

**VOLUNTARY ARBITRATION PROCEEDINGS
THE GRIEVANCE OF CORDI STOKES AWAD**

THE STATE OF OHIO
(LOTTERY COMMISSION)

The Employer

-and-

UNITED FOOD AND COMMERCIAL
WORKERS, AFL-CIO AND ITS
LOCAL 880

The Union

OPINION AND AWARD

APPEARANCES

For the Employer:

Gary C. Johnson, Attorney
Michael Musarro, Personnel Director
Scott Ford, Labor Relations Officer
Trooper Tim Robinson, Witness
Sergeant Tim Del Vecchio, Witness
Dennis Poltrone, Witness
Eddie Assad, Witness
Abram K. DeGardeyn, Deputy Director, Security
Sharon Murray, Witness

For the Union:

Mark A. Rock, Attorney
Danielle Bess, Attorney
Cordi Stokes Awad, Grievant
Robert Grauvogl, Meat Division Coordinator
Mohammad Odeh Musleh, Witness
Ousam Awad, 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 at the conference facility of the union in Cleveland, Ohio, on October 22, 1994 and November 19, 1994. The parties stipulated and agreed that this matter was properly before the arbitrator; that the witnesses should be sworn; that the witnesses should be 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 in this particular case was first hired under the maiden name of Cordi D. Stokes by the Lottery Commission on March 10, 1986. She worked to April 24, 1987, as an administrative assistant and at that time resigned. On May 30, 1988, she was rehired as a lottery sales representative. During the course of her employment she was married and took the name of Cordi Stokes Awad. The duties of a lottery sales representative known as classification number 64581 revealed the following:

"Promotes lottery ticket sales in assigned district (e.g., distributes supplies & agent transmittal case & issues instant tickets during assigned route; displays & maintains all point of purchase material; establishes & maintains relations with sales partners & general public; implements lottery marketing policies & administrative procedures & regulations; trains & updates sales partners on lottery regulations,

game procedures & administrative forms; assists partners with general bookkeeping & settlement procedures & resolves discrepancies when necessary).

Recruits new lottery ticket sales partners; assists sales partners with special promotions &/or sale contests; instructs sales partners on how to use all lottery promotional material; prepares required paperwork, maintains records & completes reports."

In addition to those duties, the employee at the time of the incident was also working under the "Sales Representatives Work Standards" as revised August 23, 1991. At hearing, the grievant admitted reading them a "long while ago" but stated the rules and procedures changed often. No other written rules were placed into the record however. Those rules, in pertinent part, when referring to applications stated;

"2. Evaluation must be checked for accuracy, legibility and completeness."

It might be noted on February 16, 1994, the greivant was removed by termination proceedings by the employer. At the time of her removal the grievant's wage was \$14.58 per hour. Under date of December 8, 1993, while the grievant was still employed the grievant received a predisciplinary notice which in pertinent part revealed the following:

To: Cordi Stokes, Region 1, Cleveland
From: J. Scott Ford, Labor Relations Officer
Re: Pre-Disciplinary Meeting
Date: December 8, 1993

You hereby are notified that the Executive Director of the Ohio Lottery Commission, after a thorough investigation, is contemplating a suspension or termination of your employment for the following alleged violations of the work rules:

A. Insubordination (Willfull Disobedience of a verbal or written order issued by a supervisor) [Work Rule #3b];

B. Willfull falsification of any official document [Work Rule #18];

C. Damage of a State Vehicle (preventable) [Work Rule #29];

D. Violations of Section 124.34 of the Ohio Revised Code [Work Rule #34].

A pre-disciplinary meeting will be conducted on Thursday, December 16, 1993, at 1:00 p.m., in the Personnel Department at Cleveland Lottery Headquarters. This pre-disciplinary meeting is a result of several accusations of misconduct on your part, including refusal of a direct order to complete a missing ticket report, falsification of time sheets, backing into an automobile with a state vehicle and attempted extortion of cash from Lottery sales agents."

The meeting was continued and a new notice of January 12, 1994, was forwarded to the grievant. That notice in pertinent part revealed the following:

To: Cordi Stokes, Region 1, Cleveland
From: J. Scott Ford, Labor Relations Officer
Re: Continuation of Pre-Disciplinary Meeting
Date: January 12, 1994

You hereby are notified that the Executive Director of the Ohio Lottery Commission, after a

thorough investigation, is contemplating a suspension or termination of your employment for the following alleged violations of the work rules.

A. Violations of Section 124.34 of Ohio Revised Code [Work Rule #34].

This continuation of your pre-disciplinary meeting will be conducted on Tuesday, January 18, 1994, at 10:00 a.m., in the Personnel Department at Cleveland Lottery Headquarters. This pre-disciplinary meeting is the result of new evidence related to your alleged attempted extortion of cash from Lottery sales agents.

The documents that will be utilized as evidence to support the contemplated disciplinary action are the following:

1. Singed statement of Agents Nafes 'Eddie' Assad, dated January 10, 1994.

Pursuant to Article 10 of the UFCW/State of Ohio Collective Bargaining Agreement, you are entitled to the presence of a Union Representative at this meeting."

On January 21, 1994, the grievant received a rescheduling for the pre-disciplinary hearing. After that meeting and under date of February 14, 1994, the grievant received notice of separation of employment. That notice sent by first class and certified mail to the grievant revealed the following:

"February 14, 1994

VIA CERTIFIED AND 1ST CLASS MAIL

Ms. Cordi Stokes
2538 Kemper #15
Shaker Heights, OH 44120

re: Separation from Employment

Dear Ms. Stokes:

You are hereby notified that your employment

with the Ohio Lottery Commission is terminated for cause. The termination is effective at the close of business on Wednesday, February 16, 1994, and is the result of multiple violations of Ohio Revised Code §124.34 and Work Rule #34 (violation of §124.34).

This termination is based on documentation and evidence presented at the pre-disciplinary hearings conducted on December 16, 1993 and February 4, 1994. You were found in violation of:

1. Violations of 124.34 of the Ohio Revised Code [Rule #34].

It is always difficult to discharge an employee. However, your conduct in this matter leaves me no choice. You must return any Lottery property still in your possession by the close of business on February 16, 1994. The Personnel Department will contact you concerning your benefits and final pay."

Rule 34 of the published work rules of the employer as to the Lottery Commission employees included indicated violations as stated in section 124.34 of the Ohio Revised Code. The appropriate discipline listed depended on the violation and the severity of the incident. ORC 124.34 in pertinent part revealed the following:

"124.34 Tenure of office; reduction, suspension, and removal; appeal

The tenure of every officer or employee in the classified service of the state and the counties, civil service townships, cities, city health districts, general health districts, and city school districts thereof, holding a position under this chapter of the Revised Code, shall be during good behavior and efficient service and no such officer or employee shall be reduced in pay or position, suspended, or removed, except as provided in section 124.32 of the Revised Code, and for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of such sections or the rules of the director of administrative services or the

commission, or any other failure of good behavior, or any other acts of misfeasance, malfeasance, or nonfeasance in office."

Pursuant to the separation of employment notice and in a timely fashion a protest was filed pursuant to the terms of the contract. The pertinent language of that protest revealed the following:

"Article 10-Discipline, section 10.03 UFCW contract states: 'No employee shall be disciplined or discharged without just cause. Employees of the OLC shall also be governed by O.R.C. 3770.02.'"

The matter proceeded through the grievance procedures and in pertinent part, the step 3 answer of the employer revealed the following:

"Even if the Bargaining Agreement did not bar your processing your claim as a grievance, the Ohio Lottery had abundant evidence upon which to base a just cause removal under work Rule #34. For the above reasons, your grievance is denied."

The step 4 review answer of the employer in pertinent part also denied the grievance and it revealed the following:

"This Office finds no violation of the Agreement. The grievant was terminated for just cause. Accordingly, your grievance is denied."

It might be noted that the grievant, separate and apart from her rights under the contract of collective bargaining filed an Ohio Civil Rights and EEOC charge of discrimination. The charge was based upon

sex. The Ohio Civil Rights Commission denied the claims of the grievant and in pertinent part the September 29, 1994, answer of those charges revealed the following:

"The Charging Party, Cordi Stokes, has filed an affidavit with the Ohio Civil Rights Commission and the Equal Employment Opportunity Commission, alleging that she was discharged by the Respondent, Ohio Lottery Commission, in violation of Ohio Revised Code 4112 because of her sex, female, and in retaliation (previous protected activities.)

All jurisdictional requirements for filing a charge have been met.

Evidence does not substantiate that Charging Party was subjected to a pre-disciplinary hearing because of her sex, female.

Evidence substantiates that Charging Party was not discharged by Respondent because of her sex and retaliation (Ohio Revised Code 4112.02 (I)).

Evidence substantiates that Respondent discharged Charging Party pursuant to allegations of extortion.

Upon investigation, the Ohio Civil Rights Commission has determined that it is NOT PROBABLE that Respondent has engaged in practices unlawful under Section 4112, Ohio Revised Code, and hereby orders the case dismissed."

The investigation of the grievant occurred as a result of a complaint by Mr. Eddie Assad of Eddie's Shop Rite who at the time of the complaint was a G-tech agent (a shop owner who was licensed as a lottery machine operator with the Ohio Lottery Commission). His initial complaint was memorialized by the Ohio Lottery Commission on March 19, 1993 and it revealed the following:

"TO: VIRGIL E. BROWN, EXECUTIVE DIRECTOR

FROM: CYNTHIA Y. ROWSER, DEPUTY DIRECTOR/SALES

DATE: MARCH 19, 1993

SUBJECT: EDDIE'S SHOP RITE #97216 (AKA LINDA CORPORATION)
1014 East 105th Street
Cleveland, Ohio 44108
District #105

On March 18, 1993, at 1:00 P.M., Eddie's Shop Rite #97216, appeared before the Ohio Lottery and gave statement relative to his payment of \$4,000.00 to Sales Representative, Cordi Stokes, for the purpose of obtaining an on-line GTech terminal. The agent Nafes (Eddie) Assad, was accompanied by his uncle Mike Assad, who initially brought this matter to my attention.

Also, in attendance were Keith DeGardyne, OLC Security Director, Ohio Highway Patrol Trooper Robinson and Trooper Ferguson. The Ohio Highway Patrol was called in by the OLC Security Director to officially take the agent's statement.

The following is a recap of what was discussed:

Agent alleged that Cordi Stokes asked for \$5,000.00 which he stated to her he could not afford and replied 'I can pay \$3,000.00' which allegedly she replied \$4,000.00 of which he agreed and allegedly paid Cordi Stokes \$4,000.00 on or around August 1992. The payment was made in three (3) weekly payments consisting of \$2,000.00, \$800.00 and, \$1,200.00 respectively.

Alleges that Cordi Stokes stated that one-half of the money was for Arie Chapmon.

Agent stated he was afraid of losing his terminal for giving any statement relative to the aforementioned allegations.

Alleges that Cordi Stokes visited his store on or around March 17, 1993, giving him a hug. He felt this was because she was afraid (it should be noted that he is no longer her agent due to redistricting). He alleges she further stated that Sales Representative Joe Wild, was trying to set her up.

Questioned why we were so intent on investigating now since the activity has been going on for a long time.

Stated that Cordi dated some of the Arabic agents and their friends seemed to acquire terminals because of it.

Agreed to a polygraph test on condition that he do so as a confidential witness.

Note: Agent (Eddie Assad) has been scheduled for Polygraph on March 23, 1993, at 1:00 P.M. at the Ohio Highway Patrol Office.

CYR/

cc: K. DeGardeyn"

An extensive investigation was conducted in this particular matter by the State Highway Patrol of Ohio.

The investigation was very complete. Approximately one hundred merchants who had food stores in the neighborhoods covered by the grievant and her duties as a lottery sales representative were each polled by the investigators and detectives of the Ohio State Highway Patrol. During the course of the investigation, the Highway Patrol obtained several affidavits and statements. One affidavit was by a person who owned Eddie's Shop Rite. The affidavit obtained from Mr. Assad, who was the owner of Eddie's Shop Rite, revealed the following:

"STATE OF OHIO)
) ss. AFFIDAVIT
CUYAHOGA COUNTY)

Nafes 'Eddie' Assad, being first duly sworn according to law, deposes and states as follows:

1. I own Eddie's Shop Rite #97216, located at 1014 East 105th Street, Cleveland, Ohio.

2. Lottery Sales Representative Cordi Stokes told me if I didn't pay \$4,000, I wouldn't get the G-Tech Lottery Terminal I applied for.

3. I paid Cordi Stokes \$4,000 to get the G-Tech Lottery Terminal I applied for.

Further Affiant Sayeth Naught.

/s/ Nafes 'Eddie' Assad"

It might be noted that Mr. Assad testified at hearing. At the time of hearing Mr. Assad's terminal license had been recalled but at the time of the complaint he was a G-tech licensee. He testified that he wanted a G-Tech Lottery Terminal in his supermarket. He further stated that he contacted the grievant and offered the grievant monies to obtain for him that particular lottery terminal. He testified he gave the grievant in that regard some \$4,000 in total; that the first payment was approximately \$2,000 and that there were two or three more payments for the balance. Mr. Assad further testified that the payments were made in cash.

Mr. Assad further stated that Mr. Shelby worked for him as a security guard at the store. He further stated that Mr. Shelby was given a check to cash at the local bank and Mr. Shelby brought back the funds for payment to the grievant. Mr. Shelby did not testify but his affidavit was placed into the record and it revealed, in pertinent part, the following:

"STATE OF OHIO)
) ss. AFFIDAVIT
CUYAHOGA COUNTY)

Gregory Shelby, being first duly sworn
according to law, deposes and states as follows:

1. I work at Eddie's Shop-Rite, located at 1014 East 105th Street, Cleveland, Ohio.

I WITNESSED EDDIE ASSAD GIVE CORDI STOKES APPROXIMATELY \$2,000.00 (TWO-THOUSAND DOLLARS). HE GAVE HER THE \$2,000.00, APPROXIMATELY, PRIOR TO RECEIVING A G-TECH MACHINE."

Mr. Shelby also signed off on a statement that he gave the State Highway Patrol on March 23, 1994. That statement in pertinent part revealed the following: (The entire statement of Mr. Shelby is attached hereto and made part hereof as if fully rewritten herein and is marked Exhibit 1 - 4 pages).

"Q) HAVE YOU EVER HEARD OR SEEN EDDIE DEALING WITH SOMEONE FROM THE OHIO LOTTERY?

A) YEAH THAT GIRL CORDI THE LIGHT SKIN GIRL.

Q) WERE YOU IN THE STORE WHEN EDDIE OBTAINED HIS G-TECH LOTTO MACHINE?

A) YES WHEN THE GUY BROUGHT IT IN.

Q) WHEN WAS THE MACHINE BROUGHT IN?

A) I COULDN'T TELL YOU LAST YEAR I THINK IT MIGHT HAVE BEEN IN 92.

Q) DID EDDIE EVER SEND YOU TO THE BANK TO CASH A CHECK FOR HIM WHEN THE LADY FROM THE LOTTERY WAS HERE?

A) YEA.

Q) WHAT LADY WAS HERE?

A) THE ONE THEY CALL CORDI.

Q) DO YOU KNOW WHAT THE MONEY FROM THE CASHED CHECK WAS FOR?

A) I KNEW BUT WASN'T SUPPOSE TO KNOW WHEN I BROUGHT IT BACK I SAW WHAT HE DID WITH IT.

Q) WHAT DID HE DO WITH THE MONEY?

that the Lottery Commission has had success with or there is a business returning the terminal for whatever reason and there is a one for one exchange. It might be noted that the other stores in the neighborhood of Mr. Assad were not such chains nor was Mr. Assad a chain which should have received an immediate G-Tech piece of equipment nor was there a one for one exchange in that neighborhood.

It might be noted that Mr. Assad's unit received the instant winner cards in October of 1991 and his G-Tech was placed into his storeroom unit sometime in February of 1993, or one month approximately prior to the complaint about the grievant. Mr. Assad indicated and stated that the payments he made to the grievant in this matter were sometime before February 23, 1993, in order for he, Mr. Assad, to receive that unit at that time. It might be noted that on February 22, 1994 the State Highway Patrol interviewed Mr. Assad. He was interviewed by the State Highway Sergeant Detective Del Vecchio. From that statement there appeared to be a certain interchange of questions and answers between Del Vecchio and Assad. An important colloquy revealed the following: (The entire statement of Mr. Assad is attached hereto and made part hereof as if fully rewritten herein and is marked Exhibit 2 - 18 pages).

Del Vecchio:

Okay. Ah . . now there were other payments . . the first payment was about \$2,000.00 ah . . . how much was the other payments?

Assad:

The second payment I believe it was around \$800.00.

Del Vecchio:

Ah huh.

Assad:

And the other two payments was like \$500 and \$600.00 until I finished it.

Del Vecchio:

Okay in what form was the payment made? Was it check? Cash? Mon . . .

Assad:

Cash.

Del Vecchio:

Oh, okay.

Assad:

She won't take no checks.

Del Vecchio:

Okay. Were there other people around when the other payments were made?

Assad:

The other payments . . . the other two payments, I think it was the cashier.

Del Vecchio:

Okay. The same lady?

Assad:

Yes

Del Vecchio:

And that's . . what's her name again?

Assad:

Sharon Watson.

Del Vecchio:

Sharon Watson? Okay. So she witnessed the other payments being made?

Assad:

She seen me giving 'em money you know.

Del Vecchio:

Okay. Did these people ever ask you what the money was for?

Assad:

Well . . me and the cashier . . you know she knows everything I do in the store in case I'm not around so she knows how . . how to run the . . my business so . . I used to keep her in touch with everything.

Del Vecchio:

Okay. So she knew what was going on then?

Assad:

Yes. Oh, yeah definitely she knew.

Del Vecchio:

Okay. Ah . . .how much time was there from the time of the first payment to the time of the second payment?

Assad:

Approximately . . it took me about two months to pay the \$4,000.00.

Del Vecchio:

Okay. Ah . . how soon after the last payment, did you get your G-tech machine?

Assad:

Ah . . two weeks.

Del Vecchio:

Okay.

Assad:

Maybe less.

Del Vecchio:

Alright. So you had a G-tech machine and there was another G-tech machine not even a block away?

Assad:

Exactly."

It might be noted that Mr. Assad had been involved in several matters concerning alleged felonies. The felonies were denied by Mr. Assad. In that regard the record revealed that Mr. Assad had allegedly received stolen beer (an event which caused him termination as a G-tech licensee). Mr. Assad stated that an indictment charging a felony had been filed but that the matter was reduced to a misdemeanor. Mr. Assad, according to the record had been charged with uttering a bad check and forgery. Mr. Assad stated that those charges were that of his brother, but that he made good on those checks, etc., for his brother. Further, Mr. Assad had been found to have had in his possession a stolen pistol. He was cited and it is unclear as to whether or not the charges were dropped. The record failed to show any result to any specificity in that regard.

The Ohio State Highway Patrol took further affidavits and statements. One such statement was by Detective Del Vecchio of a citizen by the name of Akrom Mustafa. That statement was taken on February 20, 1994. Mr. Mustafa was engaged in the food business also and the colloquy between Mr. Mustafa and Sgt. Del Vecchio revealed the following: (The entire statement of Mr. Mustafa is attached hereto and made part hereof as if fully rewritten herein and is marked Exhibit 3 - 5 pages).

"Mustafa:

Ah . . Joe's Food Dealer.

Del Vecchio:

Joe's Food Dealer?

Mustafa:

. . on East 93rd and ah . . Yale Avenue.

Del Vecchio:

East 93rd and Yale Avenue . . and about what time of year did this take place?

Mustafa:

About ah . . about nine months ago.

Del Vecchio:

Okay and that was in 1993?

Mustafa:

1993.

Del Vecchio:

Okay. Was there anybody around when Erie Chapman (?) asked you for this \$3,000?

Mustafa:

No. . it was me and him in the office . . that's all.

Del Vecchio:

Okay. How many times did he ask you for the money?

Mustafa:

Just that time . . and ah .. since my answer was no .. refusing ah . . I guess he got (inaudible) money . .

Del Vecchio:

Did you ever discuss terms of payment? That you would have to make it in different installments or did he want it all at once?

Mustafa:

No . . . I . . I refused the idea that I'd have to pay money for my ah . . . Lottery to be transferred and all that stuff.

Del Vecchio:

Did other people from the Ohio Lottery ask you for money under these circumstances?

A. \$6,000.00. She said money, money big big.

Q. How many times did you discuss money with Cordi Stokes?

A. A lot of times."

Another statement was taken from store owner Elias Tayeh. It stated as follows in pertinent part: (The entire statement of Mr. Tayeh is attached hereto and made part hereof as if fully rewritten herein and is marked Exhibit 5 - 14 pages).

"Okay. Today's date is 03/23/94. The time now is 4:25 p.m. This is Tpr. Robinson along with Tpr. Esenwein. We're here at the Russell's Food Store located at 11700 St. Clair Avenue. With me is ELIAS TAYEH, he's the former owner of this store. He has just recently sold this store to his brother Mike. He has information concerning the subject at hand, Cordi Stokes.

Robinson:

Elias, could you basically tell me what you've told me already about Cordi? How she came in and (inaudible) machine . . the green machine?

Tayeh:

Okay. I was selling instant tickets like for a year and a half ago . . like I tell you . .

Robinson:

Okay.

Tayeh:

. . . and you know everytime she used to come over here I used to ask her when is . . . I'm gonna get the machine. . .

Robinson:

Okay.

Tayeh:

. . . then she said it's gonna take time . . it was in the way she was talking like she wants you know some money or something like that . .

Robinson:

Okay. How much money was she asking for?

Tayeh:

I believe \$2,500.00.

Robinson:

\$2,500.00?

Tayeh:

Yes. . but . .

Robinson:

Okay. this was for the . . . for what type of machine? Was this for the green machine?

Tayeh:

For the um . . you know the Lottery machine.

Robinson:

Okay."

Other complaints were received about the grievant and statements were taken by the Lottery Security Department. Three such interviews found their way into the record of this hearing by virtue of a written statement of the Deputy Director of Security. This Deputy Director also testified that his department is responsible for the taking of these statements. Those three interviews revealed the following:

"Interviewed: Mary Skulich 5204 St. Clair Ave. owner of Pat's Deli. Mrs. Skulich stated that she suspected Cordi Stokes of consigning more Instant Tickets, to the store, then Cordi actually

Subject: Complaint received by Jackie Wright,
Hot-Line.

On July 7, 1993 I received information from Cynthia Rowser D.D. Sales, regarding an incident report made by Jackie Wright, who is assigned to Hot-Line.

On July 6, 1993 at 11:40 AM Jackie was answering the phone at her station in Hot-Line. She received a call from agent 98555, Fehmi S. Daoud aka (Sammy), Hough Food Deal Market 7102 Hough Ave. Cleveland, Ohio. Sammy called Hot-Line because he was having trouble with his Zip-Cash machine. After Jackie solved Sammy's problem, Sammy asked if Jackie could help him get a G-Tech machine. Jackie stated that she had no control over obtaining a G-Tech machine and that Sammy would have to talk to the Region One Manager, Arie Chapmon. Sammy stated that he had already talked to his sales Rep. Cordi Stokes regarding getting a G-Tech machine and that she stated that she could get him a machine for money. Sammy also stated that he talked to Arie Chapmon and that Mr. Chapmon made the same suggestion.

Sammy also told Jackie that his cousin, who owns a store up the street, paid for a machine but that his cousin would not make a complaint to the Lottery because he is afraid he will lose his G-Tech machine. Sammy also stated that he had been pressured, by Cordi Stokes, for money for a G-Tech machine from sometime in 1991 until Cordi was replaced with another sales rep. in February of 1992 or 1993.

After conferring with Dir. Virgil Brown and Cynthia Rowser, I contacted Dennis Pike, Ohio State Patrol. Trooper Pike told me that he would start an investigation and get back to me."

Another complaint was made by Gold Star Deli and that particular complaint involved an opinion on how to secure a G-Tech termination---all written up by virtue of the Security Department of the Lottery Commission. That particular memo revealed the following:

TO: VIRGIL E. BROWN, EXECUTIVE DIRECTOR
FROM: EDWARD CAJKA,
DATE: AUGUST 13, 1993

Ohio, appeared at the investigation unit of the Cleveland State Patrol Post to be examined on the polygraph, a detection of deception technique. Prior arrangements for this examination were made at the request of Sgt. T. Del Vecchio, an investigator at the Cleveland State Patrol Post.

The purpose of this examination was to determine if Eddie Assad was telling the complete truth when he claimed to have paid an employee of the Ohio Lottery Commission at least \$4,000 to have a 'G-Tech' machine installed in his grocery store in Cleveland, Ohio. According to the case facts in 1992, Eddie Assad attempted on numerous occasions to obtain a 'G-Tech' machine through legitimate channels from the Ohio Lottery Commission. After several months of no action on the part of the Ohio Lottery Commission, Eddie Assad learned that another nearby merchant had obtained a 'G-Tech' machine by paying off the Lottery Sales Agent. Mr. Assad contacted the Lottery Sales Agent, Cordie Stokes, who told him that it would cost him between \$6,000 and \$7,000 to process his request.

According to Eddie Assad, a final price of \$4,000 was agreed upon. Mr. Assad paid Cordie Stokes \$2,000 on one occasion and the remaining balance over the course of about one month. Within two weeks of making his final payment, the 'G-Tech' machine was delivered and installed.

Specific details of this investigation are contained in our Report of Investigation #93-07188-1100.

Eddie Assad was examined on the polygraph by the reporting officer commencing at 12:56 p.m. on 04/11/94. Standard polygraph technique and procedure was used throughout the examination which consisted of four separate tests.

The following are the pertinent questions asked Eddie Assad during his polygraph examination followed by his answers to them.

Q. Did Cordie Stokes demand from you \$4,000 for a G-Tech machine?

A. Yes.

Q. Did you pay Cordie Stokes \$4,000 for a G-Tech machine?

A. Yes.

Q. Are you falsely accusing Cordie Stokes of shaking you down for a G-Tech machine?

A. No.

Q. Besides the application fees, did you give any Lottery Commission employee money for a G-Tech machine?

A. Yes.

After a careful interpretation of Eddie Assad's polygraph tracings, no specific reactions were noted on his answers to the pertinent questions which could be considered clearly indicative of a deliberate attempt at deception. It is, therefore, the reporting officer's opinion that Eddie Assad told substantially the truth during his polygraph examination."

There was a series of questions directed toward Mr. Assad in his cross examination by counsel for the union in which there was an attempt to show that Mr. Assad received favors at the County Prosecutor's Office (Cuyahoga) for his promise of testimony antagonistic to the grievant in the instant arbitration matter. Mr. Assad denied that. Further, the investigators of the Ohio State Highway Patrol were told by the Prosecutor's office that no such deal could be made. In other words, not only did Mr. Assad deny that, that testimony was buttressed by the testimony of the detectives of the Ohio State Highway Patrol.

Thus from all of the evidence in the employer's case it was determined that there was a substantial number of complaints against the grievant that found their way into this record; that Mr. Assad appeared to testify concerning one of those complaints; that an employee of Mr. Assad saw the payments being made to the grievant for a lottery G-Tech terminal; that all of the complaints against the grievant were of similar nature and that the grievant was charged with accurately

the Ohio State Highway Patrol. The State Patrol requested a reduced sentence for Assad in the receiving of stolen goods indictment because of Assad's ability to present evidence against the grievant since Assad was allegedly involved in the extortion episodes in which the grievant was involved. An investigator of the Ohio State Highway Patrol testified that they were told by the Prosecutor's office that no deals were available concerning Assad.

The second event in the Prosecutor's office was to seek an indictment of the grievant. The Ohio State Highway Patrol representatives testified that they brought in this entire evidentiary presentation as it was presented at arbitral hearing. The finding of the review prosecutor, without taking the matter to the grand jury, was that there was insufficient evidence to create sufficient probable cause for indictment.

The grievant testified. She stated that the rules of the facility changed from the written rules as placed into the record by the employer. The grievant further stated the accuracy was not needed, but merely estimates. The grievant further denied that she took \$4,000.00 or any amount from Mr. Assad. She also denied the accusations of Abram Mustafa (\$3,000.00), Fareed Jabr (\$6,000.00) and Elias Tayeh (\$2,500.00 in that she asked for monies of a G-tech machine. The grievant further denied the accusations of Mary Skulich, a merchant at East 52nd Street and St. Clair; Mona Amad, a merchant at East 75th Street and St. Clair, and Osama Awad, a merchant at East 66th Street and St. Clair in which they stated that she took books of tickets, merchandise and cigarettes from their store. The grievant further denied the allegation of Fehmi

Daoud in which he stated to the Ohio Lottery Commission in a complaint that the grievant said it "costs big money to get a machine."

The grievant stated that the Lottery Commission policies changed constantly. The grievant further stated that there were sales programs to get more machines in place and that therefore, the actual figures initially requested to be accurate became estimated income projections. The grievant further stated that she only made recommendations for G-tech equipment installation and that final authority was with the Director, with several layers of management in between. The grievant further asserted that all of the complaining merchants fabricated their complaints in order to assist Eddie Assad. The grievant further complained that an uncle of Eddie Assad had close friends at the Lottery Commission (Cynthia Rowser) and that all of these issues and items in the aggregate caused her, the grievant's, termination at the facility.

The employer argued from all of this that the grievant is guilty of taking monies for a G-tech machine. The Commission further argued that the grievant made overtures to other merchants in order "to sell" G-tech machines. A further argument was made by the employer that the grievant was guilty of inaccuracies knowingly; that she caused gross inaccuracies on the applications contrary to rule; that the grievant therefore was grossly insubordinate and that the grievant used her position to take merchandise and receive favors to which she was not entitled --- all of which occurred while she was a sales representative of the lottery commission. The employer therefore asserts that the grievant was properly terminated pursuant to rule and statute.

It was upon all of these facts, statements denials and averments that this matter rose to arbitration for opinion and award.

III. OPINION AND DISCUSSION

The grievant in this particular matter was terminated from her employment as a sales representative at the Lottery Commission of the State of Ohio. She was charged with extorting monies from those who sought lottery machine licenses from the State of Ohio Lottery Commission. She was also charged with willful violation of the known rules of the Lottery Commission and therefore was terminated pursuant to Lottery Commission rule and pursuant to the the statutes of the State of Ohio. Those rules and statues were made part of this record and they are recited elsewhere in this opinion and award.

A review of the evidence in this particular matter revealed that in March of 1993, a complaint was registered with the Lottery Commission through a licensee (agent) of that commission who had what is known as a G-tech machine. That is an automatic lottery machine which dispenses tickets after the bets are recorded. The complaint alleged that the grievant asked for and received the sum of \$4,000.00 for obtaining his G-tech machine. The customer and complainant was Eddie Assad. Mr. Assad testified at hearing. He testified that he gave the grievant \$4,000.00. He testified that the sum was as a result of a deal that he made with the grievant for which there would be a \$2,000.00 down payment and the balance of \$2,000.00 paid in two or three installments. He testified he received the piece of equipment and that it was placed in use in February of 1993. He testified that his guard at the store was present when the first payment was made to the grievant.

The time sequence is important in this particular matter. Mr. Assad owned and operated a grocery store known as Eddie's Shop Rite located on East 105th Street in Cleveland, Ohio. He stated under oath and the record verified that he first made application to the Lottery Commission for instant tickets and a G-tech machine in October of 1991. He further stated that he received the instant lottery tickets but that in May of 1992, he received a turndown in the form of a letter revealing to him that there was no terminal available for him at that particular time. The record revealed that in fact another merchant a block or two away who had just gone into business and who never sold any instant lottery tickets whatsoever received the G-tech machine. The name of that business was Somerset Beverage and was also serviced by the grievant as a sales representative for the Lottery Commission.

That situation annoyed Mr. Assad. He realized that the Lottery Commission rules revealed that a merchant must sell instant tickets for a period of time before being issued a G-tech lottery machine. He further realized that Somerset had just gone into business and was not a chain of stores who many times are issued a G-tech machine because of other stores that have a favorable history with the Lottery Commission. Mr. Assad further realized that that type of treatment was certainly antagonistic to him because ever since he received the instant lottery tickets he never missed a payment to the Lottery Commission when funds were due for those tickets.

A contact was made with his agent Lottery Commission sales representative again, that was the grievant. Mr. Assad affirmed at hearing under oath that he paid the grievant \$4,000.00 for the G-tech.

Mr. Assad further stated that he made a second application in October of 1992 and in February of 1993, he received the G-tech machine. All of that history triggered the complaint as made. Mr. Assad was investigated by the State Highway Patrol. They took a statement from him and he testified at hearing. That statement is made part of this record.

The union pointed up that Mr. Assad lacked credibility. Mr. Assad had several run-ins with the law. He was accused under a criminal indictment of purchasing stolen beer; that charge was finally downgraded to a misdemeanor. Mr. Assad was also charged with uttering a bad check and forgery but Mr. Assad under oath testified that the activity was that of his brother and that he made good on his brother's check and utterances. Mr. Assad took a polygraph test and his statements made under direct examination and cross-examination were verified and deemed truthful as a result of that test. It might be noted that the record also included the results of the secret taped conversation by an investigator of the grievant in which Mr. Assad again reiterated a \$4,000.00 payment to the grievant for the G-tech with a \$2,000.00 down payment and several installments to capture the balance of the debt. Thus the statement of Assad at hearing was buttressed by the guard who saw payment be made; was buttressed by the fact that immediately after the payment Mr. Assad received the G-tech machine; that Mr. Assad had all of his statements confirmed by a polygraph test which was scheduled voluntarily; that Mr. Assad received no benefit from the Prosecutor's office of Cuyahoga County in order to downgrade his alleged felonies into a misdemeanors and that further Mr. Assad's statements were buttressed by statements of other merchants in the community who alleged

the same activity of bribery as indicated and stated by Mr. Assad.

The other merchants who gave statements in the record of this particular case were noted as Mr. Akram Mustafa who was approached for a \$3,000.00 payment to the grievant; by Fareed Jabr who was approached for a \$6,000.00 payment to the grievant and by Mr. Elias Tayeh who was approached for \$2,500.00 from the grievant. All of those statements are stated in the record and each of them were given under oath to the Ohio State Highway Patrol Investigators. Each of them revealed that the grievant herein had made contact with each of them for the purpose of obtaining funds for placing into their businesses lottery G-tech machines. Further, a statement of a contact by the grievant was made to a merchant by the name of Fehmi S. Daoud who asked the grievant herein for an application for a G-tech machine. In that particular instance according to Mr. Daoud, the grievant stated that it would "cost big money" to obtain such a piece of equipment.

There were three other merchants who complained that the grievant tried to steal books of instant tickets and took merchandise from their stores when the grievant appeared at those stores to service the instant lottery ticket sales kits. One such merchant was a Mary Skulich who had a store at East 52nd Street and St. Clair. Another merchant was Osama Awad who was a merchant at East 66th Street and St. Clair and the third was Mona Awad who was a merchant at a store located at East 75th Street and St. Clair.

Thus the complaints as a result of the investigation of the Ohio State Highway Department that surfaced revealed, in fact, that the

grievant had sought monies from Mustafa, from Jabr, from Tayeh and told another that the G-tech machine would cost big money (Daoud).

The investigation continued even after the statements of these people were taken. The investigation further revealed that for example the beverage store that Mr. Assad complained of really in fact existed on Lottery Commission records. While Mr. Assad's application was pending and at a time when he received a notice from the Lottery Commission that no terminal was available even though he had been a successful instant sales merchant for a period of months, found that Somerset Beverage who just went into business received a G-tech machine. Records of the Commission revealed that the grievant was the agent for that Somerset Beverage store and that in fact the sales began in May of 1992, on an application that indicated high weekly sales. The high weekly sales statement was in fact false. That particular store just went into business and had no previous history whatsoever. The same was true with a storeroom unit by the name of Foote's Dairy and Quick and Easy Beverage. In all of those events, the grievant was the sales representative for all of the lottery sales. Thus, from all of that, it was shown that the credibility of Mr. Assad was reasonable and believable in light of the buttressing and complimentary evidence.

Mr. Assad is but one of many crying out the same story. That story is that Cordi Stokes took or asked for monies for G-tech machines. Another portion of that story is that Cordi Stokes used her position as a sales representative to take merchandise and try to take books of tickets from the merchants she serviced. Thus the activity of Mr. Assad as he revealed at hearing appears to be clearly part of the course of

conduct that the grievant was involved in. Mr. Assad's testimony defines one chapter of the grievant's activity in a book full of similar inappropriate activity, all of which was accomplished by the grievant.

At hearing the grievant denied the activities complained of. She said that the merchants involved were a closely knit group and that because Mr. Assad did not receive the G-tech machine upon first application that they were telling untruths about her activity. The grievant further stated that any indications of inappropriate figures and numbers on the applications were as a result of a constant change of rules at the facility. She indicated and stated that the actual numbers initially requested were changed to be estimated numbers. The grievant further stated that there was a sales contest and that more machines were sought to be placed into many stores. The grievant further stated that she was merely a clerk or sales representative and that those above her were the people who made the decisions as to machines or not. In other words, from all of that, the grievant indicated and stated that she was not the responsible party for placing G-tech machines into establishments and would have no authority for that activity even if she did take money from the merchants who sought those machines.

It is interesting to note that an investigation was conducted by the grievant with her own investigator. From the evidence it was determined that the investigator of the grievant appeared at the establishment of Mr. Assad and questioned Mr. Assad concerning his activity with the grievant. A taped recording was made of the conversation without the knowledge of Mr. Assad. That recording was placed into the record and it revealed that in fact Mr. Assad through

that investigator reiterated that he paid the grievant \$4,000.00 and that the initial payment on the installment plan was \$2,000.00. From all of that as was stated in the record and by his own statement to the State Highway Patrol and by the polygraph test all revealed the same price was paid to the grievant.

From all of that, it is apparent that Mr. Assad does have credibility and on the basis of his testimony and on the basis of the investigation of the Ohio State Highway Patrol and on the basis of the official records of the Lottery Commission of Ohio as placed into the record of this case, there is no choice but to find that the grievant was guilty of the charges as complained of by her employer. The fact that the prosecutor's office of Cuyahoga County did not find sufficient probable cause to take this matter before the grand jury, is not dispositive of this matter before this arbitrator.

Burdens of proof are for the arbitrator to determine unless the contract determines to the contrary. Unless the contract otherwise states, the arbitrator may pick and choose their own burden of proof in determining the basis of a decision. It has been indicated and stated that termination of seniority is the capital punishment of an industrial relations environment and that the burden of the employer is to establish proof beyond a reasonable doubt in order to determine the discharge of the grievant or not. That really is an unimportant discussion, but suffice it to say that in this particular case and from the entire record of the evidence as placed into hearing and from the entire amount of exhibits as were made part of this record that there is no equivocation that the activity of the grievant was the same as that

complained of by the employer. Whether the burden is beyond a reasonable doubt or by clear and convincing evidence or from the entire record or by a preponderance, the result is the same. The record is replete with assertions and buttressing proof of the correctness of the termination of the grievant.

Further, the grievant indicated and stated in testimony that she had read the rules concerning accuracy and the like that were placed into the record. The grievant further stated that the rules changed from time to time. The written rules are what they are and say what they say and unless the rules are changed by subsequent written rules the prior written rules are in use. However, violation of the rules of accuracy while important are not the main thrust in this particular case.

For all of the reasons stated in this particular case and from the totality of the evidence it is apparent that the grievant is not entitled to any relief.

IV. AWARD

The discharge of the grievant is sustained for just cause and the grievance is denied.


MARVIN J. FELDMAN, Arbitrator

Made and entered
this 2nd day
of December, 1994.