

IN ARBITRATION BEFORE
MICHAEL E. CAVANAUGH, J.D.

WASHINGTON FEDERATION
OF STATE EMPLOYEES,)
)
Union,) ARBITRATOR’S DECISION
) AND AWARD
and)
) AAA No. 75-390-00310-08
)
STATE OF WASHINGTON, DEPT.)
OF SOCIAL AND HEALTH SERVICES,)
)
Employer.)
)
(Yates and Nusbaum Grievances))

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I. INTRODUCTION

The Department discharged the Grievants from their Social Worker 3 positions after learning that they had received their qualifying college degrees online from an alleged “diploma mill.” The Grievants argue, by contrast, that they reasonably believed the representations on the school’s website that it was an accredited institution, and that they were awarded their degrees on the basis of substantial “life experience” that

appropriately substituted for academic work. In any event, they contend, they did not willfully deceive or mislead the State as to their qualifications, and thus the State lacked just cause to discharge them. As a remedy, they request to be transferred to different job classifications within the Department if, in fact, they are found to be unqualified for the positions they held at the time of discharge.

At a hearing held in the office of the Attorney General in Tumwater, Washington on February 13, 2009, the parties had full opportunity to present evidence and argument, including the opportunity to cross examine witnesses. The proceedings were transcribed by a certified court reporter, and the parties provided the Arbitrator with a copy of the transcript. Counsel filed post-hearing briefs electronically on May 1, 2009, and with the Arbitrator's receipt of the briefs, the record closed. Having carefully considered the evidence and argument in its entirety, I am now prepared to render the following Decision and Award.

II. STATEMENT OF THE ISSUE

The parties stipulated to the following statement of the issue to be decided:

Were the Grievants terminated for just cause pursuant to the terms of the collective bargaining agreement? If not, what should the remedy be?

Tr. at 5.¹

III. FACTS

The Department of Social and Health Services ("DSHS") includes sections designed to investigate and remedy child neglect and abuse, including Child Protective Services ("CPS") and Children and Family Welfare Services ("CWFS"). Grievant Yates was employed as a Social Worker 3 ("SW3") in CPS, charged with investigating

¹ As the Union correctly notes in its post-hearing brief, although the cases were consolidated for hearing, each individual Grievant's case must be decided on its own merits. Union Brief at 2.

allegations of abuse or neglect of children. In that function, he was expected to accurately assess the level of risk in home environments and, if necessary, to recommend appropriate actions to protect the safety and welfare of children. Grievant Nusbaum was employed as SW3 in CWFS where she performed similar assessments and testified as an expert witness in cases seeking the termination of parental rights. She also was assigned to evaluate the potential placement of children for adoption, including monitoring placements and providing post-adoption reports to the court.

Grievant Yates applied for his SW3 position in CPS in August 2005, listing on his application a degree in criminal justice from Farington University.² He set forth his dates of attendance as “August 1, 1999 to August 1, 2003.” Exh. EY1-4. The online application listed no other educational experience, despite the fact that Yates had attended Centralia Community College during the period 2001-03 while working for the State at Maple Lane, a juvenile rehabilitation facility. In fact, Grievant Yates had not physically “attended” Farington University. That is so because it exists (or at least formerly existed) only as an online presence that awards degrees without actual course work. Instead, Farington purportedly analyzed materials submitted by “students,” such as Mr. Yates and Ms. Nusbaum, which reflected their prior educational and work and life experiences—for example, Grievant Yates’ prior attendance at Centralia CC and the training he had received in the military. Then, in exchange for a few hundred dollars, Farington awarded

² At various times, each Grievant spelled the name of the university in different ways, i.e. “Farington” with one “r,” or “Farrington” with two. I note, however, that Grievant Yates’ “transcript,” in the record as Exh. EY9, uses the spelling “Farington,” as do Ms. Nusbaum’s “degrees.” Exh. EN3. Therefore, I use that spelling throughout.

a “degree” based on that information.³ During the interview process, Yates did not disclose the precise nature of his degree, other than to say that he received it “online.”⁴ He testified that he had no reason to think that his degree did not meet the State’s requirements because it had previously been submitted to the Department of Personnel in connection with a promotion at Maple Lane. He understood that it had been approved at that time (he did, in fact, receive a promotion), so Yates did not believe that there was anything suspect about his degree from Farington. In an online scored “test” which was used to create a hiring “register” from which Grievant Yates was selected for his SW3 position, he represented that he had completed a “college-based internship or practicum in direct social services” of twelve months or longer. Exh. EY2-3. There is no evidence in the record to support that representation, however.

Similarly, Grievant Nusbaum applied for a SW2 position in CWFS in December 2004. On her unsigned online employment application, Grievant Nusbaum indicated that she had “attended” Farington University in Santa Fe, New Mexico from “2000 to 12/2003.” Exh. EN1-4.⁵ Like Grievant Yates, however, Ms. Nusbaum had not physically

³ While Grievant Yates’ degree is not in the record, Grievant Nusbaum’s Bachelor’s and Master’s degrees in social work each clearly identify themselves (albeit in the smaller print on the page) as “honorary” degrees. Exh. EN3-1 and EN3-2.

⁴ As some Employer witnesses testified, there are online institutions that actually require course work, papers, tests, and other activities similar to the requirements of students who physically attend a college or university. Employer witnesses seemed willing to treat those online degrees differently from the degrees presented by Grievants.

⁵ Ms. Nusbaum contends that she did not submit the unsigned application form dated May 17, 2004. In fact, she contends, she did not even develop an interest in applying for a position with the State until December 2004 when the private agency where she was employed lost its grant. The evidence convinces me, however, that the application in evidence was in fact submitted by Ms. Nusbaum electronically in December 2004 to Rachel Doss, the DSHS employee that Nusbaum herself testified had approached her about applying for a position with the State. Why the printed date on the application appears as May 17, 2004, several months earlier than the date the application was submitted, is something of a mystery. It is a mystery, however, that I need not solve in order to decide this case. That is so because the State’s witnesses testified that they received the document from Ms. Nusbaum, and the metadata contained in the document demonstrates that it was last saved on Ms. Nusbaum’s computer within minutes of having been e-mailed to

attended any classes, nor had she participated in any online course work with Farington. After an interview, DSHS hired Nusbaum in a temporary social worker position on December 16, 2004. In connection with her ongoing effort to be hired into a permanent position, Nusbaum completed an online “test” which was scored May 9, 2005. Exh. EN6. In the course of that test, Ms. Nusbaum represented that she had completed a “college-based internship or practicum in direct social services” of twelve months or longer. Exh. EN6-2. She also listed her dates of attendance at Farington as “06-1998 to 12-2003.” Exh. EN6-7.⁶ After serving in additional temporary social worker positions, Ms. Nusbaum submitted another online application dated July 13, 2005. In that application, she listed her dates of Farington attendance as “2002 to 1/2004.” Exh. EN8-2. Once again, these dates differed from the dates provided in earlier materials. The Department hired Nusbaum as a permanent SW3 on August 15, 2005. Exh. JN7-1. After being placed in the SW3 position, Nusbaum appeared in court on more than one occasion, offering opinions to the court on child welfare issues based on her expertise, including her purported MSW degree. Exh. EN11.

In 2006, an audit review of the hiring of Grievant Yates as a permanent employee (apparently triggered by the fact that he had been awarded a permanent position after serving for a time as a non-permanent employee) disclosed that Farington University was not an accredited institution. Consequently, DSHS approached both Mr. Yates and Ms.

Doss. In the absence of any specific evidence to the contrary, i.e. something more than Ms. Nusbaum’s assertion that she did not apply for employment with DSHS in May 2004, I find that Exh. EN1 was authored by Ms. Nusbaum and submitted to DSHS in support of her effort to become employed by the State.

⁶ I note that these purported dates of attendance, however, differed from those listed on her original online application form. *See*, Exh. EN1-4, cited above.

Nusbaum⁷ about their educational experiences and asked why they had represented that they had “attended” an institution that had no physical presence. Both employees told the investigators that they had relied on the Farrington website’s assertion that Farrington was accredited by numerous agencies, including an affiliation with Seattle University. Moreover, they each contended that they had been awarded degrees based on their accumulated educational and life experiences. When asked why he had listed his dates of “attendance” as August 1999 to August 2003, Yates said that he was trying to make the dates “match his transcript.” Tr. at 229.⁸ Ms. Nusbaum, while conceding that she had not attended classes or done course work, *see*, e.g. Exh. EN13-1, contended that her degrees were appropriate and were properly awarded to her based on her prior education and her substantial experience in social work, a position she continued to maintain during the hearing itself. Tr. at 199-200.

The Department initially investigated whether each Grievant possessed a valid qualifying degree sufficient to meet the responsibilities of the SW3 position, but as the record unfolded, the Department turned its attention as well to whether the Grievants had

⁷ When supervisors learned as a result of the Yates audit that Farrington was not an accredited institution, they recalled that Grievant Nusbaum had also presented purported degrees in Social Work from that school. Thus, they investigated Ms. Nusbaum’s situation as well.

⁸ Mr. Yates testified that he had provided a copy of his transcript during the hiring process. The State apparently has no record of having received it. In any event, however, he provided a copy of his transcript during the investigation. It includes specific courses and grades, which appear to be separated into freshman, sophomore, junior, and senior years—at least, there are four distinct segments listing courses of increasing difficulty (as measured by the course numbers) and specificity. Exh. EY9. While some of the purported “courses” appear to bear some relationship to Mr. Yates’ prior education and life experience, for others, e.g. a course in astronomy which purportedly included a “lab,” it is not clear on this record what in Mr. Yates’ prior experiences would have justified awarding him credit for courses in those subjects. Tr. at 223.

provided “false or misleading information” during the employment process.⁹ Ultimately, after two pre-termination meetings for each Grievant, the Department concluded not only that Ms. Nusbaum and Mr. Yates lacked qualifying degrees for their positions, but also that each Grievant had “willfully” provided false or misleading information concerning their credentials. Based on that finding, the Department determined that each should be discharged. The parties were unable to resolve the resulting grievances during the preliminary steps of the parties’ grievance and arbitration procedure, and these proceedings followed.

IV. DECISION

The Union argues on Grievants’ behalf that they had no reason to doubt the assertions on the Farington website that it was an accredited institution, that in any event Grievants were never informed that a qualifying degree must be from an accredited university, and that both Grievants were truthful about their degrees (but were simply never asked whether the degrees were awarded based on “life experience”). Finally, the Union argues that the State should be estopped from objecting now to any alleged misrepresentations because the Department had ample opportunity to properly evaluate the Grievants’ credentials prior to hiring and/or promoting them, but utterly failed to do so.

A. Whether the State is Estopped

I agree with the Union that the State failed in its duty to verify the credentials offered by Grievants in support of their applications for employment. Most glaring, perhaps, is the fact that Grievant Nusbaum’s “degrees,” which supposedly qualified her

⁹ The online applications for employment completed by each Grievant (although unsigned) provide that “untruthful or misleading answers are cause for rejection of this application, removal of my name from a register, or dismissal if employed.” *See, e.g.* Exh. EY1-5.

for the position of SW3 with its substantial responsibilities, were designated as “honorary degrees” on their face. Yet apparently no one noticed that fact while “verifying” her credentials. Similarly, Mr. Yates, during his interview, described his degree as being from an “online” institution.¹⁰ Yet no one asked the follow-up questions one would reasonably expect from Department representatives selecting prospective employees for such a sensitive position. In addition, as the Union points out, Ms. Nusbaum was promoted later based on the same credentials. Moreover, while Mr. Yates was employed at Maple Lane, he presented a “degree” in support of promotion just a short time after having told the same supervisor that he would need several additional quarters to achieve his A.A. degree at Centralia CC. Yet that person passed on the application and degree, apparently to the Department of Personnel, to see if they would accept it. For each Grievant, then, the State failed on multiple occasions to notice serious discrepancies in their purported qualifications. The citizens of the state, and particularly the vulnerable children the Department is responsible for protecting, deserve closer attention to detail in the selection of DSHS employees.

I cannot agree with the Union, however, that once the State has failed to properly verify an applicant’s credentials, it is forever estopped from enforcing the conditions set forth on the application form, i.e. that providing false or misleading information is cause for termination. If an employee gains employment by supplying false or misleading information, the harm that accrues to the State and its citizens from employing less than fully honest individuals, particularly in positions of trust, is not eliminated simply

¹⁰ While one of the interviewers on the panel testified that she would have remembered and would have immediately asked probing questions had Mr. Yates said he had an online degree—thus suggesting that Mr. Yates had not disclosed that fact during the interview—the other interviewer on the panel did in fact remember that Yates described his degree as having been earned online.

because the State has failed to catch a falsehood or half-truth as early as it should have. The State and its citizens have a right to honest and forthright public servants, and that right continues even if hiring officials are less than fully observant in ferreting out misleading or false representations in the first instance. The opposite rule, it seems to me, would tend to encourage and reward less than complete disclosure from applicants for employment with the State. That result is not only illogical, it would be bad public policy.

B. Whether the SW3 Position Requires a Degree From an Accredited Institution

The Union also notes that Grievants were not informed that their qualifying degrees for the SW3 position had to be conferred by an accredited university. While that may be true,¹¹ there is no question in my mind that the State has applied an appropriate standard of qualification for SW3. The Department is certainly entitled to conclude that degrees from accredited institutions carry more weight, in terms of confidence that an individual has received a rigorous education, than degrees from non-accredited schools. Of course, when the degree is not only from a non-accredited school, but from one that awards a degree in exchange for a few hundred dollars based on information about an individual's prior education and life experience—which may or may not be thoroughly verified—the degree is even less reliable as an indicator of an appropriate educational background.

That is not necessarily to say that social workers lacking a degree from an accredited institution, including the Grievants here, are *necessarily* less competent. They may in fact be quite skillful at what they do. But even if that is the case with respect to

¹¹ On the other hand, it is my understanding from the testimony that each Grievant was aware that accreditation was an important factor. That is, each Grievant testified to having carefully examined the online information about Farington and to having accepted, at face value, the representation that Farington was accredited by various bodies, including a purported affiliation with Seattle University.

any particular individual, one need only consider the possibility that a social worker with a “life experience” degree might become involved in a case in which the Department’s action (or inaction) has allegedly contributed to the death or serious injury of a child through abuse or neglect. In such a case, the Department, and the citizens of Washington, would be ill-served by having to defend not only the propriety of the Department’s actions in the case, but also its decision to employ a social worker with a degree from an “online diploma mill,” as the media and plaintiffs’ lawyers would be likely to describe Farington. Even in day-to-day situations certain to arise in the position—for example, when SW3’s testify as “experts” in court—it seems highly unlikely to me that a judge, made fully aware of the nature of the degrees possessed by Grievants, would consider them qualified to offer expert opinions on the weighty issues presented in matters concerning parental rights or adoption.

In sum, I find that Grievants lacked the appropriate degrees to be employed in the SW3 position,¹² and that is the case whether or not they were told in advance that a qualifying degree for that position must be awarded by an accredited institution.

C. Whether Grievants “Should Have Known Better”

The Union next contends that the case should not be about whether “Grievants should have known better.” Union Brief at 2. According to the Union, Grievants took the Farington materials at face value and believed the school offered an appropriate method of meeting the State’s requirements. Perhaps they should have known better, but even so, the Union argues, they did not engage in intentional deception or “cheating.” Had they

¹² That is particularly true, of course, if the degrees awarded were “honorary” on their face as is the case with Ms. Nusbaum’s degrees.

been asked about the details of their degrees, as they were during the investigation, they would have been forthcoming.

While it is my sense that Grievants had genuinely convinced themselves that they were acting appropriately, I have difficulty accepting the argument that they were being reasonable in coming to that conclusion. With respect to Mr. Yates, for example, he received a “transcript” that awarded him not only credits, but specific “grades” for “courses” that he did not take. It seems unreasonable to me for an employee to conclude that a “degree” awarded on that basis would be legitimate in his employer’s eyes.¹³ Similarly, Ms. Nusbaum’s “degrees” were labeled “honorary.” Again, it seems unreasonable to me to assume that such a “degree” would qualify a person for a position of great responsibility in dealing with vulnerable children.¹⁴

In the end, however, I need not decide these issues. That is so because, for the reasons set forth in the next section, I have concluded that each Grievant knowingly provided “false or misleading” information on materials related to their employment with the Department. Under those circumstances, the Union concedes, as it must, that termination would ordinarily be justified on the basis of “willful intent to deceive.” Union Brief at 2.

¹³ While Ms. Nusbaum’s transcript is not in the record, during the investigation she told the Department that she had received one. Exh. EN13-1. During that discussion, she did not expressly deny that her transcript included purported “grades” for courses she had not actually taken and for which she had not taken some form of a graded test. *Id.*

¹⁴ Ms. Nusbaum explained that she thought “honorary” meant simply that based on her prior education and extensive work experience, Farington was “honoring” her with the degrees. Exh. EN13-1. That is a highly unusual understanding of the meaning of an “honorary degree,” however.

D. Whether Grievants Provided False or Misleading Information

1. Mr. Yates

Grievant Yates knowingly provided false and/or misleading information to the State in at least two respects. First, he falsely represented that he had “attended” Farington from 1999-2003. Without further explanation, saying that he “attended” Farington would justifiably lead anyone reviewing his application materials to understand that he physically attended classes—or at the very least that he engaged in course work during that period of time, even if at a distance. During the investigation, Yates explained that he had set forth those dates on the application (although he used different dates elsewhere) because they “matched” the time reflected on his transcript. Tr. at 40. He repeated that assertion at the hearing. Tr. at 229. Even if that were true (in fact, however, while the transcript notes that a degree was awarded in 2003, it does not otherwise indicate when Mr. Yates “attended” Farington), that explanation would not make the representation on the application any more “truthful.” In fact, it is itself a false or misleading statement. Mr. Yates simply never “attended” Farington in any meaningful sense of the word, but by knowingly putting dates of attendance on the application—dates that did not even match the period of time over which he accrued the education and experience for which he was purportedly awarded his degree—Grievant created the false impression that he had physically attended college (or at a minimum, had engaged in some sort of distance learning) over that period of time.¹⁵

¹⁵ I also note Grievant’s concession that his transcript, if in fact he provided it to the State as he alleges, was misleading in that it similarly gave the impression that he had “attended” Farington. Tr. at 223-24.

An even clearer example of false or misleading information is Grievant Yates' representation that he had engaged in a "college-based internship or practicum" of twelve months or more. Exh. EY2-3. There is no evidence in the record to substantiate Mr. Yates' claim on the online test that he had in fact completed a college-based internship or practicum of any length, let alone one of twelve months. Because the State made that alleged misrepresentation by Mr. Yates a central issue in testimony describing its reasons for determining that he should be terminated for providing false or misleading information, *see, e.g.* Tr. at 143, I would have expected him to rebut the State's assertion if it were possible to do so. He did not.

Both of these representations by Mr. Yates, each of which concerned a matter important to the hiring decision, were knowing and intentional, and they were inherently misleading, if not outright false. Thus, I find that the State has met its burden to establish that Grievant Yates knowingly provided false or misleading information on issues material to the hiring and/or promotional process.¹⁶

2. Ms. Nusbaum

For very similar reasons, I find that Grievant Nusbaum provided false and/or misleading information on subjects material to the State's hiring and promotional decisions. Like Mr. Yates, Ms. Nusbaum also represented on her applications and associated materials that she had "attended"—or at least had some educational affiliation with—Farington either between 1998 and 2003 (as set forth in Exh. EN6-7) or from 2000 to 2003 (*see*, Exh. EN1-4). This information was at best misleading. That is, she never

¹⁶ Given my evaluation of these aspects of Mr. Yates' representations in connection with his employment, I need not analyze in detail the additional alleged false or misleading statements argued by the State in support of discharge.

“attended” classes and never engaged in any course work of any kind, nor did she have any relationship with Farington whatsoever until she sent in her materials¹⁷ and paid for her degrees shortly before receiving them.

Also like Mr. Yates, Ms. Nusbaum represented to the State that she had completed a “college-based internship or practicum in direct social services” of twelve months or greater in length. Exh. EN6-2. When I asked her at the hearing to explain why she made that claim, she said:

I was more focusing on the practicum side, not the college-based internship. Based on the information that I had discussed with the admissions representatives from Farington the level of work that I was doing as the foster parent liaison in Region 6 qualified, according to her, as a practicum level of experience and that that was transferable over to them as my practicum. And I worked there for about two years. It was directly related to the field I was looking at.

Tr. at 204. Although it is not entirely clear to me, it appears perhaps that Ms. Nusbaum interprets the adjectival phrase “college-based” as modifying only “internship” and not practicum.” If so, then she has parsed the phrase unreasonably. That is, a reader of above average intelligence, as I have no doubt Ms. Nusbaum is, would reasonably understand that the ordinary meaning of the phrase “college-based internship or practicum” is that “college-based” modifies *both* of the subsequent terms.

Moreover, the idea that prior work experience can constitute a “practicum” stands the concept of a practicum on its head. That is, a “practicum” is “a *school or college course*, especially one in a specialized field of study, that is designed to give students *supervised* practical application of *previously studied theory*.” See, *The American*

¹⁷ The State argues that there is no proof that Ms. Nusbaum provided anything to Farington in support of her degrees other than the funds to purchase them. I need not decide that question, however. Even if she did provide extensive materials in support of her education and experience as she testified, her representations to the State were nevertheless “misleading,” to put it charitably.

Heritage Dictionary of the English Language (4th Ed., 2000), available online at www.bartelby.com/61/89/P0498900.html (emphasis supplied). Ms. Nusbaum, however, did not participate in a “supervised practical application of previously studied theory as part of a college course.” Rather, she asserts that her practical, on-the-job learning and experience should *substitute* for the study of *theory* in *college course work*. Thus, while the work she did as a foster parent liaison was no doubt valuable and important, it in no reasonable sense could be termed a “practicum,” no matter what the Farington “admissions” person may have told her, and it seems to me that Ms. Nusbaum, with her practical experience in social work as well as prior experience as a student at Clark Community College, “should have known better.” Be that as it may, however, even if her lack of understanding of the precise nature of a social work practicum could be excused, Ms. Nusbaum’s so-called practicum (really, her prior experience) was simply not “college-based.” Thus, it was misleading, at a minimum, for her to claim that she had completed a “college-based practicum.”¹⁸

I find that the State has established that Ms. Nusbaum knowingly provided false and/or misleading information to the State in support of her applications for employment and promotion.¹⁹

¹⁸ This observation is related, at least tangentially, to a concern expressed by one of the State’s witnesses, i.e. that Ms. Nusbaum had received credit against required experience as a SW2, as an element of qualifications to become SW3, on the basis of her purported MSW degree. That “degree,” however, was based primarily on her “experience.” Thus, in essence, Ms. Nusbaum’s “experience” was credited twice.

¹⁹ As with Mr. Yates, my findings with respect to the specific representations set forth above make it unnecessary for me to analyze the State’s additional allegations of “false or misleading” information allegedly provided by Ms. Nusbaum.

E. Appropriateness of the Penalty

The Union forcefully contends that Grievants are “hardworking, effective, motivated employees,” and thus that the State has an “obligation to find some position for these employees in which they can be of service.” Union Brief at 6. In essence, the Union argues that the penalty of termination is excessive here because these are dedicated and valuable employees of the State.²⁰ I think the record supports a conclusion that both Grievants are dedicated to the welfare of troubled, disadvantaged, and otherwise vulnerable children. Mr. Yates, for example, chose to work at Maple Lane and then at CPS, and it appears that he was good at his job and took it seriously. Ms. Nusbaum, who has a history of taking vulnerable children into her own home, was essentially recruited to DSHS by State employees who had found her to be an effective foster parent liaison. My impression is that both Grievants sought their “degrees,” at least in part, so they could assume positions of even greater responsibility, with the corresponding opportunity to do greater good for at-risk children and their families. Both should be commended for that desire.

Nevertheless, each Grievant acted in a way that justifiably undermined the Department’s confidence in their judgment and their candor. Providing information on a job application that is “misleading” or that constitutes a “half-truth” is little different from providing information that is flatly false. That is why when witnesses testify, whether in court or in an arbitration, they are required to swear or affirm that they will

²⁰ To the extent the Union is arguing for an exercise of “leniency” because Grievants are dedicated and valuable employees, that is a matter for the Employer, not the Arbitrator, to decide. That is, both by arbitral tradition and by the parties’ agreement as to the precise issue I am to address in this proceeding, I am limited to an evaluation of the issue of just cause.

“tell the truth, the whole truth, and nothing but the truth.” Anything less is not being fully “truthful.” Particularly in a context in which employees in the course of their duties are asked to evaluate the truthfulness and credibility of members of the public they encounter, such as at DSHS, it is no small matter that Grievants have failed to meet that standard here. Consequently, given the record before me, I cannot say that the State has violated principles of just cause in determining that their actions were deserving of the ultimate penalty in the workplace.

F. Conclusion

The Department established just cause for the discharge of both Grievants. Their grievances must therefore be denied.

AWARD

Having carefully considered the entire record in light of the contentions of the parties, I hereby render the following AWARD:

1. The Department had just cause to terminate each Grievant based on false or inaccurate information provided during the employment and/or promotional processes; therefore,
2. The grievances on behalf of Michael Yates and Melissa Nusbaum must be denied; and
3. The parties shall bear the fees and expenses of the Arbitrator in equal proportion.²¹

Dated this 1st day of June, 2009



Michael E. Cavanaugh, J.D.
Arbitrator

²¹ My file does not contain a copy of the parties' collective bargaining agreement, nor do I see the CBA listed either on the index of exhibits provided by the State, nor on my own handwritten exhibit list prepared during the course of the hearing. From past cases between the State and WFSE, I understand that the parties generally share the Arbitrator's fees in equal proportion. If for some reason that rule is not applicable in this case, I would promptly correct the Award upon a timely motion by either party after opportunity for the other party to be heard if it so desires. Any such motion should be served and filed in writing (e-mail is sufficient) not later than 5:00 PM on June 8, 2009.