VOLUNTARY ARBITRATION PROCEEDINGS
CASE NO. 16-00-911129-0081-01-09
ANTHONY W. RAWLINGS, GRIEVANT

#789

THE STATE OF OHIO	:	
	:	
The Employer	:	
	:	
-and-	:	OPINION AND AWARD
	:	
OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, LOCAL 11, A.F.S.C.M.E., AFL-CIO	:	
	:	
The Union	:	

APPEARANCES

For the Employer:

Dennis R. Vansickle, Labor Relations Officer - Advocate
Paul Kirschner, Office of Collective Bargaining 2nd Chair
Kenneth R. Shomody, Ohio Department of Human Services
Eric Warren, Labor Relations Officer
Terry Piwnicki, Labor Relations Officer

For the Union:

John Gersper, OCSEA, Advocate
Maxine S. Hicks, Second Chair
Anthony W. Rawlings, Grievant
John Lunn, Chief Steward
Patti Zarr, Witness

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I. SUBMISSION

This matter came before this arbitrator pursuant to the terms of the collective bargaining agreement by and between the parties, the parties having failed resolve of this matter prior to the arbitral proceedings. The hearing in this cause was scheduled and conducted on June 16, 1992, at the conference facility of the employer in Columbus, Ohio, whereat the parties presented their evidence in both witness and document form. The parties stipulated and agreed that this matter was properly before the arbitrator; that the witnesses should be sworn and sequestered and that post hearing briefs would not be filed. It was upon the evidence and argument that this matter was heard and submitted and that this opinion and award was thereafter rendered.

II. STATEMENT OF FACTS

The grievant completed two applications of employment with the Ohio Department of Human Services. The first application was for a temporary slot and the second application was for a permanent position. Each of the applications contained the following clause immediately prior to signature.

> "I solemnly swear or affirm that the answers I have made to each and all of the questions in this application are complete and true to the best of my knowledge and belief. I hereby waive all provisions of law forbidding my physician or other person who has attended or examined me or who may hereafter attend or examine me, colleges or universities which I attended, or past employers, from disclosing any knowledge or information which they thereby acquired relevant to my employment and I hereby consent that they may disclose such knowledge or information to the Division of Personnel, Department of Administrative Services."

The first application was completed on March 7, 1989, and the second application was completed on November 28, 1989. Both applications listed total number of years of education to be that of sixteen years. The applications also listed Ohio State University as the last school attended. Both applications listed the Ohio State University Hospital as a job that the grievant held during his work history. The March, 1989, application revealed that the grievant was employed at that hospital from the period of January, 1980, to February, 1985, and the November application revealed that the grievant was employed there from November, 1985, to February, 1988.

Upon investigation by an investigator of the Department of Human Services it was found that the grievant in fact worked at the Ohio State Hospital for a period of November, 1985, to March, 1986, or for a period of four months. Both applications listed the major subject area for a graduate degree of pharmacy. The Ohio State School of Pharmacy had no record of the grievant's attendance and upon examination at arbitral hearing the grievant admitted that he did not attend any pharmacy school but placed it upon his application because he wanted to attend and because it would "look better" for the prospective employer. Further, both applications listed the Commerce Department as a prior place of employment. The March, 1989, application revealed that the grievant was employed there from February, 1985, to the time that he signed the March, 1989, application and the November application revealed that he was employed there from February, 1988, to March, 1989. The actual facts revealed that the grievant was employed at the Commerce Department for the period of February, 1988, through June, 1988. From all of that, it is noted that the grievant filed applications with the employer that

were untrue in several events, namely that the grievant was not employed at the Ohio State University Hospital for the times indicated; that the grievant was not employed at the Commerce Department for the times indicated and that the grievant did not receive three years of pharmacy education as recorded by him. Those errors were revealed by the grievant at hearing upon questioning of him.

The record further revealed that the grievant in obtaining a letter of recommendation wrote one such letter on the stationery of Warner Cable Communications, Inc. and had a co-worker at Warner sign it. The fact of the matter is the signator was not a supervisor who had any authority to write such letters of recommendation. Nor, was the grievant ever employed by the company. Evidence revealed that the grievant was employed by certain temporary agencies one of which caused the grievant to be temporarily employed at Warner Cable Communications, Inc. However, the grievant never directly received a paycheck from them. It might be noted that that letter of recommendation revealed the following:

> "January 31, 1989
>
> To whom it may concern:
>
> I'm writing this letter in reference to Anthony Rawlings. Anthony has been and (sic) employee of Warner Cable billing Department for approximately 4 months upon applying for the position Anthony scored a 96 on his written test, 86 wpm on his timed typing test with 4 errors. Anthony shows confidence in his self and his work. Anthony is always prompt and at his work area everymorning (sic) at 8:30 am. There is no need for constant supervision over Anthony. Anthony gets along with his co-workers nicely in a very professional matter (sic).

> As the supervisor of Warner Cable billing Dept, I'm really impressed with Anthony's work. Anthony is very quick as well as accurate with his work. Anthony is very familiar with the system (FDR) First Data Resources. Anthony helps out in credit and finance Dept regularly, his job description is preforming (sic) Adjustment accounts and produce reports for billing, we are very lucky to have Anthony as and (sic) Warner Cable employee.
>
> If you have any question concerning the matter please contact me at (614)481-5388.
>
> Very yours Truly, (sic)
>
> /s/ Jacqueline L. Robinson (Supervisor)"

The grievant provided the employer herein certain resumes. Those resumes revealed again that the grievant completed three years of pharmacy school and that he also attended the University of Columbus. The fact of the matter is, no such University of Columbus ever existed. When the grievant was questioned at hearing as to why he completed the work applications and the resumes and the letter of recommendation, the grievant admitted that those remarks made therein on those documents would "look better to the prospective employer".

The results of a predisciplinary hearing relevant to this matter were revealed on an inter-office communication dated October 17, 1991. The conclusion and recommendations of that particular document revealed the following:

> "CONCLUSIONS AND RECOMMENDATIONS
>
> The investigative report revealed a number of inconsistencies and inaccuracies in the two employment applications submitted by Mr. Rawlins. (sic) His level of education was misrepresented and his work experience was not accurate.

The medical documentation which he submitted to substantiate his head injury merely showed that he had sustained a head injury in 1982. There is no documentation to support his claim that he suffered any memory loss. Most of the medical documents that he submitted had nothing to do with a head injury. (Tab E) Furthermore, among the documentation that he submitted there was nothing to support his claim that he had surgery on his head. Even though there were plausible explanations given for a couple of the inconsistencies, there are many more inconsistences (sic) which indicate willfull (sic) and deliberate falsification.

Consistent with management's recommendation and the disciplinary grid guidelines, it is my recommendation that this employee be removed for deliberate falsification of an employment application."

Thereafter a termination dated October 25, 1991, was directed to the grievant and it revealed the following:

"October 25, 1991

Anthony Rawlings
Bureau of Claims Services
65 East State Street, 6th Floor
Columbus, Ohio 43215

Dear Mr. Rawlings:

As a result of the pre-disciplinary hearing held on September 24, 1991 a determination has been made to remove you from your employment with the Ohio Department of Human Services. The reason for this action is substantial evidence that you knowingly falsified employment applications in order to secure employment with this agency.

The effective date of this removal is close of business on Friday, November 1, 1991.

This action is consistent with the provisions of Section 124:34 of the Ohio Revised Code and Article 24 of the OCSEA contract. You may appeal this action through the provisions of the collective bargaining contract between the state

(sic) of Ohio and OCSEA, Local 11, AFSCME.

Sincerely,

/s/ Terry A. Wallace
Director"

To that particular activity of the Ohio Department of Human Services a protest was filed and the grievance form on its face stated in pertinent part as follows:

> "The grievant Anthony Rawlings was removed from his job as a data entry operator 2, effective November 1, 1991. It is the opinion of the union that documentation was given and Mr. Rawlings explained to management why there were discrepancies in the applications he submitted. On three occasions the union steward asked questions of the supervisor that he could not answer. Mr. Steve Stern had filled out a questionnaire for Mr. Rawlings. Mr. Rawlings had documentation in his file stating he was a good employee. Mr. Stern had on several occasions reviewed."

The basis for the grievance was indicated to be Article 2 and 24 of the contract.

It might be noted that Article 24.01 of the contract revealed the following:

> "§24.01 - Standard
>
> 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. In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the

arbitrator does not have authority to modify the termination of an employee committing such abuse."

It might be further noted that Article 2, Section 2.01, of the contract revealed the following:

"§2.01 - Non-Discrimination

Neither the Employer nor the Union shall discriminate in a way inconsistent with the laws of the United States or the State of Ohio or Executive Order 83-64 of the State of Ohio on the basis of race, sex, creed, color, religion, age, national origin, political affiliation, handicap or sexual orientation. Nor shall either party discriminate on the basis of family relationship. The Employer shall prohibit sexual harassment and take action to eliminate sexual harassment in accordance with Executive Order 87-30, Section 4112 of the Ohio Revised Code, and Section 703 of Title VII of the Civil Rights Act of 1964 (as amended).

The Employer shall not solicit bargaining unit employees to make political contributions or to support any political candidate, party or issue."

The work rules at the facility revealed that deliberate falsification of employment application is a violation constituting dishonesty and a subject for removal at the time of the first event. The work rules were in use ever since April 1, 1987 and all during the employment of the grievant at the facility.

The union placed several defenses into the record. One such defense was that the grievant at a very early age had suffered a cerebral concussion and that that injury caused memory loss. That injury was indicated to be when the grievant was sixteen years old in 1982. In 1991 the grievant received a medical report in that regard and

as alleged proof of memory loss from a clinical psychologist which revealed the following:

"September 16, 1991

RE: Anthony Rawlings
DOB: 04/23/66

TO WHOM IT MAY CONCERN:

The above patient requested a letter descriptive of his history of therapy at our Center. He states that he is pending a hearing with the State regarding the charge of falsification of an employment application and states that it is due to memory loss from an organic condition.

Our records show that he was seen at our Facility on six (6) occasions between 7/8/82 and 8/11/82. He was seen subsequent to suffering a blow to the head from another boy. The thrust of therapy involved attempting to resolve the differences between him and his assailant, psychological testing for brain damage and future planning.

Our findings indicated that there was sufficient reason to refer him for neurological evaluation via his physician. Both EEG and Brain Scan Evaluations were normal dispite clinical indications of brain damage (WAIS-R and BENDER).

Following his sixth appointment he failed to return for further treatment as apparently his conflict with the assailant was resolved.

Sincerely,

/s/ George E. Serednesky, Ph.D.
Clinical Psychologist"

The union further indicated and stated that the employer knew of the employment application problem as early as February, 1991, but waited until September, 1991, to terminate the grievant and the union therefore averred that the employer thereby had waived the right to dismiss because of the untimely activity on the part of the employer in that regard. The evidence does reveal that when the matter was placed

squarely before upper management, that that management acted rapidly in the matter at hand. The union further argued that there was no harm to the agency that occurred as a result of the grievant being hired either on a part-time or full-time basis as a result of the applications. The union further argued that the errors made were not substantial in nature and that they were merely due to the forgetfulness of the grievant due to time and perhaps even injury. The union further argued that the job application itself did not reveal that error or mistake or misstatement would cause dismissal. It might be noted that the union did not argue or make any reference to the lack of the rule publication in 1987. Presumably from that it can be determined that the grievant knew of the published rule which revealed that a deliberate falsification of the employment application was grounds for discharge. The grievant was employed for a period of time at the agency when the rule was in use and there was no evidence to reveal that the grievant came forward to correct the employment application prior to termination and during the pendency of the rule.

The union further argued that specifications of the job did not demand the educational activity revealed by the grievant on either his application or resumes and as a matter of fact the job evaluations of the grievant revealed that he was able to accomplish his present workload.

The union argued three aspects of discrimination in this particular matter. The union argued that the grievant was told to change his lifestyle and "go straight". The union further argued therefore that the grievant's failure to abide by that suggestion resulted in termination activity. The union further argued that the grievant filed

a multitude of grievances in 1990 and that the termination was a retaliation for that activity. The union further argued that another person subject to the rules was not dismissed under the same set of facts. In other words the union argued that since the grievant was black he received a greater discipline than a guilty, white management person did under the same factual pattern. Some evidence was placed into the file relevant to that but the facts did reveal that the person to whom the grievant compared himself was a situation which occurred to that management person subsequent in time to the grievant's date of termination. Thus, not only was the person to whom it occurred not black but also a management person not subject to the terms of the collective bargaining agreement and one who received the discipline subsequent in time to the grievant.

It was upon those facts and that multitude of defenses that this matter rose to arbitration for opinion and award.

III. OPINION AND DISCUSSION

The facts in this particular case which triggered the termination of the grievant are clear and unambiguous. The grievant in his application for both temporary and permanent positions at the facility told substantial untruths in his applications and resumes on two separate instances and provided a fake letter of recommendation. The untruths were as to his education and prior employment. The grievant admitted all of this at hearing and said he did it so that it would "look better". The grievant therefore obtained employment at the facility knowing that he was hired after providing the employer with false background and educational information. The union does not deny

the inaccuracies as investigated, alleged and proven by the employer. The union sought to defend this particular matter on the basis of many defenses. Perhaps it is better to review each of those defenses at this time.

The union argued that there was really no harm to the agency. The union argued that even though the act of admitted falsification of an employment application and even though there was an admitted false letter of recommendation and even though the resume was false, the grievant's work record does not show or reveal or indicate or substantiate that the grievant committed any act of dishonesty at work. The fact of the matter is that a false employment application disallowed the employer from picking and choosing its employees upon the correct information of the prospective employee's background. An individual who revealed that he had attended a college of pharmacy for three years and had worked at Ohio State University Hospital for a period of time and had worked at the Department of Commerce for a period of time and had worked at Warner Communications, Inc. for a period of time has a better record in his work history than one who does not work at those facilities. Simply put, the substantial harm is that the employer did not have a free choice to pick and choose its employee upon the real work experience and education of the applicant. This free choice was taken away from them by a prospective employee who simply lied about his work history and educational background.

The fact of the matter is that the grievant may have had a decent employment record at the facility herein but the test is not how he

worked, the test is how he obtained the position to work. There is some authority that where an employer could have discovered the falsification during the time that the grievant's application was pending through an investigation and did not, the dispute is resolved in favor of the employee. However, that is not the general rule in today's mainstream arbitral thought. The mainstream thought, is that an employer has the right to pick and choose its employees by an honest history of the employment background. Whether or not the grievant was competent in the accomplishment of his work after he was hired by giving false statements to obtain that employment is not generally the true test in such matters.

The union further argued that the specifications of the present employment had nothing to do with the work history or educational background of the grievant. That matter is an employer's prerogative and not the prerogative of the union. An employer sets the pattern for persons they will hire. The union further argued that there was a delay between discharge and the time that management first discovered the untrue application. The evidence does not reveal that there was an inordinate period of time as claimed by the union. The fact is, the evidence revealed that upper management reacted at the first instance. That is what the evidence showed and any claim to the contrary by the grievant or the union to the contrary was not proven in the record from clear and convincing evidence.

The union has further argued in this particular matter that the grievant was discriminated against in three aspects. The grievant was

told that he had better change his way of living and lead a "straight life". There simply is no evidence in the record to corroborate that such allegations as alleged were stated by the employer. The union by and through the grievant, further alleged that the grievant was victimized with a termination because he filed a multitude of grievances. Again, there was no corroborative evidence in the file to reveal that such had occurred. The fact of the matter is there were some grievances filed by the grievant but they followed the normal course of procedure and any special problems were not revealed in the evidence. The third allegation of discrimination charged by the union and the grievant was that the grievant was black and therefore received the termination from the facts at hand while a white management employee received less than termination for the same event. The fact of the matter is, the grievant's termination occurred prior in time than the management person's discipline and the act of discrimination can hardly have occurred since there was nothing to compare the grievant's termination to at the time that it did occur.

In other words, the management person's discipline occurred subsequent to that of the grievant and the grievant's activity cannot therefore be compared to that of the management person who is white since the first activity of termination was given to the grievant and not to the white employee. Furthermore, the management person was not subject to the contract of collective bargaining and the rules concerning that type of employment are different than those rules in which bargaining unit members are involved. As a result of all of the allegations of discrimination, they remain just that. The allegations

of the grievant of discrimination by the employer are not founded upon any corroborative facts from the hard evidence placed into the record by the union or the grievant and they must be held for naught.

The union also placed into the record medical testimony which allegedly revealed that the grievant in 1989 and 1990 was still suffering from the results of a cerebral concussion in 1982. The medical evidence does not belie that allegation. There was nothing revealed in the record of the grievant which showed that between 1982 and 1989 that the grievant ever suffered any memory loss or that the grievant was involved in activity which would substantiate or corroborate that medical allegation. Certainly the medical report placed into the record does not do so.

Simply put, the defenses of the union, and there were many, does not absolve the grievant of the events charged. Those acts of employment application falsehoods merit termination not only under the rules but also meets the test of just cause under the terms of the contract. Further, the statements made in the application were untrue, admittedly, and also stated contrary to the affirmation of the signature block statement first appearing on page two of this Opinion and Award. Simply put, the grievant's work references and educational references and prior employments were clearly and substantially false and the employee intentionally so stated in order to obtain employment. For all of those reasons, the grievance must be denied.

IV. AWARD

Grievance denied.

MARVIN J. FELDMAN, Arbitrator

Made and entered
this 30th day
of June, 1992.