

BEFORE THE ARBITRATOR

In the Matter of a Dispute Between
WAUKESHA SCHOOL DISTRICT
and
AFSCME LOCAL 2485

Case 190
No. 72121
MA-15239

AWARD NO. 7886

Appearances:

Mr. Mark Olson, Buelow Vetter Buikema Olson & Vliet LLC, 20855 Watertown Road, Suite 200, Waukesha, Wisconsin, appearing on behalf of the Waukesha School District.

Mr. Aaron Halstead, Hawks Quindel, S.C., 222 W. Washington Avenue, Suite 450, Madison, Wisconsin, appearing on behalf of AFSCME Local 2485.

ARBITRATION AWARD

On May 28, 2013, AFSCME Local 2485 and the Waukesha School District filed a request with the Wisconsin Employment Relations Commission, seeking to have the Commission appoint William C. Houlihan, a member of its staff, to hear and decide a dispute pending between the parties. A hearing was conducted on August 1, 2013, in Waukesha, Wisconsin. A record of the proceedings was taken and distributed on August 14, 2013. Post-hearing briefs and reply briefs were filed and exchanged by November 25, 2013.

This Award addresses the discharge of Keith Jamieson.

BACKGROUND AND FACTS

Keith Jamieson, the grievant, has been employed by the Waukesha School District as a maintenance worker since hired in November of 1986. In August of 1994, Jamieson

successfully posted into the position of Maintenance Worker-Service Building, which includes the assignment as locksmith to the District. As locksmith, the grievant has a responsibility for District property security, which provided him access to all District buildings. Jamieson created keys and access codes for all employees which permitted employees access to District facilities. Among the security devices utilized by the District were cameras positioned to survey District property. Jamieson was responsible for the maintenance and repair of those cameras.

Jamieson was the President of Local 2485 of the American Federation of State County and Municipal Employees, the Union which represented the maintenance and custodial employees of the District.

Jamieson was terminated on December 27, 2012. His termination letter indicated the reasons for termination to be: "The reasons for your termination are tampering with security equipment and not being truthful in the investigation."

The events giving rise to the termination occurred on December 18, 2012. The District maintains a warehouse in which it stores old equipment and technology prior to it being sold or recycled. In 2012, the District was in the process of upgrading its infrastructure for technology. It was making all of its buildings wireless. As a consequence, a good deal of equipment was being replaced. Switches, routers, wiring, and behind the scenes pieces were being replaced. The old equipment was being stored in the District warehouse. The stored equipment had a monetary value. Switches were deemed to be worth between \$100 to \$300. Warehouse security consisted of locks on the door and a camera which was installed inside the warehouse and positioned to monitor traffic and the inventory. The camera had been installed three to four years prior to December 2012. Prior to December 15, 2012, the camera provided a live feed but was not programmed to record.

It appears that on numerous occasions the camera was manipulated in such a way that it pointed away from the intended sweep and, rather, was pointed toward the wall. The effect of so turning the camera was to eliminate its security value. When faced toward the wall, the camera could no longer film the foot traffic nor could it survey the stored equipment. It was the testimony of Lauri Clifton, Director of Business Services, that she had received reports, on numerous occasions, that the camera had been relocated. Glen Norder, Director of Facilities and Jamieson's supervisor, testified that he had reports of the camera being moved that traced back well over six months. James Eppers, Custodial Foreman, testified that he noticed that the camera had been turned a couple of dozen times. He indicated that he had brought that to Norder's attention dating back to the first time he noticed it in 2010.

At some point, Norder became concerned that theft was occurring. On December 15, 2012, he had the surveillance camera programmed to record. Additionally, a second camera was installed. The second camera was placed just above the first camera, and trained on the first camera.

On December 18, 2012, the first camera recorded Jamieson entering the warehouse and then moving outside the camera range. It subsequently recorded Jamieson leaving the building with either two keyboards or with a keyboard and a network switch. The second camera showed Jamieson re-entering the building and, using a broom, push the first camera so that it faced the wall.

On December 20, 2012, Chris Hedstrom, Assistant Superintendent for Human Resources, convened a meeting to address the warehouse matter. The meeting included Hedstrom, Lauri Clifton, Jamieson, and Steve Wiley, who was present as Jamieson's union representative. Hedstrom indicated that there were technology items missing from the warehouse. Jamieson advised that he takes parts to refurbish computers at the service building. He further indicated that he had always done so. When asked who told him he could do so, he replied that any boss who has been down there, and named Glen Norder specifically. He offered that he had recently taken two keyboards.

Hedstrom asked him if he was aware of the security camera, and that it is always turned toward the wall. She asked if he tampers with the camera or is aware of anyone tampering with the camera. He replied that he repairs the cameras and does not tamper with them. He was asked again if he turned the security camera and said, "My recollection ... no, I don't do that" Later in the discussion, Jamieson indicated that another employee came into the warehouse after he left. After viewing the first tape, which showed the camera being moved with a broom, Jamieson indicated: "It wasn't me. I didn't move the camera."

Jamieson did not admit to moving the camera until he was shown the tape from the second camera, which recorded him moving the camera. When confronted with the tape, Jamieson reacted that he was being retaliated against.

On December 27, 2012, another meeting was held. Jamieson provided a written statement and was subsequently terminated. In the written statement, Jamieson indicated that he had Norder's permission to repair certain computers and to take equipment from the surplus. He further explained why he had denied moving the camera; "When you work in an environment of harassment, intimidation, retaliation and favoritism, you become very frustrated. The cameras were put in to spy on employees that are not the problem. I do regret not admitting to the fact that I had moved the camera but when you are harassed, intimidated and trying to do your job and taking pride in your job, I panicked thinking I was being set up."

In November 2012, Jamieson requested that Rick Badger, Executive Director of AFSCME Council 40, arrange for a meeting with the Superintendent of Waukesha Schools, Todd Gray, relative to concerns Jamieson had about nepotism, potential contracting out of work and the status of the contract, and Jamieson's relationship with certain managers of the District. Jamieson and Gray met on November 30, 2012, and discussed the matters of concern to Jamieson. Both Badger and Gray felt the meeting was positive and successful. Gray

understood the nepotism concerns, which pertained to Norder, to have been resolved. Gray scheduled a follow-up meeting with Jamieson to continue the discussion on contracting out. Jamieson's retaliation remark in December was a reference to the subject(s) of the November meeting.

Jamieson testified that he set up computers in the service area for custodial employees to receive email. He indicated that he set up and maintained six computers for the maintenance staff to share. He indicated that he had supervisory approval from a series of managers to build and maintain the computers. He indicated that he used computers and parts that he took from the warehouse where discarded equipment was stored. Jamieson testified that he periodically took repair parts from the warehouse with the full knowledge and blessing of supervisors.

James Eppers testified that he observed Jamieson frequently removing equipment from the warehouse. Eppers went to Norder to suggest putting up a sign that would stop people from taking the stuff. The following sign was posted:

SCHOOL DISTRICT OF WAUKESHA

NOTICE

School District Equipment that has been set up for disposal is still the property of the School District of Waukesha. Equipment for disposal may only be removed by the Disposal Company employed by the District. Removal of this equipment is considered theft unless permission has been granted by the Director of Technology or the Director of Facilities.

Eppers testified that he observed Jamieson take equipment from the warehouse 20 to 24 times over the years, both before and after the sign went up.

Luke Day, who is an information systems analyst, testified that he never gave Jamieson, or anyone else, permission to take equipment from the warehouse. Lauri Clifton testified to a conversation with Jamieson in January 2011. According to Clifton, Jamieson indicated that in the past he had taken equipment and donated it to nonprofit organizations. She indicated that she informed him that that was a violation of policy and that that was not something we should be doing. Steven Schlomann, Chief Information Officer for the District, testified that he never gave anyone authorization to take equipment from the warehouse. Norder testified that he never gave Jamieson permission to remove equipment from the warehouse.

In determining to terminate Jamieson, the District reviewed his personnel file and considered a number of entries to be relevant to the level of discipline. On December 5, 1990, eight District employees were given a memo which directed them not to use District facilities

or equipment for personal gain. On June 3, 1993, Jamieson was given a 15-day suspension for removal of property from the service building. The conduct was described as “in flagrant violation of district rules for removal of property.”

In March of 2000, Jamieson and another employee were given a warning when pictures of scantily clad women were found in the workplace. On February 24, 2010, Jamieson was given a two-day suspension without pay for taking and hiding another employee’s coat where the coat remained until retrieved by Glen Norder two days later. The employee believed the coat to be stolen and called the police. A police investigation followed. The two-day suspension was grieved and the matter was settled. The suspension was reduced to a one-day suspension as of December 1, 2012. It would have been further reduced to a written reprimand as of December 1, 2014.

After Jamieson was terminated, the District made inquiry into the police investigation that occurred following the 2010 coat incident.

Jamieson was given a letter of expectations on November 2, 2011. The letter addressed the fact that Jamieson had changed his computer password as he left on vacation. Another employee called Jamieson to ask for his password to access the computer. Jamieson advised his coworker that if he wanted the password he needed to have Norder authorize overtime for the two call-in events. Jamieson received four hours pay at time and one half.

ISSUE

The District regards the issue to be:

Did the School District have proper cause to terminate the employment of Grievant Keith Jamieson on December 27, 2012, following the School District’s investigation of Mr. Jamieson’s conduct on December 18, 2012, and following the School District’s review of Mr. Jamieson’s employment record as an employee of the School District?

The Union regards the issue to be:

Did the District violate the 2010-2013 collective bargaining agreement by terminating Grievant Keith Jamieson on December 27, 2012, and, if so, what is the proper remedy?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE 1 – MANAGEMENT RIGHTS RESERVED

1.01 Rights. Unless otherwise herein provided, the management of the workforce and the direction of the working forces, including the right to hire, promote, demote or discipline, or otherwise discharge for proper cause, and the right to relieve employees from duty because of lack of work or other legitimate reason is vested in the Employer. Effective February 1, 1984, the District shall have the right to subcontract second shift cleaning at Butler Middle School for the term of the labor Agreement. The employees laid off as a result of this section shall be subject to the layoff and recall provision of the contract.

1.02 Employer Action. If any action taken by the Employer is proven not to be justified, the employee shall receive all wages and benefits due him / her for such period of time involved in the matter.

1.03 Rules. The Employer may adopt reasonable rules and amend same from time to time.

DISCUSSION

Turning the camera was a serious matter. The grievant is the District locksmith, a job he sought out and bid into. In this role, he has been given broad access to the District's security system. It is the essence of his job to issue the keys and codes that controlled access to the District's facilities. As he noted, it was his job to maintain and repair the surveillance camera he moved.

There is no dispute that the camera matter is serious. It forms a central basis for the District's decision to discharge. The Union regards the discharge as too severe and argues that a 30-day suspension would be more appropriate. A 30-day suspension is a significant disciplinary measure. A good deal of the argument in this proceeding has centered on whether or not there has been progressive discipline. A 30-day suspension would be an extraordinary step in a progressive process, where a 3-day suspension is more the norm.

The security guy disarmed the security system. The Union recognizes the seriousness of this.

The District has lost confidence in the grievant, so much so as to terminate him. The question for me is whether the District has overreached and / or whether the degree of discipline is unfair or unjust to the grievant.

When questioned, the grievant denied that he had turned the camera three times. The Union argues that, since the District knew the answer to the question, the question was not a legitimate inquiry in search of information, but rather an inherently unfair element of the discipline. I am not willing to ignore the three denials. His answers were simply not true. Hedstrom was asked why she had asked the question when she knew the answer. She replied that she wanted to determine his honesty, and that if he said yes, she intended to follow up with the question of why. This is consistent with her preconference notes. It is possible she never asked why he had moved the camera because he denied doing so every time he was asked.

The District claims that the dishonesty flowing from the camera questions is a part of a history of dishonesty. The Union disputes that claim and contends that it is greatly exaggerated.

I don't believe that the December 5, 1990 memo or the March 17, 2000 matter contribute much to this record.

The grievant received a 15 working day suspension for removing District property in June 1993. His actions were described as a "flagrant violation of district rules for the removal of property." He was advised that "... future violations may tend to have a detrimental effect on your future employment" There are no details of this event in the record. On its face, it appears to be a very significant discipline, involving the removal of District property. It does not bespeak innocent behavior. If this was an innocent misunderstanding, it would not appear to support such a large suspension. It did occur 19 years prior to the incident leading to the discharge. The grievant was awarded the locksmith job in August 1994.

In February 2010, the grievant was disciplined for hiding another employee's coat. It is unclear what motivated the grievant to hide the coat and fail to reveal its location for two days. However, the victim of the action regarded his coat as stolen and called the police. The police became involved and an investigation ensued. It does not come across as a benign action. The District retrieved the police records after the grievant was discharged. The content of those records was not available to the District at the time of discharge and therefore played no role in the decision to discharge. They should not influence the review of that decision.

The grievant was not disciplined for changing his password before he left on vacation and then demanding overtime to share the new password with coworkers. The incident is not a part of any progressive discipline. It does reflect the grievant's view of his relationship with his employer.

At hearing and in the investigatory interview, the grievant was asked who authorized him to take equipment from the warehouse. It appears that there was a time when the practice of removing such equipment was allowed. The grievant testified that a former District IT Technician, no longer with the District, helped him remove and set up six desktop computers that maintenance employees used to retrieve emails. He testified that the equipment was old and needed to be replaced periodically. In his testimony, he mentioned Luke Day, an IT Technician, and Norder, as individuals who had approved his taking warehouse equipment for the six desktop computers.

Norder and Day both denied having told Jamieson he could take equipment from the warehouse. Clifton testified that in January 2011 she had a conversation with Jamieson about District equipment. He advised her that in the past they had taken equipment and donated it to nonprofit organizations. She advised him that that was a violation of policy and that that was not something we should be doing.

This is not a theft case. The District does not accuse the grievant of stealing equipment. The grievant testified that he used warehouse parts and equipment to maintain the six computers which provided the email capability of District employees. It appears the practice of allowing that was condoned, if not explicitly authorized.

At hearing, the grievant was asked if he had ever moved the camera before. He replied; "Not that I can remember." From all accounts, it appears that the camera was moved regularly and frequently. Someone(s) was doing that over an extended period of time. I find it hard to believe that someone or some persons, other than Jamieson, were regularly moving that camera for months, and that Jamieson moved the camera for the first time on December 18, just days after the second camera was installed.

The Union points to the grievant's 26 years of service to the District and contends that discharge is too severe given the grievant's service record. The grievant does have a great deal of service with the District. However, he demonstrated significant lapses in judgment during his employment. He turned the camera to disarm the security aspect of the camera. His act in doing so is compounded mightily by the fact that he was the locksmith, charged with maintaining the security system. I do not find credible his testimony that he only turned the camera once.

There is no basis to conclude that the installation of the second camera or the investigation of the grievant and his subsequent discharge was retaliatory. There was a meeting between Badger and Gray on November 30, 2012. They talked about the items brought forward by Jamieson. By both accounts the meeting went well. Gray believed the nepotism matter had been resolved before the meeting. Badger believed that he had brought the matter to Gray's attention. Gray indicated that he had a follow-up meeting with Jamieson to work on building a solid relationship to convince the Board that there was no need to contract out

positions. The camera was set up two weeks later. It is unclear to me how that should be regarded as retaliatory toward Jamieson.

In conclusion I think turning the camera is a serious matter. It does not stand in isolation. I am not comfortable overturning the District's judgment as to the appropriate discipline under the circumstances.

AWARD

The grievance is denied.

Dated at Madison, Wisconsin, this 20th day of March 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

William C. Houlihan, Arbitrator