

COMMONWEALTH OF PENNSYLVANIA

Kathleen A. Stoudt : State Civil Service Commission
:
v. :
:
Wernersville State Hospital, :
Department of Public Welfare : Appeal No. 22560

Kathleen A. Stoudt : Robert Miller
Pro Se : Attorney for Appointing Authority

ADJUDICATION

This is an appeal by Kathleen A. Stoudt challenging her level one Alternative Discipline in Lieu of Suspension (hereinafter “ADLS”) ¹ from regular Licensed Practical Nurse (hereinafter “LPN”) employment with the Wernersville State Hospital, Department of Public Welfare. A hearing was held March 5, 2002, in the Strawberry Square Complex in Harrisburg, Pennsylvania before Chairman Katherene E. Holtzinger Conner, who presided.

The Commissioners have reviewed the Notes of Testimony and exhibits introduced at the hearing. The issue before the Commission is whether there is good cause for appellant’s level one Alternative Discipline in Lieu of Suspension.

¹Although the imposed action has no impact on the appellant’s pay, seniority or other benefits, it carries the same weight as if appellant had served a one-day suspension without pay from her position with the appointing authority. Accordingly, the appeal will be analyzed as challenging a one-day suspension. Comm. Ex. A.

FINDINGS OF FACT

1. By letter dated January 4, 2002, the appellant was given a level one (one-day) ADLS from her position as LPN, regular status, for refusing to work mandatory overtime on December 29, 2001. Comm. Ex. A.
2. The appeal was properly raised before this Commission and was heard under Section 951(a) of the Civil Service Act, as amended.
3. On December 28, 2001, appellant, a LPN at Wernersville State Hospital, whose job duties entail administering medications to patients, worked the daylight shift and was mandated to work overtime on the evening shift. N.T. p. 36.
4. On December 29, 2001, appellant worked the daylight shift. N.T. p. 10.
5. The evening shift staff was short by two LPNs. In the morning, Lisa Willman, Registered Nurse Supervisor, made an announcement over the intercom system that overtime was needed for licensed staff on the second shift. N.T. pp. 10-11.

6. One LPN volunteered to work one overtime position by splitting the shift with another employee. Willman mandated the other LPN overtime position to appellant, according to the mandated equalization worksheet.² N.T. pp. 12-14, 18; AA Ex. 2.
7. Appellant refused to work stating that working this overtime shift would be an unsafe act. N.T. p. 18.
8. Appellant is subject to the Council 13, AFSCME union contract (hereinafter “Master Agreement”). N.T. p. 13.
9. Under the Master Agreement, employees who work voluntary overtime will not be mandated to work overtime for a period of forty-eight hours except in the case of an emergency. N.T. p. 17, 28; AA Ex. 1.
10. Employees who work mandatory overtime are not provided with the same forty-eight hour respite before being required to work another mandatory overtime shift. N.T. p. 25, 28.

² The mandated equalization worksheet, which is required by the AFSCME Master Agreement, lists the employees within a classification by seniority. Mandatory overtime is designated to employees on this list starting with those with the least to most seniority. N.T. pp. 13-14; AA Ex. 1, 2.

11. The general practice of the hospital calls for mandatory overtime assignments to be given to those classified employees who work the immediately preceding shift. Employees who are not currently working are not contacted at their homes to work mandatory overtime. N.T. pp. 29-32.
12. Employees can refuse to work mandatory overtime by either opting to take an excused refusal (“free spin”), which allows an employee once every six months to refuse mandatory overtime without penalty, or employees can find another employee to work their overtime shift or to split the shift. N.T. pp. 23-24.
13. Appellant had already used her excused refusal for the relevant six-month period in October of 2001. N.T. pp. 24, 39.
14. Due to appellant’s refusal to work mandatory overtime, a Registered Nurse from outside the bargaining unit was mandated to work the shift. N.T. p. 25.

15. It is important to have a full staff for the shift in order to provide enough coverage for patient care. N.T. p. 25.
16. Appellant has a prior written reprimand for refusing to work mandatory overtime. N.T. p. 21.
17. The Department of Public Welfare Conduct and Disciplinary Manual warrants a one to five day suspension for an employee's second offense for refusal of mandated overtime. N.T. pp. 21-23; AA Ex. 3.

DISCUSSION

In the case before the Commission, appellant was issued a level one (one-day) ADLS because she refused to work mandatory overtime on December 29, 2001. Comm. Ex. A. Disciplinary action in the form of an ADLS is reviewed by the Commission pursuant to the same standard as a suspension without pay.

In an appeal challenging the suspension of a regular status employee, the burden lies with the appointing authority to present good cause for the disciplinary action. 71 P.S. §§ 741.803, 741.951(a); 4 Pa. Code § 105.15; *White v. Department of Corrections*, 110 Pa. Commw. 496, 532 A.2d 950 (1987).

In support of its charge, the appointing authority presented the testimony of Lisa Willman, Registered Nurse Supervisor and appellant's supervisor on December 29, 2001, who stated that, on the day in question, the evening shift staff was short by two LPNs. N.T. p. 10. In the morning, Willman made an announcement over the intercom system that overtime was needed for licensed staff on the evening shift. N.T. p. 11. She received one volunteer who found another employee with whom to split her shift. In order to fill the other evening shift position, Willman constructed a mandated equalization worksheet, listing the LPNs by seniority. N.T. pp. 13-14; AA Ex. 2.

The AFSCME Master Agreement requires that a mandated equalization worksheet be constructed for employees within a classification from which mandated overtime is to be assigned. N.T. p. 14; AA Ex. 1. Willman testified that she used the worksheet to designate the mandatory overtime position for the evening shift by starting with the least senior LPN to the most senior LPN. N.T. p. 15. She explained that two of the LPNs had worked voluntary overtime within the previous forty-eight hours, therefore they were not eligible to work mandatory overtime for the evening shift. According to the Master Agreement, employees who work voluntary overtime assignments shall not be mandated to work overtime for a period of forty-eight hours except in the case of an emergency. N.T. p. 17; AA Ex. 1. Willman further explained that six LPNs were off duty, one LPN was not authorized to work mandated overtime pursuant to the Family Medical Leave Act, and another LPN refused to work mandated overtime. N.T. p. 15. Willman informed appellant that she was mandated to work overtime, as she was the next LPN on the mandated equalization worksheet authorized to work overtime. According to Willman, appellant refused to work mandated

overtime for the evening shift and stated that it would be an unsafe act. N.T. pp. 18-19.

The appointing authority also presented the testimony of David Kantor, Personnel Director, who stated that appellant was given a level one ADLS, pursuant to the Department of Public Welfare Conduct and Disciplinary Manual. He explained that appellant had a prior written reprimand for refusal of mandatory overtime, and the next step in the progressive discipline was a one to five day suspension. N.T. pp. 21-24; AA Ex. 3. Kantor noted that appellant did not attend her pre-disciplinary conference (hereinafter "PDC"). He explained that the appointing authority notified appellant that a PDC was scheduled for January 4, 2002. N.T. p. 21; Ap. Ex. 1. But, the day before the PDC was to commence, the appointing authority received a letter from appellant indicating that she chose not to attend the PDC. N.T. p. 21.

Kantor also testified that appellant could be excused from mandated overtime by opting to take an excused refusal ("free spin"). Kantor explained that the hospital has a local agreement with the union whereby every six months an employee can exercise an excused refusal from mandated overtime without incurring a penalty. N.T. p. 23. He noted, however, that appellant had already used her excused refusal in October of 2001, so she did not have a "free spin" available to use on December 29, 2001. Kantor added that appellant could also be excused from mandated overtime by finding another employee to work the whole shift or split the shift. N.T. pp. 23-24. Due to appellant's refusal to work the evening shift, a Registered Nurse outside of the bargaining unit was mandated to cover the shift. Kantor noted that it is necessary to have a full staff for each shift in order to provide enough coverage for patient care. N.T. p. 25.

Kantor further testified that the union contract does not provide that an employee who was mandated to work overtime receive the same forty-eight hour respite before being mandated to work another overtime shift as provided to employees who work voluntary overtime. N.T. p. 25. He noted that the reason for not providing this forty-eight hour respite to employees who work mandated overtime is to encourage employees to volunteer for overtime. N.T. p. 29. In explaining the union contract provisions, regarding assigning mandatory overtime, Kantor stated that the appointing authority's interpretation of the contract and local general practice of the hospital regarding mandating overtime is that employees who are not working are not contacted so that the hospital is not contacting employees at their homes. N.T. pp. 29-32. In this case, if those off-duty employees listed on the mandated equalization worksheet were on-duty, then they would have been mandated to work overtime prior to appellant since they had less seniority. N.T. p. 31.

Appellant does not dispute that: 1) overtime was needed for the evening shift on December 29, 2001; 2) the appointing authority mandated the overtime shift according to the terms of the union agreement; and 3) the practice is not to contact employees at home. N.T. p. 36. Appellant's position, however, is that the appointing authority should have accepted her reason for refusing mandatory overtime, thus excusing her from the overtime shift without penalty. According to appellant, she worked the daylight shift on December 28, 2001, administering medications, and was mandated to work overtime for the evening shift, totaling a sixteen-hour workday. She went home for eight hours and returned to work the daylight shift on December 29, 2001. Again appellant was mandated to work overtime for the evening shift where she was expected to administer

medications for another eight hours on a ward where she was unfamiliar with the patients. According to appellant, she told Willman that working this overtime shift would be “unsafe based on the fact that [she] had just worked 16 hours the day before.” N.T. p. 36. She noted that she did not want to make a mistake in administering the medications thereby endangering a patient’s health. N.T. p. 37.

Appellant acknowledged that she had already used her “free spin” on October 8, 2001 and, therefore, was not able to use an excused refusal for December 29, 2001. N.T. p. 39. Additionally, she recognized that she could have volunteered to work overtime on December 28, hence insulating her from being mandated to work on December 29. She argues that her reason for refusing overtime should have constituted an acceptable excuse for refusal. N.T. p. 40. According to appellant, pursuant to the Master Agreement,³ it is within the personnel department’s discretion to determine what is an acceptable excuse for refusing to work mandated overtime, despite the fact that she had already used his/her “free spin.” N.T. p. 41. Furthermore, in determining what discipline, if any, is appropriate. Appellant asks the Commission to remove the ADLS from her personnel record because she has commendable performance reviews. N.T. p. 38.

With respect to the PDC, appellant did not attend because the written notice sent by the appointing authority notifying her of her scheduled PDC indicated that, “it was already determined by the personnel office that [her] excuse was unacceptable. And my status hadn’t changed on my excuse. I had nothing else to add to it.” N.T. p. 37; Ap. Ex. 1.

³ Section 2(e) of the Master Agreement provides as follows: “In the event a mandatory assignment is made and the employee who has been mandated to work requests to be excused, the employer will make a determination whether the request is approved or disapproved.”

Having reviewed the evidence, the Commission finds that the appointing authority established good cause to issue appellant a level one (one-day) ADLS for refusal to work mandatory overtime. This level of discipline is consistent with the Department of Public Welfare Conduct and Disciplinary Manual applicable to appellant's employment as a LPN.

Appellant's refusal to work mandatory overtime, as directed by her supervisor, hindered her from carrying out her job duties, as she was not available to administer medications to patients for the evening shift. Although a nurse from outside the bargaining unit was mandated to work this shift, appellant's refusal to work could have affected adequate coverage for the patients' care.

The appointing authority's procedure for designating mandatory overtime and its interpretation of the Master Agreement and the ensuing general practices of the hospital are controlling in this case. The Commission does not have jurisdiction to interpret the terms of a labor agreement. *Ermel v. Commonwealth, Department of Transportation*, 79 Pa. Commw. 431, 435, 470 A.2d 1061, 1064 (1984). In fact, the Master Agreement, itself, dictates that "[l]ocal scheduling agreements presently in existence or those agreed to in the future between the Employer and the Union will supercede the requirements of this section." AA Ex. 1 (Appendix J—Hours of Work). The appointing authority has interpreted the provisions of the Master Agreement, and subsequently established the general practice of the hospital, to provide that mandatory overtime be designated by seniority to the current staff on duty to work the upcoming shift, rather than contacting employees at their homes. Although the Commission recognizes that the appointing authority's interpretation is controlling, we note that but for this general practice, appellant's mandation appears to contradict the

provisions set forth in the Master Agreement. The agreement provides that mandatory overtime be designated by seniority to the classified staff, without reference to whether the employee is on or off duty. Nevertheless, appellant was required to work mandatory overtime for the evening shift on December 29, 2001, as directed by her supervisor and according to the procedures set forth by the appointing authority.

We also find that, pursuant to the Master Agreement, it is within the sole discretion of the appointing authority to determine what constitutes an acceptable excuse in order to be excused from mandatory overtime. Appellant chose not to raise this by not attending the PDC; and, despite her position that it would not have made a difference, the Commission believes that it was the opportunity to request the appointing authority to evaluate and accept or reject her reason for not working overtime for purposes of determining the appropriate discipline. The appointing authority determined that appellant's excuse was unacceptable, perhaps because it did not agree that the assignment would constitute an "unsafe act," thereby requiring appellant to work overtime. Although sympathetic to appellant's situation, the Commission will not second-guess the appointing authority's decision given these circumstances. Accordingly, we enter the following

CONCLUSION OF LAW

The appointing authority has presented evidence establishing good cause for suspension under Section 803 of the Civil Service Act, as amended.

ORDER

AND NOW, the State Civil Service Commission, by agreement of its members, dismisses the appeal of Kathleen A. Stoudt challenging her level one Alternative Discipline in Lieu of Suspension from regular Licensed Practical Nurse employment with the Wernersville State Hospital, Department of Public Welfare and sustains the action of the Wernersville State Hospital, Department of Public Welfare in the level one Alternative Discipline in Lieu of Suspension of Kathleen A. Stoudt from regular Licensed Practical Nurse employment.

State Civil Service Commission

Katherine E. Holtzinger Conner, Esquire
Chairman

Barbara L. Krause, Esquire
Commissioner

Mailed: June 20, 2002