

ARBITRATION DECISION NO.:

121

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Health

DATE OF ARBITRATION:

March 30, 1988

DATE OF DECISION:

April 13, 1988

GRIEVANT:

Jeffrey Enberg

OCB GRIEVANCE NO.:

G-87-1229

ARBITRATOR:

Andrew J. Love

FOR THE UNION:

Allyne Beach

FOR THE EMPLOYER:

Michael J. D'Arcy, Jr.

KEY WORDS:

Just Cause

Insubordination

Progressive Discipline

Written Reprimand

ARTICLES:

Article 24 - Discipline

§24.01-Standard

§24.02-Progressive

Discipline

FACTS:

At issue is whether the written reprimand of the Grievant was for "just cause".

Grievant is classified as a Delivery Worker at the Ohio Department of Health. The Grievant was given a written reprimand because he had defied his supervisor after she had counseled him

on many occasions. The basis for the Grievant's written reprimand was as follows: Grievant's failure to make deliveries, that Grievant used his personal automobile to make mail runs after his supervisor had instructed him not to, that Grievant had continued to smoke in prohibited areas, that the Grievant had come in late for work and returned late from lunch, and that the Grievant had refused to remove pictures of pin-ups off the wall behind his desk. The Grievant's supervisor reported that she had discussed the above mentioned problems with Grievant on several occasions.

ARBITRATOR'S OPINION:

The Arbitrator felt that "just cause" existed for disciplinary action due to the numerous problems brought out through testimony. The Arbitrator found that there was no procedural error in taking disciplinary action because for a period of three months the Grievant had been forewarned by his supervisor that certain activities would not be tolerated.

As to the issue of whether the disciplinary action taken was commensurate with the offense, the Arbitrator held that the appropriate action taken should have been a verbal reprimand. Section 24.02 of the contract outlines the principles of progressive discipline. There was no evidence of any prior disciplinary action taken against the Grievant. The offenses in and of themselves constitute a series of non-major offenses. However, when taken in their entirety, these actions by the Grievant need to be addressed in the form of the progressive discipline schedule.

AWARD:

Accordingly, the Grievance is DENIED, however, the written reprimand should be reduced to a verbal reprimand with appropriate notation in the Grievant's file.

TEXT OF THE OPINION:

ARBITRATION

**STATE OF OHIO
DEPARTMENT OF HEALTH**

AND

**OCSEA LOCAL 11
AFSCME, AFL-CIO**

(Grievance of Jeffrey Enberg)

ARBITRATOR:
Andrew J. Love

CASE NO.:
G87-1229

FOR ODH:
Michael J. D'Arcy, Jr.

FOR GRIEVANT:

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DECISION AND AWARD

The issues presented in this proceeding on March 30, 1988, are whether the written reprimand of the Grievant by the Ohio Department of Health (ODH) was without "just cause" and therefore in violation of Section 24.01 of the parties' Collective Bargaining Agreement and, if so, what should the remedy be.

A number of exhibits were offered into evidence and were accepted.

The facts are as follows:

Freya J. McKethen testified that she became Chief of the Division of Management Services, ODH, in December, 1986. Her duties included supervision of the offices of purchasing, telecommunications, graphic arts, printing, and the mail center of ODH. She testified that this latter division or office is responsible for all ODH mail throughout the State, including delivery and receipt of mails. In addition to delivery and receipt of mails, this division is also responsible for delivery and receipt of other supplies.

Ms. McKethen stated that, when she started her position in December, 1986, the mail center operations were very poor in attitude, morale, unreliability, and organization. She stated that she was particularly concerned about preventing unauthorized persons from entering the mail center. She noted that there was a great deal of traffic in the area. In order to make the mail center operate more professionally, Ms. McKethen conducted individualized meetings with all of the employees in the center in late December, 1986. During these meetings, Ms. McKethen discussed with them their respective job descriptions. She also invited each employee to render any ideas that would enable the mail center to operate more professionally.

Ms. McKethen testified that she met with the Grievant, who made suggestions for overall improvement of the mail center's operations. She stated that the Grievant discussed his job duties with her, which included bulk mailing and satellite office runs.

Ms. McKethen stated that she had had problems with the mail supervisor at the time, in that he did not conduct the mail center in a professional manner, e.g. timely breaks, lunch, etc. She stated that she would check the mail center at least two to three times per day on the average to let the employees and the then supervisor know that she expected improvement. Ultimately, she had to discipline the supervisor. She further stated that she had the mail center remodeled so that traffic flow could be stopped. She also obtained uniforms for the employees to wear, and she obtained new machinery and equipment for use in the mail center.

Ms. McKethen testified that the mail/messenger schedule, which was posted (State Exhibit No. 2) indicated times in which the Grievant was responsible for satellite deliveries. Satellite deliveries means the delivery and picking up of mail from satellite offices of ODH. Ms. McKethen stated that these satellite deliveries should only take 1/2 to 3/4 of an hour to do. The Grievant would have additional satellite runs at 2:15 in the afternoon. When the Grievant returned, Ms. McKethen testified his duties included handling the bulk mail.

The witness further testified that Grievant's performance of his duties were "disturbing." She stated that she would receive complaints of mail not received or picked up by or from the Grievant at the various satellite offices. She was asked to review State's Exhibit No. 3, which was log of mail pick up times for the Employee Assistance Plan Office. This log shows that this unit was not getting its mail picked up on certain days. In late January or early February of 1987, Ms. McKethen stated that she invited the Grievant to come to her office to discuss infractions, at which time the

Grievant admitted to those infractions. She stated that the Grievant felt that he was not treated fairly through the reclassification procedure, which changed his job classification from Office Machine Operator to Delivery Worker I. She testified that she encouraged the Grievant to demonstrate his skills and that she would assist him in his career development, including tuition assistance.

Ms. McKethen also mentioned that the Grievant was smoking in no smoking locations and discussed this with him. She also noted that the Grievant, at her invitation, would come in to her office to discuss problems on an average of once per month. She stated that as a result of these conversations, the Grievant's performance would improve for several days and then decline. She cited examples of poor delivery of mail and bad-mouthing other employees as evidence of his decline in job performance.

Ms. McKethen stated that each employee was told what she expected of them in respect to their job duties, and that she advised them of the possible consequences of failure to perform those duties properly. This notification was also presented to the Grievant. On or about March 12, 1987, Ms. McKethen assigned one Harry Heath as the acting mail room supervisor. An Exhibit stating the same was posted.

As the basis for the Grievant's written reprimand, Ms. McKethen cited the Grievant's failure to make deliveries to the Bureau of Alcoholism, the State Office Tower, and the WIC Program office. She was advised by Harry Heath of this problem. She further went on to say that on March 23, 1987, that the Grievant reported to work a half an hour late, however, he wrote the time he was supposed to be at work (8:00 A.M.). Ms. McKethen saw this time sheet. On March 24, 1987, the Grievant was again late for work. Ms. McKethen instructed Mr. Heath to request that the Grievant get a leave slip. The Grievant refused to do so.

On March 25, 1987, the Grievant used his personal automobile to make mail runs. Ms. McKethen had previously admonished the Grievant not to use his personal automobile, because of potential liability to the State of Ohio. She testified that she also advised the Grievant of disciplinary action that could be taken if he continued his activity. In addition to this action the witness testified that the Grievant continued to smoke in the mail center, even though the smoking policy in ODH facilities was prohibited. On March 27, 1987, the Wic mail had not been picked up or delivered in the morning or the afternoon. Mr. Heath observed the Grievant putting the mail back in the mail slots at the center, and he advised the witness of this activity. Also, on March 31, 1987, the Grievant came in late for work and returned from lunch late, as well.

The witness further stated that the Grievant refused to remove pictures of pin-ups off of the wall behind his desk. This was noted in a Memorandum by Mr. Heath dated March 13, 1987.

Ms. McKethen stated that she gave the Grievant a written reprimand because he was defying her after she had counseled him on many occasions. She stated that she had instructed Mr. Heath to counsel the Grievant on previous occasions and was advised by Mr. Heath that this was done.

Jackie Randolph, Administrative Assistance, Maternal Health, ODH, testified that she is a steward for the union and was present at the Step 3 hearing. She stated that the Grievant's time sheets were requested but not received. She also stated that she had seen pictures of semi-nude women in other departments of ODH. (Ms. McKethen was later recalled to testify and said that she would enforce the policy of no semi-nude pictures being posted in those areas for which she was responsible, regardless of what other administrators in their respective divisions did.)

The Grievant testified that he has been a Delivery Worker I for approximately one year prior to receiving a written reprimand. Previously he was an Office Machine Operator.

The Grievant stated that the mail/messenger scheduled identified as State's Exhibit No. 2 was not his schedule. He stated that Charles McCoy was assigned to do all outside runs.

The Grievant said that Ms. McKethen only asked for his suggestions. He denied any other

meetings or contacts with Ms. McKethen. He further stated that it was not until March 24, 1987 when Ms. McKethen said anything about disciplinary action.

As to late arrivals to work, the Grievant stated that the previous supervisor had always said not to worry about it.

Regarding satellite runs, the Grievant testified that he was only doing them for Charles McCoy, who was absent on a particular day. When the Grievant could not complete the satellite office runs, he would bring the mail back to the mail center for next day delivery. He also indicated that he had been given approval to use his personal car on some satellite runs.

The Grievant stated that he respectfully refused to follow certain orders from Mr. Heath, the acting supervisor, to remove his pin-up pictures on both March 13, 1987 and March 24, 1987, because he was uncertain that Mr. Heath was the acting supervisor. (It should be noted, however, that the Grievant acknowledged that Mr. Heath was the acting supervisor beginning on March 12, 1987. See the Step 3 Recommendation.)

A determination whether "just cause" exists rests heavily with the credibility of two individuals: the Grievant and Freya McKethen. This Arbitrator believes that Ms. McKethen, who became Chief over the mail center in December, 1986, was appalled at the condition and the professionalism of the mail center. This Arbitrator believes that her testimony was truthful regarding the steps that she took to bring the mail center and the work product of its employees to an acceptable standard of decorum and professionalism. Furthermore, all employees, including the Grievant, were aware that things in the mail center would not be done as business as usual. Changes were to be made. Each employee, including the Grievant, was advised of these changes. What the evidence has revealed is that, not one, but many incidents involving the Grievant had occurred during Ms. McKethen's tenure as Chief. Just one of the incidents demonstrates that the Grievant was insubordinate to the immediate supervisor, Mr. Heath, when he "respectfully" refused to remove pin-ups in his work area and off of the bulletin board in the mail room in general. This Arbitrator feels that the problems are greater than the one incident that clearly proves that "just cause" existed for disciplinary action to be taken. It is the opinion of this Arbitrator that the Grievant had not yet recovered from his disappointment of his job reclassification to Delivery Worker I. He persisted in being late to work, ignoring or outright refusing to accept the directions of his immediate supervisor, and continuing to use his personal car even though he was advised not to do it, and not fulfilling job responsibilities in respect to mail delivery and pick up. Even if the Grievant were to be believed that Mr. McCoy was responsible for satellite deliveries, when Grievant did make those particular deliveries, he was not carrying out those tasks. In sum, the Chief of the mail center and the acting (and later) supervisor have made changes for the improvement of the functioning of the mail center. It is incumbent upon each employee to elevate his or her standards to meet those needs. Furthermore, none of the things that were acted upon by the Chief or the supervisor violated the Grievant's job duties and assignments.

Nor did the Grievant suffer disparate treatment in respect to the removal of the pin-up pictures or smoking. As stated earlier, Ms. McKethen stated that she would carry out the policies as they related to her areas of responsibility irrespective of the actions of Chiefs in other divisions. It was the responsibility of the Grievant not to smoke in the mail room and not to have certain unacceptable pictures posted in the vicinity of the mail room.

In addition, this Arbitrator finds that there was no procedural error in taking disciplinary action for the reason that for a period of three months the Grievant had been forewarned by Ms. McKethen and by Mr. Heath that certain activities would not be tolerated.

Turning to the issue of whether the disciplinary action taken was commensurate with the offense, this Arbitrator determines that the appropriate action taken to be a verbal reprimand. Section 24.02 outlines the principles of progressive discipline. There was no evidence of any prior

disciplinary action taken against the Grievant. The offense or offenses in and of themselves constitute a series of non major offenses. However, when taken in their entirety, these actions by the Grievant need to be addressed in the form of the progressive discipline schedule.

Accordingly, the Grievance is DENIED; however, the written reprimand should be reduced to a verbal reprimand with appropriate notation in the Grievant's file.

ANDREW J. LOVE, Arbitrator