

#1602

IN THE MATTER OF ARBITRATION
BETWEEN
STATE OF OHIO – ADULT PAROLE AUTHORITY
AND
OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION
AFSCME LOCAL 11, AFL-CIO

Grievant:: Munira Hayes

Case No. 28-03-20011120-0141-01-12

Date of Hearing: July 31, 2002

Place of Hearing: Cleveland, Ohio

APPEARANCES:

For the Union:

Advocate: Steve Lieber, Staff Representative

Witnesses:

Munira Hayes, Grievant

For the Employer:

Advocate: Kelly Foster,
Beth Lewis, 2nd Chair

Witnesses:

Rosemarie Yako
Pamela Kaufman
Jamie Holmes
Martina Grier

ARBITRATOR: Dwight A. Washington, Esq.

Date of Award: September 11, 2002

INTRODUCTION

The matter before the Arbitrator is a grievance pursuant to the Collective Bargaining Agreement ("CBA"), in effect March 1, 2000 through February 28, 2003, between the State of Ohio and the Ohio Civil Service Employees Association AFSCME Local 11, AFL-CIO ("Union").

The issue before the Arbitrator is whether just cause exists to support removal of the Grievant, Munira Hayes ("Hayes"), for violating Employer's Standards of Employee Conduct of Employee Conduct Rules: Rule 5(b) (misuse of property); Rule 21 (unauthorized use/release of information); Rule 22 (removing any official document); Rule 37 (actions that could harm or potentially harm co-workers); Rule 45(A) (giving preferential treatment to any individual under supervision of the Department); and Rule 46(a) (unauthorized relationships).

The removal of the Grievant occurred on November 9, 2001 and was appealed in accord with Article 24 of the CBA. This matter was heard on July 31, 2002 and is properly before the Arbitrator for resolution. Both parties had the opportunity to present evidence through witnesses and exhibits.

BACKGROUND

Hayes was employed as a Word Processing Specialist 2 ("WP2") for the Adult Parole Authority ("APA"). The APA is responsible for supervising offenders under the auspices of the Department of Rehabilitation and Corrections ("D,R&C") until they are released from the supervision of the D,R&C. A portion of Hayes job duties required her to mail various items to offenders such as, parole certificates and final releases. As a WP2, Hayes was part of a clerical pool with ten (10) other employees who were supervised by Rose Marie Yako ("Yako"). Hayes worked for APA for approximately twenty-two (22) months prior to her removal on November 9, 2001. At the time of removal Hayes had no prior discipline of record.

On November 9, 2001, Hayes was removed for violations of the following APA Standards of Employee Conduct Rules: Rule 5(b) - misuse of property; Rule 21 – unauthorized

use/release of information; Rule 22 – removing official documents; Rule 37 - actions that could potentially harm co-workers; Rule 45(A) – giving preferential treatment to an offender under supervision of the APA; and Rule 46(a) – unauthorized relationship with an offender under supervision of the APA.

As a WP2 Hayes' job allowed her accessibility to public and confidential records of individuals who were under supervision of the APA. Hayes' job also included telephone and office contacts with offenders who visited the office for appointments with their respective Parole Officer ("PO").

In this context, Andre Jenkins ("Jenkins") was under supervision of APA and was assigned to PO Martina Grier ("Grier"). Jenkins visited the office or telephoned several times a month to maintain the required contact with PO Grier.

PO Grier functions as the liaison with offenders to ensure compliance with the conditions of their parole. PO Grier would determine the type and number of contacts (i.e., visits and/or phone calls) required based upon a risk assessment of each individual. A high risk offender would have four (4) contacts per month. A medium risk offender would have two (2) contacts per month; and a low risk offender would have one (1) contact. Flexibility, would allow as an example, a high-risk individual to have two (2) contacts by phone and two (2) office visits. Simply, it was not required that all contacts required office visits. An integral part of a PO's duties requires that they document their findings and makes recommendations if an offender is in non-compliance with his/her parole stipulations. With respect to Jenkins, PO Grier assessed him as a medium to high risk requiring at least two (2) contacts per month. On several occasions, according to PO Grier, Jenkins would stop into the office without a planned visit being previously scheduled.

Due to Jenkins failure to comply with his parole restrictions, PO Grier had arranged for Jenkins arrest in the office on April 3, 2001 which would have been his next scheduled visit. Jenkins failed to show up in the office and it was PO Greir's belief that he was warned about the arrest. Hayes, denied warning Jenkins of this pending arrest.

Hayes and Jenkins had previously met each other as teenagers, and according to Hayes, she had no other contact until Jenkins started visiting PO Grier at the APA. However, while being interviewed by Pam Kaufman ("Kaufman"), Administrative Assistant to the Regional Director, Hayes indicated that she knew Jenkins from the neighborhood and that they grew up together. Jenkins refused to be interviewed by Kaufman or participate in any way in this matter.

In July 2001 Jenkins was incarcerated in the Cuyahoga County Jail. Jenkins contacted Hayes by phone and requested Hayes to send him information from the APA as to why he was incarcerated. Kaufman received an anonymous telephone tip from a male voice that Hayes had sent certain information to Jenkins at the jail. Kaufman immediately relayed the tip to Yako, who contacted the jail mailroom to determine the accuracy of the tip. Yako verifies that an envelope with a return address from the APA was sent to Jenkins and is currently in the mailroom. Yako requested that the mailroom attendant maintain custody of the envelope until she could retrieve it.

Yako obtains the envelope and in the presence of Kaufman determines that Hayes handwriting was on the front and that the contents contained confidential information from Jenkins's APA file. The items within the envelope included the following: PO Grier's report(s); Indictment dated April 17, 2001 for violation of Ohio Revised Code § 2913.51; Indictment for violation of Ohio Revised Code § 4549.5; Indictment for violation of Ohio Revised Code § 2923.24; Indictment for violation of Ohio Revised Code § 2913.42; Indictment for violation Ohio Revised Code § 2913.51; Indictment for violation of Ohio Revised Code § 2923.24; Indictment for violation of Ohio Revised Code § 4549.62; and case notes (i.e., docket information). This envelope postage date was July 18, 2001.

The appropriate personnel within APA were notified and Kaufman was assigned to conduct the investigation. Kaufman interviewed PO Grier to determine if she had any knowledge of Hayes conduct. PO Grier reviewed the contents of the mailing and was overtly concerned that without proper authorization Hayes had released records to an offender containing her reports which included a recommendation for his arrest the next time he visited

the office. PO Grier was visibly shaken due to her safety and the potential harm to her family, fearing retaliation by Jenkins. PO Grier and Yako testified that Hayes did not have authorization to provide any information to Jenkins without their consent.

Kaufman instructed Yako to maintain contact with the county jail in the event other mailings would occur. On July 25, 2001 a second envelope addressed to Jenkins with a return address from the APA was intercepted. The second envelope contained Hayes handwriting as well, and included the originals of docket information that were previously in Jenkins file according to PO Grier.

Kaufman subsequently met with Hayes who admitted sending both envelopes to Jenkins without informing PO Grier or anyone in the office of her actions. Hayes admitted to communicating with Jenkins only when he called or visited the office in furtherance of her job duties. Hayes believed that all of the information in both mailings were public records and was unaware that any of the information was confidential. Regarding the first envelope, Hayes admitted to printing and copying the information while at work. With respect to the second envelope of July 25, 2001 Hayes claims that the information was printed from her home computer, but she took the envelope from APA and mailed it outside the office. Hayes further indicated that she printed out the docket information from her home computer but mailed the information in an APA envelope. Hayes was also questioned regarding the planned April 3, 2001 arrest of Jenkins upon his visit to PO Grier, and she denied telling Jenkins about the planned arrest.

Hayes maintains that she was not trained regarding which records were confidential and what information could not be released without authorization. APA on the other hand indicates that Hayes attended the New Employee Orientation in 1999; attended the Pre-Service Training at the Correctional Training Academy ("CTA"); and ongoing training during supervisory meetings and emails provided actual notice regarding the confidential records and policies of APA.

Regarding unauthorized relationships, APA requires employees to complete an "Inmate Nexus" form if an affiliation or relationship exists with anyone under supervision of APA. The

broad definition of relationship includes a relative by marriage or blood, a neighbor, a friend, an ex-spouse, a close family friend, an ex-boyfriend or girlfriend or anyone with whom you have or have had a personal or business relationship. Hayes did not inform anyone at APA that she knew Jenkins from the neighborhood nor did she complete an Inmate Nexus form at any time. Hayes considered her past meeting(s) of Jenkins as merely casual or informal.

Hayes indicates that the only contact with Jenkins occurred when he called or visited the office and no other communication occurred between them. Hayes admitted that no other offender, incarcerated or not, had requested the information sought by Jenkins. However, Hayes maintains that it was her belief that the mailings were not outside her job duties. Hayes further contends that she sends a lot of information to offenders and was simply unaware the information was confidential.

On August 13, 2001 this matter was reassigned to Jamie J. (Weber) Holmes ("Holmes"), Word Processing Supervisor I, to complete the investigation. Holmes assumed investigatory responsibility due to her physical location outside of the Cleveland region in an effort to ensure neutrality and fairness in the process. Holmes reviewed the work-product of Kaufman as well as conducted an independent assessment (i.e., interview(s), reviewed files, reviewed various policies) of this matter and concluded that the evidence supported discipline of Hayes. Finally, no evidence was uncovered that other APA employees sent information which was considered confidential or engaged in unauthorized relationships who were not removed.

Hayes contends that the information submitted and her conduct was within the standard operating procedure and no prior knowledge existed that her actions were violative of APA policy, or that prior notification was required to her supervisor or PO Grier.

ISSUE

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

RELEVANT PROVISION OF THE APA AND OHIO REVISED CODE

ARTICLE 24 – DISCIPLINE

24.01 – Standard

Disciplinary action shall not be imposed upon an employee except for just cause. The Employer has the burden of proof to establish just cause for any disciplinary action. In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have authority to modify the termination of an employee committing such abuse. Abuse cases which are processed through the Arbitration step of Article 25 shall be heard by an arbitrator selected from the separate panel of abuse case arbitrators established pursuant to Section 25.04. Employees of the Lottery Commission shall be governed by O.R.C. Section 3770.02(i).

STANDARDS OF EMPLOYEE CONDUCT RULE 5, RULE 21, RULE 22, RULE 37, RULE 45 & RULE 46

- Rule 5:** Purposeful or careless act(s) which result in one or more of the following: damage, loss or misuse of property of the State to include but not limited to vehicles, telephones, computer hardware, computer software, electronic mail and internet usage.
- Rule 21:** Unauthorized use, release or misuse of information.
- Rule 22:** Falsifying, altering, or removing any official document.
- Rule 37:** Actions that could harm or potentially harm the employee, fellow employee(s) or a member of the general public.
- Rule 45(A):** Without express authorization, giving preferential treatment to any individual under the supervision of the Department, to include but not limited to – The offering, receiving, or giving of a favor.
- Rule 46(a):** Unauthorized relationships – The exchange of personal letters, pictures, phone calls, or information with any individual under the supervision of the Department or friends or family of same without express authorization of the Department.

POSITION OF THE PARTIES

POSITION OF THE UNION

The Grievant believing that her job duties required that she forward the requested information to Jenkins did not engage in inappropriate conduct. The Grievant's job responsibilities mandated that she mail to offenders, under supervision of APA, various documents as a WP2 and her actions on or about July 18, 2001 and July 25, 2001 were consistent with past job conduct.

The union alleges that the Grievant was not trained on what records and/or information was confidential within APA, at any time of her employment. The failure of the employer to properly notify the Grievant of what conduct was unacceptable imposed too harsh a discipline (i.e., removal was too severe).

With respect to the alleged unauthorized relationship charge, the Grievant didn't know Jenkins personally and believed that the request for information, although incarcerated, was proper. The Grievant believed that only public information was provided to Jenkins and such information was available off the website of the Courts, and hence no violation of any policy.

Finally, just cause did not exist to remove the Grievant and mitigation was appropriate due to no prior discipline on the record and the Grievant was given "special responsibilities" in her job indicating that she was a valued employee.

POSITION OF THE EMPLOYER

The Grievant admitted sending information to offender Jenkins while incarcerated at the Cuyahoga County Jail on two (2) occasions. The contents of the envelopes contained copies and original records from Jenkins official file maintain by APA. PO Grier identified the contents of both envelopes as to which documents were originals versus copies. Both envelopes were mailed from APA offices and contained the postage meter stamp assigned to APA.

The information sent to Jenkins, although intercepted, contained confidential information from his file. Specifically, PO Grier's reports, indictments and docket information. The contents of PO Grier's reports included risk level assessment of Jenkins as well as arrest recommendation. Due to the risk level of Jenkins and the potential for retaliation PO Grier became distraught regarding her safety and family members.

With respect to training, APA's records verify the Grievant attended new employee training on December 10, 1997 where confidentiality was discussed, as well as the CTA for three (3) weeks where this issue was also discussed. Moreover, due to the type of individuals under department supervision "common sense" should have guided the Grievant regarding a request by an incarcerated offender for information not normally provided by the Grievant as

part of her job duties. APA contends that at a minimum the Inmate Nexus form was required for completion due to a prior relationship with Jenkins and prior approval was required by the APA due to the nature of their association.

BURDEN OF PROOF

It is well accepted in discharge and discipline related grievances, the employer bear the evidentiary burden of proof. see, Elkouri & Elkouri – "How Arbitration Works" (5th ed., 1997)

The Arbitrator's task is to weigh the evidence and not be restricted by evidentiary labels (i.e. beyond reasonable doubt, preponderance of evidence, clear and convincing, etc.) commonly used in the non-arbitable proceedings. see, Elwell- Parker Electric Co., 82 LA 331, 332 (Dworkin, 1984)

The evidence in this matter will be weighed and analyzed in light of the APA burden to prove that the Grievant was guilty of wrongdoing. Due to the seriousness of the matter and Article 24 requirement of "just cause", the evidence must be sufficient to convince this Arbitrator of guilt by the Grievant. see, J.R. Simple Co and Teamsters, Local 670, 130 LA 865 (Tilbury, 1984)

DISCUSSION AND CONCLUSIONS

After careful consideration of this matter including all of the testimony and evidence of both parties, I find that the grievance must be denied. My reasons are as follows:

In support of the charges against Hayes, APA presented evidence regarding the training of the Grievant and why the ramifications of providing this information to inmate Jenkins was so extreme to warrant removal. The initial analysis of the evidence centers upon what conduct was expected of Hayes, and did the evidence support that Hayes was properly trained on providing information to individuals under APA supervision? Moreover, the evidence to support the unauthorized relationship charge must also establish that Hayes was aware of this rule and failed to conduct herself accordingly.

With respect to the training issue, APA presented the following evidence regarding Hayes institutional training: (1) attended the New Employee Orientation on December 10, 1999; (2) attended the CTA from December 13, 1999 through January 14, 2000; and (3) periodic staff meetings, emails or by the Internet. Yako, credibly testified that all employees of APA including Hayes are trained on confidentiality of records as well as a myriad of other employee conduct governed by department rules or policies.

In support of Yako's testimony, on December 10, 1999 Hayes acknowledged receipt of the Standards of Employee Conduct for the Department of Rehabilitation and Correction (JX 5A) as well as the Ohio Ethics Law (JX 6A). The Standards of Employee Conduct contains in the introduction heading a subsection titled, Confidentiality which states in part "...[S]ome information is considered public information, some is strictly confidential and may be released at the discretion of certain designated departmental authorities. Each employee may only disclose or release that information required in the performance of the employees' duties or upon specific authorization..." (emphasis added). No evidence was before this Arbitrator to suggest that Hayes did not understand this section or sought clarification at any time.

Hayes, as part of the CTA training was instructed on the Standards of Employee Conduct (JX 6(c)). Hayes training sheet indicates on December 13th, 14th and 15th 1999 a substantial portion of the days were devoted to employee conduct, including issues associated with records and confidentiality (JX 6D).

The CTA three (3) week course syllabus was offered as exhibit (JX 6E). A cursory review of this training guide is replete with specific references directing the employee to use the Standards of Employee Conduct as a reference to evaluate your situation in determining whether or not a rule was violated. In fact a key objective of the training was for Hayes to be able to identify and explain the three (3) main sources for Rules of Conduct: (1) Ohio Revised Code; (2) D,R&C Administrative Regulations; and (3) Institution Agency Policies. This record is void of any suggestion that Hayes, during training, was unclear of what conduct was expected of her.

Hayes successfully completed the CTA training and obtained her certificate dated January 14, 2000 (JX 6C). Yako testified that in addition to the CTA training, department policy updates are discussed in staff meetings and during Hayes' employment Yako reviewed the confidentiality policies relating to APA. Further, all policies are posted on the website of APA and employees are instructed to go to the website when needed.

With respect to institutional policies on record within D,R&C, Yako testified that several policies were in effect specifically governing this issue (JX 6J, JX 6K). As example DR&C Policy 501-34 indicates that "...records of persons under the supervision of the Adult Parole Authority are not public records..." (JX 6J) The evidence is clear to this Arbitrator that Hayes was notified of what conduct was expected regarding public records including offender files that were under supervision of APA.

Hayes' job required that she send to offenders, final releases and parole release certificates – at the direction of the PO. Hayes as part of the clerical staff was authorized to mail certain pre-approved information to offenders and no evidence suggests that a WP2 had independent discretion to send offenders records not previously authorized.

The facts are unrefuted that Jenkins requested Hayes to provide information on why he was being held at the county jail. The nature of the information was not information that was typically handled by the Grievant. An immediate alarm should have went off within Hayes upon this request. The grievant testified that Jenkins' request was the only time that such information had been asked of her by an offender. At this point it seems to this Arbitrator that Hayes was required to do the one if not all of the following: (1) consult the Standard of Employee Conduct; (2) consult D,R&C policies; and/or (3) contact PO Grier. Hayes decided to do it her way and without authorization she mailed the information to Jenkins.

With respect to the initial mailing on July 18, 2001, Hayes indicated that she put the envelope in the out box for mailing and she is unaware how official files were included in that envelope. This testimony was unpersuasive since confidential and original documents were identified by PO Grier in this envelope and, no logical explanation was offered by Hayes to

explain how such information inside a sealed envelope bearing her handwriting was not her doing. Furthermore, Hayes did not refute that the information in the initial mailing was obtained by using APA office equipment.

Regarding the second mailing, Hayes testified that all of the information was public records and the information was obtained by using her home computer. Hayes further maintains, the materials in the second envelope was mailed outside APA even though the envelope was from APA and the return address stamped was also from APA .

In assessing both mailings this Arbitrator was not convinced by Hayes versions and discredit her testimony regarding her chronology of the mailings. I find that both mailings contained certain copies and/or originals from Jenkins' file which were not public records. PO Grier and Yako both indicated that Hayes did not seek their authorization regarding either mailing. The evidence is unrefuted that both mailings involved the use of APA equipment or property in a manner contrary to Hayes's job duties as a WP2. The obtainment of PO Grier's reports, which a logical inference suggest were in Jenkins file, clearly put Hayes on notice that this data was outside of her normal mailing to offenders. However, assume for argument, every document was a public record except PO Grier's reports, the submittal of these reports alone, would justify removal absent a strong showing of mitigation. Therefore, the evidence supports a violation of Rules 5, 21 and 22.

Regarding Rule 37 (actions that could potentially harm co-workers), the conduct of Hayes in providing PO Grier's report(s) is problematic for the obvious reasons. PO's are required to interact with some of the most violent individuals in Ohio. POs' reports requires that their recommendations and work product be afforded as much protection within APA as humanly possible under the confidentiality guise. Hayes' conduct may have been benign, however, the real potential existed that Jenkins could have obtained information regarding PO Grier's assessment that would have been unflattering to say the least. Jenkins' prior criminal history, according to PO Grier, made him a medium/high risk offender. PO Grier upon learning of Hayes' mailing(s) became distraught that the possibility existed that Jenkins could have

reviewed her recommendations which directly impacted his freedom. The fact that the envelopes were intercepted does not mitigate the consequences of Hayes' actions. PO Grier's reactions for, herself and family were genuine and underscore the necessity for maintaining the confidentiality of these records. Hayes' conduct in this matter was egregious and the potential for harm to PO Grier existed, therefore a violation of Rule 37 is supported by the evidence.

Hayes during the investigation admitted to meeting Jenkins when they were teenagers and the only contact with Hayes thereafter occurred as a result of his contact with the APA office. Hayes admitted to communicating with Jenkins only in connection with her job and admits while he was in the county jail she spoke with him by phone. Hayes was aware of the unauthorized relationship Rule (i.e., rule 46) but due to the casual/informal remembrance of Jenkins from the neighborhood she did not believe an Inmate Nexus form was required (JX 4E).

In connection with the unauthorized relationship charge, the facts are unrefuted that Hayes sent information to Jenkins that had never been forwarded to any other offender in her position as a WP2. In attempting to draw inferences consistent with the evidence a couple of nagging question exists in the mind of this Arbitrator. Why would Hayes send any information to an offender in jail? Why would Hayes send specific information to an offender in jail that she has never provided to any other offender in her clerical position? At the hearing Hayes presented herself as an intelligent witness with good recall. Therefore, the logical conclusion is that Hayes was aware of the risks and participated with actual or constructive knowledge of the consequences.

I find that Hayes failed to inform anyone of her past "casual" or "informal" relationship with Jenkins despite the fact that Jenkins had ongoing contact with the Grievant as a WP2. Hayes, naivety may have played a role in her lack of informing PO Grier of this relationship – but this type of past relationship under these circumstances is why the Inmate Nexus policy exists. Simply, an affirmative duty existed for Hayes to notify APA in accordance with the existing policy. Hence, the evidence supports a violation of Rules 46(a) and 45(A).

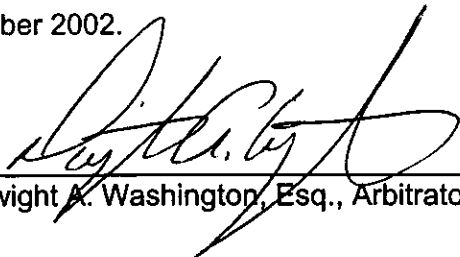
Hayes was the only witness presented to rebut the evidence provided by the APA in support of the charges for removal. Hayes primarily challenged the credibility and weight to be afforded to APA witnesses. The documentary evidence were joint exhibits validated the training and other policies at issue in this dispute which the Grievant had full knowledge of and does not dispute. No evidence suggests that the APA has applied the application of the rules at issue inconsistently in the past or in a disparate manner.

Finally, the events preceding the removal of the Grievant were all reviewed and analyzed with the view that the seriousness of the discipline must convince this Arbitrator of wrongdoing – the APA satisfied this burden and no mitigation exists to alter the removal.

AWARD

The grievance is denied.

Respectfully submitted this 11th day of September 2002.



Dwight A. Washington, Esq., Arbitrator

Facsimile Transmittal Cover Sheet

To: _____

Ken Nelson

Fax No: _____

Date: _____

09/16/02

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From: _____

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