

# Engler's Mess

Inside State Government

Issue # 95-1

June 23, 1995

## Fairness Gets Low Priority at DMB

### State employee "counseled" for violation he didn't commit

By Steve Harry

A "notice of formal counseling" isn't very serious, I guess, because in the one I got it says "Failure to meet the expectations of this counseling notice may result in disciplinary action." Which indicates that the "notice of formal counseling" by itself is not considered disciplinary action. It's hard to know just how these things work, because according to Jim DeForest of DMB Personnel, there are no written guidelines for disciplining employees. That is typical of DMB. If you don't have written rules, you don't have to apply them consistently.

When I got a "notice of formal counseling" from supervisor Lucy Pline for attempting to send a letter to the Lansing State Journal on the office fax machine, I filed a grievance. Here's what it said:

On March 17, 1995, I received a "Notice of Formal Counseling" from Lucy Pline. The reason was "unauthorized use of the Office of Administrative Services' fax machine..." This violates two Civil Service Merit Principles:

1. "All...employees...should receive fair and equitable treatment in all aspects of personnel management..."
2. "(E)mployees...should be protected from reprisal for the lawful disclosure of the violation of law, rule or regulation or mismanagement or abuse of authority."

I believe that the "Notice of Formal Counseling" is unfair for the following reasons:

1. The cost of faxing a document is negligible or zero. The cost is the same as a for local call. If this is a punishable misuse of State resources, all personal calls should be banned. The severity of the punishment in this case is out of proportion to the magnitude of the violation - had it occurred. In our 3-23-95 meeting on the matter, Lucy said that the reprimand was written rather than verbal because I was reprimanded in writing in 1989 for personal use of state resources. That was almost 6 years ago, and it was not for *personal* use of State resources. It was for continuing to question - on State time - the way the ARMS project was being conducted after I had been "reassigned" to Retirement maintenance projects. It *was* State business, but State business in which Jack Bauman didn't want me involved.
2. The violation did not occur. The document was not transmitted. When my attempt to fax it failed, I did not try again, and not because I do not know how to operate the fax machine. It occurred to me that this was not an appropriate use of State resources, so I sent the letter via U.S. mail. Lucy knows that the fax was not sent, but considers the attempt no less a violation than an actual transmission.
3. In our 3-23-95 meeting, I asked Lucy for a copy of any written rules or guidelines on personal use of State resources. The next day, she gave me two documents, neither of which addresses personal use of State resources. If written rules do indeed exist, Lucy is apparently unaware of them. She can have no intention of  
(See **GRIEVANCE**, page 2)



## Editorial

I voted for John Engler in the last two elections, and I agree with most of what he has done and wants to do. But it seems to me as a state employee that his leadership has resulted in deterioration of the day-to-day management of state government. Maybe it's the Republican belief that government is a nuisance and the only thing to do with it is "downsize" it. With that attitude, there isn't much enthusiasm for making things work.

There is no doubt that there are many areas of state government that could be more efficient and productive - where a better job could be done at a lower cost. There are two ways to remedy this. One is to stop overpaying state employees - to pay no more than necessary to attract qualified employees (and managers). The other is to manage them effectively. A lot of good information is available on how to manage for success, but there seems to be no imperative for state managers to put that knowledge into practice. Of course, many of them couldn't do it if they had to. There seems to be an unusually high percentage of state managers who are psychologically unfit for the job. We have managers who suffer from megalomania, personality disorder, paranoia, attention deficit disorder, mental retardation, manic depression, schizophrenia, alcoholism and psychosis. No wonder employees aren't productive.

I don't blame it all on John Engler. A lot of these problems existed before he took office. But he's been in charge for four years, and for the last year he's had the support of a Republican majority in the Legislature. He's eagerly taken credit for Michigan's low unemployment rate and other successes, and as Chief Executive, he must take responsibility for the mess in the executive branch.



*Engler's Mess* is published by Steve Harry, 3125 Tecumseh River Rd., Lansing, MI 48906. Telephone: 323-3897. Letters, stories and opinion pieces on mismanagement and corruption in Michigan state government are welcome.

## GRIEVANCE (continued from page 1)

enforcing rules fairly if she doesn't even know of their existence.

4. Lucy Pline is not my supervisor and therefore has no authority to take disciplinary action against me. She approves my leave time and receives my biweekly time and attendance report, but beyond that provides no supervision. She neither assigns, reviews, nor talks to me about my work. She has no knowledge of what I do or how well I do it. One is not a supervisor unless one supervises. To claim that she is my supervisor is simply not true.

Since my violation did not actually occur and would have been trivial if it had, and since Lucy Pline otherwise pays no attention to my activities as an employee, I suspect that this disciplinary action is reprisal for a complaint made to Civil Service last November...in which I reported that Lucy Pline did not disclose that she was first cousin of a new employee selected by a 3-member panel on which she served.

A just and fair solution of my grievance is:

1. Rescind the Notice of Formal Counseling. I would accept a verbal warning.
2. Either provide written guidelines on personal use of State resources or stop attempting to discipline employees for perceived violations.
3. Suggestion: Determine the cost of using State equipment such as the fax machine and the copier and let employees pay for using them for personal business.

Lucy's formal reply to my grievance is dated 3-30-95. She says:

I am Mr. Harry's supervisor.

An unauthorized use of the Office of Administrative Services' fax machine, to fax number 377-1298, a fax belonging to the Lansing State Journal, occurred on February 13, 1995. Mr.

Harry had no work assignment that would require such use of the fax machine to the above identified fax number. No Civil Service rules or departmental procedures exist that allow for use of State of Michigan fax machines or personal pursuit and interests.

Grievance denied.

I appealed to the next step, which turned out not to be Murphy Cutler, Lucy's supervisor, but Jack Bauman, director of the Automation Services Division. Jack did not respond in any manner, although the Civil Service grievance procedure says "the Step 2 supervisor shall hold an oral conference with the employee and issue a decision in writing..." I appealed to the next step. The response, dated 5-1-95, came from DMB Personnel's Jim DeForest:

The grievant is protesting a March 14, 1995, Notice of Formal Counseling issued for using the office fax machine to send a personal message to the Lansing State Journal. He demands that the counseling notice be rescinded.

On February 13, 1995, the grievant attempted to use the office fax machine to send a personal political opinion to the Editor of the Lansing State Journal. An error message printout with the newspaper's telephone number and a paper copy of the message were discovered by the fax machine about a week later. During the investigation, grievant admitted trying to send the message but he didn't think he did anything wrong.

The grievant argues the counseling notice should not have been issued because there is no specific rule addressing this issue. Civil Service Rule 6-4.1, however, grants management broad rights including the determination of managerial policy and the method, means, and personnel by which government operations are to be conducted. Formal counseling may be issue to correct inappropriate behavior or work related performance. There is nothing improper about the subject of the counseling notice.

Grievance denied.

I didn't appeal because counseling memoranda are not appealable beyond the final department step. But I

don't think Rule 6-4.1 really means that DMB can do anything it pleases. Rule 6 is the Employee Relations Policy Rule, which deals with collective bargaining. The title of Section 4 is "Rights of the Employer":

**6-4.1 Agency Determinations.** -- To determine, without engaging in the collective bargaining or meet and confer process, matters of managerial policy; mission of the agency; budget; the method, means and personnel by which government operations are to be conducted...

In my opinion, its intent is to specify what matters are off-limits for collective bargaining, not to supersede Civil Service Merit Principles.

## Civil Service No Help

In my grievance against Lucy Pline, I said that I suspected that the "notice of formal counseling" was in retaliation for a complaint filed with Civil Service which in part said that she had served on an employment interview panel without revealing that one of the candidates was her first cousin. That was only part of the complaint. On 11-7-94, Murphy Cutler - who was hired as Retirement Systems Manager in September 1994 - called a meeting and announced to her staff that two people had been hired to fill two new "lead analyst" positions. A lead analyst is a step between a regular data systems analyst and a supervisor. These positions had been created and filled without the knowledge of current staff, several of whom were qualified. When we questioned this, Murphy said that we *had* been considered; resumes that had been submitted months ago for positions on the MAIN project were reviewed by Personnel.

Four other staff members and I submitted a complaint to the Certification Appointment and Applicant Appeals Unit of the Department of Civil Service. One of our objections was that one of the people hired lacked a "minimum qualification" specified in his Position Description: "Extensive knowledge and use of PACE database Management system and extensive Automated Retirement System." Neither did the other new employee, but his PD - for no apparent reason - didn't require it. We also complained that team leadership experience was valued more than PACE and ARMS experience; that

by not making us aware of the openings, we were deprived of the opportunity to submit resumes that emphasized qualifications for these particular positions; and that by basing our rejections solely on our resumes, Management ignored what they knew of our experience and abilities from having worked with us over the years. Later, we added to our complaint the fact that Lucy Pline, who was on the 3-member panel that interviewed the candidates, was first cousin to one of the people who were hired.

We submitted our complaint to Civil Service on 11-15-94 and it was not until 3-29-95 that we received a reply from Charles Green, Jr., Director, Central Processing Division. He said DMB Personnel told him that they were looking for "experiences that would indicate that the candidate was well versed in various types of technology, particularly as it applies to relational data bases. ... (T)hey did not limit the experience to PACE or ARMS as you suggest nor would it have been necessarily appropriate to do so."

We didn't suggest it; it was in the PD.

Mr. Green went on to say that while it was true that resumes obtained in April of 1994 were used, they were used for all candidates, so none had an advantage in that regard.

Mr. Green agreed that a well-organized resume should not be a requirement for the position, but since the candidate's ability to communicate in writing is an essential part of the position's responsibilities, it is appropriate to use the resume for that purpose.

Mr. Green was concerned about "the relationship of one of the panel members to a successful candidate...", but although "Civil Service does have rules concerning conflict of interest...there was no indication that any of the other panel members were aware of the relationship..." or "that Ms. Pline was in a position to exert...any significant influence in the review and selection process."

So why bother with an interview panel?

Mr. Green concluded by saying that they told DMB to "avoid even the appearance of potential conflict of interest" in the future, but that "there is insufficient evidence in this case to make a finding that there was a violation of Civil Service Rules or Regulations and to rescind the appointments."

Note: Lucy's cousin left in February to take a job in another department - a promotion - and his old position does not appear on our latest organization chart.



Engler's Mess  
3125 Tecumseh River Rd  
Lansing, MI 48906