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ARBITRATION

Marion Correctional Institution
and
SCOPE/OEA (Grievance of Charles Hartwell)

FOR MCI: Thomas Durkee

FOR GRIEVANT: Henry Stevens

ARBITRATOR: Andrew J. Love

CASE NO.: 27-16-5-9-89-069-069-10

DECISION AND AWARD

The issues presented in the proceeding on September 20, 1989, are identified as follows:

- (1) Whether the three-day suspension of the Grievant imposed on May 8, 1989, was for "just cause"; and
- (2) If not, what should the remedy be.

On April 26, 1989, the Grievant, a Guidance Counselor at MCI, received a three day suspension for violation of the Standards of Employee Conduct Rule 6C, to wit: Failure to follow post orders, administrative regulation, and/or written policies and procedures.

A Grievance was timely filed and all matters regarding the steps requirement were met by MCI.

As Guidance Counselor, the Grievant was responsible for administering General Educational Development (hereinafter GED) testing at MCI. He was also responsible for the security of such test material as the site examiner for 1988.

Since GED testing is conducted by the Ohio Department of Education, the testimony of Richard Armanini, State Administer for

the GED Testing Program for the Ohio Department of Education, is illuminating. Mr. Armanini supervises the GED Testing Program for Ohio, which includes 85 test centers and 100 satellite test centers. Twenty of these test centers are within the Department of Rehabilitation and Correction.

Mr. Armanini stated that he has a working relationship with the Grievant through orientation meetings with test examiners. The purpose of these meetings is to train test examiners on the utilization of forms and security measures which need to be taken to protect GED materials. He testified that he observed the grievant at at least two such orientation meetings in 1988. Provided to all participants in these orientation meetings are the examiner's manual from the GED Testing Service of The American Council on Education and the Ohio Policy Manual. These manuals have been distributed by Mr. Armanini to the attendees at the orientation meetings since 1986. These manuals cover administrative test policies and procedure, including security measures taken to maintain integrity of the testing. Included among the materials supplied to all test examiners is a memorandum referring specifically to security of the GED. All test examiners, according to Mr. Armanini, were aware of this memorandum of agreement, which is contained in the Ohio Policy Manual. In addition, Section 4.58 of the Examiner's Manual delineates procedures to be employed by the test examiner if a test booklet or scoring stencil is misplaced, lost, or otherwise jeopardized. That Section also states that Chief Examiners and GED administrators must insure that restricted testing materials are

handled in the prescribed manner so that the security of the test will not be compromised. Mr. Armanini stated that Alan Toops, Assistant Educational Administrator for the Department of Rehabilitation and Correction (DRC), advised him of missing test booklets on December 5, 1988. As a result, Mr. Armanini conducted an investigation. It should be noted that the Grievant was also on vacation on this time.

When the Grievant returned from vacation, he was approached by Mr. Armanini regarding the missing test booklets. Mr. Armanini previously determined that six booklets were actually missing. This was determined by the inventory logs at the Central Office and by the series numbers of booklets for MCI. The Grievant stated to Mr. Armanini and he took some of the booklets home. Although the Grievant was required to keep logs indicating the number of test booklets, Mr. Armanini stated that the Grievant advised him that he did not do so because he did not like the forms. Mr. Armanini further stated that the Grievant was not authorized to remove booklets from MCI as a test site, pursuant to Section 4.5 - 5(B) of the Examiner's Manual. This section states in pertinent part that "restricted test materials shall not be removed from the premises of the center except for return to the GED Testing Service or as authorized by contract addendum."

Robert Hansen, the teaching facilitator at MCI, testified that he is the Grievant's direct supervisor. Pursuant to instructions by his superiors at the Educational Department at MCI, Mr. Hansen was to exchange the 1988 GED tests for the 1989 GED tests. He thereupon discovered that six test booklets were missing. He

testified that he advised Alan Toops. An investigation was undertaken; however, the six booklets could not be found.

When the Grievant returned from vacation, Mr. Hansen interviewed him. He stated that the Grievant could not explain how many booklets he had taken home. He also stated that the Grievant could not determine whether he logged the booklets out of MCI. At no time did the Grievant request Mr. Hansen's permission to take any booklets home. The witness stated that he would never have granted such permission.

Mr. Hansen stated that the lock box containing the test materials was always kept away from inmate access at MCI. To his knowledge, there was no security problem when this padlocked box was in the Warden's office.

Mr. Hansen testified that he attended the orientation in 1988 for instructions relative to 1989 GED testing. At that time, the previously described manuals were received by him.

Alan Toops, Assistant Educational Administrator for the Department of Rehabilitation and Correction, is the chief GED examiner. His duties include inventorying GED test booklets coming and going out of the Central Office. Regarding the problem at MCI, Mr. Toops was advised that six test booklets were missing. He then advised Mr. Hansen to return the 1989 tests. Mr. Hansen could not locate these missing tests. No other test batteries were found. As a result, Mr. Toops ordered that testing be suspended in order that the GED test would not be compromised. It should be noted that the Grievant's initials were signed on the GED test inventory dated December 28, 1987. This inventory is maintained at Mr.

Toops' office. The GED test inventory covers the period from December 1, 1987 through November 30, 1988.

The Grievant was interviewed by Mr. Toops, wherein the Grievant told him that there seemed to be more tests sent than usual. The Grievant further advised Mr. Toops that the Grievant's logs were in the lock box prior to his going on vacation. On January 31, 1989, the Grievant was interviewed by Mr. Toops and Mr. Armanini. At that time, the Grievant stated that he had not taken some of the GED tests into the institution at all.

Mr. Toops stated that he knows that the Grievant received the GED tests as numbered correctly and that the Grievant had received them all, so there was no question to this witness that all of the tests (including the six missing test booklets) were received by the Grievant.

Dr. Charlene Payne, a Guidance Counselor at Ross Correctional Institution testified that she administers the GED tests there. She stated that she kept test batteries at home and that the supervisors were aware of this. However, she stated that the reason such tests were kept at her home was because no provisions had been made for GED testing at Ross Correctional Institution at that time.

The Grievant testified that he was on vacation at the time the test was administered. Although he picked up the GED tests in December, 1987, he denies initialing the inventory sheet at Mr. Toops' office. He stated that the reason he took some tests home without taking them to MCI was because he could not get all of the tests in the lock box. He further stated that Mr. Armanini

had no problems with his taking the booklets home.

The Grievant stated that he did not recall seeing the two manuals regarding administration and security of the GED test, and he further testified that he never saw any inventory log until 1989.

Tim Brandt, a teacher at MCI, testified that he gave the GED test twice at MCI. He stated that he had prior training with Mr. Armanini in 1986 or 1987. He is a certified GED test examiner. Furthermore, he stated that he was familiar with the two GED testing manuals.

When Mr. Brandt administered the GED test in April of 1988, he noted that the lock box was in the Warden's office. He returned all tests to this lock box. He further stated that he kept a test administration log with the inmate name and number, and other pertinent details for such a log.

Mr. Brandt testified that he saw the Grievant at both training sessions that he attended with Mr. Armanini, wherein the test administration manuals were handed out.

From the evidence adduced, it is clear to this Arbitrator that "just cause" existed for MCI to undertake disciplinary action against the Grievant. Essentially, the evidence overwhelmingly shows that the Grievant did not follow administrative regulations and/or written policies and procedures in insuring the security and integrity of the GED tests for which he was responsible. The Grievant failed to notify the appropriate personnel at MCI that he was in possession of some of the testing material without permission. Additionally, there was no evidence that the Grievant

kept a separate log of GED testing. As a result, testing had to be suspended at MCI and could have resulted in great cost to DRC. The fact that the Grievant was on vacation at the time that the test was administered is of little moment. The lapse in his duty to maintain and secure the test booklets occurred from the day that he received them from Mr. Toops' office. As a result, the whereabouts of the six missing booklets will remain unknown.

The Grievant, through his representative, forcefully argues that the disciplinary action taken is a violation of Section 14.1 of the Contract. This section requires that all written policies, regulations, procedures, and directives regulating employee conduct in the performance of the employer's services and programs must be furnished to the Association (SCOPE/OEA) in advance of the effective date. This Arbitrator is persuaded, however, by the decision by Arbitrator Calvin Sharpe, who stated, in part, that "(a) violation of Section 14.01 of the Agreement does not alter this fact and is properly addressed in a separate grievance." See In the Matter of an Arbitration between Ohio Veteran's Children's Home and State Council of Professional Educators. In any event the evidence shows that the grievant received manuals from the General Educational Development Testing Service and from the Ohio Department of Education, as well as instructions regarding security measures to be taken by means of orientation sessions that the grievant attended. The above mentioned manuals are not generated by the Department of Rehabilitation and Correction. Rather, they are generated by national and state Departments of Education. In order for MCI, as well as other institutions within the aegis of

DRC to administer GED testing, DRC and its institutions must acknowledge and adopt these materials in order to continue with the educational service which benefits the inmates in these institutions. Thus, for purposes of this proceeding, the Grievant was put on notice as to his responsibilities for maintaining the integrity of the testing program at MCI.

This Arbitrator find further that the imposition of a three day suspension is commensurate with the offense. Referring again to Arbitrator Sharpe in his aforementioned decision, he states:

Regarding the progressive discipline policy, the Association notes that the parties have agreed upon such a policy under Section 13.04 of the Agreement. There is no requirement under that section that the offense resulting in a higher degree of discipline cannot be a first offense.

On this point, Arbitrator Daugherty said:

Note 1: A trivial proven offense does not merit harsh discipline unless the employee has properly been found guilty of the same or other offenses a number of times in the past. (There is no rule as to what number of previous offenses constitutes a "good", "fair", or a "bad" record. Reasonable judgment thereon must be used.)

In this Arbitrator's view, the negligence of the grievant in failing to secure the GED test as persuasively established by MCI, could have compromised the integrity of the examination at MCI and possibly other institutions within DRC. As such, this cannot be considered a trivial offense. Therefore, the disciplinary action imposed by MCI reflects the effect that such an act of omission or negligence could have caused and yet remain within the realm of corrective action rather than punitive action.

ACCORDINGLY, the Grievance is DENIED.

Andrew J. Love
ANDREW J. LOVE

October 12, 1989
DATE