**ARBITRATION DECISION NO.:**
602

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

**EMPLOYER:**
Department of Rehabilitation and Correction
Southern Ohio Correctional Facility

**DATE OF ARBITRATION:**
January 19 and 26, 1996

**DATE OF DECISION:**
April 5, 1996

**GRIEVANT:**
Linda Appel

**OCB GRIEVANCE NO.:**
27-25-(93-11-24)-0627-01-03

**ARBITRATOR:**
Nels E. Nelson

**FOR THE UNION:**
Donald Sargent, Advocate, Field Representative
Pat Schmitz, Second Chair, Associate General Counsel

**FOR THE EMPLOYER:**
Pat Morgan, Advocate, OCB
Georgia Brokaw, Second Chair, OCB

**KEY WORDS:**
Just Cause
Pick-a-Post
Removal

**ARTICLES:**
Article 2 - Non-Discrimination
§ 2.02 - Agreement Rights
Article 24 - Discipline
§ 24.01 - Standard
Appendix N -Memorandum of Understanding for Implementation of Work Areas

**FACTS:**

The grievant was hired as a Correction Officer at Southern Ohio Correctional Facility. In late 1989, a pick-a-post agreement was negotiated which resulted in the grievant bidding on a position she previously held, which entailed processing in visitors to the facility. The grievant was awarded the position.

In November 1993, the grievant was informed that she was being removed from her position for good

management reason based on several letters of complaint from visitors to the facility about her conduct. As a result, a grievance was filed charging management with a violation of Article 24.01 and the pick-a-post agreement. The grievant also requested to be returned to her permanent bid job and be made whole for any losses she may have suffered.

**UNION'S POSITION:**

The Union argued that the just cause standard applies to removing an employee from his or her bid post, and that this is consistent with the minutes (official record of the pick-a-post negotiations) of the November 13, 1989 meeting at SOCF of the labor-management committee, which indicated that the just cause standard was negotiated and agreed to by management. The Union also asserted that its position regarding just cause is supported by other documents and that it was negotiated at the other facilities.

The Union argued that even if the just cause standard in Article 24 did not apply, management still violated Article 2, Section 2.02 of the contract. Section 2.02 states that "no employee shall be discriminated against, intimidated, restrained, harassed or coerced in the exercise of right granted by this agreement, nor shall reassignments be made for these purposes." The Union also maintained that the grievant is being denied rights under Article 13, Section 13.02 with respect to work schedules and Appendix N dealing with work area assignments.

Based on a decision by Arbitrator lpavec that discussed "good management" reasons, the Union contended further that there was no good management reason to remove the grievant from her bid post. The grievant has more than 20 years of service as a correction officer and has "immaculate" evaluations and no prior discipline.

In sum, the Union concludes that it has established that a just cause standard should apply. However, if the Arbitrator determines that this standard does not apply, the grievance must be upheld because the grievant's removal was arbitrary and capricious under Article 2, Section 2.02.

**EMPLOYER’S POSITION:**

The State argued that an employee can be removed for good management reasons according to Goldstein's supplemental opinion dated February 3, 1988. In this opinion, Arbitrator Goldstein stated that "the Department will only change an employee's post assignment prior to the end of a six-month rotation period for ‘good management reasons'." The State also maintained that since the Union failed to appeal Arbitrator Goldstein's award, it is binding. Furthermore, the Union never proposed the just cause standard for putting and moving an employee from a bid post. Therefore, the proper standard for pulling and moving employees from post assignments is "good management reasons".

The State also argued that the Union was unable to equate management's right to pull and move an employee from a post assignment for good management reasons with discipline. It pointed out that the only reference to just cause in the collective bargaining agreement is in Article 24, where there is no mention of pick-a-post.

The warden of SOCF had good management reasons to remove the grievant from her post, according to the State, because she was not well-suited to the demands of greeting and assisting members of the public visiting SOCF. The State also claimed that the grievant was "less than courteous" to visitors and that she did not conduct herself in a professional manner.

The State also argued that the arbitration decision by Arbitrator Charles F. lpavec, which was submitted by the Union, was not on point in several respects. In that decision, there were no complaints from the visiting public and the grievant had no opportunity to demonstrate his suitability for the position, as opposed to the case at hand. The State also disagreed with Arbitrator lpavec's opinion that "good management reasons" are nonexistent in that there was no discipline applied to the conduct that was the basis for the exclusionary reasons given by the Agency to deny the grievant the bid." Management contended that there was no contemplation in the Goldstein supplemental award or in any valid pick-a-post agreement that discipline must underlie good management reasons to pull an employee out of a bid position. The employer argued that if it were forced to resort to discipline in this case, it might have had to terminate a good employee before the problem would have been eliminated.

In sum, the State concluded that the Arbitrator must deny the grievance because it has proven that it can pull and move an employee for good management reasons. The State further claimed that the warden's decision to move the grievant was not discipline and was for good management reasons.

**ARBITRATOR'S OPINION:**

Based on Goldstein's supplemental decision, the state's final offer regarding the implementation of the work assignment system and subsequent negotiations between the parties, the Arbitrator concluded that "good management" reasons was the proper standard to be applied. In addition, the Arbitrator rejected the minutes, which referred to a "just cause" standard offered by the Union, because they were not signed by a management representative.

The Arbitrator further concluded that management's decision to pull and move the grievant met the "good management reasons" standard. The grievant's removal was not arbitrary or capricious, but was based upon incidents reported by 2 visitors and the warden's own observation of the grievant. It appears that management simply believed that public relations would be improved by moving the grievant.

**AWARD:**

The grievance was denied.

**TEXT OF THE OPINION:**

**ARBITRATION DECISION**

April 5, 1996

In the Matter of:

**State of Ohio, Department of Rehabilitation and Correction, Southern Ohio Correctional Facility**

and

**Ohio Civil Service Employees Association, AFSCME Local 11**

**Case No.:**
27-25-(93-11-24)-0627-01-03
**Linda Appel, Grievant**

**APPEARANCES**

**For the State:**
Pat Mogan, Advocate, Office of Collective Bargaining
Georgia Brokaw, Second Chair, Office of Collective Bargaining
Victor Crum, Labor Relations Officer 2
Nicholas Menedis, Chief Inspector
Bernard Ryznar, Chief of Bureau of Classification
Arthur Tate Jr., Warden
Reverend Josephus Foster, Witness

**For the Union:**

Donald Sargent, Advocate, Field Representative
Pat Schmitz, Second Chair, Associate General Counsel
Linda Appel, Grievant
Charles Williamson, Witness
David Justice, Witness
Larry Neff, Witness
Danny Mullen, Witness

**Arbitrator:**

Nels E. Nelson

## BACKGROUND

The grievant, Linda Appel, was hired as a correction officer at the Southern Ohio Correctional Facility in 1974. At that time she was assigned by management to the A Building to process visitors to the facility. Subsequently, a collective bargaining relationship was established between the Ohio Civil Service Employees Association and the State of Ohio. In late-1989 a pick-a-post agreement was negotiated by the parties which allowed employees to bid on jobs based on their seniority. The grievant bid on the position that she held in the A Building and was awarded the job.

The grievant remained in the position until November 15, 1993. On that date the grievant was informed that she was being removed from her position for good management reason. She was told that the action was based on several letters of complaint from visitors to the facility about her conduct.

The grievant filed a grievance on November 16, 1993. It charged that management's action violated Article 24, Section 24.01 of the collective bargaining agreement and the pick-a-post agreement. The grievance requests that the grievant be returned to her permanent bid 'job and be made whole for any losses she may have suffered. The grievance was denied at step four of the grievance procedure on May 12, 1994 and appealed to arbitration on January 31, 1995.

The Arbitrator was notified of his appointment on November 7, 1995. The hearing took place on January 19 and 26, 1996. Written closing statements were received on March 4, 1996.

## ISSUES

The issues as framed by the Arbitrator are as follows:

1) Is the standard for removing an employee from his or her bid position good management reasons or just cause?

2) Did management meet the appropriate standard in removing the grievant from her bid position? If not, what is the proper remedy?

## RELEVANT CONTRACT PROVISIONS

Article 2, Section 2.02; Article 24, Section 24.01; and Appendix N.

## UNION POSITION

The union argues that the just cause standard applies to removing an employee from his or her bid post. It contends that this position is consistent with the minutes of the November 13, 1989 meeting of the labor-management committee which indicate that the just cause standard was negotiated and agreed to by management. The union indicates that the minutes were taken by Helen Akers, a union member who was

not affected by the pick-a-post agreement, and are the official record of the pick-a-post negotiations. it maintains that it is likely that the minutes were sent to the Office of Collective Bargaining. The union claims that the content of the minutes were verified by Dave Justice and Donald Sargent, union field representatives, and Charles Williamson, a union steward and a member of the OCSEA board of directors for the district.

The union asserts that its position regarding just cause is supported by other documents. It states that a note attached to the proposed pick-a-pay agreement which was discussed at the November 13, 1989 meeting reveals that the proposal was accepted by both sides. The union claims that Sargent's January 15, 1990 memorandum regarding the pick-a-post negotiations at SOCF to Russell Murray, the executive director of the OCSEA, reports that the denial of a bid can be grieved under just cause.

The union contends that the just cause standard was negotiated at other facilities. It points out that an agreement regarding job bids at the Ross Correctional Institution indicates that the union reserves the right to grieve moves under the just cause provision of the contract. The union notes that Sargent testified that he negotiated the just cause standard at the Portsmouth Receiving Hospital. It maintains that it is unlikely that the Office of Collective Bargaining would allow three agreements calling for just cause to slip by if it were opposed to just cause.

The union argues that if the just cause standard in Article 24, Section 24.01 does not apply, management still violated Article 2, Section 2.02 of the contract. It observes that this provision states that "no employee shall be discriminated against, intimidated, restrained, harassed or coerced in the exercise of right granted by this agreement, nor shall reassignments be made for these purposes." The union maintains that the grievant is being denied rights under Article 13, Section 13.02 with respect to work schedules and Appendix N dealing with work area assignments.

The union offers the decision of Arbitrator Charles lpavec in Ohio Civil Service Employees Association, AFSCME, Local 112, AFL-CIO and State of Ohio, Department of Rehabilitation and Correction, Madison Correctional Institution, case no. 27-15-(1229-93)-309-01-03, in support of its position. It points out that in that case management alleged that an employee's attendance, inactive disciplinary record, and performance evaluations constituted good management reasons to deny his bid on a post. The union notes that Arbitrator lpavec stated:

“This decision does not constitute, in the opinion of the Arbitrator, a substitution of the judgment of the arbitrator for the judgment of the management of the agency because the arbitrator has found that the reasons given by the agency as constituting "good management reasons" are non existent as an exclusionary factor in that there was no discipline applied for any conduct which formed the basis for exclusionary reasons given by the agency to deny to the grievant the bid to the special duty post. As pointed out, when an employee engages in conduct which has not risen in severity to give the agency just cause for discipline, such misconduct may be deemed a deficiency by the agency which must be corrected within the 30 day orientation period, all as provided for in the pick-a-post agreement.” (Page 14)

The union contends that there was no good management reason to remove the grievant from her bid post. It points out that she has more than 20 years of service as a correction officer and has "immaculate" evaluations and no prior discipline. The union claims that Larry Neff, the lieutenant who investigated the grievant's removal, could find no wrongdoing by the grievant and protested her removal from her bid post.

The union rejects the contention that the testimony of the Reverend Josephus Foster constitutes appropriate grounds for removing the grievant from her position. It contends that the grievant was simply trying to enforce the rules and procedures which she is required to enforce or risk facing discipline. The union notes that the Reverend Foster testified that he had no problems with the grievant before the alleged incident on October 5, 1993 or after that time.

The union challenges the contention that the testimony of Bernard Ryznar, an administrative assistant for the northern region of the Department of Rehabilitation and Correction, constitutes proper grounds for the grievant's removal. It indicates that he saw the grievant only briefly on the two occasions when he was at the facility for an audit. The union notes that management waited for 1 1/2 years after it received Ryznar's letter

before taking action.

The union argues that the Arbitrator should not give any weight to the other letters of complaint offered by management. It observes that none of the writers testified during the grievance procedure or at the arbitration hearing so that it never had the opportunity to cross-examine them. The union notes that their failure to appear at the arbitration hearing made it impossible for the Arbitrator to judge their credibility.

The union concludes that it has established that just cause is required to remove an employee from his or her bid post. It claims, however, that even if the Arbitrator determines that the just cause standard does not apply, the grievance must be upheld because the grievant's removal was arbitrary and capricious under Article 2, Section 2.02. It asks the Arbitrator to return the grievant to her bid post.

## MANAGEMENT POSITION

The state argues that it has the right to pull and move an employee from his or her post for good management reasons. It contends that this right is derived from Elliott Goldstein's supplemental opinion and award in State of Ohio, Office of Collective Bargaining and Ohio Civil Service Employees Association, American Federation of State,County and Municipal Employees, AFL-CIO, which is dated February 3, 1988. The state notes that in selecting its final offer regarding the issue of pick-a-post agreements Arbitrator Goldstein stated:

“Moreover, the Department has voluntarily restricted its own ability to make assignments in at least two ways. First, the Department will only change an employee's post assignment prior to the end of a six month rotation period for "good management reasons." Second, prior to making any such change, the Department will notify the employee, and his or her union representative if he or she desires, of the reasons for the assignment change. Most important, any reassignment which the employee believes is not for "good management reasons" is subject to the grievance procedure.” (Page 14).

It maintains that since the union failed to appeal Arbitrator Goldstein's award, as provided for in the Ohio Revised Code, it is binding.

The state claims that the union never proposed the just cause standard for pulling and moving an employee from a bid post. It points out that the July 19, 1989 memorandum from Nick Menedis, the chief of labor relations in the Department of Rehabilitation and Correction, to local institutional management refers to management's right to pull and move employees for good management reasons. The state asserts that the November 2, 1989 memorandum from Russell Murray, the executive director of OCSEA, to correction chapter presidents regarding the parameters established by Menedis for the negotiation of local pick-a-post agreements amounts to an acquiescence to good management reasons as the standard for pulling and moving employees from post assignments.

The state argues that the pick-a-post agreement dated March 2, 1990 is the valid pick-a-post agreement at the Southern Ohio Correctional Facility. It observes that the minutes to the November 13, 1989 labor-management meeting are not signed and that Victor Crum, a labor relations officer at the facility, testified that he had no authority to agree to the just cause standard. The state stresses that only the March 2, 1990 pick-a-post agreement has the required signatures of the director of the Office of CollectiveBargaining, the chief of labor relation of the Department of Rehabilitation and Correction, and the executive director of OCSEA.

The state charges that the union was unable to equate management's right to pull and move an employee from a post assignment for good management reasons with discipline. It points out that the only reference to just cause in the collective bargaining agreement is in Article 24 where there is no mention of pick-a-post. The state maintains that the examination and cross-examination of union witnesses proved that there was no vestige of just cause in Article I3, which deals with work schedules, or Appendix N, which concerns the implementation of pick-a-post agreements. It asserts that the union's claim that pulling an employee from a post assignment is punishment is "patently absurd."

The state argues that Arthur Tate, the warden of SOCF, had good management reasons to remove the grievant from her post at the visitors desk in the A Building. It asserts that the grievant was not well suited to

the demands of greeting and assisting members of the public visiting SOCF. The state claims that the grievant was "less than courteous" to visitors and did not conduct herself in a professional manner.

The state indicates that Tate's decision to remove the grievant from her post was based in part on the complaint of the Reverend Josephus Foster. It points out that he testified that when he attempted to bring a package to his son at the facility, the grievant told him in a loud and abusive tone that he would have to mail it. The state notes that the Reverend Foster also complained about his treatment following a mix up about needing a reservation to visit his son and his "humiliating" and "demeaning" treatment by the grievant. It maintains that he was left with a negative impression of SOCF as a result of the grievant's conduct.

The state observes that Tate's decision was also based on the report of Ryznar who visited SOCF to conduct an audit of operations. It notes that he testified that in 1991 the grievant addressed an elderly couple that was having trouble filling out a form in an "agitated and scolding" tone. The state indicates that Ryznar stated that when he returnedfor another audit in 1992, the grievant failed to inform a group of visitors to the facility that their attire was inappropriate and that when he questioned her about it, she responded that she did not say anything because the visitors would not follow the rules in any event.

The state indicates that Tate also relied upon three letters of complaint that he received regarding the grievant's conduct. It points out that Tate received letters from Ann Hunt, Vivian Waller, and Geraldine Simons. The state notes that these letters were all received in 1993 indicating that the grievant's behavior in the months prior to her removal had become intolerable.

The state asserts that Tate's decision was also based on his personal observation of the grievant. It points out that Tate stated that he encountered the grievant when he entered or left the facility. The state notes that he testified that he saw the grievant being less than courteous to visitors on more than one occasion.

The state argues that Tate was vested with the responsibility to determine if the complaints of four visitors, Ryznar's report, and his own experience constituted good management reasons to pull the grievant from the visitors desk at the A Building. It maintains that he has many years of experience in the Department of Rehabilitation and Correction and appreciates the importance of good public relations to the facility and the department. The state claims that Tate's action was "not knee-jerk, capricious, or arbitrary." It emphasizes that Tate acted only when the grievant's pattern of inappropriate behavior became clear.

The state rejects the union's contention that the grievant was unjustly injured by being removed from her post. It reports that there is no record of any disciplinary action in her file and that she remained on the same shift. The state acknowledges that the grievant's days off changed but maintains that the change was a result of a bid by the grievant. It stresses that the grievant's new assignment involves little change from the advantages of her previous post.

The state argues that the decision of Arbitrator Charles F. lpavec in Ohio Civil Service Employees Association, AFSCME, Local 11, AFL-CIO, case no. 27-15-(12-2993)-309-01-03, which was submitted by the union, is not on point in several respects. It points out that in that case management considered the grievant's disciplinary and attendance records as well as his performance but there were no letters of complaint from the visiting public so that there were no public relations considerations. The state notes that in the case before Arbitrator lpavec the grievant was not given an opportunity to demonstrate his suitability for the position while in the instant case the grievant had demonstrated that she was so deficient in certain aspect of her duties that she was detrimental to the public's perception of the facility.

The state emphasizes that Arbitrator lpavec's decision affirmed management's right to pull and move an employee for good management reasons. It indicates that he stated:

“The agency cautioned the arbitrator to not substitute his judgment for that of the judgment of management. The arbitrator has no intention of making such substitution because the Agency has the right to deny a bid for good management reasons. . . “(Pages 10-11).

The state maintains that Arbitrator lpavec held that he could only determine whether management acted in a proper or in an arbitrary manner.

The state indicates that it strongly disagrees with Arbitrator's lpavec's opinion that "good management

reasons are non-existent in that there was no discipline applied for any of the conduct which form the basis for the exclusionary reasons given by the Agency to deny the grievant the bid." (Page 15). It contends that there was no contemplation in the Goldstein supplemental award or in any valid pick-a-post agreement that discipline must precede good management reasons. The state maintains that discipline followed by pulling an employee from a post would constitute double jeopardy. It complains that if it were forced to resort to discipline in the instant case, it might have had to terminate a good employee before the problem would have been eliminated.

The state concludes that the Arbitrator must deny the grievance. It asserts that it has proven that it can pull and move an employee for good management reasons. The state further claims that Tate's decision to move the grievant was not discipline and was for good management reasons.

## ANALYSIS

The first issue is what standard applies in the case where an employee is pulled from his or her position. The state argues that the proper standard is good management reasons. The union contends that the parties agreed that the just cause standard applies to pulling and moving an employee.

The Arbitrator believes that the record indicates that the good management reasons is the standard that must be applied. On February 3, 1988 Arbitrator Elliott Goldstein issued a supplemental decision regarding work assignments in the Department of Rehabilitation and Correction. In his decision he selected the state's final offer. Section 4 of that offer indicates:

“The employer shall canvass each institution in accordance with the procedure outlined in Section 3 above within 30 days of the execution of this agreement. Employees will exercise their institutional seniority rights to select their shift preference and their days off.

Upon completion of the canvass, the Employer shall assign each employee a particular post assignment. The Employer may change an employee's post assignment prior to the end of the six-month rotation for **good management reasons.** Prior to making such a change, the Employer shall state the management reasons to the employee in private, or in the presence of a union representative at the employee's option. The employee may grieve such post assignment changes in accordance with Article 25, Grievance Procedure, contained in the negotiated agreement between the State of Ohio and OCSEA/AFSCME, Local 11, AFL-CIO. (Emphasis added by Arbitrator).”

The reference to good management reasons is clear as is the fact that there is no mention whatsoever of just cause.

Section 7 of the state's offer provided for negotiations at each institution regarding the implementation of the work assignment system. Pursuant to this requirement,negotiations took place at the Southern Ohio Correctional Facility. An agreement was reached between the parties. Section I(D) of the agreement states:

“Management reserves the right to "pull and move" employees from their selected or assigned post for **"good management reasons",** e.g., to meet operational needs.” (Emphasis added by Arbitrator).

The agreement is signed by Russell Murray, the executive director of OCSEA; Johnny Kimbler, the local chapter president; Donald Sargent, the field representative; Eugene Brundige, the deputy director of the Office of Collective Bargaining; Nicholas Menedis, the chief of labor relations for the Department of Rehabilitation and Correction; and the warden at SOCF. It refers to good management reasons but does not mention just cause.

Despite the language of the final offer and the language subsequently negotiated by the parties, the union argues that just cause is the relevant standard. Its position is based on its claim that management agreed in negotiations at SOCF to the just cause standard and that its agreement is reflected in the minutes of the meeting where the agreement was reached.

The Arbitrator cannot accept the union's contention. Crum testified that management at SOCF never agreed to the just cause standard and that they did not have the authority to agree to it. The minutes offered by the union were prepared by the union and are not signed by any management representative.

The union also claimed that the just cause standard was negotiated at the Ross Correctional Institution and the Portsmouth Receiving Hospital. This assertion is based on the testimony of Sargent and a pick-a-post agreement from the Ross Correctional Institution. However, Sargent's testimony was challenged by Menedis who said local officials could not agree to just cause and that any local agreement required his signature and that of Brundige and Murray. The alleged agreement at Ross Correctional Institution submitted by the union had no signatures.

The second issue is whether management had good management reasons to remove the grievant from her position at the visitors desk at the A Building. The removal was based on the letters and testimony of the Reverend Foster and Ryznar, letters from three visitors, and the personal observations of Tate.

The Reverend Foster testified at- length regarding his treatment by the grievant. He claimed that the grievant was rude and abusive when he arrived at the A Building with a package to bring to his son and because of a mix-up which resulted in his not having a reservation to visit his son. While the Reverend Foster is particularly sensitive to events involving a correction officer because of his own incarceration, it does appear that the grievant improperly assumed that he was simply ignoring the rules and treated him accordingly.

Ryznar testified regarding two visits to SOCF. The first visit was in 1991. He stated that on that occasion the grievant was rude to an older couple that was having difficulty filling out a form. The second visit took place in 1992. Ryznar claimed that at that time the grievant stated to him that it was fruitless to explain the rules regarding appropriate attire to visitors. While the grievant's conduct does not appear to be terribly serious, it apparently did not meet the standard expected by Ryznar, who was auditing procedures at the facility, or meet the standards maintained at other facilities he had visited.

The state submitted three letters written by other visitors to the facility. The letters raise what appear to be minor complaints -- some of which seem to have arisen from the grievant's attempt to enforce the rules for visitors. However, since none of the writers appeared during the grievance procedure or at the arbitration hearing, the Arbitrator believes that in the instant the case it would be inappropriate to attach any weight to the letters.

Tate testified that his decision to move the grievant was also based on his own observation of the grievant as he entered and left the facility. He stated that he saw thegrievant being "less than courteous" to visitors. However, he apparently did not feel that the grievant's conduct was serious enough to take any action or even to talk to her about her conduct or direct her supervisor to speak to her.

The importance of the appropriate standard is clear. While the just cause standard imposes quite a heavy burden on an employer, the good management reasons standard constitutes a considerably lower standard for an employer to meet. An action that satisfies the good management standard might not meet the just cause standard.

In the instant case management's decision to pull and move the grievant meets the good management reasons standard. The grievant's removal was not arbitrary or capricious but was based on the incidents reported by the Reverend Foster and Ryznar as well as Tate's own observation of the grievant. There was no indication whatsoever of any improper motive. Rather, it appears that management simply believed that public relations would be improved by moving the grievant.

Management's action would not meet the just cause standard. The grievant received no discipline in more than 20 years of service and has excellent evaluations. When questions regarding her relations with visitors were first raised, nothing was done --no counseling, no training, no warnings, and no opportunity to improve her performance. Given just these facts, management would have difficulty in establishing just cause.

The Arbitrator must comment on the decision of Arbitrator Charles lpavec in Ohio Civil Service Employees Association, AFSCME, Local 11, AFL-CIO, case no. 27-15-(12-29-93)-309-01-03, which the union submitted in support of its position. In that case correction officer Mark Crosbie bid on a

position but it was awarded to a less senior person. The union charged that management's action violated the pick-a-post agreement at the Madison Correctional Institution. The state claimed that the position was awarded to a less senior correction officer for good management reasons. Arbitrator Ipavec acknowledged that management had the right to award a position to a less senior employee for good management reasons but held:

"good management reasons" are non existent as an exclusionary factor in that there was no discipline applied for any conduct which formed the basis for exclusionary reasons given by the agency to deny to the grievant the bid to the special duty post. (Page 14).

This Arbitrator does not believe that Arbitrator Ipavec's decision changes the outcome in the instant case. First, the case before Arbitrator Ipavec involved different circumstances than the instant case. In the case before Arbitrator Ipavec the grievant bid on a position and was denied the position so that he did not have an opportunity to demonstrate his suitability for the job. In the instant case the grievant was assigned to the visitors desk in the A Building for many years. Second, the Arbitrator believes that Arbitrator Ipavec inadvertently altered the pick-a-post agreement negotiated by the parties. He argued that there was not good management reasons to award a job to a less senior employee because the senior employee had not been disciplined for the reasons given for disqualifying him. However, because discipline requires just cause, the standard for disqualifying the grievant was converted to the just cause standard which the negotiators of the pick-a-post agreements rejected.

The Arbitrator recognizes that management could abuse its discretion under the pick-a-post agreement. It could pull and move employees as a form of discipline and in that fashion attempt to avoid the just cause standard called for in Article 24, Section 24.01 of the collective bargaining agreement. However, there is no indication that it did so in the instant case. Furthermore, given the testimony that only two employees out of 400 positions have been moved in the past, there is no evidence that management has abused its right to pull and move employees for good management reasons.

Based on the above analysis, the Arbitrator must deny the grievance.

AWARD

The grievance is denied.

Nels E. Nelson
Arbitrator

April 5, 1996
Russell Township
Geauga County, Ohio