

In the Matter of Arbitration Between)

WASHINGTON FEDERATION OF)
STATE EMPLOYEES,)
(Union),)

and)

WASHINGTON DEPARTMENT OF)
CORRECTIONS,)
(Department or DOC).)

OPINION AND AWARD

AAA Case No. 75 390 412 07
K. Hubbard Grievance

BEFORE:

David W. Stiteler, Arbitrator

HEARING LOCATION:

Tacoma, Washington

HEARING DATE:

April 9, 2008

APPEARANCES:

For the Union:

Steve Chenoweth
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Washington Federation of State Employees
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For the Employer:

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RECORD CLOSED:

April 9, 2008

OPINION & AWARD ISSUED:

May 9, 2008

OPINION

I. INTRODUCTION

The Union filed a grievance on May 21, 2007 on behalf of Kelly Hubbard (Grievant). The grievance alleged that the Department violated Article 20.1 by failing to provide a safe work environment on April 30, 2007. The Department denied the grievance. The Union advanced the dispute to arbitration. Through the procedures of the American Arbitration Association, David W. Stiteler was appointed Arbitrator of the dispute.

A hearing was held before the Arbitrator on April 9, 2008 in Tacoma, Washington. The parties had the full opportunity to examine and cross-examine witnesses, submit documentary evidence, and argue their positions. They stipulated that the grievance was properly before the Arbitrator for resolution. They also stipulated that the Arbitrator could retain jurisdiction over the matter for a period of 60 days following this decision to resolve any disputes about the remedy, if a remedy was awarded.

At the conclusion of the hearing, the parties made closing arguments. The Arbitrator closed the record following those arguments.

II. ISSUE

The parties did not agree to a statement of the issue, but stipulated that the Arbitrator could frame the issue based on their submissions and the record.

According to the Union, the issue is “did DOC violate Article 20 on April 30, 2007 by not having appropriate policy in place and by not taking appropriate action to protect its employees?”

According to the Employer, the issue is “did DOC allow an unsafe work environment to exist on April 30, 2007, at the Lakewood field office, in violation of Article 20.1?”

I find the issue to be: did the Department fail to provide a safe work environment during the April 30, 2007 bomb threat incident, in violation of Section 20.1, and if so what is the appropriate remedy?

III. RELEVANT CONTRACT LANGUAGE

ARTICLE 20 SAFETY AND HEALTH

- 20.1 The Employer, employee and Union have a significant responsibility for workplace safety.
- A. The Employer will provide a work environment in accordance with safety standards established by the Washington Industrial Safety and Health Act (WISHA).
 - B. Employees will comply with all safety practices established by the Employer.
 - C. The Union will work cooperatively with the Employer on safety-related matters and encourage employees to work in a safe manner.
- 20.2 The Employer will determine and provide the required safety devices, personal protective equipment and apparel, which employees will wear and/or use. If necessary, training will be provided to employees on the safe operation of the equipment prior to use.
- 20.3 Each agency will form safety committees in accordance with WISHA requirements at each permanent work location where there are eleven (11) or more employees.
- 20.4 Safety committees will consist of employee and agency representatives of equal numbers. Agencies will appoint their representatives. The number of union-designated employee representatives on the committee(s) will be proportionate to the number of employees represented by the Union at the permanent work location. Meetings will be conducted in accordance with WAC 296-800-13020. Committee recommendations will be forwarded to the appropriate appointing authority for review and action, as necessary.

- 20.5 The Employer will continue current practices regarding blood-borne pathogens contained in agency policies.

IV. DOC POLICY AND WISHA STANDARDS

Department Policy and Procedure. The Department has a policy on bombs, bomb threats, and suspicious objects. The policy provides that “threats shall be treated as real until determined otherwise.” It sets out specific steps for a person receiving a bomb threat to follow. It provides for the appointment of an initial incident commander. One of the incident commander’s duties is to determine whether to immediately evacuate or to conduct a search and evacuate if warranted.

The policy includes an orange “bomb threat card” that has a list of instructions for employees to follow if they receive a telephoned bomb threat. There are questions to ask the caller, a place to write the exact wording of the threat, a section to identify characteristics of the caller’s voice (calm, angry, excited, etc.), a section to identify background sounds (street noises, crockery, voices, etc.), and a section to identify the threat language (incoherent, foul, taped, etc.).

Employees are also given an emergency desk reference checklist, a set of bound note cards addressing a variety of emergency situations, such as earthquake, bombs, and hazardous materials. On the “bombs and suspicious objects” page for bomb threats, employees are directed to use the orange bomb threat card, treat all bomb threats as real, notify their supervisor and call 9-1-1, follow directions from law enforcement, and evacuate the building and secure the area, if possible.

WISHA Standards. There are statutes and administrative rules that govern workplace safety. WAC 296-800-11005 requires an employer to provide employees “a workplace free from recognized hazards that are causing, or are likely to cause, serious injury or death.” WAC-296-800-11015 requires employers to “prohibit employees from entering, or being in, any workplace that isn’t safe.”

V. FACT SUMMARY

There is little dispute about the facts. Grievant is employed by the Department as a community re-entry specialist with a working job title of community corrections specialist. She is stationed at the Department's Lakewood office, which is just south of Tacoma.

Grievant's job is to manage the transition of high risk offenders from prison and work release programs to community supervision. The offenders she works with include those who are classified as dangerously mentally ill, level III sex offenders, and others requiring high levels of service who have a violent or serious violent criminal history. The required working conditions for her job include field visits under adverse environmental and/or hazardous conditions, working with and around armed officers, and wearing protective vests or other safety equipment.

April 30, 2007 Bomb Threat. At about 11 a.m. on April 30, 2007, an employee in the Department's Longview field office received a call from an unidentified male caller who told her that every DOC office would be bombed and everyone in the offices would die. Longview is about 90 miles south of Tacoma.

The bomb threat occurred following a weekend fire bombing of a Department field office in Bremerton.

In response to the call, the Department set up an emergency operations center. In addition, the Department notified community corrections supervisors (CCS) in all its field offices of the call. That notice went out either late morning or early afternoon. CCSs were directed to notify staff "immediately" that DOC had received a phone call claiming that community corrections field offices "would be bombed" that day. They were also to notify local law enforcement. Two employees of the Longview office did a walk-through of the building and the area outside the office to look for anything unusual; they did not find anything. An employee in the Lakewood office, who had a long military background, checked in and around the Lakewood/Parkland offices; he found nothing unusual.

Grievant's supervisor, Rick Hendricks, did not pass on to her the notice about the threat. She heard about it sometime later when support staff in the Lakewood office forwarded the notice to all staff. She was very apprehensive about being in the building after receiving the notice. She expressed her concerns to co-workers.

Other employees in the Lakewood/Parkland offices were also upset and nervous about the threat. At least some community corrections officers checked out vehicles and left to make field visits rather than stay in the office.

Meanwhile, about 40 minutes after the first call, the Longview office got a second call, apparently from the same caller. He was very angry and said that there was a bomb in the Longview office and it was going to blow up that day.

Following the second call, the Longview office was temporarily evacuated. Local law enforcement was contacted.¹ After another walk-through of the building by certain staff members, employees were allowed to return to work.

Around 2:45 p.m., employees at the Lakewood/Parkland offices were sent an email to let them know that Lakewood Police had been notified about the bomb threat but declined to respond because it had not received the initial call threat. Employees were also notified that Field Administrators (FA) Armando Mendoza and Earl Wright were not authorizing closure of the offices.

Grievant remained very anxious and concerned for her safety and asked to be allowed to leave. Her supervisor gave her permission to go home, but required her to use accrued leave. Grievant left the office around 3 p.m. She was the only employee who went home for the day due to the threat.

About 3:30, the Department sent another email to all CCSs and other management staff. This email stated that the second call had been reported to the emergency operations center, that local law enforcement had searched the Longview office and found no bomb, and that Longview staff who had been evacuated had

¹ The evidence is conflicting about whether the Longview police responded and conducted a search.

returned to work. The message concluded: “The decision to make contact statewide was done as a precautionary measure to heighten awareness and ensure staff safety. We appreciate your patience and professionalism as the situation has evolved.”

That email was forwarded to all field office staff at 5:46 p.m. that afternoon. Most employees, including Grievant, did not receive it until the next day.

Another email went to all field office staff about 5:55 p.m. The email informed employees about a press release on the incident. They were also told that the Department had consulted with Washington State Patrol Chief John Batiste, who said that the communication and direction given to employees were appropriate. Finally, the email informed employees that the emergency operations center had closed at 5:30 p.m.

The following day, FA Steven Johnson contacted employees he supervised and requested their input on what had worked, what had not worked, and suggested changes. Grievant’s supervisor did not offer employees the same opportunity, but Grievant asked FA Mendoza, who told her to submit any comments or suggestions to him.

Grievant submitted several suggestions. Among the issues she identified were the delay in notifying staff of the threat, lack of statewide consistency in addressing the incident, failure to notify all staff that the threat was specific to Longview until after most offices were closed, failure to increase security regarding the offenders who enter field offices, and requiring her to use leave time to go home. Mendoza forwarded her suggestions to Assistant Deputy Secretary Earl Wright for his review.

On May 21, 2007, the Union filed a grievance, contending that the Department had violated Section 20.1 “by failing to provide a work environment in accordance with standards established by WISHA.” As a remedy, the Union requested that the Department “immediately develop and implement a process for future threats that is consistently followed in each office” and make Grievant whole for the vacation she used on April 30.

VI. CONTENTIONS OF THE PARTIES

A. Union

The Department failed to provide a safe working environment on April 30, 2007, in violation of Section 20.1. Under the circumstances, Grievant was justified in asking to be allowed to leave, and the Department should be required to restore the 2.5 hours of vacation she used. In addition, the Department should be ordered to develop a process to address such threats in the future.

Grievant's desire to leave was justified for several reasons. The Department failed to timely notify field staff that the threat was directed to a particular office. After the threat was announced, there were no security precautions taken at the Lakewood office. In addition, there was no directive to search all the offenders who enter the office. It must be kept in mind that this threat closely followed the fire bombing of the Bremerton office. Because of the Department's failures, Grievant should have been able to use administrative leave rather than having to use vacation.

The Department's communications to field staff were lacking. There was an unacceptable lag in telling staff after the threat was received. There was also an unacceptable lag in letting staff know that the threat was directed at one specific office.

To the extent the Department does have a policy for responding to such threats, that policy was not followed consistently in field offices. There is no assurance that a similar incident would be handled better in the future. For example, the policy says to contact local law enforcement, but here local law enforcement would not respond.

Grievant was not the only employee who was apprehensive. The fact that others did not file grievances is irrelevant.

B. Department

The Union failed to prove that the Department's actions on April 30, 2007 violated the parties' agreement. The grievance should be dismissed.

The grievance claims a violation of Section 20.1. According to the Union, the Department failed to comply with WISHA requirements. To the contrary, the evidence established that the Department did all it could and complied with its contractual obligations.

The Union is aware of Department policies regarding such incidents, but had not previously raised any concerns about the bomb threat policy being inadequate. In addition, the contract calls for joint safety committees, and the Union has not raised any issue about the bomb threat policy at such committees. Thus, the Union has failed to use the processes available to it to raise safety concerns about bomb threats.

The Department followed established policy concerning bomb threats. The first call was reported both to local law enforcement and the State Patrol. Neither was able to respond because of the general nature of the threat. The Department then asked field staff, who have experience looking for contraband and other suspicious material, to conduct a sweep of offices. After the second threat targeted the Longview office, the Department concluded that it was unsafe and it was evacuated pursuant to policy until it was determined that no bomb was present.

This case is about Grievant's perception that the office was unsafe. The Department deals with potentially dangerous clientele and situations on a daily basis. As such, it cannot be responsible for every employee's perceptions regarding safety. The evidence showed that the Lakewood office was not an unsafe work environment and that the Department responded to the bomb threat in accordance with its contractual and statutory obligations.

VII. DISCUSSION AND ANALYSIS

The issue in this contract interpretation dispute is whether the Department violated its obligation to provide a safe workplace on April 30, 2007, after it received a bomb threat. The Union alleges that the Department failed to adequately communicate with field staff about the threat, and that Grievant was justified in her

desire to leave the work site. For the reasons explained below, I conclude that the alleged contract violation was not proven.

In a contract interpretation dispute, the arbitrator's role is to determine and give effect to the parties' intent. The starting place for that determination is the language of the agreement. Where the language is clear, there is usually no need to consider other evidence of intent. If the language is ambiguous, extrinsic evidence or other contract interpretation tools may be used to determine intent.

The contract language here is clear as far as it goes. It unambiguously requires the Department to provide a work environment in accordance with WISHA safety standards. The details are left to those standards.

WISHA standards require employers, among other things, to: (1) provide employees a workplace free from recognized hazards that are likely to cause serious injury or death; (2) prohibit employees from entering or being in a workplace that is not safe; and (3) establish and enforce rules that lead to a safe work environment. In the Union's view, the Department met none of these standards on April 30, 2007.²

There are several components to the grievance. The overarching question is whether the Department's policies and procedures comport with WISHA standards, as required by the contract. If they do, a secondary question is whether the Department handled the April 30 incident appropriately under its policies and procedures. Closely tied to that question is the matter of whether the Lakewood office was an unsafe work environment on April 30. The final element is whether Grievant should have been allowed to go home during the incident without using accrued leave.

² The Union also cited WAC 296-24-567 concerning emergency action plans. That rule appears to be focused on different types of emergencies than the incident at issue. It is part of an overall rule on means of egress, and the general focus is on fires. The definition of an emergency action plan is "a plan for a workplace, or part thereof, describing what procedures the employer and employees must take to ensure safety from fire or other emergencies." In an appendix, which by its terms is a nonmandatory guideline, the given examples of emergencies are fire, toxic chemical releases, hurricanes, tornadoes, blizzards, and floods. I did not find this rule relevant to the current dispute.

On this record, there is no evidence that the Department's policies and procedures do not satisfy WISHA requirements. The Union did not establish that the Department failed to provide a workplace free from recognized hazards. On receiving the initial threat, the Department notified field offices and directed them to contact local law enforcement. In the two offices about which there was evidence, that step was followed. Consistent with policy, employees conducted building searches and found nothing unusual. In addition, the Department evacuated a workplace—the Longview office—that it determined to be unsafe. Although the initial threat was too general to take that step, once the second call was received, the decision to evacuate was made. Finally, the Department's policy includes specific steps to follow to make sure the workplace is safe. There was no evidence that this policy is not adequate.

Whether the Department handled the incident appropriately under the policy is a closer question. Grievant contends that the policy was inconsistently applied across the state. The evidence is insufficient to support that claim. The only witnesses came from the Lakewood/Parkland offices. None of them testified about what occurred in other offices.

The Department did handle the incident differently in Longview than Lakewood. However, there are obvious and legitimate reasons for this. Longview was the office that received the first call, and so attention was naturally directed there first. More importantly, the second call clearly directed the threat specifically toward the Longview office.

On the limited evidence in the record, it appears that the Department followed its policies and procedures in Longview. Once the threat was more tangible and focused, the office was evacuated. Employees were not allowed to return until it was determined that it was safe for them to do so.

The Lakewood office was not evacuated. The Department complied with its policy requirements in notifying local law enforcement, but neither the Pierce County Sheriff's Office nor the Lakewood Police Department were willing to conduct a search

because the initial threat was too vague and the call had been received elsewhere. After an employee conducted a walk-through and around the building to see if there were any suspicious objects, Department officials determined that evacuation there was not warranted. By then, the second call specifically targeting Longview had already been received.

One area in which the Department fell short is in communicating with its employees. The first threat call was received around 11 a.m. By the time the Department sent notification statewide about the threat, the second call had already come in. Moreover, even the tardy communication was not relayed as directed, at least in Grievant's case. And inexplicably, the information that the threat was specific to Longview was not sent out until about 2:30 p.m., nearly three hours after that fact was known to Department officials. Even then, it was sent to supervisors rather than to all employees. In the Lakewood office, that information did not get forwarded to all employees until after regular work hours.

The question is whether this lapse in communication violated Section 20.1. In other words, was the workplace—particularly the Lakewood office—rendered unsafe because the Department did not notify employees more quickly about the first call and/or did not notify employees about the specific nature of the threat until after the close of business?

That question must be answered in the negative. Nothing in the WISHA standards referenced in the contract requires any specific level or amount of communication in such incidents. Likewise, nothing in the Department's bomb threat policy or emergency desk reference checklist mandates any particular communication to employees. More communication, or at least more timely communication, certainly would have been better and might well have tamped down the concerns that led to this grievance. But the communication that occurred did not violate the contract.

Finally, with respect to Grievant's individual circumstances, the grievance also must be denied. There is no doubt that she had a good faith belief that her safety was at risk if she remained at work. But as the Department points out, employees in Grievant's classification work in a position that has some inherent dangers because of the type of work being done. While workplace dangers must be addressed by the Department, it is not feasible to have a separate set of safety standards for each individual employee.

Grievant perceived that the office was unsafe. Her belief, no matter how sincerely held, did not by itself make the Lakewood office unsafe on April 30. Typically, some objective evidence of a hazardous condition must exist for a workplace to be found unsafe. The anonymous threat without more, though personally alarming, did not rise to that level. Other employees in the office, at least those who testified on Grievant's behalf, were concerned or nervous about the threat and upset at the lapses in communication. But no one else went home.

In sum, I conclude that the Department did not fail to provide a work environment in accordance with WISHA standards. Department policies regarding bomb threats comply with the cited standards. While communications with employees about the threat could have been more timely and widespread, the Department's response to the April 30 threat was consistent with its policy. Because Grievant nonetheless perceived the workplace to be unsafe, the Department allowed her to go home. It was not required by the contract or WISHA standards to grant her administrative leave for that absence. In reaching my conclusion, I considered all the evidence and argument submitted by the parties, even if it is not specifically addressed above. The grievance will be denied and dismissed.

AWARD

Having fully considered the whole record in this matter, and for the reasons explained in the Opinion, I award as follows:

1. The Department did not fail to provide a safe work environment, in violation of Section 20.1, during the April 30, 2007 bomb threat incident.
2. The grievance is denied and dismissed.
3. The Arbitrator's fees and expenses will be split equally between the parties.

Respectfully issued this 9th day of May, 2008.

David W. Stiteler
Arbitrator