
ARBITRATION IN THE MATTER

Between

The County of Oswego

and

**The Oswego Public Employees
Association**

*
*
*
*
*
*
*
*
*
*

Grievant: Ossie Lane

Issues: 7-Day Suspension

Judy A. Gust, Arbitrator

PRELIMINARY STATEMENT

The hearing in this matter was held on May 15, 2002, at the County of Oswego, County Counsel's Office Room 1902, 25771 County Way, Timberlake, California. The parties appeared through their designated representatives and presented evidence through exhibits and testimony of their witnesses who were subject to cross-examination, for a final and binding determination by the arbitrator. The record of this case was closed on July 19, 2002, upon receipt by the arbitrator of the parties' post hearing briefs.

APPEARANCES & WITNESSES

For the Association

Dale D. Darwin Counsel, Oswego Public Employees Association
Cynthia Yarno Co-counsel, OPEA
Michelle Donnegan Senior Staff Representative
Sue Gottis Board Liaison
Evelyn Herrera Observer, OPEA
Ossie Lane Grievant

For the County

Ben Larkin Spokesperson, County of Oswego,
Jane Traut Staff Analyst II, County of Oswego
Millie Cessena Human Resources - Probation
Terry Warner Chief Deputy Probation Officer
Cliff Frank Retired, Former Collections Manager
Leilani Weston Collection Officer Supervisor

BACKGROUND AND FACTS

The grievant, Ossie Lane, was employed by the Oswego County Probation Department on December 9, 1994, as a Collections Officer. Mr. Lane's responsibilities included conducting investigations and effecting collection of debts owed the County for reimbursable aid, services provided, restitution, subrogation and other considerations or monies owed to third parties; initiating enforcement actions; and performing other work as required. (Co. Br. pp. 2) Mr. Lane's typical caseload contained approximately 2,000 cases and involved attempting to locate, contact and collect amounts owed from individuals with criminal histories who had failed to honor their financial commitments to the County in connection with the disposition of their criminal matters. (Assoc. Br. pp. 2)

Mr. Lane consistently generated the highest revenue levels within his unit. This success was attributed to his significant collection experience in the private sector prior to his County employment. He received compliments on his performance evaluations dated November 1997 and July 1998 (Assoc. Br. pp. 3, Co. Exs. 10, 11); however, he also received substandard ratings¹ on the "personal relations" and "adaptability" factors in those performance evaluations. In his August 1999 evaluation, Mr. Lane continued to be rated as improvement needed on "personal relations" and "adaptability". Additionally, he was rated "improvement needed" on another factor -- "progress" -- that is described as "speed and thoroughness of learning; efforts at self-improvement". (Co. Ex. 10-12)

Mr. Lane also received oral counselings, a counseling memo, a written reprimand and a three-day suspension for incidents regarding his inappropriate treatment of clients. (Assoc. Br. pp. 5, Co. Ex. 7-9)

Two client complaints, one from Catherine Seltzer, filed on October 29, 1999, and a second from Ronni Havers, filed on March 14, 2000, (Co. Exs. 4, 6) concerning Mr. Lane's treatment of them, led to a seven-day suspension served by Mr. Lane in August 2000. That suspension is the subject of the instant grievance.

¹ Mr. Lane received two 2=Improvement Needed ratings on November 5, 1997 and July 29, 1998. He received three 2=Improvement Needed ratings on August 25, 1999.

ISSUE

The parties stipulated to the following issue:

Was Ossie Lane suspended for reasonable cause? If not, to what remedy is the appellant entitled under the provisions of Article IX, Section 8 of the General Unit MOU?

RELEVANT CONTRACT PROVISIONS*Article VIII DISCIPLINARY ACTION**Section 4. Suspension*

- A. No regular, limited-term or probationary employee shall be suspended except for reasonable cause.*
- B. A written notice of such suspension stating specifically the cause of the suspension shall be given to the employee.*
- C. In accordance with the provisions of Article IX, an appeal of suspension shall be initiated at Step 3 of the grievance/appeal procedure, except for suspensions imposed by the Chief Executive Officer, which may be referred directly to arbitration*

*Article IX, Section 8. Discharge and Right of Appeal**A. Grievances*

- 1. If a grievance is not resolved under Step 3, an arbitration request may be presented in writing to the Personnel Director within seven (7) calendar days from the date a decision was rendered at Step 3.*

POSITION OF THE COUNTY

The County contends that Mr. Lane had a history of inappropriate and unprofessional behavior in his five-year tenure with the Probation Department. Although he had been disciplined in the past for his "style" of interacting with clients, he failed to improve his behavior and performance sufficiently to avoid the two client complaints that prompted the discipline that is the subject of this grievance. The County relies on Lane's own testimony that his improvement process was very gradual. According to the County, Lane stated that he didn't take the

Department's feedback seriously until after he received a written reprimand and a prior three-day suspension. (Co. Br. pp. 6)

The County refutes Lane's testimony that he was using a "new" approach with Ms. Havers and Mrs. Seltzer. During the investigation of these complaints, Lane reverted to his previous habit of trying to shift the responsibility for his behavior to the complainants. For example, even though the one complainant, Mrs. Seltzer, was not a Probation Department client, Lane researched her history and presented that information during the investigation in hopes of discrediting her complaint. Mr. Lane also argued that other Collections Officers received complaints, implying that his record was no different than other officers. However, the County points to the testimony of several other witnesses who attributed to Lane a much greater number of client complaints than that of his colleagues. The County argues that this is not the action of a person that is taking the Department's counseling seriously or is taking responsibility for his behavior. (Co. Ex. 7)

The County further argues that Lane had more than a reasonable time period to adjust his behavior. It points to the time interval between when Lane was first counseled about his "style" of interacting with clients and his "change" in behavior. The Department first put Lane on notice that his behavior was inappropriate in February 1997. That inappropriate behavior continued a full two years later despite efforts by the Department to provide continuing guidance and training. (Co. Ex. pp. 8) Lane then received a written reprimand in February 1999 and testified that it was after the written reprimand that he began to change his behavior. The complaints leading to the present discipline occurred in February 2000. Even if Lane's testimony is credited, that he did not begin to change his behavior until after he received the written reprimand, the County notes that a period of one year elapsed for that change to take place. It also infers that Lane's change in behavior was insufficient to avoid the complaints giving rise to the instant discipline. (Co. Br. pp. 7)

The County also sets forth its doubt that Lane changed his behavior. The behavior attributed to Lane by clients in each of the disciplinary documents is very consistent with that of

past complaints. To support this contention, the County relies to Robert Steinberg's February 20, 2002, decision regarding Lane's appeal of a three-day suspension. That decision reads, in part:

"Based on a fair reading of the evidence as a whole and my observation of him, Grievant is an individual who is obviously fixated on the proverbial trees while failing to see the forest. He is either avoiding or incapable of seeing the big picture, and that is his negative interpersonal relationships with employees as well as probationers who owe money to the County. One witness branded him 'dismissive', and that impressed us a fair evaluation, along with condescending, argumentative, and probably rude as well."

". . . The totality of Grievant's comments to the probationer, disrespectful in tone and content, were intended to be demeaning in order to get him to start paying off his debt to the County. His behavior can certainly be concluded to have been unprofessional. My own observations support those of the Department's witnesses who heard the exchange and that the Grievant's comments were edged with sarcasm and meant to humiliate the client."

Based upon Arbitrator Steinberg's observations, the County believes Lane has not made changes to his behavior as he alleges. It should also be noted that these observations of Lane were made during a hearing where one would expect an employee to be on his best behavior because issues of his employment and wages are being decided. (Co. Br. pps. 8-9)

The County refutes the Association's suggestion that his supervisor, Leilana Weston, was out to get Lane and solicited client complaints. It relies on Policy C-14 that requires investigation of all citizen complaints. That policy applies to all members of the Department. (Co. Br. pp. 10)

In summary, the County argues that the Department's mission statement, code of ethics, standards of conduct and Policy C-14 are reasonable, that Lane knew of these expectations, and that he received training in appropriate demeanor or interaction with clients and in how to interview clients as a Collection Officer. (Co. Br. pp. 10) Further, the investigation of the incidents leading to this discipline was fair and objective. Lane never testified that the citizens did not tell the truth; he only infers that since the clients had previously broken the law, they should not be trusted. As Deputy Probation Officer Terry Warner testified, the decision to suspend Mr. Lane for these complaints was based on Lane's record of prior discipline and Lane's

inappropriate interactions that prompted these citizen complaints. (Co. Br. pp. 11-12) A seven-day suspension is an appropriate course of action in light of the seriousness of the conduct as it relates to the efficient effectuation of the goals of the Department and in light of the pattern of persistent conduct by Lane despite efforts to assist him by the Department. (Co. Br. pp. 13)

The County asks that the grievance be denied.

POSITION OF THE ASSOCIATION

The Association makes three arguments in support of its position that the County did not have reasonable cause to impose a seven-day suspension on Mr. Lane.

The first argument asserts that the investigation into the client complaints was not fair or objective. A fair and objective investigation is a fundamental requirement of just cause. For an investigative process to be fair and objective, management must ensure that as much credible, relevant evidence as possible is collected and reviewed by a disinterested party. The Association contends that Millie Cessena, the staff analyst that conducted the investigation into the complaints against Mr. Lane, was biased and inexperienced. It bases this conclusion on Ms. Cessena's testimony that she relied solely on statements from Mr. Lane's supervisor, Leilani Westonr, as to the credibility of the letters of complaint, failing to interview the complainants herself. Further, she believed the complaints because the allegations fit Lane's past "pattern of behavior". Ms. Cessena had no idea how the complaints had come to be prepared or whether anyone within the Department had encouraged the complainants to prepare them or assist with their preparation. (Assoc. Br. pp. 6-7)

The Association also points out that Ms. Cessena was inexperienced as an investigator. Her entire training consisted of two, one-half day classes in 1994. She had conducted only fifteen investigations in an eight-year period. Finally, and most significant, she had conducted only two investigations in the prior two years – this investigation and the previous investigation of Mr. Lane. (Assoc. Br. pp. 7)

The Association notes the County's failure to address the "botched" investigation. The County failed to produce as a witness either of the complaining parties. Instead, management relied almost solely on Mr. Lane's previous disciplinary record to give credence to its allegations against him. Further, Supervising Probation Office Weston testified that she could not comment as to whether or not she had encouraged either caller to submit a written citizen's complaint. Nevertheless, she did admit that she informed both women of the written citizen complaint procedure. (Assoc. Br. pp. 7)

For all of the above reasons, the Association argues that the County failed to conduct a fair and objective investigation into the allegations against Mr. Lane.

In its next argument, the Association contends that the County failed to meet its burden of proof. In this case, the suspension was based on "continued inappropriate and unprofessional behavior". The County failed to offer credible evidence to establish the occurrence of such behavior. Mr. Lane testified in detail about his appropriate handling of both telephone contacts with the complainants. The only credible, non-hearsay evidence of the conversations established that Lane conducted himself professionally, properly attempted to advance the Department's interest in collecting monies due, and respected the rights and dignity of the individuals with whom he came in contact. (Assoc. Br. pp. 8)

The final argument advanced by the Association is the absence of forewarning as to the possible or probable consequences of his conduct. (Assoc. Br. pp. 9) Again, a fundamental component of just cause is that employees must be aware of the type of conduct that will lead to discipline. Although management had previously communicated to Leonard that his interactions with collection clients were "too aggressive" and that he received too many complaints, it did not provide Lane with a specific warning that *any* additional client complaint would result in discipline. The Department also failed to provide him with remedial training or communicate a specific strategy to measure his improvement in this area. As a result, Mr. Lane reasonably expected his performance to be judged fairly and from an overall perspective. He was appropriately confident that his improvement was quantifiable as the number of complaints received about him progressively decreased annually following his 1997 performance evaluation.

If management was not satisfied with his approach, it had an obligation to offer Lane specific guidance about the manner in which he was to conduct himself with clients. As an example, the Association points out that management did not convey to Lane that he should accept any payment terms that were offered by a client, however minimal, in order to avoid any confrontation. Rather, Lane did his best to create appropriate payment plans with clients – plans based upon a reasonable payment amount related to the client's verifiable income. (Assoc. Br. pp. 10)

The Association points out that the clients involved in the two incidents upon which this discipline is based were not cooperative collection clients in good standing. In both cases, the clients were significantly in arrears on their monetary obligations to the County. They had changed addresses and telephone numbers and had ignored their responsibility to keep the County informed of those changes. Lane had to contact them at their respective places of employment after locating them through State of California records. Given the payment history of the complainants and their misplaced indignation about Mr. Lane's demeanor, their written statements regarding an intention to fulfill their financial obligations can only be viewed as disingenuous. Contacts under such difficult circumstances were commonplace. Lane had handled hundreds of collections accounts in a similar and satisfactory manner in the few years preceding these complaints. Although Ms. Weston suggested in her testimony that Lane should have accepted the payment terms offered by each complainant, she had not clearly conveyed this expectation or the resulting consequences of not meeting that expectation to Mr. Lane.

In summary, the Association argues there is no credible evidence that the incidents that form the basis of this discipline occurred in the manner alleged. Further, the County failed to conduct a fair and objective investigation of the two complaints as it assigned an inexperienced employee who had investigated Leonard's previous conduct and who also had a preconceived bias against him. Finally, Mr. Lane's supervisor failed to communicate management's expectations regarding Lane's telephone contact with clients, particularly those with court judgments or significant arrears. No training, meaningful guidance or strategy was offered to

measure Mr. Lane's improvement in the area of client relations. The Association asks that the discipline be set aside and that Mr. Lane be made whole for all losses he has suffered.

DISCUSSION

This dispute requires a determination of whether or not there was cause for a seven-day suspension of Mr. Lane for a continuing pattern of unacceptable behavior with clients. As the Association points out, the client population that Probation Department Collection Officers must work with is not generally considered a model for good citizens. Clients have been in trouble with the law in some fashion that has resulted in their being charged fines, costs, or other monetary assessments. They reach the collection function of the Probation Department as a result of not paying their financial obligations that resulted from their criminal conduct. Despite these realities, the Probation Department's Mission and Values statements and its policies require that the Department's clients be treated with "integrity and in a manner which respects the rights and dignity of individuals." (Co. Ex. 16)

Mr. Lane testified that although he had been orally counseled and evaluated as "improvement needed" in at least three performance evaluations from November 1997 through August 1999, it was not until he received a three-day suspension in 1999 that he seriously took note of the need for him to change his approach to his collections work. He describes himself as "much more demanding" than other Collection Officers (COs) and yet argues that he was unfairly disciplined because other COs also received complaints. Cliff Frank, Mr. Lane's former manager, testified that the number of complaints about Mr. Lane was far greater than the number of complaints about any other CO. Further, there was no evidence introduced of other COs who were similarly situated with regard to the number and nature of client complaints.

Mr. Lane also testified that one of the "gradual" changes he made to his behavior before the two complaints that led to the seven-day suspension at issue here is to accept whatever payment amount was offered by the client. However, he later contradicted himself when he testified that although Mrs. Seltzer offered to pay something, but could not afford \$50.00 per month, he continued to press for a commitment of \$50.00 per month. There was no indication

that he asked her what amount she could commit to or that he offered her anything less than his original demand for \$50.00 per month.

The charges made by the County in issuing this discipline are based upon Mr. Lane's alleged "continued" inappropriate and unprofessional behavior and failure to follow Probation Department policies and performance standards. The Association asserts that the County failed to meet its burden because the only credible, non-hearsay evidence of the conversations came from Mr. Lane and established that he conducted himself professionally and respected the rights and dignity of the individuals with whom he came in contact. This arbitrator does not agree for the following reasons.

The continuing nature of the Department's performance concerns are supported by Mr. Lane's own testimony. When questioned about the limited nature of his efforts to improve his behavior with clients between November 1997 and March of 1999, when he received a three-day suspension, Mr. Lane testified that it was because he questioned how genuine his supervisor was. This arbitrator interpreted his testimony to mean that he questioned how serious she was about the May 22, 1998 counseling memo, the February 24, 1999 written reprimand and the three performance evaluations noting Performance Deficiencies and Suggestions for Improvement regarding his demeanor and adherence to Department policies. (Co. Exs. 7, 8, 10, 11, 12) Once he received a three-day suspension, Mr. Lane testified that he then began a more earnest "gradual" improvement in his interactions with clients. There is ample evidence that his aggressive behavior and its inappropriateness was discussed with Mr. Lane on many occasions. The expectation that he treat clients respectfully was also reiterated with him. Rather than accept these performance standards, he excused his style as being "different" and, in his mind, appropriate in part because he was number one in the amount of monies collected. Despite his collection record, the Department restated multiple times its expectation that he temper his conduct with clients and exhibit more respectful behavior with them.

With regard to this suspension, it is also important to note that Mr. Lane was again reminded about the need to respect clients and treat them appropriately when Mrs. Seltzer's complaint was received and investigated following her written complaint in October 1999. On

the very date that Mr. Lane was served with a Notice of Intent to Suspend for Mrs. Seltzer's October complaint, a second complaint from Ms. Havers² was received concerning behavior similar to that complained of by Mrs. Seltzer. As a result, the February 28, 2000, Notice of Intent to Suspend was held in abeyance pending the outcome of the Department's investigation into Ms. Havers' complaint. The import of these facts is that Mr. Lane was again on notice between November 1999 and February 2000, as a result of the investigation of Mrs. Seltzer's complaint, of the need to appropriately interact with clients.

Mr. Lane's defensiveness and attitude toward complaint investigations also failed to improve over time. Ms. Cessena testified that Mr. Lane was sarcastic, argumentative and defensive during the investigation of each of the two involved complaints. Cliff Frank, Mr. Lane's former supervisor, now retired, testified that Mr. Lane exhibited similar behavior when questioned about earlier client complaints. Additionally, Mr. Frank testified that Mr. Lane would question why clients, who were convicted criminals, would be believed over him. This behavior of discrediting the complainants was repeated in the instant matter as well. In advance of his investigative interview, Mr. Lane researched Mrs. Seltzer, who was the wife of the client at issue, and found that she also owed money on her own court order and was a convicted felon. This was the information he presented at his interview to refute the allegations set forth in Mrs. Seltzer's complaint. It was noted that although Mr. Lane testified that his behavior was appropriate and professional with Mrs. Seltzer, he conducted his research to discredit her *before* his investigative interview and *before* he had knowledge of the nature or name of the complainant. That behavior presumes that he was aware that he had acted inappropriately with Mrs. Seltzer to a degree that might prompt a complaint.

The description of Mr. Lane's behavior during the investigative process was not rebutted. It evidences a continuing failure on Mr. Lane's part to appreciate either the seriousness of such client complaints or the spirit of conduct required of Probation Department employees as set forth in the Department's Mission and Values Statements and other policies that address employee conduct standards.

² The second complaint, dated March 14, 2000, was received by the Probation Department on March 21, 2000, alleging rude behavior in a February 25, 2000, telephone exchange with Mr. Lane.

Although the Association argues on Mr. Lane's behalf that the investigation into the client complaints was not fair or objective, there was no evidence brought forth that supports that contention. There was no evidence of bias as alleged even though Ms. Cessena had conducted the prior investigation of Mr. Lane that resulted in his three-day suspension. That alone is insufficient to sustain a charge of bias. Whether or not Ms. Cessena conducted the prior investigation, Mr. Lane's record of past discipline would, or should, have been reviewed and considered by whomever conducted the investigation in order to make a recommendation as to whether discipline was appropriate in this instance.

The Association also suggests that Ms. Cessena was inexperienced, having conducted only 15-18 investigations for the Probation Department over an eight-year period. Additionally, she had conducted only two investigations within the past two years and both involved Mr. Lane.

Finally, the Association points out that Ms. Cessena did not personally interview the two complainants but rather relied on information provided by Mr. Lane's supervisor, Leilani Weston, and the written statements of the complainants. While first-hand information is certainly more desirable than not and personal meetings allow for better credibility assessments, there is no requirement that complainants be personally interviewed such that it would void an investigation. In cases of customer or client complaints, the inconvenience of multiple interviews by persons already dissatisfied with their treatment must be weighed against the value of the in-person interview. In this case, Ms. Cessena apparently chose not to further inconvenience the clients with an interview and relied on the written complaint statements of both clients, Mr. Lane's behavior during the interviews and his history of similar behavior in making her recommendation following the investigation.

Without some substantive evidence of bias or a measurable standard of the number of investigations required to be proficient, one cannot conclude that the investigation was inadequate, unfair or should be invalidated in determining cause.

Another argument advanced by the Association was the absence of forewarning to Mr. Lane as to the possible or probable consequences of his conduct. The absence of a specific warning that *any* additional client complaint would result in discipline is unpersuasive. Mr. Lane had received a series of increasingly more severe actions in the Department's attempts to correct Mr. Lane's behavioral performance with clients. Additionally, as mentioned above, he was put on notice by the investigation of Mrs. Seltzer's October 1999 complaint that his conduct should be carefully monitored to conform with the performance standards that he had been previously counseled and disciplined about. Despite this reminder in October, he persisted with argumentative behavior with Ms. Havers in February of 2000 resulting in a second complaint that forms the basis for the seven-day suspension at issue here.

The Association's inference that Supervisor Weston solicited the complaint from Mrs. Havers is unsupported. However, it does raise an interesting question about the reason for the delay between the time of the complained of interaction with Lane on February 25, 2000 and the Department's receipt of Ms. Havers' written complaint on March 21, 2000. Ms. Weston testified that she did not solicit the complaint. Another equally likely interpretation can be made that the incident was so upsetting that, despite the passing of time and other pressing activities, Mrs. Havers persisted in her efforts to bring the matter formally to the Department's attention. Ms. Weston also testified that it is a supervisor's responsibility to inform clients of the complaint procedure where appropriate. That testimony was corroborated by Cliff Frank and the Department's Policy C-14 regarding citizen complaints. Given this policy and Ms. Weston's testimony denying solicitation of Havers' complaint, it is not reasonable to conclude that Ms. Weston went out of her way to solicit a written complaint on Mr. Lane.

Finally, the Association argues that the Department failed to provide Mr. Lane with remedial training or communicate a specific strategy to measure his improvement in this area. Mr. Frank and Ms. Weston testified that Mr. Lane was provided the same training as other COs. In addition, Ms. Weston testified that in January 1998, when thirteen new employees were hired, she had all employees in the unit repeat the training modules provided to new employees. Mr. Lane participated in that general training that included a review of the Department's Mission Statement and expectations with regard to demeanor with clients. Mr. Lane's expressed attitude

in his earlier counselings gave little, if any, indication that more *training* was needed. Rather, Mr. Lane appeared to disagree with the performance standards as opposed to not knowing what was expected or how to exhibit those behaviors.

Mr. Lane apparently thought his ends justified his means and ignored the counseling and guidance he was getting about treatment of clients. He felt justified in using his demanding style because the clients were "convicted criminals" and he experienced greater success than others in his collection amounts. Given the substance of the two complaints at issue, Mr. Lane's history of similar conduct and his delinquency in responding quickly and effectively to prior discipline, one can only conclude that the Department had no alternative but to impose a more severe form of discipline in an attempt to alter Mr. Lane's overly aggressive approach with clients. Accordingly, it is found that the Department had reasonable cause for the seven-day suspension issued to Mr. Lane.

AWARD

Based on the record of this hearing and the above reasoning, the grievance is denied.

Judy A. Gust, Arbitrator

Ramona, California
August 10, 2002