ARBITRATION DECISION NO.:
542

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

EMPLOYER:
Department of Youth Services
Buckeye Youth Center

DATE OF ARBITRATION:
April 26, 1994

DATE OF DECISION:
May 9, 1994

GRIEVANT:
Willie Tatum

OCB GRIEVANCE NO.:
34-02-(93-02-12)-0026-01-03

ARBITRATOR:
Marvin Feldman

FOR THE UNION:
Sharon VanMeter Ralph, Advocate
Maxine Hicks, Second Chair

FOR THE EMPLOYER:
Bradley E. Rahr, Sr., Advocate
Shelly Ward, Second Chair

KEY WORDS:
Removal
Right to Union Assistance
during Investigatory Interview
Work Rules
Progressive Discipline

ARTICLES:
Article 5 - Management Rights
Article 24 - Discipline
§ 24.01 - Standard
§ 24.02 - Progressive Discipline
§ 24.04 -Pre-Discipline
Article 44 - Miscellaneous
§ 44.03 - Work Rules

FACTS:

The grievant was hired on December 15, 1991, as a Youth Leader at the Buckeye Youth Center of the Department of Youth Services. On November 8, 1992, the grievant was horseplaying with some of the youths under his supervision and seriously cut one of them on the head. In filling out the official injury report, the grievant stated that the injury was caused by the youth's collision with the bleachers during a game of basketball. The injured youth also relayed the fictitious story of how the accident occurred, to the duty officer. It was later revealed by another youth, in a statement to an institutional supervisor, that the injury was actually caused by the grievant's horseplay.

An investigation into the contradictory claims was initiated by a unit administrator. During this investigation, the Deputy Superintendent of the facility spoke with the grievant, indicating that the official inquiry had revealed the grievant's misstatements. Following their discussion, the grievant left the Deputy Superintendent's office and returned an hour or two later with a statement admitting his horseplay and false statements. The official investigation then concluded, finding that the grievant had violated agency work rules against falsifying official documents, insubordination, interference with an investigation, deceitfulness, and horseplay. The report of the investigation recommended discipline for the grievant, who incidentally had three prior reprimands in his personal file. The grievant was removed from his duties on February 2, 1993.

EMPLOYER'S POSITION:

The State asserted that the removal was the proper discipline in this case, due to the severity of the offenses and the grievant's past disciplinary record. The State claimed that the grievant falsified an official record; caused a witness to falsify an official record, thereby hindering an investigation; and was deceitful in deliberately withholding truthful and pertinent information. In light of the fact that DYS work rules provided for either 15 day suspension or removal for each of these violations, coupled with the fact that the grievant had already had two written and one oral reprimand in his first year of employment, the State believed that removal was proper in this case.

UNION'S POSITION:

The Union claims that removal amounted to excessive discipline in this case. The grievant stated that he never meant any harm to the Agency or the injured youth, and that he was young and fearful of the potential consequences of telling the truth at the time of the incident. He asserted that his fear affected his judgment and that he would never let it happen again.

The grievant also claimed that items revealed in an investigatory interview were later used as basis for his termination. He states that he was denied union representation, and any statement thus taken from him should not be factored into his discipline.

ARBITRATOR'S OPINION:

The Arbitrator first addressed the grievant's claim that he was denied union representation. Paragraph 24.04 of the Agreement entitled an employee to the presence of a union steward at an investigatory interview upon request, if he felt there were reasonable grounds to believe that the interview may be used for disciplinary action against him. The Arbitrator ruled, however, that the grievant should have left the Deputy Superintendent's office, obtained union assistance, and returned with a union representative. The grievant did not, but instead left the office and wrote a statement revealing his document falsification and improper horseplay at the time of the injury. The employee bears the burden of proving that he was denied union access. The Arbitrator ruled that the grievant failed to do so.

The Arbitrator next addressed the fairness of the discipline in light of the Agency's work rules and the progressive discipline requirements of the Agreement. The Arbitrator looked to Article 44.03, which required that the rules be reasonably set forth, published, and applied. The Arbitrator found no evidence of unreasonableness in the rules themselves or their application. The employee was found to have violated three separate rules on document falsification, deceitfulness, and interference with an investigation. Each of these offenses carries with it a fifteen day suspension or removal. Considering that even one of these offenses carried with it the possibility of removal, and that the grievant had received three other recorded reprimands within the past year, the Arbitrator ruled that the grievant's removal, in this case, was permissible.

The Arbitrator stated that in evaluating an employer's disciplinary action, he must look only to whether the employer took into account all items necessary to render the discipline. The Arbitrator may not alter the employer's decision based on his own subjective opinion. The discipline in this case was found to be well within that provided for by the work rules and required by the standards of progressive discipline.

AWARD:

The grievance was denied.

TEXT OF THE OPINION:

VOLUNTARY ARBITRATION PROCEEDING
THE GRIEVANCE OF WILLIE TATUM

THE STATE OF OHIO

The Employer

-and-

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, AFSCME LOCAL 11 AFL-CIO

The Union

OPINION AND AWARD

APPEARANCES

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For the Employer:
Bradley E. Rahr, Sr., Advocate
Shelly Ward, Second Chair
Dion Norman, Witness
Rick Painter, Witness
Mike McElroy, Witness
Brandon Edwards, Witness

For the Union:
Sharon VanMeter Ralph, Advocate
Maxine Hicks, Second Chair
Willie Tatum, Grievant
David Johnson, OCSEA Regional Director

MARVIN J. FELDMAN
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I. SUBMISSION

This matter came before this arbitrator pursuant to the terms of the collective bargaining agreement by and between the parties, the parties having failed resolve of this matter prior to the arbitral proceedings. The hearing in this cause was scheduled and conducted at the conference facility of the employer in Columbus, Ohio, on April 26, 1994, whereat the parties presented their evidence in both witness and document form. The parties stipulated and agreed that this matter was properly before the arbitrator; that the witnesses would be sworn and sequestered and that post hearing briefs would not be filed. It was upon the evidence and argument that this matter was heard and submitted, and that this opinion and award was thereafter rendered.

II. STATEMENT OF FACTS

The grievant was appointed as a full time permanent employee on December 15, 1991, at age twenty. He was employed as a youth leader in a juvenile home for youths that were involved as youths in first, second, third and fourth degree felonies. The grievant was the leader of an assigned group of about thirty youths at the time the instant incident arose. On Sunday, November 8, 1992, the grievant was horseplaying with some of his charges in the gymnasium at the facility. As a result of that horseplay, the grievant caused a serious cut to the head of one of the youths. The grievant instead of revealing the horseplay signed off on an official injury report as follows:

"On 11-8-92 Group #10 was at the gymnasium playing basketball when Michael McElroy ran up to me (W. Tatum) with a deep cut on the left side of his head the youth told me he had ran into the bleachers and hit his head, I proceed to take the youth to med line but no one was there so I took the youth to the D.O. (James Wiseman)

Willie Tatum 11-8-92
Staff member's signature Date"

It was also reported to the duty officer and the duty officer talked to the party that was injured and the following was revealed:

"Immediate supervisor's and/or Duty Officer's Review: Talked to Michael and he said he was going for a pass from his partner and sled into the wooden bleachers inside the gymnasium.

James E. Wiseman D.O. 11-8-92
Supervisor/Duty Officer's Signature" Date

Another youth at a later date, made a statement to an institutional supervisor, revealing that the injury that occurred to the youth that Mr. Tatum reported as a fall into the bleachers was actually the result of horseplay of Mr. Tatum. An investigation was conducted by a unit administrator by the name of Painter. Under date of December 14, 1992, Painter made a complete report as follows:

"December 14, 1992

TO: Robert F. Wagner, Superintendent

THROUGH: Dion A. Norman, Deputy Superintendent
Direct Care Services

FROM: Richard H. Painter, Unit Administrator
Units 9, 10, 56 & 58

SUBJECT: INVESTIGATION - WILLIE TATUM,
YOUTH LEADER

A. ALLEGATION:
On 11/8/92 at 11:31 a.m., Mr. Tatum, Unit 10 Youth Leader, allegedly hit Michael McElroy in the head with a walkie-talkie while they were horse-playing in the gym.

Initially, Mr. Tatum reported that McElroy had sustained a cut on the left side of his head when he (McElroy) accidentally hit his head on the bleachers. Mr. Tatum allegedly reported false information to the Duty Office and interfered in an investigation by not reporting the facts relative to the incident.

B. INFRACTION:

DYS General Work Rules B-19; Rules #2, Falsification of Documents; 'Falsifying, altering, or failing to accurately complete an official document;' #6c, Insubordination, 'Failure to follow procedures;' 7a, 'Interfering in an investigation, including but not limited to coaching, threatening, or otherwise attempting to intimidate, or alter the statements of witnesses (employees or youths);' #4, Deceitfulness, 'Dishonesty while on duty or engaged in state business, including, but not limited to, deliberately withholding, giving false or inaccurate information, verbally or in writing, to a supervisor or appropriate authority, i.e., OSHP, State Auditor, etc.,' and #22, Horseplay, 'Engaging in Horseplay with other staff, youth, and the general public while on state property or on duty.' "

The report further stated:

"D. CHRONOLOGY:

On 11/8/92 at 11:31 a.m., Mr. Tatum reports to the Duty Office that Mike McElroy had accidentally injured his head (deep cut) while playing basketball in the gym.

Mr. Tatum completed the injury report and gave false information to the Duty Officer, Jim Wiseman, pertaining to the incident in which McElroy was injured in the gym.

Mike McElroy was taken to Riverside Family Practice Center 11/8/92 at 12:05 p.m. Youth received sutures for the head injury and returned to BYC.

McElroy wrote a statement on 11/18/92 which stated Mr. Tatum hit him in the head with a walkie-talkie while they were horse-playing in the gym.

Mr. Tatum wrote a statement verifying that he did not tell the truth on 11/8/92 when he completed the Injury Report on McElroy. Mr. Tatum admitted that he gave false information to the Duty Officer.

E. CONCLUSION:

After reviewing the evidence in this case, I conclude that Mr. Tatum did violate DYS General Work Rules B-19, #2, #4, #6c, #7, and #22. Mr. Tatum's statement verifies that the allegations in this case are true.

F. RECOMMENDATION:

Discipline is warranted."

During the course of the investigation by Mr. Painter, the Deputy Superintendent of the facility spoke to the grievant herein. He revealed to the grievant that investigations had revealed that he, the grievant, was telling an untruth at the time he wrote out the injury report and that further he caused a falsification of reports by causing others to tell untruths as to how the injury to the injured youth occurred. At that point, the grievant under oath at hearing admitted the meeting but stated that he asked for union representation to be present at the meeting with the Deputy Superintendent. The Deputy Superintendent contrariwise revealed that there was never a request for a union representative by the grievant; that there never was an investigative meeting but rather a forewarning by the Deputy Superintendent to tell the truth. Evidence did reveal that the Deputy Superintendent, was not conducting the investigation but rather Mr. Painter was. At any rate, about an hour or two after the Deputy Superintendent met with the grievant at which no union representative was present, the grievant presented the Deputy Superintendent with a statement and that statement revealed the following:

"On 11-8-92 #10 was at the gym for rec. there were youths play football & basketball after about a hour some of the youth started playing I told the to stop and they did some of them started back up horseplaying and me and McElroy started boxing and I was swing my walkie and it hit McElroy in the head McElroy he did not tell the truth about what happened because he thought he would get in trouble for boxing with staff and I did not tell the truth for the same reason. (sic)

/s/ W. Tatum"

It might be noted that that statement was made without a union representative or anyone present, the grievant having left the office of the Deputy Superintendent. That statement is contrariwise to the injury report that was rendered by the grievant at the time of the injury to the youth under control of the grievant.

The contract of collective bargaining in pertinent part under section 24.04 revealed the following:

"24.04 -- Pre-Discipline

An employee shall be entitled to the presence of a union steward at an investigatory interview upon request and if he/she has reasonable grounds to believe that the interview may be used to support disciplinary action against him/her."

The prior discipline record of the grievant revealed three events of discipline. The event of May 7, 1992, revealed the following:

"DATE: MAY 7, 1992

TO: WILLIE TATUM
YOUTH LEADER

SUBJECT: WRITTEN REPRIMAND

I have reviewed the hearing report dated April 24, 1992, which states that on April 10, 1992, you were involved in an incident where you used physical force on a youth without first obtaining the assistance of a supervisor or other staff as outlined in local procedures. Failure to obtain assistance clearly resulted in the unnecessary use of physical force.

This type of infraction is in violation of Department of Youth Services General Work Rules, Chapter B-19, Section V, Rule 6c, 'Failure to follow procedures.' Therefore, you are being issued this written reprimand. Future incidents of this nature may result in more severe disciplinary action.

A copy of this letter will be placed in your personnel folder."

The event of August 4, 1992, revealed the following:

"DATE: AUGUST 4, 1992

TO: WILLIE TATUM
YOUTH LEADER

SUBJECT: WRITTEN REPRIMAND

I have reviewed the investigation report dated July 15, 1992, which states that on June 27, 1992, you did not report for work as scheduled placing you in an AWOL status. Your honesty in admitting this violation without excuse was appreciated and a significant factor for determining a lesser discipline.

This type of infraction is in violation of Department of Youth Services General Work Rules, Chapter B-19, Section V, Rule 26a, 'Failure to notify a supervisor of absence or follow call-in procedure'; Rule 26c, 'Unauthorized absence (AWOL).' Therefore, you are being issued this written reprimand. Future incidents of this nature may result in more severe disciplinary action.

A copy of this letter will be placed in your personnel folder."

The verbal reprimand of September 21, 1992, revealed the following:

"DATE: SEPTEMBER 21, 1992

TO: WILLIE TATUM
YOUTH LEADER

RE: VERBAL REPRIMAND

On August 14, 1992, you failed to follow the standard call off procedure.

This letter will serve as a verification that you were given a Verbal Reprimand. A copy of this letter will be placed in your personnel file. It will also serve as a warning that in case of future violations, more severe discipline may be administered."

It might be noted that the facility had some general work rules. Those general work rules were unilaterally promulgated by management as a result of article 5 and 44.03. Article 5 revealed the following:

"ARTICLE 5 --MANAGEMENT RIGHTS

Except to the extent expressly abridged only by the specific articles and sections of this Agreement, the Employer reserves, retains and possesses, solely and exclusively, all the inherent rights and authority to manage and operate its facilities and programs. Such rights shall be exercised in a manner which is not inconsistent with this Agreement. The sole and exclusive rights and authority of the Employer include specifically, but are not limited to, the rights listed in The Ohio Revised Code, Section 4117.08 (C), Numbers 1-9."

Paragraph 44.03 of the contract of collective bargaining revealed the following:

"44.03 -- Work Rules

After the effective date of this Agreement, agency work rules or institutional rules and directives must not be in violation of this Agreement. Such work rules shall be reasonable. The Union shall be notified prior to the implementation of any new work rules and shall have the opportunity to discuss them. Likewise, after the effective date of this Agreement, all past practices and precedents may not be considered as binding authority in any proceeding arising under this Agreement."

The unilaterally promulgated work rules of the employer had three rules which were involved in this particular matter. Rule 2 was a rule against falsification of documents in which falsifying, altering, or failing to accurately complete an official document lists a fifteen day or removal penalty for the first event and a removal for the second event. Rule 4 entitled "Deceitfulness" revealed that a fifteen day suspension or removal for the first event or a removal for the second event may be triggered by dishonesty while on duty or engaging in state business including but limited to deliberately withholding, giving false or inaccurate information verbally or in writing to a supervisor or appropriate authority, i.e., the highway patrol or state auditor, etc. Rule 7A which the employer thought to be pertinent to the matter, revealed that an offender may receive a fifteen day suspension or removal for the first event and removal for the second event when there is an interference in an investigation including but not limited to coaching, threatening or otherwise attempting to intimidate or alter the statement of witnesses (employees or youths). Thus, the matters created by rule were the predicate for the discipline of the employer in this particular matter. That was circumscribed of course by contractual clause relative to discipline where the standard is stated as follows:

"24.01 -- Standard
Disciplinary action shall not be imposed upon an employee except for just cause. The Employer has the burden of proof to establish just cause for any disciplinary action. In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have authority to modify the termination of an employee committing such abuse. Employees of the Lottery Commission shall be governed by O.R.C. Section 3770.02."

It might also be noted that paragraph 24.02 reflects a progressive discipline policy of the employer that was negotiated by the parties and that pertinent contractual language revealed the following:

"24.02 -- Progressive Discipline
The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense.

Disciplinary action shall include:

A. One or more oral reprimand(s) (with appropriate notation in employee's file);
B. One or more written reprimand(s);
C. One or more suspension(s);
D. Termination."

Based upon those rules and based upon the infractions noted and based upon the contractual language, the employer's investigation recommended discipline. The language from the Superintendent to the Human Resource Administrator of the Agency revealed the following in a January 22, 1993, interdepartmental correspondence. That correspondence in pertinent part stated:

"On 11/8/92, at 11:31 a.m., Mr. Tatum reported to the Duty Office that a youth, Mike McElroy, has accidently injured his head (deep cut) while playing basketball in the gym. Mr. Tatum completed reports indicating that the youth had received the injury while playing basketball, where he fell and hit his head on the bleachers in the gym. The youth was taken to Riverside Hospital and received stitches for the injury. All youth, who were in the gym playing basketball, indicated that the youth had fallen and hit his head on the bleachers verifying

Mr. Tatum's report.

Approximately 10 days later another youth, Johnny Short, made a statement to a Supervisor indicating that the injury had occurred because Mr. Tatum had hit McElroy in the head with a walkie-talkie while they were horseplaying, not because McElroy fell into the bleachers. Youth Short indicated that Mr. Tatum had forced all the youth, including McElroy, to write the statement that McElroy had fallen into the bleachers.

Upon further investigation of the incident, Mr. Tatum and the youth involved admitted that Tatum had, in fact, solicited the false statements from the youth, as well as falsifying the reports completed for the injury. Mr. Tatum and the youth indicate they falsly (sic) reportly the injury because they did not want Mr. Tatum to get in trouble."

The final termination directed to the grievant in pertinent part under date of February 2, 1992, revealed the following:

"DATE: February 2, 1993

TO: Willie Tatum, Youth Leader/BYC
Buckeye Youth Center/Training Center
for Youth

FROM: GENO NATALUCCI-PERSICHETTI, DIRECTOR

SUBJECT: Removal

On 11/8/92 you hit a youth in the head with a walkie-talkie while horseplaying in the gym. Initially, you reported that the youth had sustained a cut on the left side of his head when the youth accidentally hit his head on the bleachers. You reported false information to the duty office and interfered in an investigation by not reporting the facts relative to the incident.

This is in violation of DYS General Work Rule B-19, Rule #2, which states, 'Falsifying, altering, or failing to accurately complete an official document'; Rule #4, which states, 'Dishonesty while on duty or engaged in State business, including, but not limited to, deliberately withholding, giving false or inaccurate information, verbally or in writing, to a Supervisor or appropriate authority, i.e., Highway Patrol, State Auditor, etc.'; Rule #7a, which states, 'Interfering in an investigation, including, but not limited to coaching, threatening, or otherwise attempting to intimidate or alter statements of witnesses (employees or youth)'; Rule #22, which states, 'Engaging in 'horseplay' with other staff, youth, and the general public while on State property or on duty'.

You are hereby being REMOVED from your position of Youth Leader effective:

February 2, 1993."

A timely grievance was filed and the grievance averred that the activity of the employer was improper and the grievant requested to be returned to work with all back pay and benefits and the termination record expunged and in all ways to be made whole. The step two response of the employer denied the grievance and the finding revealed the following:

"FINDING

After reviewing the facts in this case, I cannot find that Management violated the contract; therefore, the removal is commensurate with the offense. Mr. Tatum did falsify documents and gave false information to

Management. He was removed for just cause. Therefore, this grievance is denied in its entirety."

Further facts revealed that the State of Ohio Employee Performance Review for the period of October 7, 1991, through October 7, 1992, revealed that the grievant met all expectation ratings. From all of that it is apparent that the employer believed that the grievant falsified official record; caused a witness to falsify a record and thereby hinder an investigation and further was deceitful and deliberately withholding truthful and pertinent information. The grievant on the other hand indicated and stated that he never meant any harm to the Agency or to the youth involved; that he was young and fearful of what might happen if the truth of the matter was told at the time it occurred and that fear caused him to act improperly and that he would never do so again. The grievant further stated that he was denied union representation and that any statement taken from him as a result of that denial should be held for naught.

It was upon that evidence that this matter rose to arbitration for opinion and award.

III. OPINION AND DISCUSSION

Paragraph 24.04 of the contract entitled an employee to the presence of a union steward at an investigatory interview upon request, if that employee has reasonable grounds to believe that the interview may be used for disciplinary action against that employee. The grievant stated that he was called into the Deputy Superintendent's office to discuss the injury matter and that certain items were revealed which were later used to terminate the employment of the grievant. If it is true that the grievant was denied access to union assistance by the Deputy Superintendent the grievant could have left the office of the Deputy Superintendent, obtained union assistance at that time and returned with that union assistance. Instead, the grievant left the room and presumably without anyone present wrote a statement revealing that he lied in the injury report and that he, the grievant, caused the injury to the youth.

The youth testified that at the time of the occurrence he was fearful of the grievant because the grievant appeared intimidating and as a result assisted the grievant by going along with the grievant's fiction that the injured youth fell into the bleachers while chasing a basketball. Thus, the statement of the grievant was written outside the office of the Deputy Superintendent and presented to the Deputy Superintendent approximately an hour or two after he left the office of the Deputy Superintendent some ten days after the incident.

It might be noted that the employee has the burden to prove that he was denied access to a union assistance. The Deputy Superintendent denied that the grievant was disallowed access to union assistance. Thus, we have an affirmation by the grievant and a denial by the Deputy Superintendent and the evidence is in equipoise. The fact is, the grievant revealed that he was out of the presence of the Deputy Superintendent when he wrote his statement and that he had lied in the first instance on the injury report. Given that background, it is impossible to sustain the grievant's theory that he was denied access when in fact he left the room of the Deputy Superintendent when he wrote the statement on November 18.

Further, the grievant's creditability is seriously clouded by the grievant's false statement on the November 8th injury report. Simply put, the impact of all of this evidence leads me to believe that the grievant nor the union maintained their burden of proof in showing that the grievant was denied his rights under paragraph 24.04 of the contract which demands that a union steward be present upon request of the employee being investigated for disciplinary purposes. The union's theory therefore in that regard must be held for naught.

It might be noted that the rules under which the grievant was terminated were unilaterally promulgated rules. The contract demands under paragraph 44.03 that the work rules shall be reasonable. There was no evidence to show or reveal that the rules were unreasonable, that the rules were not published and that the rules were not evenhandedly applied. Absent that evidence, it is apparent that the rules under which the grievant was disciplined must be taken as reasonable, evenhandedly applied and published. If that be the case then, discussions concerning the rules in that regard need not be made. The rules under which the grievant was disciplined are rules 2, 4 and 7a. Rule 2 stated as follows:

"Rule 2. Falsification of Documents

Falsifying, altering, or failing to accurately complete an official document."	15 or R

Rule 4 stated as follows:

"Rule 4. Deceitfulness

Dishonesty while on duty or engaged in State business, including, but not limited to, deliberately withholding, giving false or inaccurate information, verbally or in writing, to a Supervisor or appropriate authority i.e. Highway Patrol, State Auditor, etc."	15 or R

Rule 7a stated as follows:

"Rule 7. Interference in an Investigation

a. Interfering in an investigation, including but not limited to, coaching, threatening, or otherwise attempting to intimidate or alter the statements of witnesses (employees or youth)."	15 or R

A brief discussion of the rule violations is relatively simple. The grievant did falsify an employer document; the grievant was deceitful when he deliberately withheld accurate information and the grievant did interfere in an investigation by revealing to the youths in the gym at that time that any investigation should reveal that, the injured youth ran into the bleachers in the gymnasium rather than being injured as a result of horseplay by the grievant.

The question of severity of discipline has arisen in this case and it might be noted that for each of those events that the grievant was involved in, the substandard conduct should trigger either a fifteen day suspension or a removal for the first event. It is also noted in the contract at paragraph 24.02 that the employer follow the principles of progressive discipline. The evidence further revealed that the prior discipline of the grievant were for three events, namely a written reprimand on May 7, 1992, a written reprimand on August 4, 1992 and a verbal reprimand on September 1, 1992. However, the grievant was involved in three events each of which could in the first instance, trigger a discharge.

An arbitrator can hardly change or modify or suspend or alter the discipline of an employer unless that employer has not taken into account all of the items necessary to render that discipline or termination. In other word, the arbitrator may not render his own industrial justice and change a discipline or discharge merely because the arbitrator dislikes the result of the employer. The work rules revealed the standard

penalty. The standard penalty is either a fifteen day suspension or removal for a violation of the rules involved. The grievant was involved in three serious episodes of substandard conduct. It is apparent that the grievant was considered for a lesser discipline but when all three events of violation were weighed, it is apparent that the employer chose a termination. There is no evidence in the file to reveal that that should be modified, altered, changed, supplemented or in any way revoked.

While the contract revealed a system of progressive discipline under paragraph 24.02, a severely aggregious event or events can certainly cause skipping of the progressive discipline in favor of a termination. That is exactly what happened in this particular case and I think properly so.

The grievant was involved as a youth leader at the Buckeye Youth Center and had under his charge approximately thirty youths who were in that juvenile correctional facility for the purpose of becoming rehabilitated. Those individuals were to be protected and not abused by horseplay or by any other serious substandard conduct of the grievant. In this particular matter the grievant injured the youth by accident but as a result of horseplay. That substandard conduct was thereafter compounded by filing a false injury report and then again compounded by causing others to lie for him. That is hardly an example for a role model to play for his charges.

Certainly, the grievant is young and was young at the time of his hire and perhaps the employer was at fault for not closely monitoring their hires and perhaps the Agency was at fault in placing the young grievant in charge of so many youths with criminal backgrounds. However, the facts are as they are and they cannot be changed. The grievant was over twenty-one at the time of the occurrence and he should have known the difference between right and wrong and he did not. When he involved others, he compounded his own act of substandard conduct and under the circumstances cannot be tolerated. For all of those activities the grievant was terminated.

IV. AWARD

Grievance denied for reasons stated.

MARVIN J. FELDMAN, Arbitrator
Made and entered
this 9th day
of May, 1994.