

**IN THE MATTER OF ARBITRATION BETWEEN**

<b>AFSCME, COUNCIL 5</b>	)	<b>ARBITRATION</b>
	)	<b>AWARD</b>
	)	
	)	
<b>and</b>	)	<b>STRAND DISCHARGE</b>
	)	<b>GRIEVANCE</b>
	)	
<b>STATE OF MINNESOTA</b>	)	<b>BMS Case No. 07PA0089</b>

Arbitrator: Stephen F. Befort

Hearing Date: October 26, 2006

Date of decision: November 28, 2006

**APPEARANCES**

For the Union: John Westmoreland

For the Employer: Carolyn Trevis

**INTRODUCTION**

The American Federation of State, County, and Municipal Employees, Council 5 (Union) brings this grievance as exclusive representative claiming that the State of Minnesota (Employer) violated the parties' collective bargaining agreement by discharging Zachary Strand without just cause. The grievance proceeded to an arbitration hearing at which the parties were afforded the opportunity to present evidence through the testimony of witnesses and the introduction of exhibits. The parties decided not to submit post-hearing briefs.

## ISSUES

1. Did the Employer discharge the grievant for just cause?
2. If not, what is the appropriate remedy?

## RELEVANT CONTRACT LANGUAGE

### ARTICLE 16 - DISCIPLINE AND DISCHARGE

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**Section 5. Discharge.** The Appointing Authority shall not discharge any permanent employee without just cause. . . .

## FACTUAL BACKGROUND

The focal point of this grievance is Zachary Strand's application for a LPN position at the Fergus Falls Regional Treatment Center (FFRTC). The FFRTC is a State of Minnesota facility that provides health care and rehabilitation services to individuals with serious mental health and chemical dependency problems. The FFRTC is one of several regional treatment centers operated by the State throughout Minnesota.

During the summer of 2004, the Employer posted a vacant LPN position at the FFRTC on the Resume Builder web cite. The Employer uses this web cite to provide notice of position vacancies and to receive relevant information from interested applicants. Mr. Strand applied for the position and posted his resume on Resume Builder. The application program asked applicants to describe their relevant work experience. At the work history tab of the application process, the program directs applicants more specifically to "list all work experience and the details of each position, starting with the more recent." The resume posted by Mr. Strand in response listed two former employers with the following information:

Nursing Universal Worker/HST  
Minnesota Veterans Home, Fergus Falls  
10/2000 to 07/2004

Nursing asst  
Good Samaritan Center, Pelican Rapids, MN  
05/1998 to 10/2000

The Employer also asked applicants to provide more detailed information on former employment on a hard copy form and to execute informed consent agreements authorizing former employers to release work history information to the FFRTC. Mr. Strand identified the same two former employers and employment dates as listed on the resume, and added a reference to a third former employer: Bumble Bee Sea Foods, Motley, MN, from August 1997 to July 1998. Personnel Aide Senior Linda Hagen testified that she contacted the two former health care employers by fax and verified Mr. Strand's prior employment history.

Evidence submitted at the hearing established that the prior employment information provided by Mr. Strand was incomplete, in part, and inaccurate, in part. Mr. Strand's application forms were incomplete in that he did not indicate that he also had worked as a Health Services Technician (HST) at another State of Minnesota regional treatment center in Brainerd from December 1998 to October 1999. The erroneous information contained in Mr. Strand's application concerned the dates of his employment at the Good Samaritan Center and Bumble Bee Sea Foods jobs. The actual employment dates for these positions, in reverse order, are as follows:

Minnesota Veterans Home, Fergus Falls  
10/2000 to 07/2004

Good Samaritan Center, Pelican Rapids, MN  
05/2000 to 10/2000

Bumble Bea Foods, Motley, MN  
10/1999 to 05/2000

Brainerd Regional Treatment Center, Brainerd, MN  
12/1998 to 10/1999

At the hearing, Mr. Strand acknowledged these discrepancies, but explained them as unintentional, clerical errors. Mr. Strand also pointed out that he had disclosed his prior service at the Brainerd Regional Treatment Center (BRTC) on his application for state employment at the State Veterans Home in 2000, and during his interview for the FFRTC position.

The Employer elected to interview Mr. Strand for the LPN position. He was interviewed in late July 2004 by Margaret Lee, who, as Registered Nurse Supervisor of the FFRTC Chemical Dependency Division, was the unit supervisor for the posted LPN position. The only written information made available to Ms. Lee prior to the interview was a print-out of Mr. Strand's Resume Builder information. Although that resume only listed Mr. Strand's two most recent positions, it is undisputed that Mr. Strand disclosed his prior employment at the BRTC to Ms. Lee during the interview. Ms. Lee subsequently authorized Mr. Strand's hire, and he began working at the FFRTC in August.

Mr. Strand experienced some performance difficulties during his initial six-month probationary period in the LPN position. In a six-month performance appraisal, RN Supervisor Lee rated Mr. Strand below expectations in terms of transcribing orders for medications and in record keeping. As a result, the Employer extended Mr. Strand's probationary period for an additional three months. His performance improved during this period, and he passed probation in May 2005. Nonetheless, an October 2005

evaluation rated Mr. Strand as below expectations in terms of providing a safe and therapeutic environment. He also received an oral reprimand and a written reprimand during his employment at the FFRTC.

In February 2006, FFRTC Human Resources Director Tom Venaas asked Karen Ochsendorf, an Affirmative Action Officer for the Department of Human Services, to conduct an investigation concerning Mr. Strand. The investigation was prompted by allegations of sexual harassment and work performance problems. During the course of the investigation, Ms. Ochsendorf learned from Ms. Lee that Mr. Strand had previously worked at the BRTC, while also noting that Mr. Strand's personnel file contained no performance information concerning that prior employment.

With Ms. Hagen's assistance, Ms. Ochsendorf obtained an Employee Separation Report from the BRTC. That report rated Mr. Strand's work performance as poor with respect to quality of work and dependability. The report also stated that the Brainerd Center would not choose to re-employ Mr. Strand in the future. By way of explanation, the report stated, "Zachary Strand resigned in middle of an investigation that he was the subject of the investigation. There was a question if he carried a valid driver's license. There was also a complaint re Zachary's speeding and driving erratically in Mpls."

Ms. Ochsendorf then interviewed Mr. Strand as part of the investigation. When she initially asked him about his prior employment with the State, Mr. Strand mentioned having worked at the Veterans Home, but did not mention the BRTC. Somewhat later during the interview, Ms. Ochsendorf asked Mr. Strand directly whether he had previously worked at the BRTC. Mr. Strand acknowledged that he had done so, and explained that he had quit that position because he wanted to work in something other

than the mental illness field. During a second interview, Ms. Ochsendorf quizzed Mr. Strand about the apparent errors in the work history dates provided on his application. According to Ms. Ochsendorf, Mr. Strand became defensive and objected that he did not know why such a big deal was being made about his resume.

The Employer decided to terminate Mr. Strand's employment following the receipt of Ms. Ochsendorf's investigation report. A termination letter of March 31, 2006 addressed to Mr. Strand from Residential Program Manager Jennifer Collins, stated as follows:

This action is taken because of the falsification of your resume when you originally applied for employment at the FFRTC. When you applied for employment, your resume stated you had worked at the Good Samaritan Center in pelican Rapids from 5/1998 to 10/2000. Their records indicate you were employed 5/2000 and terminated 10/2000. Additionally, you omitted any reference in your resume to employment at the Brainerd Regional Human Services Center. However, their records indicate you were employed there as an HST from 12/1998 to 10/1999.

This dishonesty cannot be tolerated. An employer must be able to depend on the credibility and honesty of its employees. Falsification of a resume when applying for employment is an extremely serious offense. You have significantly breached the level of trust that is critical to the employment relationship. I regret this action is necessary, however, under the circumstances, there is no alternative.

The Employer also offered evidence at the arbitration hearing showing that Mr. Strand continued to seek State employment by posting a new resume on Resume Builder in the Spring 2006. In that resume, Mr. Strand noted prior employment at the Veterans Home and at Good Samaritan, but did not list his prior work service at either the BRTC or the FFRTC.

## **POSITIONS OF THE PARTIES**

### **Employer Position:**

The Employer contends that its decision to terminate the grievance was supported by just cause. Mr. Strand misstated his prior work experience on two forms while applying for an LPN position at the FFRTC. The Employer maintains that the circumstances of these misstatements strongly suggest that Mr. Strand purposefully attempted to cover up his poor work record at the BRTC in order to enhance the likelihood of his hire at the FFRTC. The Employer also argues that discharge is an appropriate sanction for this misconduct for two principal reasons. First, the Employer asserts that it has a significant need for candor in staff working with vulnerable chemically dependent clients where honesty is stressed as a component of the treatment regimen. Second, the fact that Mr. Strand had some work performance problems undercuts any basis for mitigating the termination penalty.

### **Union Position:**

The Union acknowledges that Mr. Strand did not accurately record his prior work history when applying at the FFRTC, but maintains that this was merely a clerical error. The Union contends that if Mr. Strand was intentionally trying to cover up his earlier employment at the BRTC, he would not have disclosed this fact on his application to the State Veterans Home or during his interview with Ms. Lee. Mr. Strand also testified that he is dyslexic and has difficulties with dates. In terms of his work performance at the FFRTC, the Union argues that the three-month extension of Mr. Strand's probationary period does not provide any evidence of dishonesty. Further, the Union points out that Mr. Strand had more than five years of continuous service with the State at the Veterans

Home and the FFRTC, and that this long-term employment should be taken into account when determining the remedial outcome of this case.

## **DISCUSSION AND OPINION**

In accordance with the terms of the parties' collective bargaining agreement, the Employer bears the burden of establishing that it had just cause to support its termination decision. This inquiry typically involves two distinct steps. The first step concerns whether the Employer has submitted sufficient proof that the employee actually engaged in the alleged misconduct or other behavior warranting discipline. If that proof is established by a preponderance of the evidence, the remaining question is whether the level of discipline imposed is appropriate in light of all of the relevant circumstances. *See* ELKOURI & ELKOURI, *HOW ARBITRATION WORKS* 948 (6<sup>th</sup> ed. 2003). Both of these issues are discussed below.

### **A. The Alleged Misconduct**

It is undisputed that Mr. Strand did not accurately depict his previous employment record when applying for the LPN position at the FFRTC. The information he provided on the electronic resume and the paper Employer Information form omitted any reference to Mr. Strand's employment at the BRTC and misstated the dates of employment at two other prior employers.

The crucial issue in this matter, however, is not whether Mr. Strand provided inaccurate information. The misconduct alleged by the Employer in support of its discharge decision is that Mr. Strand intentionally misstated his employment record in order to bolster his chances of gaining employment at the FFRTC.

The Union disputes this claim and maintains that Mr. Strand's inaccuracies were simply clerical errors. In this regard, Mr. Strand testified that he is dyslexic, and that this causes him to have problems in accurately remembering numbers and dates.

The Union also argues that the Employer's contention is at odds with the fact that Mr. Strand voluntarily disclosed his employment at the BRTC on two occasions. Mr. Strand noted his prior work experience at the BRTC when applying for a position at the Veterans Home in 2000. Since the Veterans Home and the FFRTC are both agencies of the State of Minnesota, Mr. Strand testified that he assumed that the FFRTC had this information when he applied at the latter facility in 2004. In addition, it is not contested that Mr. Strand discussed his prior work at the BRTC during his interview with Ms. Lee during the summer of 2004. Both disclosures, the Union contends, are inconsistent with a finding that Mr. Strand intentionally tried to conceal his prior BRTC employment.

The weight of the evidence, nonetheless, favors the Employer's position. Mr. Strand did not merely provide inaccurate information about his work history on one or two occasions. Instead, the record shows a cascading series of misstatements, including the following:

- 1) In a July 2004 resume filed by Mr. Strand on Resume Builder as part of his application for employment at the FFRTC, he omitted to list his prior employment at the BRTC and also misstated his period of employment at Good Samaritan Center to include those dates during which he was actually employed at the BRTC;
- 2) As part of the application process, Mr. Strand was asked to fill out an Employer Information form asking for more detailed information with respect to his prior employment history. On this form, Mr. Strand again omitted to mention his prior employment at the BRTC, and he misstated employment periods at Good Samaritan Center and Bumble Bee Sea Foods to encompass those dates during which he was actually employed at the BRTC;

- 3) When asked by Investigator Karen Ochsendorf on March 13, 2006 to discuss his employment with the State of Minnesota, Mr. Strand mentioned his employment at the Veterans Home, but not his employment at the BRTC. During this interview, Mr. Strand only acknowledged having worked at the BRTC after Ms. Ochsendorf directly asked him such employment. During a second interview on that same day when Ms. Ochsendorf raised questions concerning the erroneous work history previously provided by Mr. Strand, he became angry and insisted that the work history information provided by Good Samaritan Center was in error.
- 4) After the Employer hired Mr. Strand for the LPN position at the FFRTC, he was asked to provide certain post-hire information, including whether he had been previously employed by the State of Minnesota. In a form dated August 5, 2004, Mr. Strand replied in the affirmative, but listed only his employment at the Veterans Home.
- 5) On April 10, 2006, approximately two weeks after his termination at FFRTC, Mr. Strand posted a new resume seeking employment on the State's Resume Builder web site. This resume correctly listed his dates of employment at Good Samaritan Center, but failed to reference his employment with either the BRTC or the FFRTC.

The cumulative weight of this evidence belies the Union's claim that Mr. Strand's missteps on the July 2004 resume constituted a simple clerical error. Instead, this body of evidence suggests a systematic attempt to cover up the existence of an unsuccessful period of employment at the BRTC.

Mr. Strand's whitewash of his employment at the BRTC is particularly significant since the BRTC and the FFRTC are sister institutions within the Department of Human Resources that provide similar health care and rehabilitative services. As such, the BRTC's evaluation of Mr. Strand's job performance would have been of particular relevance to his application at the FFRTC. According to Ms. Hagen's testimony, the Employer would not have hired Mr. Strand for the FFRTC position if the circumstances of his prior BRTC employment had been known.

Under these circumstances, the Employer has carried its burden of demonstrating that Mr. Strand engaged in the misconduct alleged.

**B. The Appropriate Remedy**

The Employer argues that this misconduct is very serious and justifies the termination of the employment relationship. The Employer maintains that the repeated misstatements made by Mr. Strand demonstrate a marked lack of honesty and trustworthiness. This is a particularly serious shortcoming, the Employer contends, in a chemical dependency treatment unit where modeling honest and transparent behavior is crucial to the rehabilitative endeavor. In addition, the Employer claims that there is a lack of mitigating factors in this case in light of Mr. Strand's status as a short-term, poor performing employee.

The Union contends that Mr. Strand's conduct is not so serious as to warrant the ultimate sanction of discharge. The Union also argues that Mr. Strand is not a short-term employee since he worked continuously for the State over a five-year period at the Veterans Home and then at the FFRTC.

In the end, I find two factors to be determinative. First, Linda Hagen testified credibly that the FFRTC would not have hired Mr. Strand for the LPN position at the FFRTC if the circumstances of his prior work history at the BRTC had been known. Since it appears that the Employer would not have hired Mr. Strand if he had acted honestly, undoing that hire seems to be a logical sanction for failing to honestly divulge that information. Second, it is disturbing to see that Mr. Strand again resorted to an inaccurate posting on Resume Builder following his discharge from the FFRTC. This

conduct strongly suggests that Mr. Strand has not learned his lesson and continues to be at risk for dishonest behavior.

**AWARD**

The grievance is denied.

Dated: November 28, 2006

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Stephen F. Befort  
Arbitrator