

STATE OF OHIO  
VOLUNTARY RIGHTS ARBITRATION

#893

IN THE MATTER OF ARBITRATION BETWEEN:

THE STATE OF OHIO, OHIO DEPARTMENT OF REHABILITATION AND  
CORRECTION

-AND-

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

GRIEVANT: APRIL KING  
GRIEVANCE NO.: 27-04-20040511-1084-01-03

ARBITRATOR'S OPINION AND AWARD  
ARBITRATOR: DAVID M. PINCUS  
APRIL 11, 2005

APPEARANCES

For the Employer

Teri Decker	Chief, Bureau of Labor Relations
Jessie Keys	Second Chair
Twila Hampton Brown	Training Officer
D.J. Norris	Parole Officer
Paul Arledge	Investigator
Cary A. Sayers	Investigator
Joe Trejo	Labor Relations Specialist
Phyllis Dempsey	Labor Relations Officer
Beth A. Lewis	Advocate

For the Union

April King	Grievant
Roxie Turner	Union Representative
William Blaney	Major
Vicki Williams	Witness
Phillip L. Vermillim	Investigator
Lisa Harris	Witness
Carless Young	Witness
Bob Steele	Advocate

### INTRODUCTION

This is a proceeding under Article 25, Sections 25.03 and 25.04 entitled Arbitration Procedures and Arbitration Panel of the Agreement between the State of Ohio, Ohio Department of Rehabilitation and Correction, hereinafter referred to as the Employer, and the Ohio Civil Employees Association, Local 11, AFSCME, AFL-CIO, hereinafter referred to as the Union, for the period March 1, 2003 through February 28, 2006 (Joint Exhibit 1).

An arbitration hearing was held on January 13, 2005 and January 20, 2005, at the Office of Collective Bargaining, Columbus, Ohio. At the hearing, the parties were given the opportunity to present their respective positions on the grievance, to offer evidence, to present witnesses, and to cross-examine witnesses. At the conclusion of the hearing, the parties were asked by the Arbitrator if they planned to submit post-hearing briefs. The parties submitted briefs in accordance with guidelines established at the hearing.

### JOINT STIPULATION

Was the Grievant, April King, removed for just cause? If not, what shall the remedy be?

### JOINT STIPULATIONS

1. Grievant was hired by the Department of Rehabilitation and Correction May 6, 1991, as correction officer at the Southeastern Correctional Institution ("SCI").
2. Carless Young was incarcerated on May 11, 1993.
3. On January 31, 1998, Grievant was transferred to the Corrections Medical Center ("CMC").
4. On February 18, 2000, Inmate Carless Young was transferred to CMC.

5. On June 6, 2001, Inmate Carless Young was transferred to the Pickaway Correctional Institution ("PCI"). Carless Young was paroled from PCI on September 9, 2003.
6. Grievant was removed from employment effective May 4, 2004, for violation of Standards of Employee Conduct rule 46b – Engaging in any other unauthorized personal or business relationship(s) with any individual currently or formerly under the supervision of the Department or friends or family of same.
7. Carless Young continues to be under the supervision of the Department of Rehabilitation and Correction.

### PERTINENT CONTRACT PROVISIONS

#### ARTICLE 24 - DISCIPLINE

##### **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. Abuse cases which are processed through the Arbitration step of Article 25 shall be heard by an arbitrator selected from the separate panel of abuse case arbitrators established pursuant to Section 25.04. Employees of the Lottery Commission shall be governed by O.R.C. Section 3770.02(1).

##### **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. working suspension;
- D. one or more fines in an amount of one (1) to five (5) days, the first fine for an employee shall not exceed three (3) days pay for any form of discipline; to be implemented only after approval from OCB.
- E. one or more day(s) suspension(s);
- F. termination

Disciplinary action shall be initiated as soon as reasonably possible consistent with the requirements of the other provisions of this Article. An arbitrator

deciding a discipline grievance must consider the timeliness of the Employer's decision to begin the disciplinary process.

The deduction of fines from an employee's wages shall not require the employee's authorization for withholding of fines.

If a bargaining unit employee receives discipline which includes lost wages or fines, the Employer may offer the following forms of corrective action:

1. Actually having the employee serve the designated number of days suspended without pay; or pay the designated fine or;
2. Having the employee deplete his/her accrued personal leave, vacation, or compensatory leave banks of hours, or a combination of any of these banks under such terms as may be mutually agreed to between the Employer, employee, and the Union.

**(Joint Exhibit 1, Pg. 72)**

#### **24.05 – Imposition of Discipline**

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Disciplinary measures imposed shall be reasonable and commensurate with the offense and shall not be used solely for punishment.

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**(Joint Exhibit 1, Pg. 74)**

#### **CASE HISTORY**

At the time of the disputed incident, April King, the Grievant, had been employed as a Correction Officer since May 6, 1991. She was originally employed by the Southeastern Correctional Institution (SCI), but subsequently transferred to the Corrections Medical Center (CMC) on January 31, 1998.

On February 6, 2004, OOP/Enforcement Unit was contacted by Tammy Hartzler, Warden at Corrections Medical Center. She advised she received information that April King, the Grievant, was engaged in a personal relationship with Carless Young, a Parolee. Young, more specifically, was released on parole on September 9, 2003, and was at the time under supervision of the Adult Parole Authority.

The warden's informant, Willie Robinson, advised that the Grievant was involved in a relationship with Young, and that he was a black man. He also noted that Young drove a minivan and could be found at the Grievant's residence.

On February 6, 2004, Parole Officer D.J. Norris contacted Young's Parole Officer, Mike Anderson, and brought him up to date. Anderson acknowledged he received similar information. Anderson, moreover, remarked Young's paroled residence was 240 Glenkirk Drive, Blacklick, Ohio. He also stated Young was employed at Buckeye Steel and his hours of employment were 7:00 a.m. to 3:00 p.m.

On February 9, 2004, an attempt was made to stakeout the Grievant's residence at 1579 Morton Court. Upon arrival at this location at approximately 6:20 a.m., the OOP/EU unit observed the garage door open with only one vehicle parked in the garage. It was determined that the sole vehicle was registered to the Grievant, which caused the termination of the stakeout effort.

It should also be noted Warden Hartzler contacted the investigators on February 9, 2004. She advised that Young was driving a white minivan.

On February 10, 2004, another stakeout at the Grievant's residence was undertaken. Four individuals were involved in the stakeout: Investigators Paul Arledge, Cary Sayers, Phil Vermillion, and Parole Officer D.J. Norris.

The facts regarding the disputed matter are somewhat in dispute. As such, what follows is the Employer's view of the incident. The Union's counter will be reflected in a subsequent portion of this Opinion and Award.

Norris was parked alone on Morton Court with an unobstructed view of the Grievant's residence. The other members of the stakeout unit were parked on Ricardo

Drive, the street which intersects Morton Court. Arledge and Sayers were in another car parked on the right side of Ricardo Drive facing Kerryglen Drive. Arledge was parked in his vehicle just east of the Morton Court and Ricardo Drive intersection. He maintained he could see the intersection in question if he "turned around." Vermillion stated he arrived at Ricardo Drive after Arledge and Sayers, and parked behind Arledge's car on the same side of the street.

At approximately 6:20 a.m., Norris observed the garage door to the Grievant's residence opening. He also maintained a black man entered a minivan that was parked inside the Grievant's garage. Norris then notified the other investigators that a van was leaving the Grievant's residence. The minivan passed Arledge when it drove past him on Ricardo Drive. He noted the license plate number and determined it was registered to Young. Arledge then advised the other investigators that he was following directly behind the minivan. While following and never losing sight of the minivan, Arledge relayed his route, via radio, to Vermillion and Norris.

Arledge and Sayers, investigators traveling in the same car, followed the minivan to Buckeye Steel's parking lot and pulled in after Young's arrival. Arledge approached the minivan and asked for identification. Eventually, the other investigators arrived at the scene. All of the investigators identified the man outside the minivan as Parolee Young. He was the expected individual based on the information gathered prior to and after the stakeout.

On April 21, 2004, the Grievant was formally removed from the position of Correctional Officer. The removal order contained the following relevant particulars:

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You are to be removed for the following infractions:

You violated the Standards of Employee Conduct rule:

Rule #46b-Engaging in any other unauthorized personal or business relationship(s) with any individual currently or formerly under the supervision of the Department or friends or family of same.

This is supported by the following incident/facts:

It was substantiated through the pre-disciplinary process that on February 10, 2004, Parolee Carless Yojng (sic) was observed leaving the 1579 Morton Court residence of Correctional Officer April King that morning. Officer King can be placed in the residence at the time through her own statements. There was no authorized personal or business reason offered for Carless Young to be in her residence. It is imperative that you understand and abide by the policies, procedures and rules governed by the Department of Rehabilitation and Correction. You are in violation of the Standards of Employee Conduct.

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**(Joint Exhibit 4A)**

On May 6, 2004, the Grievant and the Union formally protested the administered discipline. The Statement of Facts included the following allegations:

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On May 4, 2004, CO April King was removed from the position of Corrections Officer on the charge of Rule 46B, which the State has not been able to justify. The above mentioned officer was removed on hear-say information and a failed investigation without proven fact. The decision to remove this officer was without just cause, and without merit. The State is also in violation, due to the fact, additional hear-say information was used to determine final discipline/removal, after the pre'd hearing. At no time was the information provided to the Grievant or the Union. Information provided by the Grievant was left out of the final decision process.

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**(Joint Exhibit 5)**

The parties were unable to resolve the disputed matter during subsequent portions of the grievance procedure. Neither party raised substantive nor procedural arbitrability concerns. As such, the grievance is properly before the Arbitrator.

### THE MERITS OF THE CASE

#### The Employer's Position

It is the Employer's position that it had just cause to remove the Grievant for violating Rule 46(B). Clearly the Grievant was engaged in an unauthorized personal relationship with Parolee Carless Young who at the time of the incident was under the supervision of the Department.

The stakeout and subsequent questioning of Parolee Young were conducted properly and surfaced a substantial level of proof that the Grievant was guilty as charged. All of the investigators involved in the stakeout provided consistent and credible testimony surrounding the dispute. Their testimony, moreover, was corroborated by similar reviews contained in statements (Joint Exhibits 2B and 2C) written by those involved in the stakeout.

The investigators did not mistake the color of Parolee Young's light blue minivan as being white. All of the investigators reported the color of the van identically and saw the same minivan with the Parolee's license plate. The minivan, more specifically, appeared white or light in color because of darkened conditions during the early morning hours, with headlights shining on the vehicle.

Circumstances precluded a traffic stop to detain Parolee Young upon his exit from the Grievant's residence. None of the investigators were equipped to make a traffic stop. Safety concerns caused them to observe Parolee Young's activity and



approach him at his place of work. The operation, moreover, was not designed to arrest Parolee Young; the purported relationship was the focus.

The surveillance, itself, was properly sanctioned in accordance with Departmental policy. The investigators discussed their plan with a supervisor who granted approval. This operation did not involve any electronic surveillance. As such, pre-conditions specified in the Department's Surveillance Policy (Joint Exhibit 12) did not play a role with the present undertaking.

None of the witnesses provided by the Union were unable to credibly corroborate the Grievant's version of events. Vicki Williams, the Grievant's acquaintance and neighbor, testified on her behalf. She attempted to discount the surveillance and related outcome, but instead improved the investigator's credibility, in terms of what transpired. Their location and activities were supported by Williams.

The investigator's version should be believed as opposed to William's recollection regarding being followed by two white men on the way to work. Again, this version was proposed to discredit the plausible surveillance of Parolee Young. Obviously if Arledge and Sayers were following Williams, they could not have followed directly behind Parolee Young. Her version lacks credibility in terms of timing, specificity, and logic in general.

Parolee Young's testimony was equally unpersuasive. Upon exiting his vehicle at Buckeye Steel, he remarked to the investigators: "You guys got what you wanted." He was, therefore, clearly aware of why he was being followed, and that the investigators surfaced the needed evidence.

Parolee Young's testimony should not be believed because of several inconsistencies. His testimony at the arbitration hearing regarding the whereabouts of the investigations at the time of his arrival at Buckeye Steel conflicted with his pre-disciplinary statement (Joint Exhibit 3F). His entire testimony, moreover, should be discounted since he has a vested interest in the ultimate outcome. If the removal is upheld, a strong likelihood exists Young committed a parole violation.

The Grievant's testimony was viewed as evasive, self-serving, and thus, without credibility. She refused to explain her relationship with Willie Robinson, the informant.

José Trejo, a Labor Relations Specialist at the Office of Collective Bargaining, provided the most detrimental testimony. He observed the Grievant and Young attending several middle school basketball games. Trejo's daughter and Parolee Young's daughter played together on the same basketball team. On one occasion, Young's daughter was asked who the Grievant was, and she responded, "my step mom."

While the Grievant and Parolee Young denied they attended these games together, again, their testimony is viewed as unpersuasive. The Grievant maintained she was in attendance to watch the children of other friends, and happenstance caused her contact with Parolee Young. Unfortunately, she neither provided the names of these "other friends," nor had them testify on her behalf.

Parolee Young's testimony was less than helpful. His testimony was veiled with inconsistent recollections. He initially stated the Grievant was never at the basketball games, but eventually admitted they sat together.

The evidence of the Grievant's on-going relationship with Parolee Young should be admitted as support for the original stated grounds for removal. The Grievant's post-discharge conduct was not introduced to establish new grounds for discharge, but to support the original grounds for removal. The Grievant's current involvement is a mere extension of her original relationship with Parolee Young, as testified to by Trejo. This current relationship did not begin after the Grievant's removal, but has been on-going for a considerable period of time.

The Grievant should not be reinstated even if just cause for removal is not supported by the record. There exists a current on-going relationship with an individual currently under the supervision of the Department. If the Grievant should be reinstated, she would again be terminated based on her current relationship.

This current on-going relationship muddies Parolee Young's and the Grievant's credibility. Their evasiveness and contrived explanations force one to conclude their testimony is not credible.

Article 24.04 was not violated and all requirements were met in this instance. The pre-disciplinary hearing officer clarified certain issues raised by the Grievant during the course of the pre-disciplinary hearing, but the information was not new. The Grievant requested and received information regarding the investigator's location. With respect to Trejos potential testimony, his involvement surfaced during the preparation phase prior to the arbitration hearing. The Union's advocate was informed of Trejos role as witness and the substance of his testimony.

The hearing officer's attempt to clarify the record in no way prejudiced the Grievant's defense. The Grievant, more specifically, admitted the Employer did not initiate any new charges against her.

Article 25.08 was not violated since all document requests were fulfilled as requested when possible. The Union's document requests were not sufficiently specific, but compliance was attempted. The Union requested "all disciplines for Rule 46A, B, C, and D." A specific time period was never specified nor were documents of this sort ever in existence. Nonetheless, the Employer created a spreadsheet for the calendar year 2004, and attempted, but failed, to provide information for calendar year 2003, even though no official request for this time period was submitted by the Union. At the arbitration hearing, the Employer was able to provide a review for calendar year 2003. It should be remembered that the provision in question does not contemplate creation of any document if it is not normally a part of the Employer's on-going course of business.

During the arbitration hearing, the Union modified its request by limiting the analysis to the Corrections Medical Center. The Employer again analyzed its data base. For the time period requested, the Employer could not provide any additional information.

This disparate treatment claim, on a general level, should be summarily rejected by the Arbitrator. Article 25.01(F) requires the parties to resolve disputes at the lowest level of the grievance procedure. Here, this issue was initially raised at the arbitration hearing. As such, any potential resolution at a lower level becomes virtually improbable. Surprise tactics of this sort prevent the Employer from preparing properly, and thus, prejudice any finding in the Union's favor.

Phyllis Dempsey, Step Three Hearing Officer, alleged the Union never raised this argument at this particular stage. Her notes (Employer Exhibit 6) fail to identify a disparate treatment claim.

A similar defect took place at Step Four Mediation. Trejo and Dempsey attended the mediation session. Both acknowledged disparate treatment was never raised by the Union's advocate. Also, their notes (Employer Exhibits 6 and 7) failed to reflect any similar allegation.

The Union failed to properly rebut this evidence and testimony. Neither Steel nor Turner were able to provide any documents in support of their allegation. They were, moreover, unable to identify any similarly situated individuals named at either Step Three or Step Four of the grievance procedure.

Arguing in the alternative, even if this defect was not viewed as improper by the Arbitrator, the claim itself should be dismissed. The Union admitted it kept all the disciplinary records at the Correctional Medical Center. It failed to provide other similarly situated employees who were provided with different discipline.

### **The Union's Position**

The Union opined the Employer did not have just cause to remove the Grievant from employment. The Employer failed to provide sufficient proof that Parolee Young exited or left the Grievant's home. As such, an unauthorized relationship with one under the care and supervision of the Department was never established.

Conflicting testimony provided by the investigators suggest the entire matter was contrived to support a removal unsupported by the evidence gathered by these individuals. Norris, as documented in the hearing officer's report, was confused

regarding the color of the minivan. He stated the minivan was either white, gray or silver. At the arbitration hearing, however, he maintained the minivan was white. Norris, moreover, did not follow the minivan in the "lead" position, but followed directions given by Arledge and Sayers.

Arledge and Sayers, however, provided equally inconsistent testimony. They identified different stakeout locations, and noted different colors for the minivan in question. Troubling, as well, was their depiction of the scene. It was so dark that they could not see where the other investigators were parked. Yet they were able to run the plates of other vehicles.

Vermillion's testimony was most troubling for the Employer's case in chief. At the hearing, Vermillion noted he never observed a minivan leave the scene nor followed a minivan to Buckeye Steel. He merely met the other investigators at Buckeye Steel. Vermillion, moreover, could not identify the color of the minivan.

Further doubt was cast by several individuals testifying on the Union's behalf. Williams observed a strange car on Ricardo Drive attended by two white males. They followed her, causing a panic and resultant call to the Grievant to meet her with a firearm. By following Williams, Arledge and Sayers could not have been following Parolee Young to Buckeye Steel.

Young strongly disagreed with the investigator's recollections. He maintained he was never at the Grievant's home on the day in question, but acknowledged he knew her for years based on their parents' relationship. Young drove to work from his home, and was approached by the investigator upon his arrival at Buckeye Steel. He asserted they were already there when he arrived.

If the investigator's observations were accurate, they should have arrested Young at the Grievant's house or at Buckeye Steel. Norris, who has arrest powers, should have arrested Young for a parole violation.

The Grievant never denied knowing Young. When Young was incarcerated at CMC, she reported it to the proper person at the facility. They knew each other based on parental relationships. The Employer could have confronted the Grievant while near her residence, but never did.

Post discharge misconduct arguments should carry little weight. These were all after the fact arguments, which should not impact the Arbitrator's decision. Trejos's observations took place when the Grievant was not a State of Ohio employee. Sitting with Young at a basketball game or attending games with Young present are not particular acts of misconduct. The Grievant asserted her attendance at these games was not based on Young's involvement. She attended to support neighborhood children or children of friends.

Article 24.04 was violated by the Employer. Hearing Officer William Blaney obtained information after the hearing without giving the Union an opportunity to respond. Additional information was then used to remove the Grievant.

The Union did, in fact, raise a disparate treatment claim at lower stages of the grievance procedure. A series of disparate treatment notices were submitted. They evidenced that other similarly situated employees were treated differently and not removed.

### THE ARBITRATOR'S OPINION AND AWARD

From the evidence and testimony adduced at the hearing, a complete review of the record including pertinent contract provisions and arguments contained in the parties' briefs, it is this Arbitrator's opinion that the Employer had just cause to remove the Grievant for violating Standards of Employee Conduct Rule 46 (B). The Grievant was engaged in an unauthorized personal relationship with Parolee Young who was at the time under the custody or supervision of the Department.

The relationship in question was accurately documented and supported by the Employer based on observations made during the early hours of February 10, 2004. The stakeout was initiated based on an informant's information. He provided critical and concrete information regarding the Grievant and her involvement with a Parolee. Willie Robinson contended the Parolee was black, drove a minivan, and could be found at the Grievant's residence. All three conditions were established on February 10, 2004, and the Grievant admitted to being at home at this time.

The color of the minivan and some conflicting testimony provided by the investigators are not of critical import. The time of day and relative darkness could have caused these discrepancies. Whether the vehicle was white, gray, or light blue could have been determined by passing headlights and viewing angles.

What is critical is whether the investigators at the stakeout somehow lost sight of Young's vehicle during the surveillance. Establishing this occurrence would break the opportunity to observe Young's departure toward work and eventual arrival. Williams' testimony reflected the Union's attempt to break this evidentiary chain. Her testimony, however, failed to support the view that Arledge and Sayers veered off this primary



objective and followed Williams instead. Williams did in fact pass Arledge and Sayers while parked on Ricardo Drive, but they never followed her. She credibly supported their location which somewhat discounted the Union's location concerns. There was no need to follow her since they determined the plates were registered to Williams.

Arledge and Sayers never followed Williams. She alleged the chase was of a short duration yet she had the time to call her friend, the Grievant, and ask for her armed protection. She could have easily called the police, but she did not.

Williams and the Grievant's responses once "the chase" ended can only lead to one conclusion. The entire episode was contrived because it lacked interval consistency. Any highly frightened individual would have contacted her friend once "the chase" was terminated. Here, Williams and the Grievant did not converse about the incident until Williams wrote her statement on March 23, 2004. A full three weeks had elapsed since the initial "tragedy" without any significant conversation. This review of what took place from the Grievant's perspective reflects a lopsided view of the circumstances, and demonstrates an unyielding attempt to bend the truth.

A similar outcome results when one analyzes Young's involvement as reflected in evidence and testimony. He provided conflicting testimony regarding the investigator's locations. At the arbitration hearing, he noted they were already in the parking lot once he arrived, but at the pre-disciplinary conference his statement (Joint Exhibit 3F) alleged the investigators pulled in next to him. He could never reconcile this differing perspective. Obviously, his initial statement would have corroborated Williams' "chase" scenario, supporting the notion that the investigators had never followed him

from the Grievant's residence to his place of work. The Arbitrator finds neither view persuasive.

It is an arbitral axiom that consequently discovered evidence is not precluded at arbitration hearings. Evidence discovered post-discharge is, therefore, admissible as long as it does not deal with subsequently discovered grounds for removal. The Union's desire to clothe the Grievant's post discharge conduct with Young as inadmissible is based on faulty logic. This type of evidence can be admitted to support the original grounds for termination, demonstrate that future employment would violate existing policy and reduce an individual's overall credibility.

Trejo's testimony supports all of the previously articulated justifications since his testimony is viewed as highly credible and untainted by any pre-existing prejudice or predilection. His testimony clearly supports the view of a continuing relationship. A personal relationship initiated prior to termination and continued upon separation. The number of occasions referenced by Trejo indicate a relationship not based on happenstance, but well timed and orchestrated to view the performance of Young's daughter.

This evidence and testimony was not properly rebutted by Young and the Grievant. As such, their credibility dealing with the incident on February 10, 2004 must be discounted more severely based on the established post discharge misconduct.

Procedural and due process concerns raised by the Union also fail to mitigate the previously described finding. Article 24.04 was not violated by the hearing officer. This provision states in pertinent part:

If the Employer becomes aware of additional witnesses or documents that will be relied upon in imposing discipline, they shall be provided to the

Union and employee... The Union and/or the employee shall be given the opportunity to ask questions, comment, refute or rebut.

Here, there were no additional witnesses or documents. The hearing officer merely attempted to clarify issues raised by the Grievant. This clarification effort did not prejudice the process or ultimate outcome. In fact, when the Employer during preparation for the arbitration found out about Trejos observations, the Union was immediately notified and advised of his potential testimony.

In a similar fashion, Article 25.08 was not violated in this circumstance. The Union's information request did not meet the specificity requirement contained in this provision. The Employer attempted to comply and did when possible, even when it had to create documents not normally kept during the normal course of business. This degree and depth of compliance is not required by this provision although it reflects a well-needed collaborate effort. Yet this Arbitrator is quite troubled when the Union asks for documents it already has in its possession and still initiates an information request. Over time such actions represent an abuse of discretion which may erode the goodwill between the parties.

The Union failed to plead and prove its disparate treatment claim. It raised it initially at the arbitration hearing. Nothing in the record suggests the Union raised this argument at lower levels of the grievance procedure. The Employer, however, introduced testimony and evidence which suggest that matter was never raised at the Third Stage or Mediation Stage. Similar documentation was not provided by the Union.

This claim, however, can be dismissed on other grounds. The Union is the moving party and has the burden of proving a disparate treatment argument. This Arbitrator is in full agreement with the standards articulated by Arbitrator Rivera in

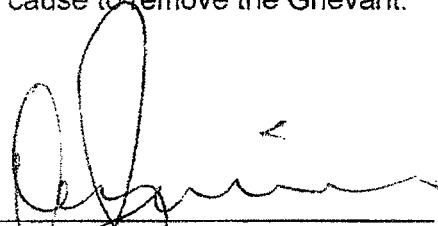
Rivera in Jennings. All of the comparables raised by the Union lacked sufficient specificity to allow for an impartial analysis. Much more must be introduced into the record to support this claim.

**AWARD**

The grievance is denied. The Employer had just cause to remove the Grievant.

April 11, 2005

Moreland Hills, Ohio



David M. Pincus  
Arbitrator