

August 17, 1990

#480

In the Matter of Arbitration)
 between)
))
 The State of Ohio, Ohio Expositions) 13-00-89-0127-
 Commission) 0003-01-09
) Grievant: Veda
) Wise
))
))
))
 Ohio Civil Service Employees)
 Association, Local 11, AFSCME,)
 AFL-CIO)

APPEARANCES

For the State:

Roger A. Coe	Advocate
John Tornis	Second Chair
Rachel L. Livengood	OCB--Arbitration Services
Robert L. Weddington	Fiscal Officer-Expo
Michael L. Froehlich	Assistant General Manager-Expo
Donna E. Raley	Personnel Director
Jean M. Hauff	Account Clerk 3

For the Union:

Gary Raines	OCSEA Representative
Veda Wise	Grievant
John Porter	Assistant Director of Arbitration
Deborah Price	Witness

Arbitrator:

Patricia Thomas Bittel

BACKGROUND

This matter was heard on July 10, 1990 at the State of Ohio Office of Collective Bargaining before Patricia Thomas Bittel, the impartial arbitrator mutually selected by the parties in accordance with Article 25 of the 1986-1989 Collective Bargaining Agreement. Both parties have stipulated to the arbitrability of the case.

At the beginning of the hearing, the Employer argued it had been denied its right under the mutually agreed arbitration rules to five days' notice of all Union witnesses. The hearing went forward, however, with the understanding that the witness would be allowed to testify and the hearing would not be closed to evidence for the following week.

In the mid-afternoon, the alleged surprise witness, Deborah Price, found it necessary to leave prior to giving testimony due to work responsibilities. The Union resisted going forward with its case without what it deemed to be a key witness, and the Employer waived its right to prior notification of witnesses and protested any continuance of the hearing. The Arbitrator ruled the hearing would reconvene the following week in order to afford the parties a full opportunity to present their case.

Grievant was hired by the Ohio Expositions Commission on April 27, 1987 as a telephone operator. In November of 1987 she was approached about an open position of Accounts

Payable Clerk because she had a background in finance. She expressed interest in the promotion and was awarded the position on November 16. She successfully completed the 120-day probationary period, receiving satisfactory performance reviews on both her final probationary evaluation in March and her annual performance evaluation in April.

On November 14, 1988, she received a letter of reprimand for poor work performance and inability to keep her daily job duties current. The letter stated more severe discipline would be taken if her work performance did not improve. On January 13, 1989 Grievant received a 10-day disciplinary suspension for neglect of duty and poor work performance. Her suspension was served from January 17 to January 30 of 1989.

On July 14, 1989 she received a letter stating she was being removed from her position of Account Clerk 2 for neglect of duty and poor work performance. Her removal was effective at the close of that day. Both her suspension and her removal were the subject of grievances filed by the OCSEA. Both grievances are before this Arbitrator and the issue is framed as follows:

Was Grievant's 10-day suspension and subsequent removal from her job for just cause? If not, what shall the remedy be?

CONTENTIONS OF THE EMPLOYER

Commission Fiscal Officer Robert L. Weddington explained his employees are responsible for receivables, payables and a general ledger for the Commission. Unlike other state agencies, the Expositions Commission is expected to generate its own income, he said.

The Accounts Payable Clerk receives copies of requisitions after they have been through channels of approval, entered into the system by purchasing and signed off by the Fiscal Officer and the General Manager's office, explained Weddington. The clerk then files the requisition pending receipt of the invoice, he said.

The clerk opens the mail daily and when an invoice arrives, matches it to the requisition, posts the invoice to the vendor ledger card and computer system and then posts the pay-by date, designating the invoice by line item, he explained. The invoice and requisition are put into a pay-by date file which is set up two months in advance, he said.

According to Weddington, when the pay-by date arrives, the clerk is to give the Fiscal Officer a report listing all open invoices. Existing purchase orders can be processed immediately; other invoices in the pay-by file are checked and held only if there is a question regarding the account, a lack of spending authority, or the invoice fails to match the requisition, he explained.

All invoices are required to be paid within 30 days, after which late charges accumulate, stated Weddington. He referred to a memo received December 14, 1988 from the Office of Budget of Management explaining Section 126.30 of the Revised Code and Rule 126-3-01 of the Administrative Code require prompt payment for all purchases. The memo establishes the 30-day rule for payment and indicates Grievant signed off on December 15, 1988. He also referred to a memo dated December 11, 1987 which delineates all aspects of her position.

Weddington explained that during her probationary period Grievant performed well, stayed caught up, showed good understanding of the computer system and asked a number of insightful questions. Her evaluation at the end of probation as well her annual evaluation were both quite good, he said.

After the final evaluation in April, Grievant's performance began to decline, said Weddington, and she began falling three, four and five days behind schedule. Vendors began calling to complain, Weddington said, claiming he counselled Grievant and reminded her she was required to give him the pay-by list on a daily basis.

According to Weddington, the vendors claimed they had been told their invoices were being processed, when in fact nothing had been done. They also reported being told Grievant was the only one in charge, said Weddington, despite his clear supervisory authority.

As is routine during the summer months before the state fair, students were assigned to the finance department to help out. Weddington said he assigned all the full-time students to assist Grievant. He stated he began finding invoices which had been misfiled and never processed. It was October or mid-November before accounts payable was caught up again, he said.

During this period, Weddington said he began taking job duties away from Grievant; he started receiving the mail and sorting it himself and assigned the processing of inter-agency transfers to Account Clerk 3 Jean Hauff. He claimed he never held up original invoices as they came in, stating if he needed to follow up, he made a copy for himself. He described the problem as a back up in the finance department because invoices were not matched up to requisitions. He further stated Grievant failed to come to him with bills ready to be paid and did not complete the necessary reports on time.

According to Weddington, the average employee can process one invoice in about fifteen minutes and Grievant was only asked to process ten to twenty invoices per day. He read from his records the number of invoices received daily in late November and early December: ten, four, five, eight, ten, zero, two, ten and fourteen, representing both inter-agency and regular invoices combined. His records showed the following numbers of invoices were received daily in the month of July: twenty-three, eleven, eleven,

thirteen, thirteen, twenty, ten and nine. In the latter part of April and early May the numbers of invoices were: six, zero, eleven, fifteen, fifteen, five, twenty, twenty-eight, five, eighteen, fourteen, fifteen and twenty.

Hauff confirmed that on occasion she did some of Grievant's work. She said her work was negatively impacted because she could not prepare the general ledger unless Grievant satisfactorily completed her work in payables.

Upon returning from suspension Grievant's performance improved for the first week to two weeks, reported Weddington. However, after a few days he said he could see the mail piling up. As of May 31, the department had incurred \$14,000 in late charges from Columbus Southern Power, he said, the majority of which was attributable to failure to file invoices in the daily pay-by date file. Commission records showed the actual amount to have been \$14,990.70. According to Weddington, the late charges were a direct result of Grievant's failure to process the bills. He denied withholding authorization to pay a utility bill at any time. He also admitted utility bills had been 60-90 days late in the past.

He described the Expositions Commission as a public relations-oriented business with sponsorship programs and involving the need for good will on the part of vendors. This good will is negatively impacted by delayed payments, asserted Weddington.

The Commission's evidence included a memo from Ohio Bell sent to Weddington delineating separate contacts or attempted contacts with the finance department regarding late payments. These contacts spanned the time from June 2, 1988 to June 30, 1989. At one point Weddington said he was called to the front office by his supervisor regarding calls from two vendors who said they had called Grievant many times and had fax contact without result.

Weddington stated he saw Grievant shuffle papers and talk a lot on the telephone. He said she would continue her phone call while he stood there waiting to speak with her and at one point she left work with only an explanation that her child was in a fight at school.

Phone calls played a large part in her lack of productivity, he said, and after lunch things tended to go downhill. He claimed he advised her that if she had any problems he would work with her, but she consistently asserted she had no problem. She required an excessive amount of supervision, claimed Weddington, and other employees began asking why she was getting so much attention and claiming it was not fair.

Aside from offering Grievant assistance by assigning her duties to others, Weddington said he also authorized her for overtime so she could catch up. At one point he said he lost authorization for overtime without management approval because of overuse. He stated he signed Grievant up for a

time management course but she declined to go, stating she did not need it.

As her performance deteriorated, her response to counselling also declined, asserted Weddington, stating she would repeat what he said or claim she understood but no improvement would follow. Weddington explained that during counseling her mind seemed to be somewhere else. He said he would ask if she was listening and she would say yes. As her performance worsened, she appeared to stop listening and did not seem to care, he said. Her response was that she was tired of being treated like a dog, said Weddington, admitting he might have had an obnoxious tone of voice.

Assistant General Manager Michael Froehlich also testified that he counseled her a number of times about her performance. When he asked whether she had any problems, she replied everything was fine, he said. He stated he told her about an available employee assistance program.

Following her letter of reprimand in November of 1988 Weddington sent her a memo in February of 1989 reiterating the problem in her department and stating he was at a loss as to what else to do:

"When I ask you point blank what you feel the problem is you state there is no need to discuss it with me, and then you ask if I'm finished and leave the room. It is clear we can't solve something you won't discuss. If you wish, write your thoughts down and arrange to speak with me."

The memo was described as a follow-up to their discussion.

Froehlich asserted the ten-day suspension was necessary to make sure she understood the severity of her situation. Having been repeatedly counseled, her performance did not improve as a result of the counseling. In addition, she had already received a written reprimand. In his view the ten-day suspension was appropriate because of the disarray of the system due to her non-performance. He also claimed termination was necessary because it was evident from her record that another suspension would be to no avail.

Based on the totality of the evidence, the Employer argued Grievant's performance was not minimally acceptable. It further claimed her testimony lacks credibility, contending a more impartial witness is bargaining unit member Hauff who confirmed that Grievant was not fulfilling the requisites of her job. The Employer also attacked the credibility of past employee Price, arguing she was a disenchanted past employee. Grievant's lack of performance cost the agency thousands of dollars, argued the Employer. Help was given in ample measure and actually rebuffed, it claimed. Given the nature of the business, there was no opportunity for repeated suspensions, it asserted, claiming to have proven its case beyond a reasonable doubt.

CONTENTIONS OF THE UNION

Grievant's predecessor, Deborah Price, testified work was already behind when she started at the Commission. She claimed Weddington asked the clerks to stop payments for one-and-a-half to two months while a new computer system was installed and he took vacation.

She said there was an overload of work because of the fair and employees helped each other to get the work done. There was not enough time to do all the required reports, she claimed, stating at times she had to stay very late at night by herself. She contended the time constraints for completing work were unreasonable and stressful. She asserted Weddington hassled everyone, and claimed one of the clerks took aspirin and cried. Everyone was intimidated and worked at an accelerated pace, said Price.

Price said she received a written reprimand which was changed to a verbal after she complained. About a week later she received another written reprimand which was removed for procedural error, she claimed.

According to Price, it was not unusual to be unable to find a bill to pay, because some were held up on another clerk's desk, some were taken by Weddington and some were lost. She said she voluntarily took a demotion to telephone operator then resigned, in order to escape payables and Weddington's immediate supervision. She simultaneously admitted she received patience and understanding from

Weddington on both jobs. Her letter of resignation thanked Weddington for his patience and understanding throughout her period of employment and claimed it was a pleasure to work with all. Price explained the letter as a "show of professionalism" and waffled when asked about telling the truth in such a letter.

Grievant testified part of her job was to generate vouchers toward the end of each month and there was a crunch the last week or two, particularly if balancing was a problem. She said there was a lot of time spent doing research and trying to find bills, and claimed a lot of bills she gave Weddington were never seen again. She testified she did not have authority to pay bills but only to bring them to Weddington for approval. She admitted her monthly report was late several times.

According to Grievant, help was not adequate and the responsibilities given to others were lightweight. Assistants were not trained and made mistakes, becoming more a hindrance than a help, she asserted. She said there were ten to thirty-five or forty invoices received daily, each of which would take ten to fifteen minutes to process.

She contended it was not her fault the Columbus Southern Power bill did not get paid. There were times when Weddington said there was not enough money currently available for payment and he would hold bills back, she said. She stated in October of 1988, Weddington advised her not to pay any more bills until further notice. She

testified she believes this was the reason for delayed payment of the electric bill.

She claimed she had entered the Ohio Bell invoice into the system but had not run a check because Weddington had not authorized payment. She further claimed several phone numbers were invoiced with separate accounts, and some were vouchered and paid while others were not. She had no explanation for the failure to return calls indicated in the memorandum from Ohio Bell.

As to counseling, Grievant claimed Weddington's concern was primarily with her attitude. She said he called her constantly and harassed her, interrupting her work. He would ask her for hard-to-find requisitions or demand to know what she was doing and who she was talking to on the phone. She claimed vouchering was not even discussed until after her suspension, then admitted it was reviewed as a deficiency in her written reprimand.

The Union summarized its position claiming there was no just cause shown for either the suspension or the removal. There was no good faith effort to correct any problem which might have existed, it claimed, pointing out late charges were an ongoing problem in finance. Grievant's initial evaluations show she did her job well, it claimed, asserting the penalties imposed by the Employer were harsh and not progressive in nature.

DISCUSSION

A. Did Grievant's Performance Warrant Disciplinary Action?

The positions of the parties in this case are diametrically opposed across an expansive gulf of credibility issues. Weddington alleges it was Grievant who held up the processing of the invoices; that it was her phone calls and children distracting her from her work. He asserts she did not listen to his counseling efforts and is perfectly capable of performing the job.

By contrast, Grievant claims it is Weddington who held up the processing of the invoices. She insists he hassled her and interfered with her work and attributes any delays to this rather than phone calls and children. She describes the counseling sessions as focused on her attitude rather than job skills, and asserts the late charges she accrued were not unusual.

Weddington and Grievant do not have significant differences in the way they describe the job duties of the Accounts Payable Clerk. While there were differences in their descriptions of the volume of work, it was quite evident that the job is relatively demanding and requires a continuous effort to stay abreast of the work.

While there was testimony confirming that late charges are somewhat common, it is also evident that late charges in the \$15,000 range are quite unusual. The only evidence regarding late charges were Commission records for the 1988

fiscal year. These showed a total of \$5,028.80 was paid in late charges on 74 separate invoices. The average late charge computes to about \$68 for 1988, lending great credibility to the State's argument that \$15,000 is truly extraordinary.

Grievant stated Weddington placed a hold on the Columbus Southern account in October of 1988. However, documentation on this account indicates payments were made on October 31, 1988, November 29, 1988 and January 9, 1989. The fact that these payments were made belies any hold on the account. Furthermore, the \$15,000 in accumulated late charges were for billings dated January 6, 1989, February 3, 1989, March 7, 1989, April 6, 1989 and May 4, 1989 and not for billing in the fall of 1988. Again, Grievant's statement that the late charges were due to an October 1988 hold on the account is simply not substantiated by the evidence.

While it appears the Accounts Payable job is a rather exacting one, it also appears clear that at least during the initial months in the position, Grievant was fully capable of performing this challenging job. This fact is plainly inconsistent with any assertion that the job is unduly burdensome.

The testimony and demeanor of the witnesses leads the Arbitrator to believe there was some personality conflict between Weddington and Grievant. This fact, however, fails to neutralize the very objective damage to the Commission

through Grievant's failure to process invoices on time. Certainly the memo from Ohio Bell is proof of vendor discontent if not loss of good will. Clearly, the payment to Columbus Southern Power Company of \$14,990.70 in accumulated late charges is definitive damage to the Commission. Inroads into employee morale validated by Hauff are also clearly demonstrated on the record.

Because deficiencies in Grievant's performance are plainly demonstrated by objective data, neither the suspension decision nor the termination decision can be attributed to personal bias. ~~Whether or not people like each other is not necessarily related to the question of just cause. The just cause standard is violated only when personal dislikes are the basis for employment decisions which otherwise lack a legitimate, job-related rationale. One way to make this determination is to ask whether the challenged employment decision would have been the same had there been no personality conflict.~~

Grievant's rendition of the facts lacks credibility in a number of areas. The Employer has established by a preponderance of the evidence that Grievant's performance was indeed deficient and substandard, thereby warranting disciplinary action. It is clear from the record that even if there had been no personality conflict between Grievant and her supervisor, the Commission would have suspended and terminated Grievant for poor performance.

B. Was the Discipline Taken Within the Just Cause Standard?

Article 24 of the parties' 1986-89 Agreement provides "Disciplinary action shall not be imposed upon an employee except for just cause. The Employer has the burden of proof to establish just cause for any disciplinary action." The Article also requires the Employer to follow the principles of progressive discipline and specifies disciplinary action shall be commensurate with the offense. It identifies verbal reprimand, written reprimand, suspension and termination as "disciplinary action."

The concept of just cause entails progressive discipline, that is, the inherent right of an employee to be specifically informed of perceived deficiencies and to be afforded a reasonable opportunity to rectify the problem.

The record shows Grievant was counseled by Weddington on a number of occasions with more than adequate specificity as to performance criteria. Her discipline progressed from verbal to written reprimand, suspension and finally, termination.

The sequence from verbal to written reprimand, suspension and termination is indeed a progressive disciplinary approach and directly follows the chain contemplated by Article 24. ~~It is not necessary for an employer to suspend an employee more than once in order to insure that the employee is fully apprised of the seriousness of his or her situation. Indeed, to the contrary, multiple suspensions can lull employees into a~~

false sense of job security thereby defeating the fundamental purpose of progressive discipline: to offer the employee an opportunity to avoid further discipline through rehabilitation.

Article 24 specifies discipline must be commensurate with the offense. This determination must be made in the context of the particular employee and the nature of job, particularly where allegations of poor performance are involved.

Suspensions of exaggerated proportion certainly accomplish the purpose of apprising an employee of the seriousness of a situation, but they go beyond that purpose to unnecessarily and excessively punish the employee.

Management's reason for choosing a suspension of long duration was an attempt to jolt Grievant back into concentrating on her job. It deemed two full work weeks without pay to be necessary to accomplish this goal, about half a month. The implicit assumption in a suspension of this length is that after a full week of lost time and pay, a second week is also needed before the employee can be deemed 'on notice' of the seriousness of the situation.

The law of diminishing returns, when applied to the disciplinary suspension, predicates that at some point during the suspension, the benefit derived will peak and begin to diminish. It follows that continued extension of the suspension eventually becomes so unrelated to any

discernable benefit that it ceases to fall within the limitations of just cause.

This indeed was the case in Grievant's suspension. The first week of her suspension was more than adequate to place her on firm notice that her job was jeopardized by her poor performance. The second week served no further purpose, yet continued to deprive her of an opportunity to earn income.

Grievant's ultimate termination was the natural and predictable conclusion of the progressive disciplinary process, given her failure to improve her performance. Having already received a verbal and written reprimand as well as a suspension, the appropriate next step was termination. The record shows Grievant's job performance failed to improve despite these progressive disciplinary steps. The Employer's progression to the final step was warranted.

AWARD

The ten-day disciplinary suspension given to the Grievant was without just cause. The grievance of the suspension is granted and Grievant will be paid five days back pay within 15 working days of receipt of this award. The termination of Grievant was for just cause. The grievance on this point is denied.

Respectfully Submitted,



Patricia Thomas Bittel

Dated: August 17, 1990