

IN THE MATTER OF ARBITRATION)

Between)

STATE OF OHIO,)
DEPT. OF YOUTH SERVICES)

The Employer)

-and-)

OHIO HEALTH CARE EMPLOYEES UNION)
DISTRICT 1199, WV/KY/OH)
NATIONAL UNION OF HOSPITAL)
AND HEALTH CARE EMPLOYEES,)
SEIU, AFL-CIO)

The Union)

OPINION AND AWARD

Conrad M. Goode, V
Termination

APPEARANCES

For the Employer:

Donald E. Elder, Deputy Director
Advocate
Valerie Butler, Contract Compliance Officer
William Lucas, Casework Supervisor

For the Union:

Jeff Fogt, Organizer
Advocate
Teresa J. Ardley, Union Delegate
Conrad M. Goode, V, Grievant

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This case ¹ concerns the termination of Conrad M. Goode, V, on June 21, 1990 for borrowing \$700.00 from the parents of a youth assigned to his caseload.

I. FACTS

A. Background Facts

The Employer provides certain services to the youth of the state, including some in connection with youthful offenders. These are divided into three parts, administrative, correction, and community service. Community service is concerned with assisting and monitoring the child after he² completes any term in a

¹ The State of Ohio (hereafter referred to as "the Employer" and Ohio Health Care Employees Union, District 1199, WV/KY/OH National Union of Hospital and Health Care Employees, SEIU, AFL-CIO (hereafter referred to as "the Union"), are parties to a collective bargaining agreement (Jt. Ex. 1) providing in Article 7 for settlement of disputes through a grievance and arbitration procedure. A dispute has arisen between the parties concerning the June 21, 1990 termination of the Grievant, Conrad M. Goode, V, for borrowing \$700.00 from the parents of a youth assigned to his caseload.

The Union's grievance (Jt. Ex. 2, #35-14(07-01-90)04-02-12) concerning this matter bore an illegible date. It was submitted to arbitration before this arbitrator who serves on the parties' permanent arbitration panel. A hearing was held on October 18, 1990 in Conference Room B of the Employer's Office of Collective Bargaining in Columbus, Ohio. Both advocates made opening and closing statements and presented and cross-examined witnesses. It was stipulated by the parties that the grievance was both procedurally and substantively arbitrable; that the time limits in the grievance procedure had either been met or waived and that the arbitrator has been properly chosen and has jurisdiction to hear the case.

² "He" is used because the child involved in this case is a male.

corrections facility. This case involves the Dayton office, which is concerned solely with the community service.

The Dayton office consists of two units, each with six Youth Counselors and one Supervisor. The Youth Counselors are classified as Social Workers II or III. The Grievant was one of the Youth Counselors working under the supervision of William Lucas. The Grievant had been in this position for some four and one half years. He had performed competently and not been subject to any disciplinary actions. Mr. Lucas had been in his position for some 22 years.

The Youth Counselor's duties are somewhat similar to those of a probation officer with respect to adult offenders. He provides "after care" services. These involve making contact with the child while he is in the correctional institution; contacting the family; assessing its dynamics and formulating a plan of action for the after care. When the child is released and returns home the Youth Counselor implements the plan of action. He assures that the conditions and rules specified by the Court are followed and that the youth's behavior is appropriate. The two basic purposes of the program are to assure that the community is protected and that the youth is developed as a person. The latter involves helping the child with employment needs and acquainting him with the appropriate resources and agencies. The Youth Counselor has a role with the Court in that he may from time to time appear either as an advocate on behalf of the youth or sometimes intervene against him if the youth is going astray. The great bulk of the Youth

Counselor's services are performed independently without detailed supervision.

B. The Facts Leading to the Termination

As of the start of June, 1989, one of the youths on the Grievant's caseload was Timothy Holbrook. The youth was about to be released from the correctional facility and return to Dayton. Timothy Holbrook's father, Ronald Holbrook, appeared in the Grievant's office for a scheduled meeting to sign the papers necessary for Timothy Holbrook's release. A summary of the Grievant's description³ of what happened at that meeting is as follows:

I had not met Mr. Ronald Holbrook before. I was going through a difficult time personally and financially because of a divorce. I had just received a telephone call concerning some pressing financial obligations. Mr. Holbrook was sitting at my desk in the aftermath of that call and sensed that something was wrong. He asked me about it. I told him the nature of the difficulties and he asked me if I could use a loan. I said I could. He left my office and returned shortly thereafter with \$500.00 in cash. He said that we should keep it quiet and I should not tell his wife. There was no discussion of any interest payments. Mr. Holbrook was dressed in blue jeans and gave no particular impression of wealth. In fact he indicated that he was unemployed and was filing a disability claim.

Later, in July, 1989, the Grievant borrowed another \$200.00 from Ronald Holbrook.

The matter proceeded without incident until April 16, 1990 when Ronald Holbrook sent the Grievant a letter (Employer Ex. 4)

³ In response to questions from both advocates and the arbitrator.

setting out the borrowing of the \$700.00 and expressing disappointment that he had not been repaid. Mr. Holbrook claimed that a repayment schedule of \$35.00 to \$40.00 per week had been agreed upon. He said that he would either take the Grievant to court or talk to his boss if he was not repaid.

No payments were received and on May 17, 1989 Timothy Holbrook's mother, Ethel Holbrook telephoned the Grievant's supervisor, William Lucas. She told him about the loans; complained about not being re-paid and asked Mr. Lucas's help in obtaining repayment.

Mr. Lucas then contacted his superiors and the machinery was invoked to investigate the matter. Shortly thereafter, on June 1, 1990, the Grievant re-paid half the amount he owed. He also indicated that payment in full would be made by June 30, 1990. Timothy Holbrook's case remained on the Grievant's case load. Apparently all that remained was the more or less clerical task of discharging the youth.

The investigation centered on the possibility of a violation of Rule 15 of the General Work Rules of the Department of Youth Services, which provide that:

"A. Employees participating in the following activities shall be considered to be in violation of the Department of Youth Services work rules:

.....

15. Accepting gifts, gratuities, or other special favors from youth or the parents, guardians, relatives, foster parents, etc. of youth entrusted to the Department's care."

The Grievant's supervisor, Mr. Lucas, recommended that the Grievant be given the lightest penalty possible. There was also testimony that another superior recommended that the Grievant be given a two week suspension. Nevertheless, the outcome of the investigation was that the Grievant was terminated effective June 29, 1990. The memorandum found that:

· "Your actions are in violation of the Department of Youth Services Directive Chapter B-19, Paragraph IV-A, Work Rule 15 and constitutes failure of good behavior under Section 124.34 of the Ohio REvised Code. You are hereby Removed from your position of Social Service Worker 2 effective June 29, 1990." (Employer Ex. 5)

The memorandum was signed by the Director of the Department of Youth Services, Geno Natalucci-Persichetti, and by the Regional Administrator, Victor Brown.

The matter proceeded through the grievance procedure to arbitration.

II. APPLICABLE CONTRACT PROVISIONS

ARTICLE 8 - DISCIPLINE

Section 8.01 Standard

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

Section 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.

III. STIPULATED ISSUE

Was the Employer's action of discharge of Grievant, Conrad M. Goode, V, for just cause? If not, what shall the remedy be?

IV. POSITIONS OF THE PARTIES

The Employer Position

The Employer maintains that the application of Rule 15 is clear to the facts of this case and that termination is justified for the Grievant's admitted violation. Rule 15 is necessary if the Department is to fulfill its function. Youth Counselors cannot fulfill their duties on an impartial basis if they accept gifts, gratuities and other special favors from the youth they supervise. The public has a right to expect that it will get the same level of impartial service without having to give gifts and gratuities. Progressive discipline is not required in all cases and the Employer was justified in the present case in terminating the Grievant for the first offense.

The Union Position

The Union does not condone the actions of the Grievant in this case. But, the fact is that the Grievant did not realize that his actions violated Rule 15 and the Employer is required by Article 8.02 to utilize progressive discipline. This was sadly lacking.

Here the Grievant's supervisors were of the opinion that a light disciplinary penalty would suffice to correct the grievant's behavior. The non-seriousness with which the matter was regarded is shown by the fact that the Grievant was left with Timothy Holbrook on his caseload even after the investigation was begun. The grievance should be sustained and the Grievant given the benefit of the corrective disciplinary procedure called for by the contract.

V. DISCUSSION

A. Introduction

The Employer has a Rule 15 against "accepting gifts, gratuities, or other special favors" (sometimes referred to subsequently simply as "gifts"). The Union does not challenge the reasonability of this rule and the Grievant has acknowledged receiving a copy of the rules. The Union essentially concedes that the Grievant violated Rule 15 when he accepted the loans in question.⁴ These aspects of the case are not in dispute and will not be discussed further.

What is in dispute are two questions. The first is whether the Grievant's actions constituted a serious violation of Rule 15. The second is whether the offense was one which permitted the

⁴ Based on statements at the hearing. Similarly the Union asks the arbitrator to reduce the termination to a lesser penalty. If its position were that Rule 15 were not violated at all it would presumably ask for reinstatement without any disciplinary penalty.

Employer to terminate the Grievant for his first violation of the Rule. These questions will be discussed in the order stated.

B. The Seriousness of the Violation

Rule 15 itself concerns a serious matter. Youth Counselors have serious responsibilities in the administration of justice to youthful offenders. It appears to be undisputed that their recommendations may weigh heavily in court determinations of whether youthful offenders remain in the "aftercare" system or are released. In some cases the recommendations may also be concerned with the question of whether the youthful offender is returned to the correctional institution or not. The retention or lifting of certain restrictions on the youths is also involved.

The Employer pays the Youth Counselors to bring their independent judgment to these questions. Obviously, any Youth Counselors who have accepted gifts from those under their supervision may not be able to exercise this independence of judgment. They may be influenced either by gratitude for the gift previously received or by the hopes of receiving another one. Whether or not the Youth Counselors are actually influenced the appearance is created that they may have been influenced. Such appearances cannot help but diminish the confidence of the courts, of non-gift bearing youthful offenders and of the general public in the impartiality of the Youth Counselors' recommendations.

To be sure the Union does not attack the Rule itself. It only urges that the violations were not serious ones. Two reasons are

put forth. The first is that the Grievant did not know that "loans" were a violation of the Rule. The second is that the loans did not interfere with the Grievant's handling of the Holbrook case.

The arbitrator has considered the arguments. Neither is sufficient to diminish the seriousness of the violations. First, it is generally understood even by persons who are unsophisticated in financial matters that an interest free loan is a "gift" of the use of the money by the lender. It is a gift because interest payments on the same money are universally available to a lender from banks and other financial institutions. In the present case no interest payments were asked for by Ronald Holbrook or offered by the Grievant. In addition the loan was not handled in a businesslike manner (i.e it was not evidenced by a written "IOU", it was given in cash rather than a check, and it was, at Ronald Holbrook's urging, to be kept quiet). No payments were made on the loan until after Mrs. Holbrook eventually contacted the Grievant's superiors almost a year later. All of these aspects are sufficient to convince the arbitrator that the Grievant knew or must be charged with knowledge that the loans in question here fell within the coverage of the "gifts, gratuities, or other special favors" covered by Rule 15.

We turn to the claim that the violation is not serious because the loans did not influence the Grievant's handling of the Timothy Holbrook case. The Union is correct that there is no evidence in the record indicating that there was such influence. But, the simple answer is that Rule 15 is not directed at "influenced

handling" but at the receipt of gifts. The receipt of gifts creates the appearance of possible influence whether or not it in fact occurs. It is precisely because it is so difficult to determine whether actions are actually influenced that the Employer is entitled to make rules such as Rule 15 directed toward improper appearances. The arbitrator concludes that the question of whether the Grievant was actually influenced by the loan is irrelevant to the case.

On the basis of the above discussion, the arbitrator concludes that neither of the reasons put forth are sufficient to minimize the seriousness of the Grievant's violation of Rule 15.

C. Termination for the First Violation of the Rule

It is a well recognized general principle in arbitration that there are certain offenses which are serious enough to justify termination for the first offense without going through the more usual steps of corrective discipline. Parties of course remain free to treat this principle in their collective bargaining agreement and employers sometimes do so in their published rules.

In the present case Article 8.01 specifies that "The principles of progressive discipline shall be followed." The steps of verbal reprimand, written reprimand, suspension and demotion or removal are specified. But it is also stated that "The application of these steps is contingent upon the type and occurrence of various disciplinary offenses." The arbitrator reads the quoted two

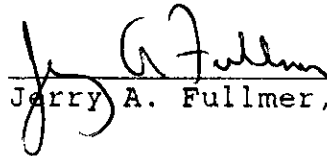
sentences of Article 8.01 as not requiring the Employer to proceed through the verbal/written/suspension/removal sequence in every case for all types of offenses. The Employer retains the right, depending "upon the type and occurrence of various disciplinary offenses." to terminate for the first offense. The parties' labor agreement is thus consistent with the general arbitration principle set out above.

The question remains whether the present case is a "type and occurrence" permitting termination for the first offense. The arbitrator holds that it is. The reasons underlying Rule 15 have been discussed above and will not be repeated. Suffice it to say that any acceptance of gifts seriously compromises the appearance of independent judgment by Youth Counselors in the exercise of their important duties. The Grievant's acceptance of the loans was a clear violation of Rule 15. The Employer's judgment is that such a violation is not one which deserves the use of progressive discipline and the arbitrator does not find the Employer's judgment on this question to be unreasonable and in violation of the

parties' agreement.⁵

VI. AWARD

Grievance denied.


Jerry A. Fullmer, Arbitrator

Made and entered this
1st day of November, 1990
at Cleveland, Ohio

⁵ There was un rebutted testimony from Union Delegate Butler that an employee of the Department at T.I.C.O., Shirley Dupler, approximately a year ago, harbored a youth after he escaped from the institution. She was then suspended with pay and thereafter offered the option of resigning. The inference is that this constitutes disparate treatment by comparison with the present case.

There can be no doubt but that the Employer is required to consistently enforce its rules and give like penalties for like offenses. But, the T.I.C.O. case is one from a different institution involving a different offense and the arbitrator is unable to hold that it requires a different result in the present case.