ARBITRATION DECISION NO.:
227

UNION:
OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:
Department of Youth Services
Cuyahoga Hills Boys School

DATE OF ARBITRATION:
January 26, 1990

DATE OF DECISION:
February 10, 1990

GRIEVANT:
Randy Garrett

OCB GRIEVANCE NO:
35-03-(89-08-02)-0041-01-03

ARBITRATOR:
Anna Smith

FOR THE UNION:
Tim Miller
Staff Rep., Advocate

FOR THE EMPLOYER:
Deneen D. Donaugh
DYS, Advocate
John Tornes
OCB

KEY WORDS:
Removal
Sleeping on Duty
Notice of Work Policy
Notice of Proposed
Discipline
Procedural

ARTICLES:
Article 24-Discipline
Article 29-Sick Leave

Article 43-Duration
§43.03-Work Rules

FACTS:

The grievant was hired in March, 1986 as a Youth Leader 2 and was assigned to a dorm at Cuyahoga Hills Boys School, a maximum security facility for the confinement of youth. The grievant was found by the duty officer to be asleep in a chair. The grievant had two prior violations of sleeping for which he was suspended. An institution directive dated June, 1988 (B-38) specifies removal as the appropriate penalty for sleeping on duty for the first or second occurrence of neglect of duty and sleeping on duty which endangers life, property of public, or public safety. Prior facility work rules did not specifically address sleeping on duty before it was modified by directive B-38.

EMPLOYER'S POSITION:

The employer argues that sleeping while on duty is an offense so serious as to warrant discharge because of the threat to the youth, the institution, the surrounding community and to the grievant himself. The employer claims that the grievant and the Union were aware that the grievant was subject to removal for sleeping on duty. They state that directive B-38 was clear and was sent to all employees. In addition, this is not the grievant's first such offense and, as such, the employer has disciplined the grievant progressively and has worked with him to try to correct his behavior. The employer also claims that the grievant did not notify the supervisor of his medical and physical condition, nor did he ask for relief in regard to his shift assignment. The grievant admits that he was sleeping on duty.

UNION'S POSITION:

The Union argues that the grievant is not a lazy person and did not deliberately set out to go to sleep. The grievant claims that he previously contacted his supervisor for the purpose of indicating that back problems relating to a past injury caused by a youth required that he use medication which made him drowsy. In addition, he pointed to requests that he had made to move him to another shift which would help prevent his falling asleep on duty. The Union argues that Article 24.05 states that discipline should be reasonable and commensurate with the offense and because the grievant has made efforts to improve his behavior and to correct past problems, discharge is too harsh. In addition, the Union argues that the grievant did not have forewarning that he would be discharged, as the new directive B-38 provides a more serious penalty for sleeping on duty. It was not clear that it was put into effect prior to the grievant's removal. The union claims that confusion about the new and old policy hindered its efforts to properly represent the grievant at the pre-disciplinary hearing. In addition, the Union claims that Article 24.02 states that disciplinary action should be initiated as soon as reasonably possible and that the Arbitrator must consider the period of time it took the employer to initiate and finally notify the grievant of his removal. Finally, in addition, the letter of removal was dated 1 day after the pre-disciplinary hearing which suggests that a proper investigation did not take place.

ARBITRATOR'S OPINION:

The Arbitrator finds the employer has applied progressive discipline and has also worked with the grievant to correct his behavior. The Arbitrator dismissed the argument that no harm was done the night in question as the threat caused by sleeping on duty is real and not speculative. In addition, the old and new directives regarding work duty are reasonable and appropriate to improve and insure employee performance.

The Arbitrator further notes that being informed both as to the charge and the possible form of discipline is a right guaranteed by the collective bargaining unit (Article 24.04). The Arbitrator finds that the contract was violated when the notice of investigation specifies the old work rule directive which was non-specific on the form of discipline and the contract was also violated when the notice of pre-disciplinary hearing states only that the grievant was subject to discipline, not the form of discipline. In conclusion, the Arbitrator finds that it is reasonable to believe that neither the Union or (the grievant understood that the new directive had been implemented. Consequently, the Union and grievant could not have reasonably perceived that discharge was a possible outcome of the pre-disciplinary hearing. In addition, the employer violated Article 24.01 by imposing discipline under a directive not clearly in force at the time of incident and different from the directive specified on the notice of investigation. She states that the employer can not initiate disciplinary action under one set of work rules and complete it under another set when the result is to the employee's disadvantage. The employer's delay in the final action to remove the grievant also raises doubts about the employer's statement that the employee constituted a continuing threat.

The employer's violations, however, do not exonerate the grievant of his error. As such, a major suspension is appropriate.

AWARD:

The grievance is sustained in part, and denied in part. The discharge is reduced to a 10 day suspension. The grievant is reinstated to his former position with full back pay minus a 10 day suspension with full benefits and seniority.

TEXT OF THE OPINION:

In the Matter of Arbitration
Between

**THE STATE OF OHIO,
DEPARTMENT OF YOUTH SERVICES,
CUYAHOGA HILLS BOYS SCHOOL**

and

**OHIO CIVIL SERVICE EMPLOYEES
ASSOCIATION, LOCAL 11,
A.F.S.C.M.E., AFL-CIO**

OPINION and AWARD
Anna D. Smith, Arbitrator

Case No. 35-03-(08-02-89)-41-01-03
Removal of Randy Garrett

I. Appearances

For the State of Ohio:

Deneen D. Donaugh, Advocate,
Department of Youth Services
John Tornes, Office of Collective Bargaining
Crystal E. Bragg, Superintendent,
Cuyahoga Hills Boys School
Harry Edwards, Deputy Superintendent,
Cuyahoga Hills Boys School
Donald E. Elder, Deputy Director, Central Office
Edgar W. Jacobs, Duty Officer,
Cuyahoga Hills Boys School

For OCSEA/AFSCME Local 11:
Tim Miller, Staff Representative and Advocate
Randy W. Garrett, Grievant
Dorothy O. Brown, Chapter 1830 President

II. Hearing

Pursuant to the procedures of the Parties a hearing was held at 10:00 a.m. on January 26, 1990 at the Cuyahoga Hills Boys School, Warrensville Township, Ohio before Anna D. Smith, Arbitrator. The Parties stipulated that there is no question as to procedural propriety and the case is properly before the Arbitrator. The Parties were given a full opportunity to present written evidence and documentation, to examine and cross-examine witnesses, who were sworn, and to argue their respective positions. No post-hearing briefs were filed in this dispute and the record was closed at the conclusion of oral argument, 2:00 p.m., January 26, 1990. The opinion and award is based solely on the record as described herein.

III. Issue

The Parties stipulated that the issue before the Arbitrator is:

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

IV. Stipulations

In addition to arbitrability and the issue, the Parties submitted the following stipulated documents, received as Joint Exhibits #1-#6:

1) State of Ohio/OCSEA Local 11 Contract, 1986-89;

2) Discipline Trail;

3) Grievance Trail;

4) Department of Youth Services Directive B-38,
"Disciplinary Actions";

5) Department of Youth Services Directive B-19,
"D.Y.S. General Work Rules";

6) Prior Discipline of Grievant.

V. Relevant Contract Clauses

Article 24 - Discipline
Article 29 - Sick Leave
Article 43.03 - Duration: Work Rules

VI. Case History

Cuyahoga Hills Boys School is a maximum security facility for the confinement of youth offenders in an open dormitory arrangement. Built for a capacity of 200 beds, its population on the night in question was 300 youth.

The Grievant, Randy W. Garrett, was hired on March 10, 1986. In his capacity as Youth Leader II, he was directly responsible for the youth in the dorm to which he was assigned. One practice of the institution is that the youth leader be locked into the dormitory to which he is assigned, taking his keys with him. According to the testimony of Deputy Superintendent Harry Edwards, youth leaders are exposed to danger because planned escapes typically involve jumping the youth leader to obtain his keys. Such plans often include weapons and injury to the youth leader. Night shift youth leaders are particularly exposed to this danger because escape attempts are most often planned for night. Youth leaders are thus very important for maintaining institutional and community security. In this environment youth leaders must remain alert. If a youth leader is ill or tired, according to Edwards, he is supposed to notify his supervisor and a notation is made in the log. If additional staff is available for relief positions, that staff relieves the ill or tired youth leader. Otherwise the duty officer helps out by favoring that youth leader in his rounds.

Another relevant practice of the institution is the method by which the Employer implements new work rules, in particular, Directive B-38 (Joint Exhibit #4). This directive, which is dated June, 1988, specifies removal for the fourth occurrence of minor neglect of duty (Violation #1b) and sleeping on duty (Violation #9), and for the first or second occurrence of neglect of duty (Violation #1a) and sleeping on duty (Violation #9a) which endangers life, property of public safety (Joint Exhibit #4). This directive was received and reviewed by the Grievant on October 6, 1988 (Employer Exhibit #2). However, Superintendent Bragg testified that the directive was not implemented until all employees of the institution had acknowledged reviewing its contents. Deputy Superintendent Edwards thought this might have been April or May of 1989, but he was clearly uncertain. Superintendent Bragg said that is was implemented in January, 1989. Both agreed that it was after the Grievant's two prior violations of the sleeping rule (for which he was suspended), but before the instant violation. Whenever it occurred, employees were not informed of the actual implementation date of the directive. Technically, some were on notice, some were not during the changeover period.

On the night in question, May 1, 1989, the Grievant was assigned to the 11:00 p.m.-7:00 a.m. shift on dormitory “C", whose population was 39 youth (3 over its maximum capacity of 36 beds), including felony offenders. The duty officer on the midnight-8:00 a.m. shift was Edgar W. Jacobs, a 20-year employee of the department. When Mr. Jacobs attempted to get his census after coming on duty, he received no response to three rings to dorm "C." He and the supervisor, Jesse Williams, approached the dorm together at 12:30 a.m. When they got there, they found Mr. Garrett

asleep in a chair outside the office. Jacobs and Williams attended to the lights, TV and census, and awakened Mr. Garrett. Later that morning, Mr. Garrett was served a Notice of Investigation which reads as follows: "Mr. Garrett has been found in violation of D.Y.S. General Work Rules Number 7 #B-19 sleeping during working hours" (Joint Exhibit #2).

On June 12, 1989, notice of a pre-disciplinary hearing was issued which states "You have received a copy of the Notice of Investigation subjecting you to discipline for neglect of duty (sleeping) . . . ." (Joint Exhibit #2). Ms. Dorothy O. Brown, a 13-year employee, President of Chapter 1830 and Steward, testified that she interpreted this to mean that Mr. Garrett was probably going to be suspended. Prior discipline of youth leaders for sleeping on duty had been suspension, not discharge. Had she known discharge was a possibility she would have responded to the pre-disciplinary notice differently in investigation, representation at the hearing and settlement attempts. On cross examination, she stated that she knew of Directive B-38, of the discipline specified for sleeping on duty and that the directive is presently in effect at Cuyahoga Hills Boys School, but that it was an issue between the Employer and the Union. She further clarified that she thought there had been employees disciplined for more than two instances of sleeping on duty prior to Directive B-38, but that Mr. Garrett was the first with two priors since B-38.

On June 21, 1989, a pre-disciplinary hearing on the matter was held. Mr. Garrett waived his right to union repre-sentation. He acknowledged that he was, indeed, asleep on the job, but pled extenuating circumstances: personal problems were preventing him from getting proper sleep during the day. The hearing officer recommended removal because of the danger created by the offense and inability of disciplinary action to correct the Grievant's behavior (Joint Exhibit #2). The removal order was dated the following day, June 22, 1989, but not effective until July 29, 1989 (Joint Exhibit #2) at which date it was served on the Grievant at 7:10 a.m. (Joint Exhibit #3). This action was subsequently grieved and processed to arbitration where it presently resides.

VII. Positions of the Parties

Position of the Employer

The Employer argues that the Grievant was sleeping while on duty, an offense so serious as to warrant discharge because of the threat of danger to the youth, the institution, the surrounding community, and to the Grievant himself. Moreover, the Grievant knew the rule prohibiting sleeping on the job, but continued to violate it despite having been previously disciplined for the same offense. The Employer also claims that both the Grievant and the Union were aware that the Grievant was subject to removal for this offense. Both knew of the discipline grid in Directive B-38, which calls for removal on the first or second violation of this rule. This directive had been in effect since January, 1989. Pursuant to Article 43.03 of the Contract, the Union had been given notice of a work rule change and the Grievant had signed a statement in October, 1988 acknowledging that he had read the directive.

Moreover, even if the offense is so serious as to warrant discharge for the first offense, the Employer had disciplined the Grievant progressively and worked with him to correct his behavior. In support of this contention it offers the 1- and 3-day suspensions for prior violations and its offer on February 23, 1989 to move him to the day shift, which the Grievant declined (Employer Exhibit #1).

It vigorously contests as false and self-serving the Grievant's claim that he had informed his employer about his medication and his physical condition and had requested relief that was refused him by the duty officer. Mr. Edwards denied the Grievant's claim that he told him of his physical and sleeping problems. Both he and Ms. Bragg testified they had not seen the doctor's

statement the Grievant alleges he submitted. Mr. Jacobs, Duty Officer on the night of May 1, 1989, also denied that the Grievant told him he was ill or at least that if Mr. Garrett did so, he--Mr. Jacobs--did not remember it or any leave or relief requests from the Grievant. If Mr. Garrett had requested help, he would have gotten it because there was plenty of help available that night. In final support of its position, the Employer submits the Duty Officer's log of May 1, 1989, which indicates two things relevant to the Grievant's claim:

1) Mr. Jacobs came on duty at midnight, one hour after the Grievant's shift began and when the leave was allegedly requested; and

2) In the column indicating who was ill that night (information which Mr. Jacobs would have received from the duty officer he was relieving), Garrett's name is missing (Exhibit #3).

The Employer further argues that if one accepts the Union's contention that no one has been previously discharged for sleeping and that a past practice exists, where does one draw the line to change that past practice?

Finally, the Employer cites Arbitrator Feldman's opinion in MRDD-OCSEA Grievance No. G87-0874 (7-31-87) in which it was ruled that the Employer has the power to establish rules commensurate with the needs of the particular department.

For these reasons, the Employer asks that the grievance be denied.

Position of the Union

The Union's chief position is that the Grievant was discharged without just cause. The Grievant testified that when he reported for work at a few minutes before 11:00 p.m., he was tired from working two jobs to pay off gambling debts and from other personal problems. He also felt ill and was on a medication that makes him drowsy--Tylenol 3 with codeine--which he was taking for injuries received in an attack by a youth several months before. He held the attack responsible for various problems including an inability to sleep during the day and a continuing conflict with Duty Officer Jacobs.

The Grievant claims that he informed Duty Officer Jacobs, of his condition and requested help. He further stated that Jacobs yelled and screamed at him, told him he was not needed and could go home. His sick leave having been exhausted, he requested paid leave (he had vacation and personal days available). This was refused. Financial problems preventing him from taking unpaid leave, Mr. Garrett decided to go to work, but asked again that an extra person be sent up to help him. He also stated that he had previously talked with Deputy Superintendent Edwards about youth leaders not getting breaks which they need to stay alert.

The Union submits that Article 29.01 permits employees the option of using paid or unpaid leave when they have exhausted their sick leave benefit. Mr. Jacobs allowed only unpaid leave and thus contributed to the problem that evening.

The Union also argues that there are degrees to sleeping on the job. The Grievant is not lazy and did not deliberately set out to go to sleep. He did not attempt to hide, nor did he make a bed. On the contrary, he made efforts to stay awake: he called another youth leader in another dorm, he stayed out of the dorm office because it was warm and called around to see if extra people were available to help him. Despite his efforts, he did fall asleep, not an unusual occurrence on the midnight shift in any environment. Even so, no harm was done, since the youth in Mr. Garrett's charge were themselves asleep. There were no escapes or attempts, nor was anyone or any thing injured as a result of Mr. Garrett's inadvertent nap.

The Union further argues that Mr. Garrett took efforts to solve the problems that were causing

him to fall asleep on the job: he testified that he discussed his problems, though not his embarrassment over the youth's attack, with Mr. Edwards. He applied for a shift change, but was unable to accept it when offered because of a conflict with a second job. He entered the Employee Assistance Program, but was unable to follow through with treatment for compulsive gambling because insurance benefits were not available. He tried to work out his conflict with Mr. Jacobs after the May incident, but the relationship did not improve. He reported his medical problems and use of Tylenol 3 to both Mr. Edwards and Mr. Jacobs, and submitted a doctor's statement with his sick slip when he reported back to work.

Article 24.05 specifies that discipline should be reasonable and commensurate with the offense and not used solely for punishment. In view of the circumstances of the incident and the efforts the Grievant has made to improve his behavior, the Union believes that the last-resort measure of discharge is too harsh. Arbitrator Graham (MRDD-OCSEA (Neipling) Case No. 24-09-890214-0174-01-04, November 8, 1989) has ruled that disciplinary guidelines established by the Employer are just that--guidelines--without the force of the Collective Bargaining Agreement. The appropriate standard is the contractual one of just cause. Therefore, management is not obliged to slavishly follow the discipline grid of Directive B-38.

The Union goes on to assert that an existing past practice and various procedural defects should result in sustaining the grievance:

1) The Grievant did not have forewarning he would be discharged. Prior to Mr. Garrett's removal, no one at Cuyahoga Hills Boys School had been discharged for sleeping on duty. Directive B-19 does not specify a penalty for this offense (Joint Exhibit #5). Moreover, Edwards' testimony shows that it was unclear when Directive B-38, which does provide for discharge, was implemented. The notice of pre-disciplinary hearing (Joint Exhibit #2) indicates that the Grievant would be disciplined, but not that discharge was contemplated. Past practice and lack of notice caused Ms. Brown and Mr. Garrett to believe that at most he would be suspended. Thus, the Union was hindered in its efforts to represent Mr. Garrett adequately at the pre-disciplinary hearing. Arbitrator Pincus in CHBS-OCSEA (Wiley King), Case No. G-87-2810, January 7, 1990, returned the grievant to work because of procedural defects that included not specifically informing the grievant that his actions could result in discharge.

There are also questions of timeliness. Article 24.02 states that disciplinary action shall be initiated as soon as reasonably possible and that the arbitrator must consider the timeliness of the Employer's decision to begin the disciplinary process. Fifty-one days elapsed between the incident and the pre-disciplinary hearing. The removal order was dated June 22, the day after the hearing, but it was not given to the Grievant until July 29--over a month later. The fact that the removal order was signed the day after the hearing shows a predetermined outcome and that the Employer acted in haste, without giving full consideration to the information presented at the hearing. The Union concludes that the Employer violated the just-cause principle of a fair and objective pre-disciplinary investigation.

For all of these reasons, it asks that the Grievant be returned to work with full back pay, seniority, and benefits, and be made whole.

VIII. Opinion

There is no question that the Grievant was found sleeping on duty the night of May 1, 1989, nor that this was his third infraction of this particular work rule. It is also clear that the Employer has applied progressive discipline and worked with the Grievant to correct his behavior. The prior suspensions, consultations with Mr. Edwards, and offer of shift change point to this. It is equally

apparent that the Grievant has made some effort to correct his behavior by seeking help for his various problems. That he did not follow through on these efforts (by, for example, entering Gamblers Anonymous and using a medication that does not produce drowsiness) raises questions in this Arbitrator's mind as to the sincerity of these attempts. Nevertheless, his refusal of the shift change was predicated on his need to work two jobs to pay off gambling debts and his behavior on the evening of May 1, 1989 was not indicative of premeditation. This speaks in his behalf. As he testified, he is not a lazy person.

The Union also argues that the conditions that gave rise to repeatedly sleeping on duty no longer exist. Moreover, the Employer apparently took steps to prevent recurrence before it discharged Mr. Garrett, since at the pre-disciplinary hearing he stated that he was getting a nightly break from his supervisor. Thus, the Union and Grievant would have the Arbitrator conclude that there is little likelihood of recurrence.

However, the Employer has established that sleeping on duty in these particular circumstances does endanger the safety of the institution, its employees, the youth entrusted to its care, its surrounding community, and to Mr. Garrett himself. That no harm was done that particular night does not mitigate this threat, which is real and not speculative. The Grievant could only be well aware of the danger, having been previously attacked while awake by one of the youth. The rule against sleeping while on duty published in Directives B-19 and B-38 is therefore a reasonable one, and one for which discipline is appropriate to improve and ensure employee performance. Moreover, it is clear that the Grievant knew of the rule and could reasonably expect to be disciplined for violating it.

The Union defends by stating that the Grievant sought help in reporting for work that night and was denied both paid leave, to which he was entitled, and relief, for which there was ample staff. The Employer responds by asserting that it was not derelict in its contractual duty to provide paid leave: it had no knowledge of the Grievant's physical condition and medication, nor did he inform the duty officer of his need for assistance or leave on the night in question. The record is not clear on this point. To be sure, Mr. Jacobs' shift starts one hour after the Grievant's, but this itself is not determinative. As the Union points out, Mr. Jacobs might have come to work early that night as he sometimes does. The Grievant testified that two other employees (Mr. Williams and another youth leader) were in the office when he reported for work, but neither of these employees were called as witnesses. The Employer also points out that the log does not show Garrett's alleged report of illness, request for leave, nor his alleged requests for relief and argues that the Grievant has reason to raise this defense without basis in fact, since his job is on the line. However, the continuing conflict between the Grievant and his duty officer also calls the veracity of the latter's story into question. Indeed, inconsistencies within and between testimonies of the witnesses and submitted documents leave this an open issue. It is one that might have been more fully investigated prior to the imposition of discipline, particularly since the Employer knew of the conflict and Mr. Garrett raised the defense of denied relief requests at the pre-disciplinary hearing.

This brings us to the procedural issues raised by the Union. First, the Union says that it was hampered in its ability to represent the Grievant because neither it nor the Grievant knew that discharge was contemplated in this case. Being informed both as to the charge and the possible form of discipline is a right guaranteed by the Collective Bargaining Agreement (Article 24.04). It is clear that in this regard the Employer did violate the contract because:

1) The Notice of Investigation specifies violation of Directive B-19 which is non-specific on form of discipline (Joint Exhibits #2 and #5, respectively);

2) The notice of pre-disciplinary hearing states only that the Grievant was subject to discipline, not the form of discipline (Joint Exhibit #2);

3) Testimony of witnesses and documents submitted support the conclusion of an established practice of suspension for this rule infraction even where there were two prior violations;

4) Although both the Union and Grievant knew of Directive B-38 which makes provision for discharge under these circumstances, it is reasonable to believe that neither knew the Directive had been implemented and the Grievant subject to its penalties. I reach this conclusion because (a) the Grievant was twice found sleeping on duty and disciplined with suspension after he read Directive B-38, (b) the Notice of Investigation cites Directive B-19 rather than B-38, (c) the Employer did not announce to its employees the date on which they would uniformly be held accountable to the new directive and (d) members of management are themselves unclear as to when the Directive was implemented. I therefore find that the Union and Grievant could not have reasonably foreseen that discharge was a possible outcome of the pre-disciplinary hearing, that the possible form of discipline was not specified as called for in Article 24.04, and that the Union was therefore hampered in its ability to represent the Grievant effectively. The Employer violated Article 24.04 of the Contract by failing to specify in writing the contemplated form of discipline; the Employer also violated Article 24.01 by imposing a discipline under a directive not clearly in force at the time of the incident and different from the directive specified on the Notice of Investigation. The Employer correctly points out that it has the contractual right to promulgate reasonable work rules, but it must not do so in such a manner as to deprive employees or the Union of rights guaranteed them under the same contract. Moreover, it cannot initiate disciplinary action under one set of work rules and complete it under another set when the result is to the employees' disadvantage.

The Union also points out that the Arbitrator must consider the timeliness of disciplinary action. I agree that both the speed and lack of speed with which the Employer acted raise doubts as to whether the Grievant received due process. That the removal order was dated the day after the pre-disciplinary hearing is strongly suggestive of prejudice. Moreover, that fifty-one days elapsed between the incident and the hearing and a total of three months went by before the Grievant was actually relieved of his duties raises questions in my mind as to whether the Employer thought keeping the Grievant on the job constituted a continuing threat to security and was incapable of rehabilitation.

As stated at the beginning of this opinion, however, the Grievant did violate a reasonable and known work rule, thus endangering himself and others. That the Employer violated the Agreement does not exonerate the Grievant of his error. Before May 1, 1989, he surely knew of the seriousness of falling asleep on his job. If the incident occurred as he testified and his Duty Officer refused him paid leave to which he was entitled, the appropriate response would have been to document the refusal, take the offered unpaid leave, and grieve for the lost pay. Instead, he chose to work in a condition that placed himself and others in jeopardy. Some discipline consistent with the seriousness of the offense, the Grievant's record, and past practice is called for. However, because the Notice of Investigation specifies violation of Directive B-19 and the Grievant was never specifically informed that the incident subjected him to discipline more severe than that meted out under B-19, discharge is inappropriate. A major suspension is consistent with the criteria specified above and the contractual requirement for progressive discipline (Article 24.02). The removal is thus reduced to a ten-day suspension and the Grievant is placed on notice that a further infraction could result in loss of job.

IX. Award

The Grievant was disciplined, but not discharged, for just cause. The grievance is therefore sustained in part, denied in part. The discharge is reduced to a 10-day suspension. The

Employer is ordered to reinstate the Grievant to his former position with full back pay less ten days and with full benefits and seniority. The Grievant is also put on notice that the Employer views sleeping on duty that endangers life, property, or public safety, a dischargeable offense.

Anna D. Smith, Ph.D.
Arbitrator

Shaker Heights, Ohio
February 10, 1990