#797

In The Matter of the Arbitration

-between-

Ohio Civil Service Employees
Association/AFSCME, Local 11

-and-

The State of Ohio,
Department of Commerce
Division of Securities

OPINION AND AWARD
The Melanie Braithwaite Matter

ARBITRATOR: John J. Murphy
Cincinnati, Ohio

07-00-(01-02-09)-0306-01-14

APPEARANCES:

FOR THE GRIEVANT:
(By Agreement with the Union)

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Also Present:

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Attorney-Inspector
Enforcement Section
Division of Securities

Karyn Francis
Former Attorney-Inspector
Enforcement Section
Division of Securities

Jack Gheen
Investigator, Office of
Miami County Prosecutor

FACTUAL BACKGROUND:

Effective February 1, 2001, the Director of the Department of Commerce removed the Grievant from her position as an attorney in the Enforcement Section of the Division of Securities—a division within the Department of Commerce. The removal was based upon the conclusion after the pre-disciplinary meeting that the Grievant had "violated Department policies for neglect of duty, insubordination, providing or discussing confidential information with unauthorized individuals, unauthorized removal of documents, and misuse of confidential materials." Each of the four bases for the discipline cited by the Director in the removal letter is contained in the Department's disciplinary policy for which disciplinary action can occur.

The skein of events that led to the Grievant's discharge began with the fateful assignment of the Grievant to the Tee to Green matter by her then supervisor, C. Francis, Attorney-Inspector of the Enforcement Section. The assignment occurred in the fall of 1997, and the matter involved the investigation into an alleged fraudulent scheme to cause investors to capitalize state-of-the-art golf practice facilities in exchange for promissory notes. While the scheme was nationwide and $13,000,000 was raised based upon the promissory notes, approximately $8,000,000 of promissory notes were sold in Ohio by agents, many of whom were not licensed to sell securities.

The investigation assigned to the Grievant would have its objective found in various powers that the Division of Securities

could exercise under Chapter 1707 of the Ohio Revised Code. One such power is the power to share investigatory information with other law enforcement agencies under Section 1707.12.

Since a substantial amount of the scheme was occurring in the state of Ohio, the Grievant received access requests from law enforcement agencies in other states and from the Securities Exchange Commission on the federal level.

At all times relevant to this case, the Enforcement Section had an unwritten process that was used by attorneys who received access requests on cases to which they had been assigned. The request is discussed with the attorney-inspector who then "signs off" on the request. The attorney in charge of the investigation then exercises his or her discretion in gathering the documents to be released. The actual access request is then memorialized in a written document signed by the Enforcement Section and the law enforcement agency seeking the investigatory documents from the Enforcement Section.

Several such access requests were entered into under C. Francis from the fall of 1997 to the end of her tenure as Attorney-Inspector in September of 1999. Sometime in that month Matt Fornshell became the Attorney-Inspector with supervisory responsibility for all of the attorneys in the Section, including the Grievant. Under his supervision and with his approval, the Grievant entered into an access arrangement with the United States Securities and Exchange Commission for the northeast region located in the World Trade Center in New York. The written memorialization

stated that the S.E.C. "will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of files to which access is granted . . ." Further, the S.E.C. promised to "notify you of any legally enforceable demand for the files or information prior to complying with the demand. . . ."

In addition to sharing investigatory information with law enforcement agencies outside of Ohio, the Grievant also was engaged during the course of the investigation in exercising other powers granted to the Division of Securities. These powers are enumerated in Section 1707.23 of the Ohio Revised Code and they include administrative proceedings by which the Division of Securities, represented by the Attorney General, which seek administrative remedies such as cease and desist orders or license suspensions. In addition, this Section enables the Division to initiate criminal proceedings for violations of prohibitions found within Chapter 1707. The Division does not prosecute these criminal proceedings; it makes a referral "by laying before the prosecuting attorney of the proper county any evidence of criminality which comes to its (the Divisions) knowledge." Section 1707.23 (E). If the County prosecuting attorney does not proceed, "the Division shall submit the evidence to the Attorney General, who will proceed in the prosecution."

The Grievant was engaged in making these criminal referrals. The undisputed evidence indicates that she did prepare a referral, which was addressed to the Attorney General and was told to redirect the referral to the Ohio Organized Crime Investigations

Commission. The Commission responded by a one-page letter dated June 22, 2000 signed by William McKendry, Executive Director. The letter begins by noting, "the Ohio Organized Crime Investigations Commission's (OOCIC) legal staff has reviewed the information presented to us in the 'Tee To Green' case." The letter concludes that "OOCIC declines the adoption of this case." The letter adds a suggestion: "I feel the best route is to involved the SEC in the federal prosecution of this matter."

Attached to the letter, and referred to in the letter, was a three-page memorandum addressed to William McKendry, Executive Director OOCIC from R. Smith, Assistant Attorney General OOCIC. The memorandum states as the Subject: "Criminal Referral from Ohio Division of Securities."

The McKendry letter with its attached memorandum directed to him from Assistant Attorney General Smith were sent by McKendry to the Grievant and to the Acting Director of the Division of Securities. There then shortly followed two events of importance to this case. First, the Grievant immediately (June 26, 2000) sent the McKendry letter with the attached memorandum by Smith to the New York regional office of the Securities Exchange Commission. This is one of the law enforcement agencies with whom an access agreement had been executed. Second, shortly thereafter, her supervisor, M. Fornshell told the Grievant not to pursue any more criminal referrals; she should focus on the administrative cases in the Tee to Green matter.

On November 14, 2000, the northeast regional office of the SEC

sent a letter to M. Fornshell with copy to the Grievant. The letter constituted notice to the enforcement section that the SEC had received a request for the production of documents by certain defendants in a civil case brought by the SEC concerning the Tee to Green matter. The letter noted that the request covered the documents produced by the Enforcement Section. It concluded by asking the Enforcement Section to raise any objection the section would have to the production of any documents.

M. Fornshell responded with a letter that constituted his usual practice in such instances. The letter stated that the Ohio Division of Securities had not objection to the SEC's producing records provided by the Division in October 1999.

There then followed a response by the SEC that it had come "across materials which the Division might wish to assert a privilege, including, for example, documents concerning the criminal referral by the division . . .". This letter resulted in a trip by M. Fornshell to the northeast regional office of the SEC and his examination of the enforcement section's files that were in possession of the SEC. He discovered for the first time that the Grievant had sent the McKendry letter and the attached memorandum, and both were in the SEC files that were subject to the demand for production by the defendant.

Fornshell testified at the arbitration. He noted that the Grievant had "made a criminal referral to the Attorney General and was denied." Fornshell explained that agency lawyers do not have an attorney-client relationship with the agency but with the

Attorney General's office. The agency (Enforcement Section of the Department of Securities) is the client of the Attorney General. The McKendry letter with the attached memorandum to McKendry by Assistant Attorney General Smith "is a communication by the attorney to us, the client." When the Grievant, therefore, sent these documents to the SEC, this act by the Grievant waived the privilege over the documents. This is the factual basis for the charges of neglect of duty, providing or discussing confidential information with unauthorized individuals, unauthorized removal of documents and misuse of confidential materials.

Within the time period of November-December of 2000, M. Fornshell became aware of a number of telephone calls that had been initiated by the Grievant to the Miami County Prosecutor's Office. He also learned of the content of these calls and concluded that the Grievant was not following his order to stop pursuing criminal referrals. This was the factual foundation for the charge of insubordination against the Grievant.

Finally, on December 15, 2000, M. Fornshell learned that subpoenas had not been prepared by the Grievant for an administrative hearing scheduled for the December 19-20 incident to the Tee to Green matter. By practice, attorneys in the section would prepare subpoenas for these hearings 4 to 5 weeks in advance of the hearing date. This again was a factual foundation for the charge of neglect of duty.

All of these matters were brought together in a pre-disciplinary meeting conducted on January 26, 2001. The hearing

concentrated on the purported waiver of the attorney-client privilege, the alleged pursuit of the criminal referral to the Miami County Prosecutor's Office, and the matter of preparation of the subpoenas for an administrative hearing. Based upon the report from the pre-disciplinary meeting, the director of the Department of Commerce removed the Grievant from her position as an attorney in the enforcement section.

ISSUE:

Was the Grievant disciplined for just cause? If not, what shall the remedy be?

POSITIONS OF THE PARTIES:

A.) Employer Position

The Grievant engaged in three distinct acts of misconduct that, taken together, constitute her destruction of the employment relationship and any trust that could be attached to her by her supervisors. By Section 109.02 of the Ohio Revised Code, the Attorney General is the chief law enforcement officer for all state agencies. As such, an attorney-client privilege exists between the Ohio Attorney General and the state agencies represented by the attorney general. In the matter in this arbitration, the Division of Securities, or its Enforcement Section, is the "client" in its relationship to its attorney, the Attorney General. The client can waive such a privilege if the client voluntarily exposes protected information to a party external to the privileged relationship.

As an attorney in Ohio, the Grievant was required to respect the existence of the attorney-client privilege. "A lawyer should

endeavor to preserve the evidentiary privilege." Ohio Code of Professional Responsibility, EC 4-4. When the Grievant sent the McKendry letter and memorandum to the SEC, she waived the attorney-client privilege over the documents.

The documents were privileged because they were sent from the Ohio Attorney General to the Division of Securities. The OOCIC was established in Section 177.01 of the Ohio Revised Code and it was established "in the office of the Attorney General." Section 177.01 (A). (Employer post-hearing brief at 6). The Attorney General is a member of the commission and the Attorney General and his or her designated representative serves as chairperson of the commission.

Even if one considers the statute establishing OOCIC as ambiguous on this point, the legislature provided "a road map" for the purpose of determining legislative intent. The legislature provided statutory rules of construction in Ohio Revised Code §§ 1.41 to 1.59. Words shall be construed according to common usage Section 1.42. For common usage "in" means "contained or enclosed by; inside; within."

Finally, the "joint defense" privilege of the "common-interest" rule does not legally apply to the facts of this case, and does not excuse the Grievant from liability for waiving the attorney-client privilege.

With respect to the insubordination charge, the Grievant continued "to pursue criminal prosecution when she exploited a routine inquiry and pressured a county prosecutor to prosecute Tee

to Green." (Employer post-hearing brief at 11). Insubordination was based on the record showing the number of calls initiated by the Grievant to the prosecutor's office and by the testimony of the investigator for the prosecutor's office of the content of these calls. The investigator had no interest in the removal of the Grievant, and his testimony should be given credit.

Finally, the Grievant neglected her duty to prepare subpoenas for an administrative hearing, and it became necessary to take extraordinary measures to ensure attendance of witness at the hearing. "The raft of excuses given by the Grievant at the arbitration . . . cannot mitigate the fact that the Grievant neglected her duty to perform the simple, yet important task of properly preparing subpoenas." (Employer post-hearing at 15).

B.) Grievant's Position

The Grievant denied that the Employer has sustained its burden of proof that it had just cause to discipline the Grievant with respect to any of the charges. On the matter of the Grievant's alleged disclosure or production of confidential information, the Grievant made several points. First, the unwritten policy of the enforcement section did not require the Grievant to get her supervisor's approval before sending any documents to a law enforcement agency under an access agreement. Her supervisor asserted that the Grievant should have known not to turn over to the SEC the alleged attorney-client material. However, there were no rules limiting the Grievant's discretion in turning over documents.

The only document of concern was the letter from the Ohio Organized Crime Investigations Commission with the attached memorandum. This is not covered by the attorney-client privilege. The attorney-client privilege involves confidential communications between an attorney and client for the purposes of rendering legal services. Ohio Revised Code Section 2317.02. The most basic element of the privilege is that one of the parties to the communication must be an attorney licensed to practice law. (Grievant post-hearing brief at 11). In this case, the McKendry letter was from the Executive Director of the organized crimes investigations commission, and that person was not a lawyer. "McKendry is not an attorney. End of inquiry." (Grievant post-hearing brief at 12).

Moreover, even if McKendry were an attorney, he must be functioning in his capacity as an attorney. In this case, McKendry was conducting an investigation and deciding whether the commission should prosecute in the Tee to Green matter.

The OOCIC was not created pursuant to the Chapter in the Ohio law setting forth the Office of the Attorney General. Indeed, the OOCIC was established under a different Chapter, and its functions are primarily investigatory in nature.

The Employer did not show just cause for the removal based upon actions of the Grievant which allegedly caused a witness to fail to appear as needed for an administrative hearing. In fact, all the witnesses did attend voluntarily, and the actions of the Grievant in respect to the subpoenas largely reflect the decisions

of an assistant attorney general who was the attorney for the enforcement section in preparing and presenting the case.

Lastly, the Employer failed again to show just cause for the removal based upon the Grievant's actions with the Miami County prosecutor's office. The Division's work rules impose an affirmative duty on the employees to provide assistance when it is requested by law enforcement authorities. Therefore, the Grievant could not be disciplined for not cooperating with the official investigation by the Miami County prosecutor's office. "Thus, the charge against (the Grievant) arising from her dealings with the Miami County prosecutor is that she enjoyed doing what she was supposed to be doing. In essence, she committed a "'thought crime'." (Grievant post-hearing brief at 18). The Grievant did not make the initial contact with this prosecutor's office; rather she was contacted by an investigator for the office because of citizen complaints directed to the prosecutor's office. Her ensuing telephone communications with the investigator constituted the performance of her duty to assist in the investigation by the prosecutor's office.

OPINION:

A.) The Attorney-Client Privilege Matter

The core of this case centers on the McKendry letter dated June 22, 2000 and the attached three-page memorandum to McKendry by Assistant Attorney General Smith. The McKendry letter was addressed to the Grievant and the acting director of the Division of Securities. The Employer says that these documents were

privileged as communications by the Attorney General as attorney and the Division of Securities as client. The Grievant, acting for the client, waived the privilege by disclosing these privileged documents to a third party, the northeast regional office of the SEC. The Grievant sent these documents to the SEC on June 26, 2000, and her supervisor did not discover this fact until he examined documents from the Division in the possession of the SEC during the supervisor's visit to the SEC in December 2000.

The hearing officer who conducted the pre-disciplinary meeting on the charges against the Grievant recommended that she be removed from her position. His report reflected the importance to the Employer of the charge of waiver of the attorney-client privilege. He noted but for this charge, the other charges against the Grievant would, if found meritorious, result in only a minor suspension.

> By far, the most critical violation was the release of protected information resulting in the loss of such protection. But for this allegation, the allegations in this matter would only result in minor suspension. However, the breach of confidentiality, especially by an attorney who knows and can appreciate the consequences of such breach, is unforgivable.

The question of the waiver of the attorney-client privilege should be approached in the context in which this case arose. This is a case under a collective bargaining contract with the standard of just cause to be met by the Employer to discharge the employee. The fact that the employee is an attorney does not change that standard. The fact that the employee was an attorney does,

however, dictate the reasonable expectations that the Employer would have for the conduct of the employee.

There were no Employer rules--written or oral--governing the Grievant in selecting documents to share with the SEC under the access agreement with the SEC. The Employer's theory is that the attorney-client privilege was so obvious in this case that the Grievant should have known that discharge would result if she deliberately waived the privilege. In other words, this case is akin to a case where a discharge is upheld by arbitrators for conduct that is clearly wrong. Where conduct is clearly wrong, arbitrators have held that employees need not be notified by rules prohibiting the conduct.

The testimony of the Grievant's supervisor, M. Fornshell, manifests this theory. He characterized the McKendry letter as "a letter from the Attorney General's office." He stated that he did not do any legal research to support his determination that the Grievant had caused a breach of the attorney-client relationship. He thought that the violation by the Grievant was clear on its face.

> The Grievant did not use fundamental lawyering judgment. We thought legal research was unnecessary. We thought the matter was clear on its face from the traditional attorney-client relationship.

The testimony of the Grievant's former supervisor (who initially assigned the Grievant to the Tee to Green case) also supports this theory by implication. The supervisor was asked if she would expect an attorney to research before charging another

attorney with a violation of the attorney-client privilege. She answered, "no, if the violation is self-evident."

This record shows that there is serious doubt as to whether or not the McKendry letter was in fact a communication by an attorney to a client and whether the communication in the letter reflects the function of an attorney assisting a client. The principle of just cause requires that an employee be aware that his or her conduct would result in discipline. Normally, an Employer acquits itself of this requirement of just cause through the publication of rules. Given the serious doubt of whether the requirements of the attorney-client privilege apply to the McKendry letter, the theory that the disclosure of the letter by the Grievant was "clearly wrong" is inapplicable. On the facts of this case, had the Employer wished to attach the sanction of removal for the disclosure of a communication such as the McKendry letter, it could have adopted a rule so stating. Since the "clearly wrong" theory is inapplicable, and there was no disciplinary rule applicable to the disclosure of a communication like the McKendry letter, the Employer did not have just cause for removing the Grievant because of the disclosure.

It is clear that the Employer viewed the Ohio Organized Crime Investigations Commission (OOCIC) and the Office of the Attorney General (Attorney General) as one entity, and this united entity is the Attorney General. The Grievant's supervisor referred to the McKendry letter as a letter from the Attorney General while the letter is on the stationery of OOCIC. In addition, William D.

McKendry is listed in the left column as the Executive Director and his signature appears above a typewritten statement of his name and his title, "Executive Director."

It is true, as pressed by the Employer in this case, that the OOCIC was "established in the office of the attorney general," and that the "attorney general . . . shall serve as chairman of the commission." Ohio Revised Code Section 177.01. The chapter of the Ohio Revised Code that established the OOCIC has, however, other provisions concerning the personnel of those who govern and operate the commission. These provisions raise doubt as to whether the attorney-client privilege attached to the McKendry letter. Chapter 177 (the chapter that established the OOCIC) sets forth a commission of seven members. Other than the attorney general and two prosecuting attorneys, there is no requirement that the other four members of the commission be attorneys. The other four must be county or city law enforcement officers, who may or may not be attorneys.

Under Section 177.01 (C) the operation of the commission is entrusted an executive director. The executive director and other employees "exercise the powers and carry out the duties of the commission."

The same provision sets out the requirements for a person becoming an employee or executive director of the commission. They include such matters as undergoing an investigation to obtain security clearance, which may include a polygraph examination. The key is that there is no requirement that the executive director or

any employee who carries out the duties of the commission be an attorney.

The purpose of the attorney-client privilege is the promotion of free and open communication between clients and their legal advisors without fear of disclosure. The attorney cannot disclose their communications because the privilege encourages confidence between clients and attorneys. It is a "commonly accepted view of the profession that the privileges confined to communications made to an attorney who has authority to practice the legal profession in courts of record . . . ". 44 Ohio Jur. 3d Section 829. The statute setting forth the requirements for a person to hold a position of executive director of the OOCIC does not include the necessity that the executive director be an attorney, and no such proof that McKendry was an attorney was presented in this case.

The second difficulty with the McKendry letter is its contents. The OOCIC is statutorily empowered to conduct an investigation through a task force to determine whether organized criminal activity has occurred as that phrase is defined in Chapter 117. If so found, there then follows a referral of the case to a prosecuting attorney, special prosecutor, or to the attorney general.

Nothing in Chapter 117 suggests that the OOCIC provides legal advice or representation to state agencies. Ohio Revised Code Section 109.02 states that "the attorney general is the chief law officer for the State and all its departments . . .". The same provision goes on to state that "no State officer or board, or head

of a department or institution of the State shall be employ, or be represented by, other counsel or attorneys at law."

The McKendry letter in its contents reflects the duties of OOCIC. The commission determines whether to proceed with the investigation through a task force. McKendry letter concluded that "OOCIC declines the adoption of this case."

There was a three-page memorandum by Assistant Attorney General Smith attached to the McKendry one-page letter. This was not privileged as an attorney-client communication between Smith acting as the attorney and the Department of Securities as the client. First, the communication was on OOCIC letterhead as an interoffice memorandum; it was signed by Robert F. Smith as Assistant Attorney General, OOCIC; that is, as an attorney within OOCIC. The important reason, however, is that the three-page memorandum is not directed to the Division of Securities or an agent of such as the client. It is directed to William McKendry, Executive Director, OOCIC.

B.) The Other Charges

It was undisputed that the Grievant received an oral order from her supervisor late in June 2000 not to make any criminal referrals to county prosecutors. Rather, the Grievant was to focus on administrative cases concerning the salesman of the Tee to Green matter. The Employer contended that the Grievant violated this order and was insubordinate. The evidence consisted of a record of telephone calls initiated by the Grievant to the county prosecutor's office in Miami County, and the testimony of an

investigator from that office as to the content of these calls. The Employer quite correctly argued that the testimony of the investigator should be given credit because of the absence of any interest in the outcome of this case.

There are, however, three undisputed facts in this case that greatly heightened the burden of proof on the Employer to show that the Grievant disobeyed the order.

First, the record shows that the Grievant did not directly initiate a contact with the Miami County prosecutor's office after June of 2000. In addition, the record shows that the initial contact to the Grievant was by the investigator for the county prosecutor's office and this initial contact was not engineering by some subterfuge by the Grievant.

During late July 2000, an investor in Tee to Green, D. Lauber, called the Grievant with his concern about a notice of bankruptcy sent to him by Tee to Green. Obviously, this raised the prospect that the promissory note given to him for his investment would be worthless. The Grievant advised him that the department could not assist him at the bankruptcy, but that one of his options was to contact his local county prosecutor in Miami County, and that the division could provide assistance to the prosecutor, if needed. The Grievant's supervisor was questioned about the Grievant's response to the investor. The supervisor stated "it would not be wrong if the public called, and we could suggest contacting the prosecutor, and if the prosecutor needed assistance, the prosecutor could call the staff attorney."

The investor did contact the Miami County prosecutor, and the prosecutor told the investigator in his office to contact D. O'Hair at the Department of Commerce. He did so, and O'Hair directed the investigator to the Grievant.

This shows that the Grievant did not use the troubled investor as a conduit by which her name would be given to the county prosecutor of Miami County. The investigator obtained the Grievant's name from O'Hair, and had O'Hair not referred the investigator to the Grievant, the Grievant would have had no further involvement with the Miami County prosecutor's office.

The investigator for the Miami County prosecutor's office contacted the Grievant by telephone early in August of 2000, and the telephone records of the Grievant show that she initiated nine telephone calls in August, five of which were under one and a half minutes with one only nineteen seconds. The Grievant initiated two telephone calls to the prosecutor's office in September and one in October. The contents of some of these telephone calls without specifying the particular date were supplied by the investigator.

Even assuming that the investigator's testimony is to be given full credit, the Employer's case failed in the shoals of yet another undisputed fact in this record. The Employer has a disciplinary rule (Rule 30) that is triggered on facts that show an employee "failing to cooperate in an official investigation or inquiry." The rule sets forth progressive sanctions up to removal. Consequently, because the county prosecutor initiated an official investigation on its own (not prompted by the Grievant), the

Grievant had a duty to cooperate with this official investigation and with the investigator's inquiry. If she failed to do so, she was subject to discipline. The Employer's case is essentially that her conduct shaded beyond cooperation and became encouragement. The standard of just cause that the Employer must meet to justify discipline of these facts is not met on such an unclear distinction.

The telephone records of the Grievant do show a high number of telephone calls initiated by her to the Miami County and Montgomery County prosecutor's offices in November 2000. This is explained however by the testimony of her supervisor. The supervisor told the Grievant in November of 2000 that her high priority was to respond to the two county grand jury subpoenas from Miami and Montgomery Counties. These subpoenas centered on the production of 20 to 30 boxes of documents.

The record shows that the Employer did not sustain its burden of showing insubordination by the Grievant.

The final charge of neglect of duty concerned the failure of the Grievant to prepare subpoenas in a timely fashion for two administrative hearings that were occurring on December 21, 2000. The Grievant's supervisor testified that by office practice, the Grievant should have prepared these subpoenas 4 to 5 weeks before the hearings.

The Grievant did not dispute that she should have prepared the subpoenas 4 to 5 weeks before the hearings, but she offers several explanations for the failure. These excuses are significant only

on the question of the sanction for her admitted failure to prepare the subpoenas in a timely fashion. These excuses include her concentration on responding to the two county subpoenas in November, and her difficulty in arranging meetings with the assistant attorney general who would act as trial counsel at the hearings.

Neglect of duty is the subject one of the disciplinary rules of the Employer with sanctions available for the first four offenses. According to the rule, the sanctions under each of these four offenses are "severity of discipline depends on nature of offense." Given the mitigatory explanations and the fact that all of the witnesses voluntarily appeared at the hearing through the Grievant's telephone contacts, a written warning is an appropriate sanction for the violation of this rule on these facts.

AWARD:

The Employer did not have just cause to remove the Grievant. The Grievant should be reinstated and made whole for the period of time from her removal to her reinstatement. All reference to the Grievant's removal should be expunged from the records of the Employer. The record of the Employer should include a written warning for the Grievant's neglect of duty in failing to prepare subpoenas in a timely fashion.

Date: June 29, 2002

John J. Murphy
Arbitrator