
In the Matter of Arbitration

Between

Fraternal Order of Police-
Ohio Labor Council

and

The State of Ohio, Department
of Mental Health

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Case No.:

23-10-90-01-11-0077-05-02

Before: Harry Graham

Appearances: For Fraternal Order of Police:

Paul Cox
Fraternal Order of Police-Ohio Labor Council
3360 East Livingston Ave.
Columbus, OH. 43227

For Department of Mental Health:

John Rauch
Labor Relations Coordinator
Department of Mental Health
State Office Tower
30 East Broad St.
Columbus, OH. 43215

Introduction: Pursuant to the procedures of the parties a hearing was held in this matter on April 12, 1990 before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record in this dispute was closed at the conclusion of oral argument on April 12, 1990.

Issue: At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Was the discharge of Mark Hill for just cause? If not, what shall the remedy be?

Background: The major elements surrounding the discharge of the Grievant are not in dispute. Mr. Hill has been employed as a Police Officer at the Massillon State Hospital for about three years. On October 24, 1989 he witnessed what he regarded as abuse of a patient. Staff at Massillon placed the patient into seclusion and three-point restraints. It was Officer Hill's opinion that restraint of the patient under the circumstances was unnecessary. In his view the patient was stable and was not posing a threat to any person in the institution. Subsequently, on October 31, 1989 Officer Hill acted upon his concerns. After reading hospital policy and sections of the Ohio Revised Code as well as taking a statement from the patient he was firmly convinced that patient abuse had occurred. He filed a report to that effect with administration of the Hospital. Shortly thereafter, on November 1, 1989 Hill presented the result of his investigation of possible patient abuse to the local Prosecutor. In fact, no action was taken by law enforcement authorities against any member of the hospital's administration.

Subsequently, in December, 1989, Mr. Hill was discharged from his employment at Massillon. It was the opinion of the Chief Executive Officer of the Hospital that Mr. Hill had violated several Policies in effect at the facility by his actions in this situation. A grievance protesting Mr. Hill's

discharge was promptly filed. It was processed through the procedure of the parties without resolution and they agree it is properly before the Arbitrator for determination on its merits.

Position of the Employer: Pointing to the events that surround this incident the State asserts that Officer Hill acted incorrectly in several instances. When he witnessed what he viewed as abuse of the patient he failed to file an incident report. Hospital Policy No. 3.04 prescribes that such a report is to be filed when abuse of a patient occurs. It is specific and requires that a report must be filed when an employee of the Hospital believes that abuse or neglect of a patient occurred. Hill was a veteran of three years of service with the institution. He was aware of the Policy. He failed to comply with it. This is improper according to the State.

By his actions Hill violated Policy No. 3.22 as well in the opinion of the Employer. That Policy requires that a report be filed when an unusual incident occurs. A number of occurrences are defined as unusual incidents. Among them is "patient abuse/neglect." No report was filed by Hill detailing his observation of the alleged patient abuse. It must be concluded that this failure to file the standard report opens Hill to discipline in the State's opinion.

When he went to the Office of the Prosecutor Hill was

also in violation of Hospital Policy. Policy No. 3.76 provides that patient related information is to be kept confidential. Obviously by going to the Prosecutor Officer Hill breached the confidential relationship between patients and the Hospital. He informed the Prosecutor of the events and told the Prosecutor the name of the patient involved. This sort of behavior is prohibited under the terms of Policy No. 3.76. Patients have a confidential relationship with the Hospital that may not be breached according to the State. As Hill directly violated that policy he opened himself to severe discipline in its view.

When on October 31, 1989 Hill went to the ward where the patient involved in this incident was housed he was disruptive. His behavior was so improper that the Nursing Supervisor on duty wrote a memo to her supervisors excoriating him. In her view (Employer Ex. 5) he was "surly and sarcastic." He slammed doors. He spoke in an angry tone of voice. The Nursing Supervisor was of the view that the involvement of Officer Hill and her staff had produced a "chasm" that jeopardized the safety of patients. Furthermore, he was not assigned to investigate any allegation of patient abuse. He was acting on his own. Officers cannot be permitted to conduct investigations of this sort on their own initiative. No directive to investigate the alleged patient abuse had been given to Officer Hill according to the State.

These are very serious lapses in professional conduct on the part of Officer Hill. Taken together, they certainly justify discharge in the State's view. This is particularly the case in this instance when Officer Hill has been the recipient of other forms of discipline. He provided the State with ample grounds for discharge and it urges its action be sustained.

Position of the Union: As is to be expected in dispute of this nature the Union recounts a substantially different version of events than does the State. It points out that no refutation of patient abuse was made by the Employer. In the Union's view, this should be taken to show that the patient abuse which concerned Officer Hill actually occurred as he claimed.

No discipline can attach to Hill for failing to file the incident report prescribed by Policy No. 3.22. Police officers at Massillon do not file such reports. They file investigation reports. That report, included in Employer Exhibit 4, was properly made by Officer Hill. Examination of the report indicates it is thorough. That incident reports are not completed by police at Massillon is widely known and was supported by testimony of other police officers at the hearing. Hill cannot be disciplined for failing to file a report which is not required. He filed the report which is routinely filed in such situations. No discipline may be

administered for that action the Union insists.

Hill's actions find support in the Ohio Revised Code. Chapter 5101.61 E of the Code provides that no employer may "discharge" a person who has reported suspected patient abuse. Section 2903.34 makes it a crime to commit patient abuse or neglect and Section 2903.36 provides that:

No care facility shall discharge or in any manner discriminate or retaliate against any person solely because such person, in good faith, filed a complaint, affidavit or other document alleging a violation of section 2903.34 of the Revised Code.

In fact, that is precisely what occurred in this situation. The Hospital did not take kindly to Hill informing the local Prosecutor of the alleged patient abuse. It discharged him. It cannot do so under the plan provisions of Section 2903.36 the Union insists. Hill acted in good faith on what he saw. The patient was calm. He responded rationally to conversation and direction according to Hill's report. Nonetheless, he was placed in isolation and restrained. Hill had a duty to report that incident to the Prosecutor the Union insists.

That view is supported by reference to the Ohio Revised Code at Section 124.34.1 A which makes it an obligation of State employees to report violations of state or federal laws or rules. The statute provides explicitly that the employee may "report it to a prosecuting attorney, director of law, village solicitor, or similar chief legal officer...." That is what Hill did. Section B of that section of the Statute

prohibits disciplinary action against a State employee for making a report under Section A. Obviously he was discharged for going outside of the chain of command of the Massillon facility according to the Union.

When Hill investigated the patient abuse incident he acted properly. He informed the Police Chief at Massillon of his observations. The Chief directed him to secure a statement from the patient. That is what he was doing when he went to the ward on October 31, 1989. Furthermore, he went to the patient advocate to inform her of his observations and instructions to investigate. She told him to go to the ward by himself. According to her, it was too close to her lunch time for her to accompany him to the ward. Hill acted properly when he appeared at the ward and interviewed the patient. In fact, his colleague, Officer Gary Waldrop, was involved in this incident and filed an investigation report in the same fashion as did Hill. He was not disciplined in any way for his role in this incident.

When Hill went to the Prosecutor he did not compromise patient confidentiality. The Prosecutor is an instrumentality of the court. He is charged with maintaining confidentiality. In fact, no breach of confidentiality occurred in this situation. As Hill acted in accord with state statutes and conscientiously performed his duty as a police officer he cannot be discharged the Union insists.

Discussion: Unrefuted testimony was received from Officers Hill and Waldrop as well as Officer John Williams to the effect that well accepted, long standing procedure at the institution calls for officers to file investigation reports in situations such as this. They do not file what the institution terms incident reports. There is no doubt that the reports called for by Policy 3.22 and Policy 3.04 are not made by police at Massillon. To the contrary, they file a report termed an investigation report. Hill filed such a report. On the record in this proceeding as part of Employer Exhibit 4, it is a thorough recitation of the events he and Officer Waldrop observed in connection with patient abuse. He cannot be disciplined for failing to file a report when filing of that report is not and has not been required of him and his colleagues.

At the hearing Officer Hill testified that he was directed by his Chief to investigate this incident. He did so. He sought out the patient advocate who could not be bothered to accompany him to the ward as it would interfere with her lunch hour. That testimony is unrefuted. There is no contradictory testimony on the record. If the Employer sought to discredit Officer Hill's version of events it could easily have produced the Chief and the Patient Advocate to testify differently. That it failed to do so compels the Arbitrator to believe Hill. The record does not indicate he acted on his

own initiative in this incident. He was acting pursuant to the directive of his Chief. No discipline may attach to him for that action.

As set out in the Union's position in this dispute, Officer Hill did not act improperly when he went to local law enforcement officials with his concern. Section 123.34.1 of the Ohio Revised Code specifically provides that an employee who "reasonably believes" he is aware of a violation of state or federal statutes may "in addition to or instead of" filing a report with his supervisor, contact a local prosecutor. Hill did both. He reported his observations in his investigation report and he contacted the Prosecutor. How can he be disciplined for that action? He witnessed what he and his colleague, Officer Waldrop, believed was patient abuse. He is a police officer and he acted as a police officer would be expected to act. The Prosecutor is charged with not disclosing the names of people involved in investigations. Nothing is on the record to indicate the name of the patient was disclosed to the public.

The report of the Nursing Supervisor, Employer Exhibit 5, does not furnish sufficient grounds for discipline, let alone discharge. Hill may have been agitated when he visited the ward. To discharge a person for that state of mind is not permissible.

Award: The grievance is SUSTAINED. Officer Hill is to be

restored to his employment as if this incident had not occurred. He is to receive all wages and benefits he would have received but for his improper discharge. All record of this incident is to be expunged from his personnel file. The Grievant is to furnish to the Employer records of any funds received from the Unemployment Compensation system of the State which may be used to offset its financial liability to him.

Signed and dated this 19th day of April, 1990 at South Russell, OH.

Harry Graham
Harry Graham
Arbitrator