In the Matter of Arbitration Between	OPINION and AWARD
DISTRICT 1199, THE HEALTH CARE AND SOCIAL SERVICE UNION, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO	Everette J. Freeman, Arbitrator
- And -	Case # 16-00-971003-0016-02-12
	GERALD LUCAS, Grievant
STATE OF OHIO DEPARTMENT OF HUMAN SERVICES, OFFICE OF CHILD CARE & FAMILY SERVICES	**5-DAY SUSPENSION**

Pursuant to the procedures of the parties a hearing was conducted at the Ohio Department of Administrative Services, Office of Collective Bargaining in Columbus, Ohio, on May 13, 1998 before Dr. Everette J. Freeman, Arbitrator. The parties agreed to the jurisdiction of the Arbitrator for a determination of the issue(s) presented. The parties were given a full opportunity to offer opening statements, to present written evidence and documentation, to examine and cross examine sworn witnesses, and to argue their respective positions during closing oral statements. The parties declined to present post-hearing briefs. The Record of this proceeding was closed upon conclusion of the arbitration hearing and this matter is now ready for final resolution herein.

The case for the Employer was presented by Mr. Okwudili Anekwe, Labor Relations Administrator, Ohio Department of Human Services, Office of Internal Administration. The case for the Union was argued by Mr. Harry W. Proctor, Administrative Organizer, District 1199, Service Employees International Union, AFL-CIO.

WITNESSES

Witnesses on behalf of the Employer were:

Kenneth Kotch, Supervisor, Interstate Placement Unit, Ohio Department of Human Services, Bureau of Children's Services;

Sandy Honigford, Social Services Supervisor, Van Wert County, Ohio, Department of Human Services;

Beth Ann Constantine, Social Worker, Catholic Charities, Diocese of Toledo, Family Connections Department;

Margaret Gehring, Supervisor, Catholic Charities, Diocese of Toledo, Family Connections Department.

Witnesses on behalf of the Union were:

Barbara A. Turpin, Human Service Developer II, Ohio Department of Human Services, Bureau of Children's Services, and District 1199 Delegate;

Gerald Lucas, Human Services Specialist III, Ohio Department of Human Services, Bureau of Children's Services.

EXHIBITS

Joint Exhibits

1. Statement of the Issue

2. Grievance Trail

   - Including documents 2a through 2an

3. Ohio Department of Human Services, Office of Internal Administration *Human Resources Policy Directive*

4. 1997 - 2000 Collective Bargaining Agreement

5. Grievant's February 1996 *Corrective-Plan-of-Action*

Employer Exhibits

The Employer submitted the following documents to the Arbitrator pursuant to this case:

M- .Arbitration Hearing Opening Statement;

M-1. March 1996 Employee Performance Review: Gerald Lucas;

M-2. February 1997 Employee Performance Review: Gerald Lucas;

M-3. May 20, 1996 Inter-Office Communication regarding returned phone calls and case status from K. Kotch to G. Lucas;

M-4. May 23, 1996 Job Performance Needs to Improve Warning Notice from K. Kotch to G. Lucas;

M-5. August 13, 1996 Inter-Office Communication regarding Verbal Reprimand: Neglect of Duty and Performing at Substandard Levels from K. Kotch to G. Lucas;

M-6. March 20, 1997 Inter-Office Communication regarding Hancock County information from K. Kotch to G.Lucas;

M-7. June 17, 1997 Memorandum regarding Mary Ellen Morris case from K. Kotch to G. Lucas.

Union Exhibits

U-1. Arbitration Hearing Opening Statement;

U-2. Ohio Department of Human Services, *Supervisor's Handbook,* September 1991;

U-3. Photocopy of case log sheet (2 pages);

U-4. June 15, 1997 Memorandum regarding Decentralization of ICPC from G. Lucas to Isaac Palmer, Deputy Director, ODHS;

U-5. November 14, 1996 Memorandum regarding Reminder-Need to Follow Office Procedures from K. Kotch to G. Lucas;

U-6. September 5, 1997 Letter praising work of G. Lucas from Jerry M. Johnson, Esq., to I. Palmer, and September 24, 1997 Letter praising work of G. Lucas from Judge Randy T. Rogers.

ISSUE

The parties submitted a joint written stipulation regarding the issue (joint exhibit 1). As stipulated, the issue before the Arbitrator is "was the five day suspension issued to the grievant for just cause, if not, what shall the remedy be?"

FACTS

The Grievant, Gerald Lucas, has been in the employ of the Ohio Department of Human Services for 23 years. The Grievant is classified as a Human Services Specialist III and is responsible for placing children in adoptive care, foster care, and residential treatment programs in Ohio and other states. His duties include coordinating home studies as well as the

processing and placement of children in adoption, foster care, or residential treatment programs as a consequence of state and/or court directives.

On September 29, 1997, the Grievant was suspended for five days allegedly for refusing to follow the directions of his supervisor, for refusal to follow written directions, for refusal to carry out assigned duties, and for substandard job performance.

On September 4, 1997, a predisciplinary conference hearing took place before Hearing Officer Keith Nichols, Labor Relations Officer, Bureau of Human Resources, Ohio Department of Human Services. The Grievant did appear at the predisciplinary conference as did Barbara Turpin, District 1199 Delegate. The hearing officer recommended that the Grievant be disciplined for violation of Human Resources Policy Directive #20 - Neglect of duty, refusal to follow written policies and procedures, Human Resources Policy Directive #30(A) - Incompetence - Performing at substandard levels, and Human Resources Policy Directive #30(B) - Incompetence - failure to carry out assigned duties or failure to follow direction of supervisor or written policies (see Joint Exhibit 2).

On September 12, 1997, Arnold R. Tompkins, Director, Department of Human Services, issued a five (5) day suspension to the Grievant for violation of the aforementioned Human Resources Policy Directives #20, #30(A), and #30(B). (Joint Exhibit 2).

On September 26, 1997, the Grievant received notice of the five day suspension by letter from Arnold Tompkins. On October 2, 1997, the Grievant appealed the suspension and requested he be made whole. A Step 3 meeting was convened on October 30, 1997 from which on November 12, 1997, Okwudili "Didi" Anekwe affirmed the five day suspension by way of written response (see Joint Exhibit 2 al).

On November 13 1997, the Union prepared and mailed to Steve Gulyassy, Director, Office of Collective Bargaining, an intent to arbitrate notice on behalf of the Grievant (Joint Exhibit 2, ak).

APPLICABLE CONTRACT PROVISIONS

ARTICLE 5- MANAGEMENT RIGHTS (see Joint Exhibit 4, p. 8)

ARTICLE 6- NON-DISCRIMINATION (see Joint Exhibit 4, p. 9)

ARTICLE 8- DISCIPLINE

ARTICLE 8.01- Standard

Disciplinary action may be imposed upon an employee only for just cause.

ARTICLE 8.02 - Progressive Discipline

The principles of progressive discipline shall be followed. These principles usually include:

A. Verbal Reprimand

B. Written Reprimand

C. A fine in an amount not to exceed five (5) days pay

D. Suspension

E. Removal

The application of these steps is contingent upon the type and occurrence of various disciplinary offenses.

The employee's authorization shall not be required for the deduction of a disciplinary fine from the employee's paycheck.

* * * * *

ARGUMENTS OF THE PARTIES

The Employer's Position

In its opening statement, through testimony and argument, exhibits, written documentation, and in closing, the Employer focused on providing justification for suspending the Grievant for five (5) days. The Employer argues that the suspension was for just cause under the terms of the collective bargaining agreement. In its opening argument, during the arbitration hearing, and in its closing remarks, the Employer asserts that not only was the Grievant disciplined for just cause, but that the level of discipline imposed on the Grievant was not only fair

but significantly below that given to a fellow bargaining unit members disciplined for similar although not identical reasons. Furthermore, the Employer reasons, the Grievant had been given ample prior warnings and other corrective measures to support the level of discipline imposed (see M-3, M-4, M-5 and M-6). Under objection from the Union, which the Arbitrator duly noted, the Employer offered as evidence of its prior notification of potential disciplinary action interoffice memoranda from supervision to the Grievant urging improved job performance relative to returning telephone calls, processing Interstate Priority Placements (IPPs) or Interstate Compact on the Placement of Children (ICPC) in a timely manner, and attending to job responsibilities.

The Employer argues that the grievance is without merit inasmuch as the Grievant was warned and counseled on numerous occasions over a lengthy time period, but without effect. Additionally, the Employers argues that the Grievant's case load was no greater or more arduous than any of his counterparts and, accordingly, did not place him at a disadvantage. Furthermore, the Employer states that the Grievant understood fully the relevant Human Resources Policy Directive(s), had received and acknowledged receipt of performance evaluations and corrective action plans, and had been adequately advised and counseled, but

did not meet job expectations. Finally, the Employer asserts that the Grievant had a total of three priority placement cases were not processed within the timeframe specified in Regulation 7, and, moreover, that the Grievant had improperly signed his supervisor's signature to Form 100A in violation of Unit directives he and his counterparts had previously received. To wit, the Employer claims that the Grievant's poor job performance was highlighted in complain letters from Catholic Charities of Toledo, Van Wert County Department of Human Services, and the Utah Division of Child and Family Services.

During the arbitration hearing the Employer objected to the introduction by the Union to a photocopy of a case entry log which the Union offered as evidence that the Van Wert case file had been assigned two different case numbers at different times.

The Union's Position

The Union, through its written evidence and documentation, witnesses, cross-examination of Employer and Union witnesses, arguments during the arbitration hearing, and in its closing asserts that the Employer's suspension of the Grievant was without just cause. The Union's position is that the Employer breached the terms of the collective bargaining agreement and failed to meet any of the established standards of just cause.

The Union argues further that the Employer sought to impose discipline on the Grievant not due to poor job performance, but because the Grievant refused to be reassigned to another work site.

Additionally, the Union insists that the Employer's rationale for imposing discipline is without foundation inasmuch the Employer failed to provide a corrective plan and counseling prior to disciplining the Grievant. Moreover, argues the Union, the Employer actions against the Grievant were punitive not corrective in nature and violate the collective bargaining agreement.

During the arbitration hearing, the Union objected to the Employer's introduction of the interoffice memoranda from the Grievant's supervisor to the Grievant concerning work performance-related matters (M-3 through M-6). The Union asserts these documents are inadmissible.

Finally, the Union reminds the Arbitrator that the Employer bears the burden of proof in this case and, accordingly, concludes that there is no basis for the Employer's actions against the Grievant. The Union petitions, therefore, that the grievance be sustained and that the Grievant, Gerald Lucas, be made whole.

DISCUSSION AND FINDINGS

While the parties agree about the basic facts of the dispute; namely, that the Grievant was suspended for five (5) days on August 14, 1996, the basis of this grievance centers on whether the action taken by the Employer was for just cause. Neither the Employer nor the Union presented arguments that the Arbitrator found inadmissible for consideration as part of the proceeding, even though both parties objected to the admission of certain evidence one or the other considered germane to the case. The Arbitrator's approach to this hearing was to admit matters for whatever they were worth and, where appropriate, defer a ruling on the merit of such issue(s)until rendering this final decision, guided by the language of the collective bargaining agreement.

The Employer sought to enter as evidence in support of its suspension of the Grievant three interoffice memoranda from the Grievant's supervisor related to work performance matters (see M-3, M-4, M-5, and M-6). The Union objected to the introduction of these items asserting that such were not presented at the Step 3 hearing and, accordingly, were inadmissible. The Arbitrator is persuaded that the documents are admissible and lend weight to the Employer's claim that the Grievant had been provided warning and direction with regard to job performance concerns.

The Union also sought to enter into the arbitration hearing record a two-sheet case log purportedly showing the discrepancy in the case number and logged date of the Van Wert case (see U-3). The Employer insisted that the exhibits offered were suspect insofar as it is not clear that there represent official agency log sheets and were not introduced at the Step 3 hearing. The Arbitrator sees no reason to deny admissibility of this exhibit on the merit of its worth.

The Employer maintains through its opening statement, written documentation, witnesses, and closing remarks that it follows a normal, established, and customary procedure for determining a disciplinary course of action. The Employer asserts that a request for disciplinary action is initiated followed by a pre-disciplinary conference convened to ascertain if there is cause to initiate discipline. Following the predisciplinary conference, a notice of disciplinary action is issued. The Employer argues that it followed the aforementioned procedure in the Grievant's case and in no way discriminated against him relative to the manner of its investigation or imposition of discipline.

The core of the Union's position, as expressed at arbitration and in its closing remarks, is that the Employer misinterpreted Article 8 of the collective bargaining agreement.

In support of its claim that the Employer violated the contract, the Union insists that the Employer did not provided adequate training and counseling for the Grievant, did not have just cause for its action, and did not adhere to the terms of the contract in unfairly imposing discipline.

Clearly the burden of proof in this case rests with the Employer. In meeting its burden of proof, the Employer not only seeks to rely upon the Arbitrator's interpretation of the contract, but on testimony regarding steps taken to forewarn the Grievant of adverse consequences for poor job performance and efforts taken to assist the Grievant avoid discipline. In the case before the Arbitrator, the specific allegation concerns the Grievant's inability to perform his job duties properly, timely, and diligently. At bottom, the issue turns on whether the Employer provided the Grievant sufficient, training, counseling, guidance, disciplinary warning, and, eventually, just cause for the five (5) day suspension.

From the record presented at arbitration, it appears that the suspension was imposed on or about September 26, 1997. In supporting its actions, the Employer asserts that the Grievant had failed to process a total of three priority placement cases within the timeframe specified in Regulation 7, had improperly signed his supervisor's signature to Form 100A in violation of

Unit directives he and his counterparts had previously received, and had received sufficient and clear warning as well as training and counseling. Finally, the Employer claims that the Grievant's poor job performance was highlighted in complain letters from Catholic Charities of Toledo, Van Wert County Department of Human Services, and the Utah Division of Child and Family Services.

The pivotal event precipitating the five (5) day suspension was the alleged mishandling of the Van Wert case, even though the processing of the Catholic Charities of Toledo placement and the expedited ICPC request from Utah to Ohio appear to have been factored into the disciplinary action taken. At arbitration, there was considerable testimony - both written and oral - presented by the parties regarding the Van Wert case and its processing as well as the Catholic Charities and Utah cases (see Joint exhibit 2 and U-3). Other relevant documents include the request for disciplinary action, the notice of disciplinary hearing, the notice of appeal, and other evidence presented by the parties. Of particular importance to this case is are the Human Resources Policy Directives submitted jointly by the parties (see Joint exhibit 3)and the Grievant's February 1996 *Corrective-Plan-of-Action* (Joint exhibit 5).

The Van Wert case becomes pivotal to this arbitration not only because it is the engine generating this grievance, but also because it serves as the Employer's anchor for asserting that the Grievant progressively and repeatedly had failed to complying with the ICPC timelines for case processing and had continued to evince poor job performance even after having been warned about same.

Kenneth Kotch, Supervisor, Interstate Placement Unit, Ohio Department of Human Services, Bureau of Children's Services, and supervisor to the Grievant, provided testimony regarding procedures and timelines for handling child placement cases, the manner in which IPPs cases are handled, and the job performance expectations for Human Services II position. Kotch also testified regarding the sequence of events leading up to the Grievant's suspension, what step he had taken to assist the Grievant in performing his job duties, and correspondence to the Grievant regarding work expectations. Kotch noted in testimony that the IPPs bear a strict two (2) working day processing time and that said timeline is court mandated.

From the testimony and cross-examination of Mr. Kotch, as well as support evidentiary documentation, it appears to the Arbitrator that the Grievant had been given prior warning regarding the potential for disciplinary action. Indeed, the

Grievant testified that he had received the interoffice memoranda, documents the Arbitrator admits as materially relevant to this case, from Mr. Kotch. Accordingly, the Employer establishes that the Grievant has been given sufficient and clear warning. Both Mr. Kotch and the Grievant testified that Human Resources Policy Directives #20, #30A, and #30B - all specifying job duties and expectations. Further, both Mr. Kotch and the Grievant agree that the Grievant's March 1996 and February 1997 performance reviews were acknowledged, signed, and received, without protest as was the February 1996 *Corrective-Plan-of-Action* (see M-1, M-2, and Joint exhibit 5).

While the Union sought to portray Mr. Kotch as unwilling or disinterested in providing the needed guidance, counseling, and training to assist the Grievant in performing his job duties, testimony from Mr. Kotch at cross-examination shows that the supervisor had exercise reasonable efforts in helping the Grievant. Indeed, Mr. Kotch noted at cross-examination that the Grievant never expressed a lack of clarity regarding job expectations associated with the corrective-plan-of-action or performance reviews, nor did the Grievant obtain, as he could freely have, available organizing tools to assist him.

As regards the matter of forcing the Grievant to go to training, Mr. Kotch testified - without contradiction from the

Union - that he had no authority to force the Grievant to attend training he did not wish to attend. Based on his testimony, it appears that Mr. Kotch relied primarily upon employee initiative in counseling his direct reports. It seems to this Arbitrator that based on the managerial style Mr. Kotch employed as supervisor to the Grievant, there was not violation or dereliction of duty to counsel, train, or advise as delineated in the Ohio Department of Human Services, *Supervisor's Handbook* (see U-2).

There is nothing in the evidence or testimony presented that persuades the Arbitrator that the job expectations and remedial responsibilities imposed on the Grievant were unreasonable. Indeed, the absence of any dissent by Mt. Lucas regarding his treatment by Mr. Kotch prior to the initiation of this grievance lends powerful support to believing the Grievant regarded the action taken by the Employer to be reasonable and not in violation of his collective bargaining rights.

The Union asserts that the Grievant had an inordinately large work load which prevented him from speedily processing cases. While the Arbitrator believes the case load for the Grievant may have been taxing, it does appears from the evidence presented that the Grievant's work load was commensurate with his level of experience and expected performance. To wit, no evidence was presented by the Union indicated that the Grievant had

pressed earlier for a work load reduction on the basis of disparity.

Although the Employer and the Union offered condemnatory and complimentary letters regarding the Grievant's work performance, none of these letters are controlling in this case and appear to have been penned - certainly in the case of those critical of the Grievant - after the discipline was imposed. Moreover, while the Union asserts that the discipline was imposed on account of the Grievant's refusal to be reassigned to another work site, there was not compelling evidence presented at arbitration to support the declaration.

It appears from the record of this arbitration that the Employer conducted a fair and impartial investigation of the facts before imposing discipline. The issue in dispute turns now partly on the facts regarding the Van Wert case in particular. The Arbitrator notes that the Grievant does not dispute violating the prohibition against signing Form 100A, a violation which alone might be grounds for discipline under the terms of the collective bargaining agreement. To wit, a fellow employee, David Kim, had been suspended for twenty (20) day for signing Kotch's signature. While the Union offers that the signing was inadvertent, the Arbitrator does not find this defense persuasive.

In regard to Van Wert, there is a lively disagreement between the parties concerning whether the case was initially or subsequently misfiled thereby leading to inattention to it by the Grievant. The Union successfully established in cross-examining Mr. Kotch that the Van Wert case did carry two separate case numbers for a time. It would appear that the Van Wert case was assigned case number 66205 initially on March 12, 1997, and, then, assigned case number 66809 on August 6, 1997. While there is legitimate disagreement regarding when and who mishandled the Van Wert file, including the Van Wert staff, there is no disputing the fact that the Van Wert case was assigned to the Grievant and it was his responsibility to see to it that it reached an expeditious conclusion, even if that meant asking his supervisor or a fellow employee to handle same in his absence. The fact that the supervisor had to retrieve the Van Wert file from the Grievant's desk - an assertion made by Mr. Kotch which was not refuted by the Union - points to laxity on the part of the Grievant in seeing to it that the home study was speedily done. Moreover, by not informing his supervisor that his telephone went unanswered during his absence, the week of July 18, 1997, and thereby creating a plausible mitigating factor in his behalf, the Grievant exacerbated an already lengthy and troubling delay. Finally, the Van Wert case, if handled

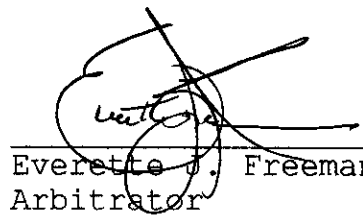
expeditiously by the Grievant and notwithstanding the alleged erroneous filing by Van Wert staff, less than seven months would have transpired from the day of the initial request for a home study until its final closing.

Inasmuch as the Grievant was the case officer of record for the Van Wert case, he is obliged at all times to exercise a proprietary interest over this file regardless of whether the case finds itself flowing through the hands of other ODHS personnel or not. Without the establishment of such a proprietary obligation, the ODHS would be unable to meet the dictates of family and juvenile courts, state public child welfare mandates, or the ICPC regulations. Because of these judicial and administrative regulations, it falls upon the ODHS to rely, and rely heavily, upon the attention, diligence, competence, thoroughness, faithfulness, and timeliness of the individual Human Service Specialists to whom the cases are entrusted for processing.

The Arbitrator finds that the Employer acted with just cause in imposing the five (5) day suspension on the Grievant for violation of ODHS Human Resource Directive #20, Human Resource Directive #30(A), and Human Resource Directive #30(B).

AWARD

The grievance is denied in its entirety.



Everette J. Freeman, Ed.D.
Arbitrator

June 23, 1998