney Sampson  
Don Wilson  
Kathleen Antalocy  
D. Eugene Woods, Jr.  
Joseph R. Zisler  
Suzanne Widing, R.Ph.

Asst. Chief, Arbitration Services, OCB  
Arbitration Advocate, OCB  
CEO, Woodside Receiving Hospital  
Director of Human Resources, WRH  
Security Consultant, ODMH  
Manager, Pharmacy Service Center, ODMH

For the Union:

Deborah Bailey  
Richard E. Sternagel  
Maude A. Wolfe, R.Ph.

Organizer  
1199 Delegate  
Grievant

Arbitrator:

Earl M. Curry, Jr.

## BACKGROUND

The instant arbitration arose as the result of a grievance filed on June 17, 1988, by the Ohio Health Care Employees Union District 1199, WV/KY/OH, National Union of Hospital and Health Care Employees, AFL-CIO (the "Union"), protesting on behalf of employee Maude A. Wolfe, R.Ph. (the "Grievant") her demotion from Pharmacist 2 to Pharmacist 1 and her removal from the position of Director of Pharmacy by the Woodside Receiving Hospital, Youngstown, Ohio, a facility of the Ohio Department of Mental Health (the "State"). When the parties were unable to resolve this matter through their negotiated grievance procedure it was referred to arbitration pursuant to Article 7, § 7.06, Step 5.

## STATEMENT OF FACTS

The circumstances leading to this case began on February 12, 1988, when telephone calls were received by the Youngstown Police Department, the Ohio Highway Patrol, Canfield post and the Woodside Receiving Hospital from a private citizen alleging that Valium tablets were being sold illegally to her 17 year-old daughter by an unidentified employee of the Hospital pharmacy. After receiving this call, the hospital administration, needing to know if any Valium tablets were, in fact, missing, agreed that the Grievant, who was on extended sick leave and vacation, would take the individual patient's medication profile cards and the

documentation on what Valium supplies were in stock to her home to determine if there was an actual shortage. The Grievant reported back that there was a shortage of three hundred (300) tablets of ten milligram Valium.

Upon obtaining this information from the Grievant, Superintendent Kathleen A. Antalocy, on March 3, 1988, contacted Joseph R. Zisler, Security Consultant, Office of Operation Management, Ohio Department of Mental Health, and requested that he conduct an administrative investigation. This investigation began on March 10, 1988. Mr. Zisler's written report, dated March 21, 1988, raises questions about serious procedural, operational, and documenting flaws in the conduct of the Woodside Pharmacy. The report referred to suspicion concerning the integrity of the Pharmacy personnel; inability to account for and locate large amounts of pharmaceutical purchases; possible criminality in package content, misrepresentation to the Drug Enforcement Agency; questioned the competence of the Grievant; and the need to develop a system by which personnel could question the volume purchases of addictive drugs such as Valium, which ordinarily had low in-house usage. In his recommendation Mr. Zisler called for a complete inventory using the resources of Internal Auditing and the Central Pharmacy to ascertain any further losses and to "restore the integrity of the Pharmacy." He also requested that the matter be brought before the State

Board of Pharmacy and further recommended that employees of the pharmacy be disciplined and/or removed.

As a result of Mr. Zisler's request a special pharmacy audit of Woodside Hospital covering the period May 21, 1987 through April 4, 1988, was conducted by the Internal Audit Section under the leadership of Suzanne Widing, R.Ph., Manager, Pharmacy Service Center, Office of Support Services, Ohio Department of Mental Health. The audit team, consisting of five professionals, found an extensive error rate for controlled substances and numerous additional irregularities. A total of forty-three controlled substances were studied. Seven items (all having no usage) were found to be in balance between the ending inventory per documentation and the actual count. Twenty items were over the ending inventory per documentation and sixteen items were under the documentation figure. The alarming shortages were Xanax 1.0 mg. (989 unaccounted) and Valium 10 mg. (444 unaccounted). As a result the audit team found it necessary to make eight major recommendations for procedural changes in the Pharmacy. On June 19, 1988, the Hospital administration decided to demote the Grievant to Pharmacist 1, rather than remove her as was recommended by Mr. Zisler. As stated above, the instant grievance was filed and this arbitration ensued.

## ISSUE

Was there just cause for the demotion of the Grievant from Pharmacist 2 to Pharmacist 1? If not, what shall the remedy be?

### PERTINENT CONTRACT PROVISIONS

#### ARTICLE 5 - MANAGEMENT RIGHTS

Except to the extent modified by this agreement, the employer reserves, exclusively, all of the inherent rights and authority to manage and operate its facilities and programs. The exclusive rights and authority of management include specifically, but are not limited to, the rights expressed in Section 4117.08 (C)(1) - (9) of the Ohio Revised Code, and the determination of the location and number of facilities; the determination and management of its facilities, equipment, operations, programs and services; the determination and promulgation of the standards of quality and work performance to be maintained; the determination of the management organization, including selection, retention and promotion to positions not within the scope of this agreement; the determination of the need and use of contractual services; and the ability to take all necessary and specific actions during emergency operational situations. Management will not discriminate against any employee in the exercise of these rights or for the purpose of invalidating any contract provisions.

#### ARTICLE 8 - DISCIPLINE

##### §8.01 Standard

Disciplinary action may be imposed upon an employee only for just cause.

## **§8.02 Progressive Discipline**

The principles of progressive discipline shall be followed. These principles usually include:

- A. Verbal Reprimand
- B. Written Reprimand
- C. Suspension
- D. Demotion or Removal

The application of these steps is contingent upon the type and occurrence of various disciplinary offenses.

### CONTENTIONS OF THE PARTIES

#### Union's Contentions

The Union contends that the State did not have just cause to demote the Grievant. It argues that, instead, the State should have followed the principles of progressive discipline pursuant to Article 8, Section 8.02. It argues that the discipline imposed in this case was punitive rather than corrective in nature. There was no prior warning to the Grievant and she was not given the opportunity to correct the shortcomings uncovered by the audit of the pharmacy. It asks, accordingly, that the Grievant's demotion be set aside and the State required to follow progressive discipline pursuant to the parties Agreement.

#### State's Contentions

The State denies that it did not have just cause to demote the Grievant. It argues that over an extended period of time while the Grievant was its Director, the Pharmacy at Woodside Receiving Hospital experienced serious operational and procedural

deterioration resulting in unacceptable deficiencies. Although the Grievant was not directly responsible for all of these deficiencies, she was, by job description and as the institutional Pharmacy Director, ultimately responsible for ensuring the professional efficient and safe operation of the Pharmacy. Some of these deficiencies were in violation of Ohio Administrative Code as well as state statutes. It argues that management conducted an extensive investigation and several operational audits of the Pharmacy by professionals and peers of the Grievant before coming to judgment regarding her culpability. It argues that her demotion was the appropriate discipline considering the seriousness of the deficiencies, her length of service and the absence of any previous record of discipline. It argues that the Grievant's behavior constitutes failure of good behavior and neglect of duty and warrants demotion. It asks, accordingly, that the grievance be denied.

#### DISCUSSION

In the opinion of the Arbitrator the grievance should be denied. The record is clear that the Grievant, although not personally responsible for all of the deficiencies found in the Pharmacy by the various audits was, nevertheless, as Director of the Pharmacy, ultimately responsible for insuring a professional, efficient and safe operation of the Pharmacy and she failed to do so. This alone is sufficient and just cause for the State to

remove her from this position. The management of Woodside decided that demotion, rather than removal, was the appropriate discipline in this case, considering the seriousness of the problem, the Grievant's length of service and the absence of any prior discipline. The Arbitrator agrees, in light of these factors, that this was the most appropriate discipline.

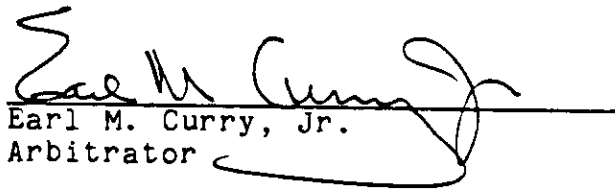
The Union has argued that the State was required to follow the principles of progressive discipline pursuant to Section 8.02 set forth above. The Arbitrator believes that the Union's argument is without merit in this instance. Section 8.02 clearly states in its last sentence that "[t]he application of these steps is contingent upon the type and occurrence of various disciplinary offenses" (emphasis added). This language means that the State is not required, in lockstep fashion, to apply each step of discipline, in turn, before it can apply a higher level of discipline. Rather, it clearly means that, depending upon the type and/or occurrence of various disciplinary offenses, one of these steps of discipline will be applied. If the offense is minor, then a verbal reprimand is in order for the first occurrence. If however, the offense is serious, management is not required to go through the various steps of discipline set forth in Section 8.02 before it applies the penalty of demotion or even removal. If, for example, an employee committed a serious act of violence against another employee or patient, certainly progressive discipline would not be required. While



the offense the Grievant is accused of is not as serious as the example above it is, nevertheless, a serious matter and the State is not required to apply progressive discipline.

AWARD

The grievance is denied for the reasons set forth just above.

  
Earl M. Curry, Jr.  
Arbitrator

Shaker Heights  
August 14, 1989