

ARBITRATION DECISION AND AWARD

#790

STATE OF OHIO - DEPARTMENT OF YOUTH SERVICES

AND

STATE COUNCIL OF PROFESSIONAL EDUCATORS, OEA/NEA

35-06-021292-0009-06-10

Marcus Hart Sandver, Ph.D.
Arbitrator

Hearing Date: June 17, 1992

Decision Issued: July 3, 1992

I. BACKGROUND

This case arises out of a dispute between the State of Ohio Department of Youth Services (Employer) and the State Council of Professional Educators, OEA/NEA (the Union). The incident which precipitated the grievance was the discharge of grievant Don Wallis from his employment at the Department of Youth Services, Mohican Youth Center on January 14, 1992. The disciplinary trail (Joint exhibit #2) indicates that the grievant received notice of a pre-disciplinary meeting on January 3, 1992, that he attended a pre-disciplinary meeting on January 10, 1992, and that he received a Letter of Removal on January 14, 1992. The grievance trial began on February 10, 1992 with the filing of the grievance, the step III response from the employer to the union was dated March 18, 1992, the Step IV grievance review by the Office of Collective Bargaining was dated April 23, 1992, and the appeal to arbitration was dated March 31, 1992. Marcus Hart Sandver was chosen by mutual agreement of the parties to arbitrate the matter. The hearing was originally scheduled for May 21 and was then postponed until June 17 by mutual agreement of the parties.

II. THE ISSUE

The issue as jointly submitted by the parties will be; "was the Grievant, Don Wallis, removed for just cause?" If not, what should the remedy be?

III. THE HEARING

A. Exhibits and Opening Statements

The hearing began at 9:00 A.M. in the 7th floor conference room of the Office of Collective Bargaining. In attendance for the Employer were:

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| 1. Brian Eastman | State of Ohio Advocate |
| 2. Robert Thornton | State of Ohio Labor Relations Specialist |
| 3. Jerry Young | Witness |
| 4. Sally Childers | Witness |
| 5. Chuck Rhodes | Witness |
| 6. Barry Braverman | Labor Relations Officer -
Department of Youth Services |

In attendance for the union were:

- | | |
|----------------------|-------------------------|
| 1. Grant Shoub | S.C.O.P.E. Advocate |
| 2. Henry Stevens | OEA Uniserve Consultant |
| 3. Don Wallis | Grievant |
| 4. William Robertson | OEA Site Representative |

The hearing began with the swearing of the witnesses and the introduction of joint exhibits. The joint exhibits were:

Joint Exhibit # 1 - Joint Statement of the Issue

Joint Exhibit # 2 - Index of Joint Exhibits

Joint Exhibit # 3 - State of Ohio Department of Youth
Services: General Work Rules
(dated November 30, 1990)

- Joint Exhibit # 4 - Notice of Pre Disciplinary Meeting
(dated January 3, 1992)
Sign in Sheet (dated January 10, 1992)
Minutes of Pre-Disciplinary Meeting
(dated January 13, 1992)
Letter of Removal
(dated January 14, 1992)
- Joint Exhibit # 5 - Employee Grievance Form
(dated February 10, 1992)
Step 3 Response
(dated March 18, 1992)
Request for Step 4 Review
(dated March 16, 1992)
Step 4 Review (dated April 23, 1992)
- Joint Exhibit # 6 - General Work Rules - Department of
Youth Services. Dated and signed by
Donald Wallis November 9, 1990
- Joint Exhibit # 7 - Judgment Entry, State of Ohio v.
Donald Wallis (dated April 28, 1992)
Court of Common Pleas of Ashland County
- Joint Exhibit # 8 - Stipulation of Facts in the case of
S.C.O.P.E. v. State of Ohio - DYS
(dated June 17, 1992)
State of Ohio Purchase Order
(date illegible)
Mt. Vernon K-Mart Purchase Order
(dated October 29, 1991)
Register tape from Mansfield K-Mart
(dated December 12, 1991)
State of Ohio Receiving Report
(dated October 29, 1991)
Refund Identification Ticket signed
by Mr. Linscott (no date)
Refund Identification Ticket signed
by Don Wallis
Register tape signed by Don Wallis
(dated December 12, 1991)

(falsification of documents), Rule 3 (misuse of funds), Rule 4 (deceitfulness), Rule 6 (insubordination) and Rule 15 (failing to account for money or articles received). Mr. Eastman then related to the Arbitrator the occurrences which led up to Mr. Wallis' termination. Mr. Eastman stated that on October 29, 1991 Mr. Wallis and Mr. Linscott purchased 13 pairs of insulated coveralls from a K-Mart store in Mr. Vernon, Ohio. Mr. Eastman pointed out to the arbitrator that on the purchase order (part of Joint exhibit # 8) Mr. Wallis and Mr. Linscott were only approved to purchase 10 pairs of coveralls. Mr. Eastman then noted that the reason that Mr. Linscott and Mr. Wallis were able to purchase 13 coveralls for the price of 10 was that the coveralls had gone on sale between the time the purchase order was completed and the time the garments were actually purchased. When the men returned to the Mohican Youth Center on October 29, 1991 they only checked 10 coveralls into the store room as shown on the receiving report (Joint exhibit # 8).

Mr. Eastman then directed the Arbitrators attention to the register tape from the Mansfield K-Mart dated December 12, 1991 which shows that Don Wallis received a refund of \$140.36 for returning 3 pairs of coveralls. Mr. Wallis did not remit this money back to the institution. Subsequent to this refund an employee of the Mansfield K-Mart contacted the State Highway Patrol and notified them of the transaction. The Highway Patrol notified the institution and an investigation of the matter began.

Upon returning to work after a vacation absence of approximately two weeks, the grievant was questioned about the matter. Initially, the grievant stated that he purchased only 10 pairs of coveralls but after repeated questioning he admitted to purchasing 13 pairs of coveralls. On January 2, 1992 the grievant remitted back to the institution \$140.36.

In concluding his opening statement, Mr. Eastman noted that the Mohican Youth Center is a juvenile correction institution for first time offenders in the 16 to 18 age range. Mr. Eastman emphasized that the teachers at such an institution serve as a role model to the youthful offenders. Finally, Mr. Eastman stated his opinion that the discipline meted out to Mr. Wallis was justified due to the seriousness of the offense and due to the need for the Department of Youth Services to provide good role models for the youth that it is entrusted to rehabilitate.

In his opening statement, Mr. Shoub took care to point out to the Arbitrator that Mr. Wallis had not been charged with theft of property (DYS - Rule 34). Mr. Shoub stressed the fact that Mr. Wallis had a 22 year employment history with no prior discipline in the State of Ohio. Mr. Shoub reviewed the basic facts of the case and stated that there was no dispute about the facts. Mr. Shoub did emphasize, however, that there was no conversion of the \$140.36 for Mr. Wallis' personal use but rather that the money was to be used for a petty cash fund to further the good business relationships Mr. Wallis had established with a number of local employers.

Mr. Shoub asked the arbitrator to consider the fact that Mr. Linscott had also participated in the plan to purchase the 13 coveralls; but yet he only received a 3 week suspension. Mr. Shoub asked the arbitrator to consider the fact that Mr. Wallis had requested that he be allowed to participate in an Employee Assistance Plan but had been denied this request by his supervisor Ms. Childers. Finally, Mr. Shoub stated his belief that termination of a 22 year employee for a rule infraction of this nature was unjustified.

B. Witnesses and Testimony

The first witness called by the State was Ms. Sally Childers, Superintendent of the Mohican Youth Center. Ms. Childers began her testimony by explaining to the Arbitrator the mission, purpose and operation of the Mohican Youth Center. Ms. Childers then went on to discuss and explain the Occupational Work Experience Program (O.W.E. Program) which is the program Mr. Wallis coordinated at Mohican.

In her testimony, Ms. Childers explained to the Arbitrator the nature of the O.W.E. coordinator position and emphasized the importance she places on the O.W.E. coordinator as a role model to the youthful offenders and to the employers in the community. Ms. Childers testified about the success of the O.W.E. program in placing students in jobs in the community. Ms Childers discussed the awards and recognitions that some O.W.E. students had received from their various employers over the past few years of the O.W.E. program.

Next, Ms. Childers testified about the sequence of events that led up to her decision to discipline Mr. Wallis. Ms. Childers described her reaction of disbelief when the State Patrol first brought to her attention the refund of the coverall money to Mr. Wallis in December of 1991. Ms. Childers described her efforts to conduct an investigation of the Wallis matter through Mr. Young.

Finally, Ms. Childers reviewed for the Arbitrator the purchasing order process. Ms. Childers was quite emphatic in explaining to the Arbitrator the rules and regulations regarding the purchasing order process. Ms. Childers emphasized the point that a purchase can not exceed the purchase order price and that if a purchase is less than the purchase order price either the difference in cash or a check must be brought back to the business office of the Youth Center.

On cross examination, Mr. Shoub examined the purchase order process in more depth with Ms. Childers. In response to the questions of Mr. Shoub, Ms. Childers restated her earlier point that any change that any employee may receive from a purchase (if the actual purchase price is less than the purchase order price) must be reported and brought back to the Youth Center.

Mr. Shoub next asked Ms. Childers about the work record of Don Wallis. Ms. Childers responded that the O.W.E. program was a good program and that up until this incident she considered Mr. Wallis a good employee. At this point in the hearing Mr. Shoub produced Union Exhibit # 1 which was the most recent employee

performance review of Don Wallis. Ms. Childers identified the document and testified that she considered Mr. Wallis hard working, effective and good role model for his students up until this incident. Mr. Shoub next asked Ms. Childers about Rule 34. Ms. Childers testified that Mr. Wallis was not charged with violating Rule 34 because that rule is usually used in connection with incidents involving the damaging or the destroying of state property.

Next, Mr. Shoub asked Ms. Childers a few questions about the discipline of Mr. Linscott. Ms. Childers testified that Mr. Linscott received a 15 day suspension and that he had violated DYS Rules 2,6 and 15. Mr. Shoub then introduced into evidence Union exhibit # 10 which was the pre-disciplinary letter sent to Mr. Linscott. Mr. Shoub next asked Ms. Childers what she would have done if Mr. Wallis' involvement in the coverall purchase incident had ended on October 29. Ms. Childers answered that Mr. Wallis would have received the same 15 day suspension as Mr. Linscott had he not taken the cash refund of December 12. Ms. Childers testified that once the State Patrol filed charges against Mr. Wallis that the incident became more serious in her view.

At this point Mr. Shoub asked Ms. Childers a few questions pertaining to her knowledge of money Mr. Wallis had spent on his students. In her response to these questions, Ms. Childers stated that she did not know that Mr. Wallis had spent his own money on his students and she stated that she felt such

expenditures were improper. Ms. Childers stated that there was no reason for Mr. Wallis to spend his own money on his students.

Next, Mr. Shoub asked Ms. Childers a few questions about her knowledge of Mr. Wallis' personal circumstances. Ms. Childers testified that she knew that Mr. Wallis' father had recently died and that his mother was seriously ill with cancer. Ms. Childers testified that Mr. Wallis had asked her to place him in the Employee Assistance Program subsequent to the coveralls incident and that she had refused this request. Mr. Shoub asked Ms. Childers if she knew that Mr. Wallis had left town suddenly on December 13, 1991 to be with his sick mother and she testified that she knew that this was his reason for leaving town.

On redirect, Mr. Eastman asked Ms. Childers when Mr. Wallis returned the \$140.36 to the Youth Center. Ms. Childers testified that the money was returned on January 2, 1992 the day before she sent the pre-discipline letter. Mr. Eastman asked Ms. Childers if she had the final authority to terminate Mr. Wallis and she testified that she did not have this authority. Ms. Childers testified that the final decision to terminate Mr. Wallis was made by the DYS central office in Columbus. Finally, Mr. Eastman asked Ms. Childers to draw a distinction between the actions of Mr. Linscott and Mr. Wallis and Ms. Childers testified that the act of returning the coveralls for money differentiated the actions of Mr. Wallis from those of Mr. Linscott. After a brief recross examination by Mr. Shoub the witness was excused.

The next witness for the state was Mr. Jerry Young, Chief of

Operations at the Mohican Youth Center. Mr. Eastman began his questioning of Mr. Young by asking him about his duties as Chief of Operations. Mr. Young testified that he was largely responsible for security at the Youth Center. Mr. Eastman next asked Mr. Young to describe his investigation of the Wallis incident and Mr. Young went into a detailed account of his efforts at investigating the purchase of the coveralls and the refund of the \$140.36. Mr. Young next described his meeting with Mr. Wallis on January 2, 1992 and offered into evidence management exhibit # 1 which was a summary of the questions asked and answers given during the meeting with Mr. Wallis. Mr. Young testified that when he first asked Mr. Wallis how many coveralls he purchased on October 29, 1991 he answered 10. Upon subsequent questioning Mr. Wallis answered that he purchased 13 coveralls.

On cross examination Mr. Shoub asked Mr. Young if he had ever supervised Mr. Wallis and he answered that he had not. Mr. Shoub asked Mr. Young his personal opinion of Mr. Wallis' performance as a teacher at the Youth Center and Mr. Young answered that he considered Mr. Wallis one of the best teachers at the Center. Mr. Shoub asked Mr. Young if he knew that Mr. Wallis was spending his own money on the students in the O.W.E. Program and Mr. Young testified that he did not know this before the January 2, 1992 meeting. Mr. Shoub asked Mr. Young if he had any knowledge of how Mr. Wallis intended to use the money and Mr. Young answered that he did not have any knowledge of Mr. Wallis' intentions. At this point, Mr. Young was excused and the State

rested its case.

The first witness called by the union was the grievant Don Wallis. Mr. Shoub began his direct examination of Mr. Wallis by asking him a few questions about his work and the history of his involvement in the O.W.E. Program. Mr. Wallis testified that he became involved in the O.W.E. Program in late 1986 and that he had taught Social Studies for 16 years before that at the Youth Center. Mr. Wallis testified that he started the off-campus O.W.E. Program and he detailed for the Arbitrator the difficulties he initially encountered in placing students in jobs in the local community. Mr. Wallis testified that the program typically involves about 15 off-campus students at a time. Mr. Wallis testified that he would spend his own money for students to purchase lunches when they were placed in off-campus employment. Mr. Wallis testified that the source of this money was from reimbursements he received from the state for the use of his personal automobile in driving the O.W.E. students to their jobs. Mr. Wallis testified that he would take the reimbursement checks, cash them, deduct his actual gasoline expenses, and then put the remainder of the money in an envelope in his desk drawer to be used for the students.

Mr. Shoub next asked Mr. Wallis to describe how he used the money and to identify who else knew about the money. Mr. Wallis testified that he used the money for equipment repair, and for lunches for students. Mr. Wallis testified that Mr. Torok knew about the money, that Mr. Linscott knew about the money and that

the students knew about the money.

Mr. Shoub next asked Mr. Wallis about the purchase of the coveralls on October 29, 1991. Mr. Wallis testified that Mr. Linscott actually purchased the 13 coveralls and that he paid \$9.20 of his own money to cover the full purchase price. Mr. Wallis testified that the 3 extra coveralls sat in a closet until December and that there was no intention in October to convert the coveralls to cash. Mr. Wallis testified that he converted the coveralls to cash in December because his "cash fund" was depleted and he needed money to buy Christmas presents for the employers of his students. Mr. Wallis testified that he needed to buy the presents to maintain good relations with the employers of his students.

Mr. Shoub asked Mr. Wallis if he actually bought the presents and Mr. Wallis testified that he had not. Mr. Wallis explained that after he obtained the refund on December 12, 1991 he was subsequently contacted on December 13 by his brother and summoned to come immediately to New York due to the declining health of his mother. When Mr. Wallis returned to Ohio on December 24 he no longer felt like buying the presents and the money remained in his wallet.

Mr. Shoub asked Mr. Wallis if he requested a deferral of discipline and admission into the EAP Program from Ms. Childers and he testified that he did but that his request was denied. Mr. Shoub asked Mr. Wallis if he was charged with a criminal offense by the State Patrol and he testified that he pleaded

quilty to a charge of taking control of funds not his own. Mr. Shoub asked Mr. Wallis about the punishment he received from the court and Mr. Wallis testified that he paid a fine and that he was placed on probation. Mr. Shoub asked Mr. Wallis if he ever intended to use the coverall refund money for his own personal use and Mr. Wallis testified that he never intended to use the coverall refund money for his own personal use.

On cross examination, Mr. Eastman began by asking Mr. Wallis several questions about the cash fund. Mr. Eastman asked Mr. Wallis if anyone in authority told him directly to maintain the fund or to spend his own money on the students and Mr. Wallis answered "no". Mr. Wallis was asked if he kept records of the fund expenditures and he replied that he kept a running tally of expenditures on the outside of the envelope. Mr. Wallis was asked about how he spent the cash fund money and he replied that he spent the money on gifts, equipment repair and lunches.

Mr. Eastman next asked Mr. Wallis several questions about the purchase of the coveralls. Mr. Wallis was asked why he did not report in the 13 coveralls to the institution on October 29, and he replied that it was due to the inflexibility of the purchase order process. Mr. Wallis testified that he really needed 12 coveralls and that he had originally requested 12 but that the approved purchase order was trimmed to 10 at a later date. At this point the witness was excused.

C. Closing Statement

In his closing statement Mr. Shoub reviewed the events of October 29, 1991. Mr. Shoub asked the Arbitrator to consider the original purchase of the 13 coveralls and to take into consideration the fact that while only 10 were checked in, the other 3 were almost a free good to the institution because of the sale price. The coveralls were brought back to the institution and were kept there. This was not in accordance with the established purchasing process, but it was done to benefit the Youth Center.

Returning the coveralls to Mansfield for the refund was an error in judgement in Mr. Shoub's view. Mr. Shoub was quick to point out, however, that there was no conversion of the funds to the personal benefit of Mr. Wallis and that there was no motivation of personal gain to Mr. Wallis regarding the refund at any time. Mr. Shoub stressed that Mr. Wallis was using his own personal funds for the benefit of the O.W.E. Program and that he intended to use the \$140.36 for the same purpose.

Mr. Shoub urged the Arbitrator to review Mr. Wallis' performance evaluation reviews for the past 5 years (S.C.O.P.E. Exhibits 1 -6) and to note the letter of commendation he received in 1987. Mr. Shoub asked the Arbitrator to consider the fact that Mr. Wallis was experiencing personal and family trauma at the time of the incident and that he had requested enrollment in an EAP but was denied this by his supervisor. Finally, Mr. Shoub asked the Arbitrator to consider the severity of the discipline

that Mr. Wallis had received and asked the Arbitrator to balance the degree of discipline with the seriousness of the rule infraction.

In his closing Mr. Eastman asked the Arbitrator to distinguish between the act of purchasing the 13 coveralls on October 29 and the refund of the coverall money on December 12. Mr. Eastman pointed out that Mr. Wallis acted alone on December 12 and that he did not tell Mr. Linscott that he was going to obtain the refund. In Mr. Eastman's view, it is a cause for concern that Mr. Wallis purchased the coveralls at one store and then returned them to another. Mr. Eastman brought out the fact that Mr. Wallis was never authorized to maintain a cash fund and that no one in authority knew that he maintained this fund. Finally, Mr. Eastman stated the opinion that there is reason to be suspicious of the activities of Mr. Wallis and that the seriousness of his actions justify the discipline that was given to him.

At this point both sides rested. The hearing was closed at 2:00 P.M.

IV. DISCUSSION AND AWARD

It was not pleasant to hear the case of the State of Ohio versus Don Wallis. It is never pleasant to hear that a long term loyal employee has been caught breaking the rules, and engaging in a pattern of conduct that would tarnish the reputation of an agency of the State of Ohio. Mr. Wallis admitted that he violated the DYS work rules both on October 29 and December 12. The facts are not in dispute and the parties have stipulated to the essential factual details of the case.

What a contrast one experiences when one reads the performance evaluations of Mr. Wallis over the past few years, and then considers the events of December 12, 1991. What could have motivated such an exemplary employee with 22 years of excellent service to the Mohican Youth Center to do such a thing? That is a question that Mr. Wallis has undoubtedly asked himself many times since his suspension in January. That is also a question that no one else can answer. As far as I am concerned, Mr. Wallis' motivations are irrelevant. The record and the testimony reveal that Mr. Wallis violated the rules of the Mohican Youth Center and the Department of Youth Services; there is no dispute about that. He deserves to be disciplined, his representative does not deny this, and he has been suspended from the position since January. The question now becomes, is the termination justified?

I do not believe that it is. Mr. Wallis is a 22 year

employee of DYS and he deserves more consideration in this case than he was given by his employer. The discipline of suspension is harsh enough for the infraction of the rules that Mr. Wallis has been found to have committed. I am sure that Mr. Wallis has learned a big lesson from this experience and I am sure that he will not pose a discipline problem at the institution should he be returned to his former position.

The Mohican Youth Center and the Department of Youth Services would suffer a great loss should Mr. Wallis be terminated from his position as youth counselor. Mr. Wallis should be given a second chance to redeem himself and to reestablish a record as an exemplary employee. I have confidence that Mr. Wallis will return to Mohican and will resume his lifelong vocation as a youth counselor to the best of his ability. It is not the intention of this ruling to minimize the seriousness of the charges that have been brought against Mr. Wallis, but to recognize the fact that a 22 year employee of the State deserves an opportunity in a circumstance such as this to redeem himself.

The grievant will have no right to back pay or back seniority but should be returned to his job on the effective date of this award (July 3, 1992). The seriousness of the infraction justifies suspension with no back pay, but not termination.

V. CERTIFICATION

This decision is based on the evidence and testimony presented to me on June 17, 1992 by the State of Ohio - DYS, and the State Council of Professional Educators.

A handwritten signature in cursive script, reading "Marcus Hart Sandver", is written over a horizontal line.

Marcus Hart Sandver, Ph.D.

Arbitrator

July 3, 1992

Columbus, Ohio