

**STATE OF OHIO
LABOR ARBITRATION TRIBUNAL**

In the Matter of Arbitration Between:

Office of Collective Bargaining and the
Department of Mental Health

And

Ohio Health Care Employees Union
District 1199
National Union of Hospital and
Health Care Employees, S.E.I.U., AFL-CIO

State of Ohio
Case #23-06-91-12-09-0227-
0211

Before: Rob Stein

Appearances: For SEIU, District 1199

David Regan, Advocate
District 1199
National Union of Hospital and
Health Care Employees, SEIU, AFL-CIO
475 E. Mound St.
Columbus, OH 43215

And: Jane Cox (Grievant); Jeff Hill (Director, Managed Care); Susan Sally
(Mental Health Technician); Marci Sutherland (Assistant Program
Manager); Cornelius Williams (Social Work Supervisor).

For the Office of Collective Bargaining and the Department of Mental Health:

John Rauch
Labor Relations Manager
Dept. of Mental Health
30 East Broad St., Rm 1120
Columbus, OH 43215

Shelly Ward
Labor Relations Specialist
Office of Collective Bargaining
106 N. High St., 6th Floor
Columbus, OH 43215-3019

And:

Regina Anderson (Internal Auditor); Valerie Hayes (Activity Therapist);
David Kirkland (ICF/MR Unit Manager); Eloise Russell (Patient Accounts
Manager); Andrea Kool-Tucker (Director of Vocational Education).

I. **INTRODUCTION:** This case came to arbitration and a two-day hearing was held October 23, 1992, and October 30, 1992, in Columbus, Ohio. The hearing was held before Rob Stein, member of the Arbitration Panel selected in accordance with the terms of the Agreement between the parties.

The Employer raised a threshold question as to the procedural arbitrability of the instant grievance. The parties presented evidence and testimony on the issue of arbitrability prior to presenting their position on the merits of the grievance. For the sake of efficiency and economy, the parties then mutually agreed to proceed on the merits of the grievance. It was understood that the arbitrator would render a ruling on arbitrability, which would either preclude or necessitate a ruling on the merits.

The parties were given full opportunity to examine and cross-examine witnesses and to submit written documents and evidence supporting their respective positions. Oral closing arguments were made and no post-hearing briefs were filed. The discussion and award are based solely on the record described above.

PART ONE

II. ISSUE

The issue as framed by the arbitrator is:

Should the grievance form (Joint Exhibit 1) be accepted as a grievance timely filed under the Agreement between the parties.

III. BACKGROUND

On November 22, 1991, the grievant received a letter (Joint Exhibit 1-A) notifying her of removal from the position of Social Worker III. The contents of the letter and the fact that the letter was hand delivered and received on the 22nd of November are not in dispute. The effective date of the removal was November 23, 1991.

Joint Exhibit 1-C is a copy of the envelope which contained the grievance form (Joint Exhibit 1). The grievance form was postmarked December 3, 1991. Although the Employer made a passing reference to the two postmarked dates of the 5th of November and the 3rd of November appearing on the envelope, the 3rd of November post marked date was accepted as valid by both parties.

The dispute over the timeliness of this grievance centers on the date the ten (10) day grievance filing period begins. The Employer asserts, it begins the day following the date of notification of removal (i.e., November 23, 1991). The Union asserts it begins the day following the effective date of the Employer's action (i.e., November 24, 1991).

IV. EMPLOYER'S POSITION

The Employer cited the following provisions of the Agreement between the parties as being germane to the issue of procedural arbitrability:

7.06 Grievance Steps

Step 1 - Immediate Supervisor or Agency Designee

A Member having a grievance shall present it to the

immediate supervisor or agency designee within ten (10) days of the date on which the grievant knew or reasonably should have had knowledge of the event.

7.02

C. *Day as used in this article means a calendar day, and times shall be computed by excluding the first and including the last day, except when the last day falls on a Saturday, a Sunday, or a legal holiday, the act may be done on the next succeeding day which is not a Saturday, Sunday, or holiday.*

7.07 Arbitration

E. Arbitrator Limitations

1. *Only disputes involving the interpretation, application, or alleged violation of a provision of this Agreement shall be subject to arbitration. The arbitrator shall have no power to add to, subtract from, or modify any of the terms of this Agreement, nor shall he/she impose on either party a limitation or obligation not specifically required by the express language of this Agreement.*

As stipulated by the parties, the letter (Joint Exhibit 1-A) was received by the grievant on November 22, 1991. This was the day, according to the Employer, that the grievant knew or reasonably should have had knowledge of the event as provided for under Article 7.06 Step 1 of the Agreement (Joint Exhibit 2).

The grievance was post marked (Joint Exhibit 1-C) December 3, 1991, which the Employer argues is one (1) day beyond the filing period. Accordingly to the Employer the grievance filing period ran

from November 23, 1991 (excluding the first day of November 22, 1991) to December 2, 1991 (including the last day).

In further support of its position on the significance of time limits, the Employer submitted a previous arbitration award (Employer Exhibit 1) which upheld its position on timeliness. The Employer specifically referred to page 11 of the Opinion and cited the following:

"Never the less, where the parties have negotiated obligatory time constraints for processing grievances, the same must be acknowledged and adhered to. The arbitrator has no authority to ignore the explicitly stated prerequisites for filing of grievances. Indeed, in the pending case, the terms of the Agreement specifically limit the jurisdiction and power of the arbitrator so as to preclude deviation from the exact contract requirements."

And Page 12 as follows:

"Moreover, the members of the bargaining unit are deemed to know what the negotiated provisions require. Lack of knowledge of contract provisions is not a valid defense for failure to comply with contractual commitments."

The Employer cites Article 7.07 E Arbitrator Limitations in making the argument that ... "The Arbitrator has no power to add to, subtract from, or modify any of the terms of this Agreement, nor shall he/she impose on either party a limitation or obligation not specifically required by the express language of this Agreement."

The Employer agrees that, in spite of its actions in processing

the grievance, hearing the merits, and responding to it at Step 3, it reserved the right to raise the issue of arbitrability in arbitration (see Joint Exhibit 1).

Furthermore, the Employer states that its participation in mediation in attempting to settle agreements, without raising the issue of arbitrability, should not be construed as a waiver of its rights to raise the issue in arbitration. The Employer contends that mediation is an informal step in the grievance process.

Based upon the above arguments, the Employer takes the position that the grievance should be considered untimely filed, and therefore precluding the arbitrator from rendering a decision on the merits.

V. UNION'S POSITION

The Union contends that the Employer is obligated to raise the issue of timeliness early in the grievance process. But for a reference in the January 15, 1992 Step 3 answer, the Union argues that the Employer never raised the issue of timeliness until arbitration. The Union further asserts that in mediation, the Employer "never uttered one word concerning the issue of timeliness." The Union considered mediation to be a formal step in the grievance process, thereby obligating the Employer to be forthright with all aspects of its position on the grievance. In its closing argument, the Union submitted the new Agreement (Union Exhibit 3) as proof of the formality of the mediation step and in support of the employers obligation to disclose all relevant and pertinent records.

On the specifics of the untimeliness charge by the Employer, the Union asserts that the Employer is simply wrong. The grievance was

filed within the contractual time limit of ten (10) days.

The Union states that the date of the event was November 23, 1991, as indicated in Joint Exhibit 1-A. Therefore, the time to file a grievance began November 24, 1991, and ran through December 3, 1991. Since the post mark on the envelope containing the grievance (Joint Exhibit 1-C) was dated December 3, 1991, the grievance was timely filed and is properly before the Arbitrator.

DISCUSSION

The dispute in this matter centers on whether the grievance was timely filed or was filed one day beyond the ten (10) day contractual limits.

This grievance was a discharge grievance and therefore was filed at Step 3. Joint Exhibit 1 indicates the Employer raised the issue of procedural timeliness at this step, albeit in a weak way, not giving it much stature in the larger context of the issues surrounding the grievance. In this particular case, further examination of the facts surrounding the actions and obligations of the Employer to raise the issue of timeliness early on and in mediation will not help resolve the question of the timely filing of the grievance.

What seems more revealing is an examination of the grievance language of the Agreement (Joint Exhibit 2) vis-a-vis the letter of removal (Joint 1-A). What becomes apparent is a difference in the stated definition of the time frames for filing a grievance. This difference appears to be at the heart of the dispute and most likely provided the basis for both the Employer and the Union to have differing points of view.

The language of the Agreement (Joint Exhibit 2) reads as follows:

7.06 Step 1

A member having a grievance shall present it to the immediate supervisor or agency designee within ten (10) days of the date on which the grievant knew or reasonable should have had knowledge of the event.

Grievances submitted beyond the ten day limit will not be honored.

It's clear that the parties have intended to have grievances filed within ten (10) days of the event, otherwise they will not be honored. The phrase "...of the event" is significant since, it is the event which sets into motion the time period to file a grievance. Time is further defined in Article 7.02-C and this language is clear and unequivocal "...exclusion of the first day and inclusion of the last day."

In contrast to these agreed upon definitions is the language of the letter of removal (Joint Exhibit 1-A) which states in the third paragraph:

If you wish to appeal this action, you must file a written grievance with the agency director within ten (10) days of notification of this action.

The phrase "within ten days of notification of this action" is a substantially different definition of the grievance filing period than that which appears in the Agreement (Joint Exhibit 2). In Joint Exhibit 1-A, the grievance filing time period is set in motion by notification of the action as contrasted with the Agreement (Joint Exhibit 2) in which the grievance filing time period is set in motion

by the event.

The express language of the Agreement is controlling in this matter. The time period to file a grievance is set in motion by the event and not by the notification that an event will occur. In the matter at hand, a discharge is not a discharge until it is executed, which was November 23, 1991. The parties may want to review the practice of placing language in letters of removal which are not in compliance with the Agreement.

AWARD

The grievance is timely filed and is properly a subject of arbitration.

PART TWO

MERITS

I. ISSUE

The parties mutually agree on the issue to be: Was the grievant's discharge for just cause?

If not, what shall the remedy be?

II. BACKGROUND

The grievant is Jane Cox, a Social Worker III, employed by the Ohio Department of Mental Health. Ms. Cox was employed since October 24, 1988. She worked at the Central Ohio Psychiatric Hospital (COPH) in Columbus, Ohio. She was assigned to the Intermediate Care Facility/Mentally Retarded (ICF/MR) Unit within the hospital, also known as the Centre School, until she was discharged on November 23, 1991.

Ms. Cox was part of an Interdisciplinary Team, which provided professional services to 14-16 mentally retarded residents who varied in functioning levels. Some residents could not work and required a great deal of attention, while others were employed in sheltered workshops or higher functioning jobs paying near minimum wage. Many had severe behavioral problems, as verified through the testimony of several witnesses.

The Unit was unique within the institution. It was somewhat removed from the main part of the hospital and it was the only ICF/MR Unit. The ICF/MR Unit received higher levels of funding, but with far more stringent federal regulations. ICF/MR regulations emphasized active treatment over prescriptive custodial care. This outcome oriented approach emphasized growth and change for residents on a developmental, social, and behavioral basis.

Testimony and evidence provided by witnesses for the Employer and the grievant created a picture that the ICF/MR Unit emphasized the need for a structured responsiveness to resident's needs. The need to maintain accreditation in this client centered, Medicaid-funded system, was an important factor. Individually based active treatment had to occur in order for funding to continue.

Another important factor was to have all the residents remain eligible for Medicaid funding. The residents had to have less than \$1,500 in liquid assets in order to meet the federal government's standard of indigence. This was a concern for two residents of the unit. Both residents worked in higher paying jobs and made between \$100 and \$250 per week. For these residents to remain eligible for Medicaid funding, it was important for the ICF/MR Unit to have them

regularly spend their money as part of their individualized habilitation plan.

The differences between the operation, federal regulation requirements, and the mission of the ICF/MR Unit vis-a-vis the hospital's mission led the Unit's supervisor, David Kirkland, to seek more local control over the handling of activity funds for the residents.

The ICF/MR Unit's need to fulfill its mission of promoting active treatment was perceived to be hindered by the practices of the hospital's business office. The business office had very restrictive policies regarding hours of access and the amounts of money which could be withdrawn for each resident. These practices led the ICF/MR Unit to strategize and eventually develop their own client banking system.

David Kirkland and his staff talked about the idea of a unit based banking system for some two years. In contrast, the Unit's assistant program manager, Marci Sutherland, was extremely reluctant to participate in the development of a unit banking system, however she testified that she did provide some input in setting up the system. She felt a unit based banking system was dangerous and could lead to people getting into trouble (another social worker had been fired in the past for similar activity regarding a unit-based monetary system). Nevertheless, Mr. Kirkland encouraged the idea of a unit-based banking system, one which was similar to the one used in the Deaf Unit (but without using money as an incentive for good behavior).

The grievant was also in favor of a unit-based banking system. The grievant testified she had previously worked in a group home and that the hospital's ICF/MR Unit was not in compliance with the ICF/MR

regulations. The grievant emphasized there was too much custodial care and not enough training or active treatment.

The grievant orally presented (at a team meeting) a plan to set up a ICF/MR unit-based banking system. The grievant's supervisor, David Kirkland, asked the grievant to put the plan in writing. The first plan drafted by the grievant identified a mental health technician as the employee responsible for the money, with David Kirkland being the second backup. Mr. Kirkland testified that he did not like this arrangement. He did not want to take on additional responsibility at that time.

The grievant then came up with a second plan (Employer Exhibit 2) which the supervisor favored. This plan placed Mr. Kirkland third in applied responsibility after the grievant and Valerie Hayes, the Unit's activity therapist. Mr. Kirkland orally approved the banking system (Employer Exhibit 2). Although, Mr. Kirkland wanted very little administrative responsibility for the day to day operation of the banking system, he did acknowledge that the Unit's banking system was his managerial responsibility.

The managerial tool for operating the ICF/MR banking system was the Centre School's Bank Log Book (Employer Exhibit 4). This unit banking system was not set up in compliance with the Department of Mental Health's Administrative Rule 51-22-9-10 Management and Control of Internal Funds, nor did Mr. Kirkland apprise the hospital's CEO of the existence of the fund. In addition, Mr. Kirkland testified he did not discuss set up or operation of this fund with the business office of the hospital.

The fund was operational from April 27, 1990 until July 15, 1991.

Valerie Hayes first maintained the fund and kept it locked in a cabinet in her locked office. Although the exact date was not verified or identified by anyone at the hearing, the Centre School Bank Log Book (Employer Exhibit 4) was placed in the custody of the grievant early in the 15 month period the unit banking system was operational.

The grievant's supervisor knew of the transfer of the Bank Log Book to the grievant and the grievant was in favor of this transfer of responsibility for maintaining and securing the book. The book was kept by the grievant in her office, in her unlocked top desk drawer. Employer Exhibit 4 contained a running record of the deposits and withdrawals along with zippered plastic pouches for each resident. The plastic pouches contained receipts and cash. At times the book would contain large sums of cash totalling in the hundreds of dollars.

In July of 1991, during an annual Representative Payee Review in the hospital, a pattern of weekly off-ground activity case withdrawals was noticed by the internal auditor, Regina Anderson. The auditor did a subsequent investigation and found unaccounted for discrepancies in the fund totaling some \$3,478.17 (Employer Exhibit 5). The figure of unaccounted for discrepancies has differed several times. It was listed as \$3,475.17 in the grievant's removal letter (Joint Exhibit 1-A). During the hearing, Ms. Regina Anderson testified on direct examination that the amount of the discrepancy was \$3,542.16.

The CEO of the hospital ordered an investigation and the grievant was subsequently held responsible for the unaccounted for monies. She was terminated for theft and other reasons identified in Joint Exhibit 1-A.

III. EMPLOYER'S POSITION

The Employer contends that during the period of time the Centre School Banking System was operating the grievant engaged in the act of theft and was guilty of neglect of duty performing incompetently whereby patients' rights were endangered. In the words of the Employer, "long term pilfering" took place and it was easily accomplished given the grievant's central role in the design and operation of the Centre School's Banking System.

The Employer further states that although the banking system had the oral approval of the ICF/MR's program supervisor, David Kirkland, it was the grievant who was the custodian of the system. The grievant was the one who weekly made withdrawals for the ICF/MR residents from the hospital's business office and was accountable for residents' funds. The grievant was responsible for documentation in the Centre School Bank Log (Employer Exhibit 4).

The Employer pointed out through the report of the auditor (Employer Exhibit 5) that there were several discrepancies between the Patient Demand Statement (Employer Exhibit 3), the Cash Withdrawal Slips (Employer Exhibit 6) and the Centre School Bank Log (Employer Exhibit 4).

For example, on 9-21-90, the Patient Demand Statement (Employer Exhibit 3) reflected a -\$10.00 amount for special activities. The Cash Withdrawal Slips (Employer Exhibit 6) reflected a signed patient release for \$10.00, co-signed by the grievant. The Centre School Bank Log (Employer Exhibit 4) however, showed no entry and accounting for this \$10.00.

The Employer pointed out other like examples of recording

discrepancies for the date of 7-27-90, with the same resident. Another example involved several recording discrepancies for eight residents on the date of 5-3-91. All unaccounted for discrepancies were attributed to the grievant. The Employer also addressed the issue of unaccounted for funds connected to the cashing of residents' checks (Employer Exhibit 5). For example, on 5-31-92, the grievant endorsed a check for a resident which was an acceptable practice. However, after accounting for shopping receipts (Employer Exhibit 8) the amount of cash unaccounted for totaled \$81.49. Another like discrepancy of \$129.49 occurred on 6-22-90 as identified through the testimony of the internal auditor, Regina Anderson.

The Employer asserts that the record is replete with discrepancies between patient accounts and the Centre School's Banking Log. The grievant failed to account for missing funds during the investigation process, even though she was given two occasions to produce documentation.

The Employer concludes that this behavior was theft and neglect of duty and that it represented a planned and purposeful pattern of behavior. The grievant designed the system and kept the records in the Centre School Banking Log (Employer Exhibit 4) very meticulously. When other employees needed to obtain funds for use by residents, the grievant held them to a high standard of accountability for expenditures through the return of receipts, unused funds, and notes of explanation. There was no sloppy bookkeeping, the books were in order and all monies handled by other employees were accounted for. The discrepancies occurred only with monies handled by the grievant and under the control of the grievant. The grievant was the keeper of the

books and approximately \$3,475.17 turned up missing. There can be only one explanation, the grievant is responsible for the missing money. It is the Employer's position that the grievant was removed for just cause and that the grievance should be denied in it's entirety.

IV. UNION'S POSITION

It is the Union's position that the design of the Centre School Banking System was seriously flawed. Its faulty design and unsupervised operation led to a predictable breakdown in its ability to handle larger amounts of money and in its ability to be accountable for all uses of such money. In an atmosphere characterized by the Union as "managerial meltdown," the Union asserts that no one accepted any responsibility for the Centre School Banking System when the inevitable happened.

Through cross examination of Mr. Kirkland, and several of the witnesses in direct and cross examination, the Union firmly asserted that Mr. Kirkland had managerial responsibility for the banking system. Mr. Kirkland did not exercise managerial oversight of the operation of the banking system, even though he admitted it was his responsibility.

The Union points out, the unit banking system was set up in violation of the Department of Mental Health's own rules for internal funds. As verified by Employer Exhibit 5 and the testimony of the internal auditor under cross examination, Mr. Kirkland admitted he gave oral approval for the system to be set up, but never informed the CEO of the Centre School Banking System. Mr. Kirkland also never cleared the operation of the banking system with the hospital's business office.

The banking system didn't even run according to his own's rules (Employer Exhibit 2). The grievant, Ms. Valerie Hayes, Ms. Susan Sally, testified to their non-adherence to the guidelines of the banking system. Under cross examination, Ms. Hayes testified that all the regulations contained in the guidelines for community trip money were simply not followed. Ms. Hayes testified she would sometimes let residents keep small amounts of money in violation of Guideline 3-D of Employer Exhibit 2. This was also a practice of Ms. Sally who let residents keep unaccounted for sums of \$2.00 or less. Ms. Hayes further stated, she never complied with Guidelines 4-B or #2 and only complied with 3-A, 3-C, and 3-D part of the time.

The Union makes the following contention: How can management sustain a discharge of the grievant, who was required to work with such a seriously flawed banking system. A system which was set up in violation of Department of Mental Health's rules, where employees didn't even follow established guidelines and where no manager oversight or direction was exercised.

In addition, the Union points out that this was a banking system which was so poorly designed, it required a slush fund. The slush fund served as a repository for unaccounted for money and is further evidence of a banking system that was not designed to be totally accountable for residents' funds.

Employer Exhibit 5 and the testimony of the grievant and other witnesses establish the fact that the fund wasn't well secured. At times the Centre School Bank Log (Employer Exhibit 4) contained large amounts of cash. The grievant testified that at times as much as \$500-

\$600 would be contained in the plastic bags which were part of the Log Book. The grievant testified that it made her nervous that so much money was sitting unsecured in her desk drawer. The Union asserts that although the grievant kept her office door locked, at least 10 people had keys and access to her office and to the unlocked desk drawer. The grievant testified that on one occasion she had asked her supervisor, David Kirkland, for a key to her desk in order for her to be able to secure the log book. She didn't get a key.

The Union also argues that the banking system was operationally set up in such a way that all discrepancies would be always blamed on the grievant. Testimony by the grievant, Ms. Hayes, and Ms. Sally substantiate the fact that receipts were not always obtained for purchases or that banking system guidelines were not followed regarding receipts. The Union asserts, however, the auditor drew her assumptions and fixed blame on the grievant based upon the accuracy of Employer Exhibit 4 and the other records. Given the above testimony, the Union argues the Centre School Bank Log was not an accurate record.

As an example of inaccuracies, one record referenced in Employer Exhibit 5 was the purchase of gift identified on page 6 of the Exhibit. The Union produced Union Exhibit 2 at the hearing which represented a receipt for the purchase of a plaque. The receipt was found in a file and not in Employer Exhibit 4. The Union contends this is further proof of the poor state of record keeping in the unit and in the Centre School Bank Log.

Furthermore, the Union claims that the Employer made investigatory procedural errors. During the investigation, the Employer restricted the grievant from having access to her office, her records, and her

calendar. This restriction deprived the grievant from a chance to account for discrepancies discovered through the internal auditing procedure.

Secondly, the Employer provided the Union with the evidence presented at the arbitration hearing only after a request was made by the Union in early October 1992. Prior to that, the Union was only given summaries of the auditor's findings.

During the mediation session in September 1992, the Union discovered the existence of the records which were subsequently used in the arbitration hearing. Upon discovery of this information the Union requested receipt of all data to be used by the Employer at the arbitration hearing. The information was received by the Union only a few weeks prior to the hearing, which was held October 23, 1992, and October 30, 1992. The Union claims they were placed at a disadvantage in preparing for the arbitration case because they received these volumes of information just prior to the arbitration hearing.

Thirdly, the only employee to receive corrective action for the discrepancies found in the Centre School's Banking System was the grievant. Valerie Hayes was identified as a co-custodian of the fund as substantiated in cross examination of the internal auditor. The Union claims this was disparate treatment.

The Union concludes that the Employer failed to prove that the grievant committed theft. The evidence is of such a serious nature that the Employer is obligated to prove the grievant is guilty beyond a reasonable doubt. The Union asserts that this burden of proof was not met by the Employer. Management approved of the existence of the Centre School Banking System, which didn't even meet its own standards.

It then let it operate in violation of its own guidelines, with no managerial oversight or assistance. Based upon the above, the Union requests that the grievance be sustained and the grievant be made whole.

V. DISCUSSION

The question in this case is whether Jane Cox's termination is justified. The Employer charged Ms. Cox with dishonesty; theft of patient or state property and neglect of duty, i.e., incompetency--performance of standard levels whereby rights of patients are endangered. The burden of proof under a just cause standard lies with the Employer, who must prove the truth or correctness of these allegations.

The Union raised the issue that the quantum of proof in a case involving an allegation of theft is "beyond a reasonable doubt." The standards of proof required in arbitration cases involving criminal or morally reprehensible behavior have been a subject of considerable debate over the years. Suffice it to say, allegations involving moral turpitude need to successfully withstand rigorous scrutiny in order to determine their accuracy and conclusiveness. The quantum of proof in matters of theft is great, dishonesty cannot be a matter of inference, it must be substantiated.

In this case, the Employer demonstrated the fact that the ICF/MR Unit established a unit-based banking system for the primary purpose of facilitating active treatment of residents. This system was set up with good intentions and the grievant was sufficiently motivated by the concept to take it upon herself to design it and subsequently assume

primary responsibility for its day to day administration.

Despite concerns raised by Marci Sutherland, the Assistant Program Manager to Mr. Kirkland, the banking system was set up under the guidelines of Employer Exhibit 2. Ms. Cox was the author of these guidelines and they were approved by Mr. Kirkland.

The new ICF/MR banking system operated from April 27, 1990 through July 15, 1991. The banking system accomplished its objective of making residents' funds more accessible, in order to enhance the Unit's capacity to provide active treatment. In the words of the grievant, "Clients needed to be taught responsibility," and this new unit-based banking system made that easier to accomplish. However, the operation of the banking system resulted in many unaccounted for discrepancies during this period of time. According to Employer Exhibit 5, the internal auditor found the following: 1. Cash withdrawal discrepancies of \$1,118.38; 2. Daily withdrawal discrepancies of \$75.05; 3. Inappropriate party gift withdrawals of \$68.00; 4. Off ground activities discrepancies of \$13.00; 5. Check cashing discrepancies of \$2,267.75. A grand total of \$3,474.18.

The Employer alleges the grievant engaged in systematic pilfering of these funds over 15 months. She designed this system, knew how to manipulate it, and deliberately kept meticulous records in the Centre School's Bank Log (Employer Exhibit 4), holding Unit employees to high standards of accountability through the return of receipts, unused funds, and notes of explanation. The grievant on the other hand did not document many of her transactions, allowing her to steal monies of residents without detection.

The evidence and testimony of employees in the Unit paint a

different picture. This internal banking system appeared to be in for problems from its inception. The ICF/MR banking system was established without consultation with important sources of authority, expertise, and experience. The Department of Mental Health, the CEO, and hospital's business office were never informed or consulted. The Deaf Unit, which had the only other unit-based banking system wasn't examined, which may have been particularly useful since it had undergone the scrutiny of the internal auditor (as verified in the testimony of Regina Anderson).

The total impact on the ICF/MR Unit in not taking advantage of this information and experience is not certain, however, one can safely conclude that the design of the ICF/MR bank was uninformed and did not have the advantage of incorporating institutionally-approved accounting practices and procedures. Instead, this banking system was launched on April 27, 1990 with the hope that a social worker, assisted by an activity's therapist, without any supervisory support, would employ accounting practices which would not only be sound fiscally, but would comply with department and hospital guidelines. This was too much to hope for. A close examination of the Centre School's Banking Guidelines (Employer Exhibit 2), coupled with the testimony of the internal auditor, revealed obvious accountability problems in the basic design of the banking system.

The bank included a slush fund for unaccounted for receipts which the internal auditor found to be totally unacceptable (Employer Exhibit 5). The guidelines did not account for all expenditures. Under Guideline 4-A, no receipts were required for \$1 or less. Even if strictly followed, there would be some unaccounted for monies over a

15 month period. It was also unclear how vending machine expenditures were to be recorded.

There were also problems with employee adherence to guidelines. The testimony of witnesses Valerie Hayes and Susan Sally establish the fact that guidelines (Employer Exhibit 4) were not followed. Ms. Hayes probably knew the system best (after the grievant) in as much as she was the primary custodian of the book for a short time. Yet, she testified she did not comply with all of the guidelines; she did not comply with #2 (money will be deposited and recorded in individual client's file by the person who picked it up). And she did not always adhere to guideline 3-A, 3-C, 3-D, or 4-B. She stated she did not always turn in receipts and she let clients keep small amounts of money. She did not define small. Susan Sally stated she did not always return receipts from places like McDonald's and she let clients keep small amounts of money of \$1 or \$2 at a time.

In addition to this, security of the banking system was a major problem. The Centre School's Bank Log (Employer Exhibit 4) was not adequately secured by the grievant. Up to 10 people had a key to the grievant's office where she kept the log in a unlocked drawer. This was a significant problem since the book contained large amounts of money, sometimes as much as \$500-\$600. These large amounts were verified by the grievant and in testimony of the internal auditor, Regina Anderson. The short time Ms. Valerie Hayes had the log book, she testified she kept it secured in a locked cabinet located in her locked office. This provided more security than the grievant had provided and there didn't appear to be any problems during this period of time with accountability. The log book was also taken to the unit,

where it was less secure, and where the grievant testified, residents would get upset at the prospect of not being able to have their money after having it in their sight. This overall inattentiveness to security certainly created ample opportunity for funds to be obtained without authorization by a number of individuals in the unit.

The Union claims it was placed in a disadvantaged position by the Employer regarding the Employer's use of significant amounts of auditing evidence. This is difficult to address in as much as the Union did not appear to delay the date for this arbitration, nor was a delay requested at the arbitration hearing. It is hoped that the parties are utilizing the grievance procedure in a way to resolve problems at the lowest possible levels rather than a format to posture for a "win" in arbitration.

In conclusion, the ICF/MR Unit as an entity appeared certainly to be operating informally when it came to fiduciary responsibilities. In contrast to the importance placed on federal regulatory requirements of certification and reimbursement, internal fund management was not a priority. There was no evidence of training or ongoing monitoring of the unit's banking system's requirements or performance. There were regular episodes of non-compliance or only partial compliance with the banking system's guidelines, yet this did not appear to create concern. The supervisor, David Kirkland, was not checking on things. The grievant did not appear to report significant problems with the system's operation, an operation which she should have had considerable ownership. Banking operational definitions and practices were not clear or prioritized as to what should definitely be accounted for and what was less important. Employees of the unit operated by their own

standards, resulting in differing levels of guideline compliance. The practicality of the guidelines in an atmosphere that can be charged with severe emotional and physical behavioral problems was also suspect. If you are trying to control and channel a severe behavioral outburst, is it realistic to expect an employee to subsequently create or remember to create a receipt for a can of pop from a vending machine? This requirement seemed unimportant, especially in an atmosphere where it was acceptable for an employee to hold and take residents' funds home for several days before turning them back in. What has been created with the ICF/MR's banking system is doubt. Doubt as to the conclusiveness of the Employer's allegations that the grievant committed systematic pilfering of residents' monies. Although the Employer produced voluminous documentation detailing numerous discrepancies, the allegations that Ms. Cox committed theft have not been proven. The atmosphere of the ICF/MR Unit was fiscally permissive. The banking system was not designed to account for every dollar of residents' funds and did not operate in accordance with its own guidelines. Unit management clearly could have exercised more support, oversight, and close engagement of the functioning of the unit's banking system. Mr. Kirkland knew that this type of system had the potential for problems with fiscal accountability, yet he chose not to actively supervise it. All of this raises doubt in the mind of a reasonable person to conclude singularly that the grievant committed theft.

However, the evidence does demonstrate that Ms. Cox was careless and inattentive in her responsibilities as a professional social worker. She accepted the responsibility for the banking system, yet

did not take prudent steps to comply with the hospital's requirements for handling funds or for providing security for the contents of the bank. If she felt overwhelmed because she was not receiving support from her immediate supervisor, it was incumbent upon her to persistently seek relief at other levels or refrain from engaging in activity that would be risky financially.

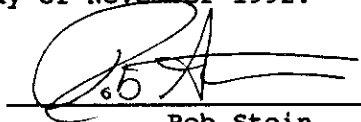
Secondly, when it became readily apparent that the banking system's guidelines were not being adhered to, it was her responsibility to report these discrepancies and take the necessary steps to make management aware of the deficiencies in the system. If she could propose this banking system in a staff meeting, she certainly could have raised problems in the same forum as well as other forums. As an intelligent professional, Ms. Cox should have and could have done a better job of managing and protecting residents' monies.

AWARD

The grievance is sustained with the following conditions:

The removal is reduced to a three-month unpaid suspension for neglect of duty. The time of the suspension is to run from November 23, 1991, through February 22, 1992. Accordingly, the grievant should be made whole for all back pay and benefits, less any monies earned or received in the form of unemployment compensation prior to the effective date of reinstatement.

Signed and dated this 25th day of November 1992.


Rob Stein
Arbitrator