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In the Matter of Arbitration	
Between	Case Number:
OCSEA/AFSCME Local 11	27-03-031205-1274-01-~~11~~ 03
and	Before: Harry Graham
The State of Ohio, Department of Rehabilitation and Correction	

APPEARANCES: For OCSEA/AFSCME Local 11:

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For Department of Rehabilitation and Correction:

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INTRODUCTION: Pursuant to the procedures of the parties a hearing was held in this matter before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. Post-hearing briefs were filed in this dispute. They were exchanged by the Arbitrator on May 15, 2004 and the record was closed.

ISSUE: At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Did the Employer have just cause to discharge the

Grievant? If not, what shall the remedy be?

BACKGROUND: Substantial agreement exists upon the events giving rise to this proceeding. The Grievant, Matthew Bonner, was a Correction Officer at the Chillicothe Correctional Institution. Prior to his discharge he had approximately 16 years of service with the State. During that time he had one written reprimand. That was for a tardy report to work.

In mid-June, 2003 the Employer received information from a confidential informant that the Grievant had supplied narcotics to an inmate of Chillicothe Correctional Institution (CCI), Robert Plowman. It was alleged that Bonner supplied Plowman with heroin and cocaine. The informant also asserted that Bonner had provided several inmates with tubes of Superglue as well as food and candy. It was also indicated that Bonner had remained in contact with Plowman after the latter's release from CCI.

In due course a search was made of Plowman's property. Mr. Bonner's name and phone number were found. Mr. Plowman was interviewed. He indicated that he and Bonner had become friends during his stay at CCI. He also indicated that Bonner had given him food and that they planned to record a song together. Robert Plowman's brother, Jimmy, is a sometime resident of CCI. The investigator, Paul Arledge, was of the view that both Plowman's might be involved in conveying drugs

into CCI and other correctional institutions.

Further investigation was made of Mr. Bonner's phone records. They showed that Plowman had called Bonner on June 24, 2003 and they had spoken for 40 minutes. The record also demonstrated that Bonner had called the residence where Plowman was staying while on parole. The total conversation time was 117.7 minutes. Plowman is a longtime member of the correctional system of Ohio. He has been incarcerated or under parole since 1978. The Employer also learned from another confidential informant that Bonner and Plowman had been friends during Plowman's stay at Chillicothe. It was asserted that Bonner had supplied Plowman with guitar picks, Superglue and food. They allegedly played guitar together. It was also asserted that Bonner was friendly with five other inmates of CCI.

Upon being interviewed Bonner acknowledged contact with Plowman and other ex-inmates. He acknowledged his common interest in music with Plowman. He admitted singing with Plowman during the latter's incarceration at CCI. He did not recall bringing anything into the institution for Plowman or other inmates. Bonner also admitted having contact with various other former CCI inmates, Lewis and Clendenin. The Employer regarded Bonner's contact with Plowman, Lewis and Clendenin as inappropriate. He was discharged. A grievance

protesting that discharge was filed. It was processed through the procedure of the parties without resolution and they agree it is properly before the Arbitrator for determination on its merits.

POSITION OF THE EMPLOYER: At arbitration the Union moved to exclude evidence from the confidential informants as referenced above. These witnesses were not produced at arbitration. In its defense, the State points out that the identity of such informants should not be divulged to protect them. Further, the information supplied furnished the basis for commencement of the investigation. It was the investigation that developed the information relied upon to terminate Mr. Bonner. Additionally, when interviewed, he corroborated the account of events developed during the investigation. Thus, there is no fatal procedural defect in this matter the State insists.

At arbitration the Union asserted that the Mission Statement and Reentry Initiative of CCI were confusing. That is a red herring according to the State. Reference is made to the concepts of safety and security. Contributing to those concepts was the duty of Mr. Bonner. By his relationship with Mr. Plowman and the other inmates he compromised himself and his ability to contribute to the safety and security of CCI and the community. Mr. Bonner had sixteen (16) years of

service with the Department upon his discharge. He knew, or certainly should have known, of the standards of performance expected of Corrections Officers.

The Department has various rules and regulations. Among them is rule 46A. It is clear. It provides that "The exchange of personal letters, pictures, phone calls, or information with any individual under the supervision of the Department, or friends or family of same, without express authorization of the Department" is prohibited. Rule 45A indicates that "Without express authorization, giving preferential treatment to any individual under the supervision of the Department, to include but not limited to: the offering receiving or giving of a favor" is prohibited. Rule 45B prohibits the "...giving preferential treatment to any individual under the supervision of the Department, to include but not limited to: The offering, receiving or giving anything of value" without authorization. These are not complicated or complex rules. He maintained unauthorized relationships and contact with people who were or had been, under the custody of the Department. The rules are clear. Mr. Bonner supplied inmates with Superglue. He had a relationship with Mr. Plowman after the latter's release from Chillicothe, thus his discharge was justified according to the State.

The Employer is aware that the Union will argue its rules

were ambiguous and confusing. That is simply not the case it contends. Given Mr. Bonner's sixteen years of service that he acted as he did opens him to discharge according to the State. Mr. Bonner had phone conversations with Mr. Plowman four days after Plowman was released from Chillicothe. No report was made. Any contention by the Union that the Grievant was assisting Mr. Plowman to return to society should be rejected the Employer contends. He brought contraband into the facility. Mr. Bonner was an experienced Corrections Officer. He had received many hours of training. He knew, or should have known, better. In support of its position in this dispute the State cites Case Number 27-09-929617-0091-01-03 (Graham, 1993) and G-87-2389. (Rivera, 1988). In the former situation I sustained a discharge of a Corrections Officer who had been placed in a compromising position by her actions. In the latter, Arbitrator Rivera found the discharge of a Penal Workshop Supervisor not to be arbitrary, unreasonable or capricious. That is the case in this situation as well. Thus, the grievance should be denied in its entirety according to the State.

POSITION OF THE UNION: The Union points out that the Grievant has a long record of excellent service. There is no discipline on his record. Hence, the Employer has a heavy burden to sustain discharge.

The Union cites the holding of Arbitrator Carroll Daugherty in Enterprise Wire, 46 LA 359. (1966) In Enterprise Arbitrator Daugherty promulgated his famous seven tests of just cause. As the Union views this situation, the Employer does not meet Arbitrator Daugherty's tests, thus the discharge should be overturned.

Mr. Bonner did not violate Rule 45(A) prohibiting the giving of preferential treatment to an inmate. He denied giving candy or food to inmates. In fact, were he to have given inmates food or candy, he should have been charged under Rule 45(B) which prohibits giving something of value to inmates.

Mr. Bonner admitted permitting inmates to use his Superglue. Merely allowing inmates to use Superglue does not constitute the granting of a favor in the common use of the word. Thus, discipline is not appropriate in the Union's view. At Arbitration testimony was received from Cheryl Rhoades, a Training Officer at CCI. She indicated her view that Rule 45(A) was concerned with different treatment of inmates. That did not occur in this instance. Mr. Bonner permitted all inmates to use his Superglue.

There can be no discipline under Rule 45(A) because Mr. Bonner did not write-up inmates who were out of place. Inmates are often out of place with nothing occurring. Write-

up's are normally done when an out-of-place inmate engages in some sort of inappropriate conduct. None of that occurred in this instance. Additionally, Corrections Officers have discretion to write-up inmates. Making failure to do so when it is discretionary is inappropriate according to the Union.

At arbitration Mr. Bonner testified he did not know Rule 46(A) prohibited telephone contact with inmates after their release. It was his belief that he had to report a call from a person who was incarcerated. Had he been aware of the prohibition on post-discharge contact with inmates he would not have engaged in it with Mr. Plowman. He did not provide Mr. Plowman with his home telephone number. The number is listed in the Chillicothe telephone book.

In the ordinary course of events Corrections Officers are unaware of the status of released inmates. On occasion first shift officers may know the status of an inmate who has been released as they may participate in the release process. Mr. Bonner was not on the first shift. He would be unlikely to know Mr. Plowman's status upon his release.

It was the Department that promulgated its Rules of Conduct. If it sought to prohibit telephone calls with prior inmates, it could do so. No explicit prohibition of such activity is found on the record. Rule 46(B) references an unauthorized personal or business relationship with a person

currently or formerly under the supervision of the Department. It does not apply in this situation according to the Union. In fact, had the Grievant been aware he could be discharged for have telephone conversations with ex-inmates he never would have spoken with Mr. Plowman. He did not know Plowman was on parole. He did not give him his telephone number.

When allegations of Mr. Bonner's alleged misconduct surfaced they involved possible drug dealing and sexual improprieties. These were not substantiated. The State could not back up serious allegations against Mr. Bonner. Hence, it used the events under review in this proceeding against him. Under the discipline grid of the State discharge is not mandatory for such activity. Hence, the Grievant should be restored to employment and made whole the Union contends.

DISCUSSION: In 1989 Arbitrator Jack Dunsford, a former President of the National Academy of Arbitrators, thoroughly discussed Carroll Daugherty's Seven Tests of Just Cause. ("Arbitral Discretion: The Tests of Just Cause," Proceedings of the 1989 Annual Meeting of the National Academy of Arbitrators, Washington, DC 1990). In his paper Arbitrator Dunsford urged circumspection in usage of Arbitrator Daugherty's tests. He pointed out the special circumstances in Arbitrator Daugherty's background, coming as he did from

the railroad industry, and he warned against the overreliance upon the formulaic application of the Seven Tests in determining the propriety of discharge. This arbitrator agrees wholeheartedly with the comments of Arbitrator Dunsford. Their mechanical application demeans the arbitration process. It represents an effort to reduce the arbitrator to a cipher. It is an attempt to substitute a procedure for thought and must be rejected. The urging of Arbitrator Daugherty's Seven Tests of Just Cause upon this Arbitrator in this situation is dismissed with no further consideration.

The Grievant, Matthew Bonner, had sixteen years of service at CCI upon his discharge. He had been Officer of the Year. Given his years of service and excellent performance the effort of the Union to split hairs regarding the interpretation of Rules 45 and 46 is misplaced. If the Grievant was unaware of the general prohibition against fraternization with inmates and ex-inmates enunciated in those rules he had his head in the sand. The activities engaged in by the Grievant represent serious breaches of the code of conduct prescribed for Corrections Officers. The rationale behind the restrictions against fraternization with inmates is sound. Corrections Officers should not put themselves in a position of potentially or actually being

compromised by their relationship with an inmate or ex-inmate. That Plowman initiated the telephonic contact with the Grievant is given no weight. Mr. Bonner could have halted it the instant it began. The Grievant is a Corrections Officer, not a social worker. The contention that he was merely furthering the reentry mission of the institution (Un. Ex. 1) is rejected. Mr. Bonner's activities with inmate Plowman went far beyond any sort of post-incarceration assistance that would be considered part of a Correction Officer's tasks. That the Grievant repeatedly spoke with Plowman after his discharge, as well as with other ex-inmates of CCI, represent serious offenses. So too is his failure to report those conversations to higher authority.

It was alleged that the Grievant supplied Plowman with Superglue and food items while the latter was incarcerated. His disingenuous answer to that allegation, "I don't recall" is certainly unworthy of belief. (Er. Ex. 2, p. 27). Once again, for a veteran of sixteen years of service to engage in such behavior represents a serious violation of the Rules of the Department (45A and B). The contention of the Union and the Grievant, that somehow Mr. Bonner was unaware that he was contravening Department rules by his activity, is unpersuasive. Mr. Bonner had received many hours of training. He had long service at the time of his discharge. A claim of

ignorance is unconvincing.

Set against the above is Mr. Bonner's record of long and good service. At discharge, he had sixteen (16) years of service at CCI. That service was not marked with discipline. In fact, he had been selected on one occasion as Officer of the Year in the Institution. After sixteen years of good service an employee has built equity in the job. The disciplinary grid of the State does not mandate discharge for first offenses of this nature, it makes discharge optional. Even if the grid mandated discharge, it is not binding upon an arbitrator. Given the Grievant's years of good service with the State a penalty short of discharge is warranted in this situation. Mr. Bonner's offenses were serious. They call for serious discipline, but discipline short of discharge.

AWARD: The grievance is sustained in part and denied in part. The Grievant, Matthew Bonner, is to be restored to employment. No back pay is due. The personnel record of the Grievant is to reflect a suspension from the date of his discharge to the date of his restoration to duty. No further remedy is directed.

Signed and dated this 8th day of June, 2004 in Cuyahoga County, OH.

Harry Graham

Harry Graham
Arbitrator