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In the Matter of Arbitration Between:

OHIO CIVIL SERVICE EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 11
AFL-CIO

and

STATE OF OHIO
DEPARTMENT OF PUBLIC SAFETY

Re: Gr. 15-03-(93-05-15)-0034-01-07
Evelyn Eddie Grievance

Hearing held November 16, 1993 in Columbus, Ohio

Decision issued December 10, 1993 in Sylvania, Ohio

Appearances:

State:
Lt. Richard Corbin, Advocate
Anne Van Scoy, Second Chair

OCSEA:
Steve Lieber, Staff Representative
Evelyn Eddie, Grievant

Arbitrator:
Douglas E. Ray

I. BACKGROUND

This arbitration arises out of the May 14, 1993, termination of Grievant, a Drivers License Examiner 1 assigned to the Mayfield Heights Drivers License Examination Station. Grievant had been employed by the Ohio State Highway Patrol since September, 1990. Through its driving license examiners at more than 90 stations, the Highway Patrol provides vision, written and road testing to some 1.3 million persons per year.

Grievant was discharged for entering false social security numbers into the computer system used for scheduling drivers license road tests during the time period from early November, 1992 through January, 1993. This resulted in false appointments being made for Saturdays. The Highway Patrol began offering Saturday testing times in early November, 1992.

During investigations conducted in March, 1993, Grievant admitted that she had made a number of false entries, estimating to one investigator that she had made between 50 and 100 false entries. At hearing, Grievant admitted to making false entries but stated that the 50 to 100 number was too high.

A grievance was filed May 15, 1993, in which Grievant protested the discharge and asked to be returned to her job with back pay. A Step 3 hearing was held June 7, 1993 and, on June 10, 1993, the State denied the grievance. The matter was subsequently processed to arbitration before the

undersigned arbitrator and a hearing held on November 16, 1993.

II. ISSUE

Was the Grievant removed for just cause? If not, what shall the remedy be?

III. COLLECTIVE BARGAINING AGREEMENT

The parties referred to a number of sections of the collective bargaining agreement in their arguments. Among the sections reviewed by the arbitrator are:

Article 24, Discipline, especially:

Section 24.01 which states that disciplinary action shall not be imposed except for just cause and that the Employer has the burden of proof to establish just cause;

Section 24.02 which provides that the employer will follow the principles of progressive discipline, that disciplinary action shall be initiated as soon as reasonably possible and that an arbitrator must consider the timeliness of the Employer's decision to begin the disciplinary process; and

Section 24.05, dealing with imposition of discipline.

Article 2, Non-Discrimination; and

Article 25, Grievance Procedure.

IV. POSITION OF THE PARTIES

The parties made a number of detailed arguments before, during and after the hearing. These arguments are only briefly summarized below.

A. The State

The State argues that the discharge was for just cause and asserts that the grievance should be denied. The State argues that Grievant's actions constituted a personal slowdown and an act of intentional sabotage designed to influence the Employer into changing its Saturday testing policy which she did not like. In the Employer's view, Grievant knew that her actions were wrong. The State asserts that her actions were extremely serious and resulted in the turning away of members of the public who sought test appointments.

In response to Union arguments, the Employer asserts that the arbitrator should not be swayed by the idea that Grievant came forward and confessed. The Employer argues that she had denied her actions earlier and came forward only when it became clear that the investigation could uncover her actions.

The Employer asserts that its actions were not arbitrary or capricious. In response to Union arguments on the issue of disparate treatment, the Employer argues that individuals who received lesser discipline had committed less serious acts and that Grievant was a relatively short term employee acting purely for her personal reasons. The Employer argues, finally, that arbitration ought not be seen as a "golden parachute" and that the knowing and willing violation committed by Grievant here does warrant discharge.

B. The Union

The OCSEA argues that the discharge was not for just cause. The Union asserts that Grievant's actions had only a negligible impact on the provision of services due to the number of walk-in test-takers coming to the station on the Saturdays in question. The Union further asks that the arbitrator consider that Grievant came forward voluntarily and that a lieutenant had addressed employees as a group and promised that management would "go easy" on employees who would come forward.

The Union argues disparate treatment and asserts that other examiners were known to have made false entries and received only written reprimands or minor suspensions. The Union points out, too, that Grievant had a good record and good evaluations of her work. Finally, the Union argues that discipline was not timely under the contract. Grievant was allowed to continue working for two months after admitting the false entries before she was discharged. Under Article 24, the Union asserts that management could had placed Grievant on leave if it regarded her actions as so serious. Instead, she was allowed to continue working. In summary, the Union asserts that the discharge was not for just cause and asks that Grievant be reinstated with back pay.

V. DECISION AND ANALYSIS

Before reaching a decision in this matter, the arbitrator has reviewed the collective bargaining agreement,

the testimony and exhibits produced at hearing and the arguments of the parties. The case involves determining the seriousness of acts which Grievant has admitted committing and determining whether the Employer satisfied contractual standards for imposing discipline.

As the Union argues, Grievant had a good record for her almost three years of employment as a drivers license examiner with evaluations indicating that she met the expectations of the job. She made a good impression at hearing. Despite these findings, however, the arbitrator believes that the Employer has met its burden of proving just cause for discharge. The reasons for this ruling follow.

1. The arbitrator finds that Grievant's actions were serious enough to constitute just cause. At various times, she admitted that two or three times a week from November through January she would enter two or three false Saturday appointments with false social security numbers. This means that each Saturday from four to nine appointments were unavailable to members of the public wishing to take driver's tests. This continued for three months.

Such actions constitute falsification of records and, in the circumstances of this case, deliberate sabotage. Grievant admitted that she was upset about the schedule change to Saturdays and that her motivation was the hope that the State would cancel the Saturday hours if no one showed up for tests. Arbitrators interpreting just cause

provisions in other contracts have upheld discharges for similar actions. See, e.g., Social Security Administration, 86-2 CCH ARB para 8429 (Bernhardt 1986) (reading files into computer to make work record look better expensive and disruptive to agency and justifies discharge); Pacific Bell, 89-2 CCH ARB para 8428 (Galanbos 1986) (upholding discharge for altering company records) Here, Grievant was intentionally seeking to sabotage the Employer's attempt to provide Saturday service to the public.

While Union witnesses argued that the harm was not great in that there are many no show appointments and that no shows are covered by walk in test takers, the arbitrator still believes that there was substantial harm. Four to nine persons a week were unable to schedule Saturday appointments because of Grievant's actions. Some may have had to miss work, school or other important obligations because of the unavailability of those Saturday testing slots. In addition, when a member of the public calls a State office, he or she is entitled to expect an honest response and a sincere desire to serve the public. Grievant's actions were counter to both of these expectations.

Further, Grievant knew exactly what she was doing and that it was wrong. She testified that she only had limited opportunities to put in false appointments because she could do it only when no one else was in the vicinity.

2. The Union argues powerfully that this is a case of disparate treatment. Introduced at hearing were numerous exhibits detailing investigations of persons at other stations who were accused of entering false social security numbers. Some of these persons were found to have entered false social security numbers but received lesser discipline such as one day suspensions.

Disparate treatment is, in essence, the treating of similarly situated persons in a different manner. Here, Grievant took intentional actions to sabotage the Employer's operations. The cases where lesser discipline was imposed all seemed to involve less serious violations. Some failed to follow proper procedures. Others set up false appointments at the beginning of the day and end of the day to enable them to set up and take down the driving course. More serious, but less serious than Grievant's offense, there were indications that some had set up false appointments to make it easier to take care of personal business. None of these, however, seemed to be on nearly the scale of Grievant's offense. While she sought later to contest her early estimate of 50 to 100 false Saturday appointments, her admissions of two or three appointments at a time entered two or three times a week over an eleven or twelve week period calculate out to the 50 to 100 range. The arbitrator further notes that the records show at least four other terminations at other locations for other driving examiners accused of entering false social security numbers.

Thus, Grievant was not the only person discharged for this offense. Because the arbitrator does not find Grievant's offense similar to those for which lesser discipline was meted out, the claim of disparate treatment does not prevail.

3. The Union argues that discipline was not timely and that, rather than placing her on administrative leave pending investigation, the Employer left Grievant in position for almost two months after her admissions to the investigator. These, too, are serious matters and make this a much closer case. Under the contract, timely discipline is a necessity. Looking at the entire record, however, the arbitrator is not convinced that the contract was violated. In this case, there were criminal investigations going on as well as administrative investigations. There was what looked like a state wide investigation going on that resulted in some terminations in February, 1993 and a group of other disciplines, including Grievant's termination, in May and June, 1993. Under these circumstances, the arbitrator finds the termination timely under the collective bargaining agreement.

Similarly, the arbitrator finds that the Employer did not condone Grievant's actions by leaving her in her position after the investigators spoke to her in March rather than placing her on leave. Her day to day work was not the problem for which she was under investigation. It was the scheduling of false appointments on Saturdays that

was under investigation. There is no indication that she was allowed to schedule false Saturday appointments during the two months at issue and, thus, her staying in the job does not establish that the Employer minimized the offense or condoned it.

4. The Union stresses the fact that Grievant came forward and that a supervisor had promised to "go easy" on people who came forward. While these are good arguments, they do not prevail here. First, Grievant came forward in March at a time when the State's investigation was intensifying. She had been interviewed in February by the same investigator and had denied entering false appointments. This somewhat undercuts her claim. At a February 3 meeting, a supervisor did seem to have said that if employees came forward, they would "do whatever we can to help you." Grievant did not, however, come forward in February. Then, on March 12, the supervisor seems to have told union officials that it would go easier if employees came forward. This was recounted to Grievant and she did contact the investigator to whom she had made her denial in February. The representation that it would go easier on those who came forward could, in some circumstances, provide a reason to reduce the discipline even where, as here, the supervisor himself had no authority to impose or lessen discipline. In this case, however, the extent and nature of Grievant's intentional sabotage was greater than the supervisor could have expected when he made the statement

and she had already specifically denied engaging in the action.

5. As noted above, Grievant made a good impression at hearing. She states that she is sorry and she would like her job back. In this case, however, the Employer had just cause under the collective bargaining agreement to do what it did.

VI. AWARD

The grievance is denied.

December 10, 1993

Sylvania, Ohio, County of Lucas

Douglas E. Ray

Arbitrator