

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between: *

FRANKLIN COUNTY SHERIFF'S *
OFFICE *

-and- *

IBCO/NAGE, LOCAL 1-045 *

ARB-13-2859

Arbitrator:

Timothy Hatfield, Esq.

Appearances:

Kevin J. Sullivan, Esq. - Representing Franklin County Sheriff's Office

Michael P. Clancy, Esq. - Representing IBCO/NAGE, Local 1-045

The parties received a full opportunity to present testimony, exhibits and arguments, and to examine and cross-examine witnesses at a hearing. I have considered the issues, and, having studied and weighed the evidence presented, conclude as follows:

AWARD

The FCSO had just cause to issue a written reprimand to Ms. Wardwell on April 4, 2013 and had just cause to terminate Ms. Wardwell on April 24, 2013. The grievance is denied.

Timothy Hatfield, Esq.
Arbitrator
March 5, 2015

INTRODUCTION

On May 28, 2013, IBCO/NAGE (Union) filed a unilateral petition for Arbitration.¹ Under the provisions of M.G.L. Chapter 23, Section 9P, the Department of Labor Relations (Department) appointed Timothy Hatfield Esq. to act as a single neutral arbitrator with the full power of the Department. The undersigned Arbitrator conducted a hearing at the Department's Springfield office on January 9, 2014.

The parties filed briefs on February 25, 2014.

THE ISSUE

- (1) Was there Just Cause to issue a written reprimand to Ms. Wardwell on April 4, 2013?
- (2) Was there Just Cause to terminate Ms. Wardwell on April 24, 2013?
- (3) If not what shall be the remedy?

RELEVANT CONTRACT LANGUAGE

The parties' Collective Bargaining Agreement (Agreement) contains the following pertinent provisions:

Article 9 – Discipline and Discharge (In Part)

The Employer has the right to discipline and discharge employees for just cause. ...

Article 15 – Management Rights (In Part)

The Management of the Office of the Sheriff and the direction of the working force, including the right to plan, direct and control operation; to schedule and assign work to employees; to determine the means, methods, processes, materials and schedules, pertaining to the overall

¹ The instant arbitration is before the DLR under an agreement by the parties.

operation of the facility; to establish standards and to maintain the efficiency of employees; to establish and require employees to oversee departmental rules and regulations; to hire promote, transfer, upgrade, classify, re-classify, lay off, or relieve employees from duties and to maintain order and to suspend, demote, discipline and discharge employees for just cause, and the recognized and reserved rights of the Sheriff.

FACTS

The Franklin County Sheriff's Office (FCSO) and the Union are parties to a successor collective bargaining agreement that was in effect at all relevant times to this arbitration.

The FCSO initially hired the grievant, Kate Wardwell (Wardwell) as a receptionist in October 1995. In October 1999, Wardwell was promoted to caseworker. In September 2003, the FCSO transferred her to the position of Job Development/Life Skills Coordinator at the Community Correction Center, a program for individuals on probation. In January 2007, Wardwell became the Site Manager at the Community Correction Center.

In November 2011, Sheriff Chris Donelan (Sheriff Donelan) closed the Community Correction Center and offered Wardwell the position of Re-Entry Manager at the Kimball House, a facility for inmates transitioning back into the community. During Wardwell's time at Kimball House, the facility was being renovated by among others, inmate workers. Security was of utmost importance, including key control and tool control. Wardwell met with Assistant Superintendent Lori Streeter (Assistant Superintendent Streeter) multiple times per week during her time at Kimball House. They discussed many issues, including on-going breaches of security by Wardwell concerning key control, tool control and the locking of unattended office doors. In July 2012, Wardwell

received a verbal warning from Captain Jason Kilgour (Captain Kilgour) after Captain Kilgour witnessed an inmate unlocking a storage facility with Wardwell's keys. Later in July 2012, due to continued security concerns, the FCSO demoted Wardwell to caseworker for Pod D inside the Franklin County Jail (Jail). During Wardwell's transition into the caseworker position inside the Jail, she was instructed to collect her personal belongings to bring to her new office. Wardwell was counseled that she was entering a secure facility and that she could not bring in items that would present a security issue. Wardwell said she understood, but upon inspection of her belongings a steak knife was found. Wardwell's explanation was that she needed it to cut her sandwich that she brings from home.

In 2012, the FCSO was awarded a grant to establish the Transition from Jail to Community Program (TJC). The goal of the program is to reduce the risk of inmates reoffending and to insure community safety. The role of the case manager under the TJC program is defined as: (1) assess inmate risk; (2) transition and guide inmates; and (3) implement treatment plans and provide adequate education to inmates. The TJC model calls for intensive, interaction and counseling with all inmates, including those who have behaved badly or who have dangerous pasts. Case managers, including Wardwell, were subjected to an intensive training course, and forty hours of yearly mandatory training including reviews of safety procedures, security protocols and the proper filing of reports.

On April 4, 2013, Wardwell received a written reprimand for her conduct during an April 2, 2013 meeting that Sheriff Donelan attended. During a discussion of long and short term goals, Wardwell stated that her short term goal was to “get through the day without being critical or sarcastic with the people I meet with.” Superintendent David Lanoie (Superintendent Lanoie), in his written reprimand, stated: “it is clearly not within the vision or expectation of the Sheriff for a case manager to make a statement such as this to people you are here to serve. It is in fact unprofessional and uncalled for.” Additionally, Wardwell was put on notice that a recent case entry claiming that she was “suckered in” was inappropriate and “runs contrary to the content and vision expressed in the several and ongoing training sessions that have been offered and attended by you in recent months.”

Later in April 2013, following a case management review by Wardwell's supervisors, FCSO determined that Wardwell had failed to properly assess the potential risk of an inmate who had served a twelve-year sentence in Michigan for a felony. Wardwell failed to obtain police records necessary to verify the inmate's past and breached procedure by relying on the inmate's verbal testimony regarding the prior offense. Following the discovery of Wardwell's failure to properly assess the inmate, the FCSO conducted an investigation into Wardwell's complete personnel record and job performance. On April 24, 2013, the FCSO terminated Wardwell. Superintendent Lanoie summarized the decision by stating:

Since November of 2011, you have been given the opportunity of continued employment at the FCSO as a Re-Entry Manager and

case manager. In both instances, you have failed to conform to expectations set forth by management. Additionally, as evidenced by the foregoing, you have failed to adequately perform the duties of either position despite ongoing counseling from members of administration and numerous opportunities for training.

The Union filed a grievance on Wardwell's behalf that was denied at all levels by the Employer and has resulted in the instant Arbitration.

POSITIONS OF THE PARTIES

THE EMPLOYER

April 4, 2013 Written Reprimand

The FCSO had just cause to issue a written reprimand on April 4, 2013. Testimony showed that upon becoming sheriff, Sheriff Donelan demanded accountability from his employees and that they properly supervise and assess the inmates. The goal of the FCSO and the TJC program was to rehabilitate inmates and make them much less likely to reoffend. It is clear from the beginning of her return to case management that Wardwell had issues with this philosophy.

The FCSO provided extensive and comprehensive training to employees, especially case managers. Training included security protocol, inmate assessment and proper tracking and reporting of inmate activity. Wardwell attended these trainings and logged over forty hours of training per year.

Despite the training, Wardwell continued to struggle with the structure of the program. The written warning is evidence of Wardwell's refusal to adapt to the program. Despite being properly trained and having superiors such as Assistant Superintendent Streeter address problems with her attitude, Wardwell

felt it necessary to continue to make public comments about her role as a case manager. When asked in a group meeting attended by Sheriff Donelan to express her short term goal, Wardwell stated her goal as “get through the day without being critical or sarcastic with the people I meet.” The comment was uncalled for and unprofessional. Additionally, Wardwell also used the term “suckered in” in a file entry while referring to a particular interaction with an inmate. This phraseology runs contrary to the content and vision expressed in the ongoing training sessions that she had received.

Wardwell’s continued insubordination and refusal to abide by the training and goals of the FCSO run contrary to the role of case manager. As such Wardwell had violated the collective bargaining agreement, and a written reprimand was appropriate and just.

April 24, 2013 Termination

Wardwell was a long time employee of the FCSO. Due to this fact, in lieu of termination, Sheriff Donelan transferred her on two previous occasions to positions that he hoped would be more suited to her abilities. Wardwell was the Site Manager for the Community Corrections Center when Sheriff Donelan assumed office. The Community Corrections Program was not operating effectively, and there was no accountability within the program. Sheriff Donelan closed the Community Corrections Center. Wardwell was one of only two individuals to be offered continued employment. Wardwell became the Re-Entry Manager at the Kimball House.

At the Kimball House, Wardwell exhibited an extraordinary lack of understanding as to the security measures required of her position. Despite weekly and sometimes almost daily meetings with her supervisors, Wardwell continuously failed to abide by the FCSO's policies. Tool control, key security and oversight of prisoners were constant concerns. It became clear quickly that Wardwell was not the proper individual to be Manger of Kimball House.

Sheriff Donelan opted to retain Wardwell and offered her the position of Case Manager in Pod D in the Jail's medium security section. Wardwell's transfer to the Jail in Pod D required her to pack her belongings and transfer them to her new office. As an example of Wardwell failing to follow security protocol a steak knife was found during a customary inspection of her belongings. Wardwell continued to exhibit her lack of understanding of the security protocols when she stated that she need the knife to cut her sandwich.

Under the new TJC program, the position of case manager became integral to the success of the program. Proper assessment of the inmate and completion of the appropriate forms triggers programming and hopefully rehabilitation of the inmate. Based on this assessment, an inmate would be assigned to education classes and hopefully the risk to reoffend or pose a threat to the community upon release would be reduced. The program requires an intensive interview between inmate and case manager. The case manager has to verify the information gained in this interview. This verification should have been the primary concern of Wardwell given her prior admission of having been "suckered in" by inmates in the past.

The issue which led to Wardwell's termination began in February 2013 with the Level of Risk report for inmate T.M. Wardwell accepted the inmate's story about the circumstances of his prior felony conviction and the programming that he completed while previously incarcerated. Pursuant to TJC guidelines, the classification of "high risk" to reoffend should have triggered extensive follow up and analysis. Wardwell could have verified the inmate's story by simply acquiring an out of state police report and by making a phone call to the Massachusetts Sex Offender Registry Board. Wardwell failed to follow the protocol and took the easy way out by believing the inmate's story. Furthermore, due to a continued belief that her personal system was superior to the TJC model, Wardwell allowed the inmate to control his own treatment. The consequences of Wardwell's actions were that a serious sex offender avoided treatment and participation in education classes in the most intensive treatment pod in the Jail. More importantly, an inmate with a high risk of reoffending was to be released back into the Franklin County community without proper assessment or treatment.

Upon an analysis of the inmate's file and after a consultation with Wardwell, the FCSO conducted a thorough investigation as required by the collective bargaining agreement and internal policies. Wardwell's entire employment history was taken into account when making the determination to terminate her employment. As stated in the termination letter, Wardwell has failed to adequately perform the duties of either of her positions despite ongoing counseling from members of the administration and numerous opportunities for

training. Pursuant to Article 9 of the collective bargaining agreement, Wardwell was appropriately terminated for just cause on April 24, 2013.

Conclusion

The FCSO had just cause to issue Wardwell a written reprimand on April 4, 2013, and just cause to terminate her on April 24, 2013. The grievance must be denied.

THE UNION

Wardwell began her career with the FCSO in 1995 as a receptionist. In 1999, she was promoted to the position of case manager, before being promoted again to the position of Manager of the Community Corrections Center. In 2011 after the closure of the Community Corrections Center, Wardwell worked as the Manager of the Kimball House, a residential re-entry program on the FCSO campus. In July 2012, Wardwell was demoted to the position of case worker in Pod D, inside the secured facility.

After over seventeen years as a dedicated employee of the FCSO, Wardwell received two instances of formal discipline. She received a written warning on April 4, 2013, and was terminated on April 24, 2013.

April 4, 2013 Warning

The written warning given to Wardwell is the result of her giving an example of what she might say for a goal for the day, in an attempt to get the group discussion started. The notation on the intake form, including her description that she was “suckered in” by an inmate’s false story is nothing more than use of a common vernacular or shop talk. That phraseology is hardly a

clear violation of any established and evenly enforced work rule or regulation. The Employer has no list of words which are off limits. This is not a case of fighting words being used or particularly offensive language being used in any fashion. Surely once the note was found, the employer changed the text to something that was personally acceptable to the editor. There is no basis for discipline under these circumstances.

April 24, 2013 Termination

In a nutshell, Wardwell was terminated because she did not obtain a twelve-year old police report from Michigan along with treatment records from the Michigan Department of Corrections to corroborate an inmate's story. The Employer attempts to spin the facts of the case to give the appearance that Wardwell believed the inmate's story, but the opposite is true. Wardwell doubted the truth of his story and indicated that he was high risk. Wardwell did not believe his story but did not know how to obtain the documentation to disprove the plausible, but unlikely, explanation offered by the inmate.

With the implementation of the TJC concept starting in August 2012, the function of the case manager expanded dramatically. Wardwell did not believe the inmate's story, but was not aware of how to obtain the materials which were up to twelve-years old and from Michigan. She, like all involved, was on a learning curve. Even former Assistant Superintendent Candace Angier (Assistant Superintendent Angier), who was brought in to implement the TJC program learned things she did not know as a result of this inmate's actions. Wardwell did not have the same experience of working with the Parole Board and was not

aware of the types of records, which are kept by the Sex Offender Registry Board. Why then was Wardwell fired when it is clear that even Assistant Superintendent Angier was not fully prepared to quickly gather the Michigan records and it took weeks of trial and error before the Michigan records were produced?

Another possible motive for the termination in this case was that the FCSO wanted to include a Correctional Caseworker in the Unit Management Team configuration but funds were tight. There were no Correctional Caseworkers, until three caseworkers, including Wardwell, were separated from employment. No unsworn caseworker has been replaced.

It is clear that the FCSO is inflating events in an attempt to justify the termination of Wardwell. If the FCSO wanted to impose discipline regarding the steak knife incident in August 2012, it could have. No action was taken. Nor was there any evidence that inmates were ever near tools without authorization regardless of the testimony about tool counts by the Employer. Wardwell was never aware that some of the instances cited by the Employer relative to security were ever considered disciplinary in nature.

Conclusion

The disciplinary actions in this case are not warranted and do not support just cause. The remedy is to return Wardwell to her position as a case manager and make her whole in all aspects.

OPINION

The issues before me are:

- (1) Was there just cause to issue a written reprimand to Ms. Wardwell on April 4, 2013?
- (2) Was there just cause to terminate Ms. Wardwell on April 24, 2013?
- (3) If not what shall be the remedy?

For all the reasons stated below, there was just cause to issue a written reprimand to Ms. Wardwell on April 4, 2013 and there was just cause to terminate Ms. Wardwell on April 24, 2013. The grievance is denied.

April 4, 2013 Written Reprimand

Wardwell does not deny making the statement attributed to her in the written reprimand. The Union attempts to characterize the statement as an example of what she would say to get a group discussion started. The evidence on the record, however, shows that this was not the first instance of Wardwell being counseled by members of the administration for inappropriate comments alluding to her frustration with her case manager position. Additionally, there is no dispute that she used the term “suckered in” on an intake form.

Written reprimands are more formal than a verbal reprimand, but less disruptive than a suspension. They are intended to place individuals on notice about a specific situation and/or action and are meant to allow for correction by the recipient. Absent some mitigating factors that call into question the appropriateness of the reprimand, I am disinclined to overturn the employer's judgment. Here, the record before me provides no evidence that this written reprimand was inappropriate. Wardwell has admitted to making the statement

attributed to her at the meeting and using the term “suckered in” on the intake form. The FCSO response, in the form of a written reprimand, is an appropriate response and is supported by just cause.

April 24, 2013 Termination

The Union, in its post-hearing brief, claims that Wardwell was terminated for her failure to obtain a twelve-year old police report. While the incident surrounding inmate T.M. was the final incident that led to Wardwell’s termination, it is inaccurate to claim that it was the sole reason for her termination.

Between November 2011 and her termination in April 2013, Wardwell had been in two different job titles, while the FCSO attempted to find a job placement that would suit her skills and the FCSO’s needs. The record shows that Sheriff Donelan, unhappy with the performance of the Community Correction Center, decided to close the program. Yet instead of laying off Wardwell, the Sheriff gave her another opportunity as Manager of the Kimball House. During her time as the Manager at the Kimball House, it quickly became apparent that Wardwell was not the appropriate individual to run that program. Multiple administrators met with Wardwell on various occasions to guide and counsel her on the importance of security control for keys, tools, and office doors, yet her continued indifferent approach to security and protocol forced the FCSO to issue a formal reprimand after she allowed an inmate to use her keys to open a storage shed. This key ring contained keys to other areas of the complex. When Wardwell granted inmate access to this key ring, she violated FCSO security policies.

Shortly thereafter, the decision was made to remove Wardwell as Kimball House Manager.

Yet again, the FCSO decided to find another job for Wardwell instead of separating her from employment. Wardwell was offered the position of case manager in Pod D inside the Jail. This change in job title and location resulted in another security incident. Despite being counseled that she would be moving her personal items into a secure facility and should remove any inappropriate items, Wardwell was found to have a steak knife in her personal belongings. Wardwell's only explanation was that she needed the knife to cut her sandwich at lunch. This incident showed Wardwell's apparent disinterest in proper security protocols necessary in a secure facility such as the FCSO.

Even with this continued misstep, Wardwell was allowed to continue her employment and became a case manager for Pod D. It is here that the final incident with the inmate T.M. unfolded. Wardwell was responsible for interviewing the inmate in connection with the TJC program and evaluating his needs as it relates to programming and educational opportunities to hopefully lower his risk of recidivism. The inmate, in an effort to explain his prior incarceration in Michigan, told a story to Wardwell that was inaccurate and glossed over the violent nature of his prior crime in an attempt to avoid further treatment and educational classes. The FCSO claims that Wardwell simply believed his story and did not investigate the matter further. The Union claims that Wardwell did not believe the inmate's story but did not know how to retrieve the twelve-year old police report from Michigan. Whether Wardwell ultimately

believed the inmate's story or not, the record is clear that she did not properly follow up and obtain the proper documentation of his story or the proper evidence of his untruthfulness. Even if one believes Wardwell's explanation that she did not know how to obtain the proper paperwork, the record is devoid of any evidence that Wardwell properly alerted her supervisors of the potential problem until after they began to investigate the matter. In the end, I need not reach the conclusion about whether Wardwell simply took the inmate's word or didn't know how to obtain the needed paperwork and failed to inform her supervisors. Either scenario in combination with her entire work performance supports the conclusion that the FCSO had just cause to terminate her employment.

The record before me shows that the FCSO made multiple attempts via continued counseling by administrators and ultimately two different job opportunities to keep Wardwell employed. Unfortunately, Wardwell's actions or lack thereof in the T.M. matter combined with her poor work performance both as the Kimball House Manager and as a case manager in Pod D support the FCSO decision to terminate her employment.

AWARD

The FCSO had just cause to issue a written reprimand to Ms. Wardwell on April 4, 2013 and had just cause to terminate Ms. Wardwell on April 24, 2013. The grievance is denied.

Timothy Hatfield, Esq.
Arbitrator
March 5, 2015