Jacobs #2

VOLUNTARY LABOR ARBITRATION

In the matter of:

Union

-and-

Employer

Grievant: Employee 1/Discharge

ARBITRATOR'S OPINION AND AWARD

DISCUSSION

The Grievant, Employee 1, was discharged for charging the District for overtime hours allegedly not worked. The Board, in its brief at p. 7, states as follows:

> "Between November 10, 1998, and April 07, 1999, (and after he had been specifically directed not to do so) the Grievant charged the Employer on 32 separate occasions for a total of 81.25 hours at time and one-half ($27.42/hour). Of the 81.25 hours charged, Employee 1 was actually in his building for approximately 2.5 hours."
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> [Board's post-hearing brief, p. 7].

Former Superintendent Employee 2, in her letter of June 11, 1999, addressed to Employee 1, alleges that the District was impermissibly charged for over 107 hours. Staff Specialist in his brief, also refers to the number 107.

The Grievant had been employed by the District approximately 16 years at the time of his discharge for allegedly stealing time. Former Superintendent Employee 3 testified that a number

of years ago, in order to reduce fire and insurance premiums, a fire/theft alarm system was installed in the District by VG Security Systems, Inc. Employee 3 testified that there was always a problem dating back to 1988 with false alarm calls, and that people who were on the list to be called whenever an alarm sounded began refusing to answer their telephone by virtue of screening their calls through caller ID. Subsequently, he personally responded to the VG calls. Ultimately he assigned the alarm calls to the building engineer for each of the six school buildings that are monitored by VG.

He testified that he authorized, without the knowledge of the School Board, a two hour minimum be paid for each response to an alarm, whether or not it be false. He stated that this was well known, however; that there was no letter of agreement with the Union; but the practice was open and notorious. His comment was that the call was not a social call in the middle of the night, and thus it was perfectly legitimate during his tenure to pay two hours for responding to a call, whether or not you personally got up, got dressed in the middle of the night and went to the school where the alarm had sounded.

The Grievant, although the other five building engineers did not do so, charged for each such call, whether or not he got up and left his home and went to the school for which he was responsible.

Steward, Employee 4, testified that she only charged two hours overtime each time she received a call from VG, and she actually returned to the school building for which she was responsible. Employee 4 said you can only charge if you return to the building, and that is per the contract. She also stated that it is the responsibility of each person who charges to record the hourly amount for which they are charging on their time sheet, and submit it to the operations

supervisor for payment. Referring to the prior Operation Supervisor, Employee 5, she said that Employee 5 never told her that she could stay at home and be paid, although this is what the Grievant alleged during the course of his testimony, and which Employee 5 denied at the hearing.

Employee 5 was replaced by Employee 6, who called a meeting with the Grievant and the Steward. Employee 6 recalls that the meeting was held in late November or early December of 1998, and that the Steward was present. At that time he told Employee 1 that he noted a large amount of overtime by Employee 1 for answering building alarms and queried Employee 1 as to why he charged the District for overtime when he did not return to the school to check out the problem. Employee 1's response was "if they bother me at home, I will charge." Employee 1 stated to Employee 6 at that time that it was his understanding with management that he could charge two hours overtime whether or not he came in. Employee 6 says that he told Employee 1 to stop doing so immediately, and informed him that he would only be paid if he actually returned to the school to check out the security problem.

In April of 1999, April 01, to be specific, Employee 6 again pulled the maintenance time sheets from all of the school buildings and compared them against the alarm logs provided by VG. He found that only one employee, namely the Grievant, was charging overtime for security and alarm issues, when he was not physically going to the buildings for which he was responsible.

Employee 6 then held a meeting with the Grievant and this time the Union President on April 27, 1999. Grievant again stated "if they call, I will charge." It was at this point in time that Employee 6 forwarded the matter to the Superintendent of Schools, who ultimately

recommended discharge to the School Board, and the School Board members voted to discharge Grievant.

At this point it should be noted that Employee 6, being new on the job, had the matter of the overtime charges first called to his attention by the school secretary; however, he did not follow-up between the period of December, 1998, through April 01, 1999, when again the matter was called to his attention by the secretary, and he called for the records. The Grievant submitted requests for overtime payment, and that no request was denied by Employee 6. Employee 6 certified the Grievant's request for overtime to the payroll officer.

There was a lengthy hearing, but nothing changed the fact that the Grievant, when given a direct order by Employee 6, did not first obey and then grieve, instead of filing a grievance when told not to charge when he did not physically attend the school building after being notified by VG, he continued to do so. This Grievant, in the eyes of the District, is a thief. I would not go so far as to call him a thief. I do, however, feel that the Grievant is responsible for his foolish actions.

Once he was told to cease and desist from what the District considered irregular and improper overtime charges, and yet was not relieved of his duty to respond to the VG phone calls, he should have filed a grievance. Instead, it appears that the Grievant decided to challenge the District. He threw down the gauntlet. Much to his current dismay, I am certain, the Grievant, who is now discharged after 16 years of honorable service, would probably in hindsight have taken a different approach to solving the problem.

I believe the Grievant's wife when she said that neither she nor the Grievant really cared to be awakened from a sound sleep by nighttime calls from the alarm company, whether or not

the calls were false alarms. Over-charging was not the proper way to get the District's attention. Admittedly, the alarm company was part of the problem because of the large number of false alarm calls received. Admittedly, and there is no denial by the Grievant, that he had no hesitation in charging for receiving messages on his answering machine. Laxity on the part of the administration is also part of the problem, but does not absolve the Grievant of honesty and integrity in his dealings with the District. When he was told to cease and desist from his method of billing for overtime that was the end of any practice that the prior administrations had accepted in the past. The Grievant had to accept Mr. Employee 6's authority. There is no validity to the Union's argument that the Grievant should have had a written, rather than an oral directive.

The District alleges that the Grievant failed a four-prong test for dishonesty. The Grievant profited from his actions, he knew of Employee 6's order, he repeatedly falsified hours worked, and he ignored proper warnings to cease and desist. The Grievant has exhibited all four of those elements. I do not, however, believe he had any intent to steal. The Grievant exercised terrible judgment. He was totally misguided in his sense of right and wrong.

The Grievant received full due process. He had Union representation at each stage of the proceedings. A full and fair investigation was conducted. A full and fair hearing was had at the School Board meeting, where the decision by the Superintendent to terminate him was upheld.

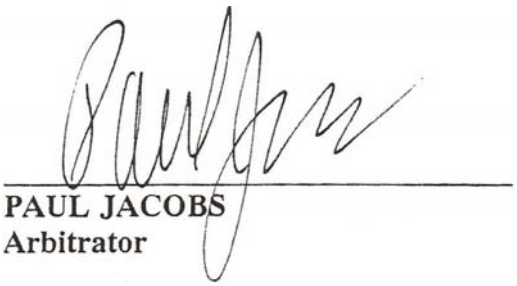
It seems a shame that an employee of 16 years, with a good record, should lose a valuable position of employment. It appears from the testimony of the two School Board members who attended the hearing that even though the Grievant was in error, he should have retained his position. I would like to think that even though he violated his position of trust, that he would not

ever do so again, and that he would now come forward and acknowledge that what he did was wrong.

But not for his 16 years of service in the District would I believe that the penalty of discharge was too harsh in this matter, when consideration is given that a certain amount of fault is attributable to the administration's method of checking payroll.

AWARD

The Grievant is to reimburse the School District, forthwith, for 78.75 hours, times $27.42 per hour, for a total of $2,159.33. These are the number of hours set forth on page 7 of the District's brief, as being hours for which the Grievant was not entitled to be paid. The Grievant, upon repayment, shall take and pass a new employee physical as required by the District, if he passes the physical, he shall return to work at the commencement of the next school term. He shall return to work with the seniority he had at the time he was terminated, but with no benefits.



PAUL JACOBS
Arbitrator

Dated: December 20, 1999