

ARBITRATION DECISION

#953

January 29, 2007

In the Matter of:

State of Ohio, Department of Rehabilitation)	
and Correction, Chillicothe Correctional)	
Institution)	Case No.27-03-(2006-05-04)-1595-01-03
and)	Scott Howard, Grievant
Ohio Civil Service Employees Association,)	
AFSCME Local 11)	

APPEARANCES

For the State:

Bobby L. Johnson, Advocate
 Beth A. Lewis, Asst. Chief, Bureau of Labor Relations, DRC
 Ray Mussio, Labor Relations Specialist, OCB
 Timothy Brunzman, Warden
 Arville Duty, Investigator
 Brian Wittrup, Deputy Warden of Operations
 Cathy Pummill, Library Assistant 2

For the Union:

Lynn Belcher, Advocate
 Dave Justice, Staff Representative
 Scott Howard, Grievant
 David Park, Acting President
 Jim Brown, Union Representative

Arbitrator:

Nels E. Nelson

Background

The grievant, Scott Howard, was hired by the Department of Rehabilitation and Correction on April 22, 1991, as an Interim Correction Officer at the Chillicothe Correctional Institution. He became a full-time Correction Officer on June 14, 1992. At the time of his removal, the grievant was assigned to the Sherman School.

The events triggering the grievant's discharge began February 23, 2006. On that day, the grievant told Timothy Brunzman, the Warden, that John Kirk Jr., an inmate, told him that CO Dave Eggers had taken him to talk to Brian Wittrup, the Deputy Warden of Operations, and that Wittrup was trying to set him up by having Kirk ask him to bring drugs into the institution. The grievant stated that he believed that when Kirk refused to participate in the plan, he was put in isolation.

On February 27, 2006, Brunzman assigned Arville Duty, an Investigator, to investigate the grievant's allegations. On the same day, Duty interviewed Kirk. The inmate stated that he never spoke to Wittrup and did not tell the grievant anything about Wittrup asking him to bring drugs into the institution. Kirk reported to Duty that the grievant brought inmates almost anything they wanted, including food, scented oil, flavored cigars, and marijuana, in exchange for packs of cigarettes. He stated that the grievant had given him contraband of several occasions. Kirk also indicated that the grievant had told him things about his family and personal life.

On February 28, 2006, Duty interviewed Wittrup and the grievant. Wittrup denied meeting with Kirk. The grievant told Duty that he thought that Wittrup was trying to set him up using Kirk but that Kirk had refused to go along and, as a result, was placed in isolation. He denied giving contraband to inmates but confirmed the details of his

personal life that Kirk had reported to Duty.

After Duty told the grievant that scented oil like he sold to other employees had been found in Kirk's property, the grievant changed his position. He stated that he gave oil to Kirk one time, food approximately five times, and flavored cigars six times. The grievant indicated that he started giving Kirk cigars in the summer of 2005. At the end of the interview, he told Duty that he believed that Kirk had lied to him about Wittrup trying to set him up.

After Duty interviewed the grievant, he briefed Brunzman. Brunzman placed the grievant on administrative leave with pay pending the completion of the investigation. He also transferred Kirk to another prison to insure his safety.

After the grievant was placed on leave, Duty interviewed seven employees who worked with the grievant at the Sherman School. They claimed that the grievant was unprofessionally close to several inmates, including Kirk and Jason Fowler. The employees reported that the grievant allowed inmates to break institutional rules.

On March 8, 2006, Duty interviewed Fowler at the Ross Correctional Institution where he was transferred in September 2005. He reported that the grievant gave him food from outside the institution, scented oil, cigars, and marijuana in exchange for cigarettes. Fowler said that at some point, the grievant became worried that he might say something to the administration about the contraband and wrote a false report about him that led to his transfer to RCI.

On March 13, 2006, Duty interviewed Cathy Pummill, a Library Assistant 2, assigned to the Sherman School. She stated that she saw the grievant give Inmate Akemon a \$10 or \$20 bill. Pummill reported that when she asked the grievant what he

was doing, he told her that he was paying for ice cream that Akemon had gotten for him.

On the same day, Duty conducted a conference call with Kirk, who had been transferred to another institution. When Duty asked him whether he ever saw the grievant give money to an inmate, he responded that he saw him give money to Akemon.

At Duty's request, Kirk gave a written statement that was faxed to CCI.

On March 14, 2006, Duty interviewed the grievant for a second time. The grievant then admitted that he gave scented oil to inmates two or three times, cigars and food to several different inmates and acknowledged that they gave him cigarettes. He stated that he would put the food in a trashcan in the bathroom or in the porter's closet where the inmates could get it. The grievant denied giving money to Akemon, getting ice cream from inmates, or selling drugs to inmates.

On March 17, 2006, Duty interviewed Eggers. He denied taking Kirk to see Wittrup. Eggers indicated that if he thought that an employee was bringing drugs into the institution, he would tell his supervisor.

Duty submitted his report to Brunsman on March 30, 2006. He reported that the grievant had admitted selling contraband to inmates and having unauthorized relations with them. Duty noted that the grievant denied selling marijuana to inmates but stressed that problems are created by contraband of any type. He speculated that the grievant made the allegations against Wittrup to protect himself should Kirk tell the administration about his improper activities. Duty concluded that the grievant had violated the Standards of Employee Conduct.

A pre-disciplinary hearing was conducted on April 12, 2006. The grievant was charged with violating Rule 45(C), which prohibits giving preferential treatment to an

inmate, including dealing, and Rule 46(B), which bars unauthorized personal or business relationships with inmates. On the same day, the hearing officer found that the grievant had violated both rules.

When the grievant was removed the next day, the union filed a grievance on his behalf. It charged that his removal was excessive and violated Article 2, Section 2.01, and Article 24, Sections 24.01, 24.02, and 24.05, of the collective bargaining agreement.

The grievance was denied at step three of the grievance procedure on June 7, 2006, and was appealed to arbitration. The arbitration hearing took place on December 4, 2006. Written closing statements were received by the Arbitrator on January 3, 2007.

RELEVANT CONTRACT PROVISIONS

Article 2 Non-Discrimination

2.01 - Non-Discrimination

Neither the Employer nor the Union shall discriminate in a way inconsistent with the laws of the United States or the State of Ohio on the basis of race, sex, creed, color, religion, age, national origins, political affiliation, disability, sexual orientation, or veteran status ...

* * *

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.

* * *

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 time 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.

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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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ISSUE

The issue as agreed to by the parties is:

Was the grievant removed for just cause? If not, what shall the remedy be?

STATE POSITION

The state argues that there was just cause for the grievant's removal. It claims that the grievant concocted his story that Wittrup was attempting to set him up. The state points out that the grievant told Duty on February 28, 2006, that Kirk came to him with the allegations on Wednesday, February 21, 2006, but he did not report them to Brunzman until Friday, February 23, 2006, after Kirk was placed in segregation the previous day for the possession of contraband, including scented oil.

The state challenges the grievant's claim that there was a meeting between Kirk and Wittrup. It observes that Wittrup denied that he met with Kirk as alleged by the grievant. The state notes that Wittrup's testimony is confirmed by the statement offered by Eggers indicating that he never took Kirk to Wittrup's office for any reason. The state charges that every time the grievant was questioned his story changed for the worse. It indicates that he initially denied giving anything to Kirk but then admitted at his first interview by Duty that he gave him scented oil one time and cigars and food five times. The state reports that at the interview on March 14, 2006, the grievant said that he gave the grievant scented oil two or three times and cigars several times and he acknowledged that on four to six occasions he accepted "Newports" for the food and cigars. It adds that at the arbitration hearing, the grievant admitted that he gave Kirk three cigars on ten occasions, which differs from an "occasional cigar" as the union claimed in its opening statement.

The state claims that the grievant's testimony regarding Kirk's credibility and other points also varied. It indicates that during his first interview, the grievant vouched for Kirk's credibility but later called him a "liar." The state reports that the grievant initially claimed that his misconduct began in late summer and ended in October but he testified at the arbitration hearing that the time frame extended from the summer of 2005 until sometime in February of 2006.

The state reports that the grievant acknowledged that he accepted payment for the contraband he delivered to Kirk. It points out that he initially justified giving him the items at issue because he was an excellent porter and because it was not illegal. The state observes that at his second interview, the grievant admitted that he accepted "Newports"

on four to six occasions for food and cigars. It notes that Duty testified that since inmates use cigarettes in place of money, by "accepting 'Newport' cigarettes from the inmate he

was indeed taking money from the inmate as payment for the items he gave [to him]."

(State Written Closing Statement, page 8)

The state argues that the grievant's actions were "egregious" and premeditated."

It states that the grievant testified that he would place the contraband items in the porter's

closet or a trashcan in the inmate's restroom where the inmates could retrieve them. The

state indicates that the grievant "not only took steps to conceal the contraband, but that he

also established a 'drop off' point." (Ibid.)

The state contends that the grievant was more interested in his dealing with

inmates than making his co-workers feel secure within the walls of the institution. It

observes that Pummill testified that when she saw the grievant handing money to

Akemon, she felt uncomfortable. The state rejects the grievant's claim that he only

wished to play a joke on her because she was "so uptight and nervous." The state asserts

that "the only outcome of the Grievant's actions was to make Ms. Pummill feel even

more nervous and uncomfortable at work." (State Written Closing Statement, page 9)

The state rejects the union's charge that it was aware of the grievant's behavior in

2004 and failed to take actions to correct it. It points out that Duty testified that the Ohio

Highway Patrol was contacted and it initiated an investigation because felonious

activities fall under its jurisdiction. The state notes that Brunsman stated that it would not

have been appropriate for the institution to conduct an investigation at the same time. It

observes that Brunsman also stated that in 2004 "the charge was only made by a

disgruntled inmate" and "there were not corroborating facts or statements." (Ibid.) It

stresses that in the instant case, "the grievant's own self-admission along with the discovered contraband makes it a proven fact." (Ibid.)

The state contends that the grievant's actions were sufficiently egregious to justify his removal. It points out that in State of Ohio Department of Rehabilitation and Correction and OCSEA, AFSCME Local 11; Case No. 27-33-980713-0050-01-03-T; February 22, 1999, this Arbitrator stated:

The Arbitrator recognizes that removal is an extremely severe penalty. However, any relationship between a correction officer and a person under the supervision of the department can put the correction officer in a position where he can be manipulated. The threat that this creates to the security and safety of employees and inmates justifies strict rules and harsh penalties for violation of the rules. (Page 9)

The state maintains that the grievant's long service is not sufficient to require a lesser penalty. It notes that in State of Ohio, Ohio Bureau of Employment Services and OCSEA, OCSEA/AFSCME Local 11; Case No. 11-09-970603-0047-01-14; March 15, 1999, Arbitrator Jonathon Dworkin stated:

Such exceptional longevity will influence an arbitrator to modify a penalty. But tenure is not a pass to commit misconduct. It does not allow an individual to break rules with impunity; it does not insulate people from removal for conduct totally inimicable to an employer's fundamental interest. (Page 22)

The state adds that in the instant case, the grievant's length of service aggravates his misconduct because he "knew the rules and chose to blatantly violate them, without regard to the security of the institution, his own integrity, or the safety of his fellow co-workers." (State Written Closing Statement, page 11)

The state concludes that there was just cause for the grievant's removal. It asks the Arbitrator to deny the grievance in its entirety.

UNION POSITION

The union argues that there was not just cause for the grievant's removal. It acknowledges that the grievant admits giving Kirk left-over lunch items, an occasional cigar, and a little scented oil and confirms that he accepted cigarettes from him. The union stresses, however, that the grievant's statement does not characterize his acceptance of the cigarettes as a form of payment. It also notes that the grievant testified that his misconduct related only to Kirk.

The union contends that the state did not establish that the grievant was involved in "dealing" in violation of Rule 45(c). It states that "only inmate statements support management's claim that the incidents are at a level that could be characterized as dealing." (Union Written Closing Statement, page 2) The union questions the statements because the state failed to provide inmate testimony to determine their veracity.

The union maintains that it provided documents and testimony to demonstrate that the inmates lack credibility. It observes out that the inmates made allegations regarding the conveyance of marijuana into the institution but the administration found no evidence to support the charge. The union claims that the statements made by Kirk are suspect because they were made in the context of his release and certainly with a concern that any statement might affect his status.

The union questions the testimony offered by Pummill. It points out that the grievant admitted the incident occurred but stated that he was joking. The union notes that Pummill admitted that she did not see any evidence that the inmate brought ice cream to the grievant. It adds that contrary to the investigator's testimony, she stated that she never reported the incident.

The union claims that the grievant had a long practice of bringing food to work to share with co-workers. It states that this was confirmed by the testimony of Dave Parks, the acting chapter president, and by the statements of the teachers. The union stresses that none of the teachers' statements reported the grievant selling or conveying food or scented oil to inmates.

The union rejects the state's claim that the grievant's offense was so egregious that it justified his removal. It reports that Brunzman claims that the length of time the misconduct occurred, the nature of the offense, the combination of two violations of the code of conduct, and his lack of trust in the grievant support his removal. The union responds that these assertions are "closely related to the violation of the CBA's requirement that discipline be administered with just cause." (Union Written Closing Statement, page 5)

The union contends that the state's argument that the duration of the grievant's misconduct justifies his removal is flawed. It points out that the just cause standard requires an employer to investigate rule violations in a timely manner so that employees will have an opportunity to correct their behavior. The union claims that in November 2004 Inmate Ronald Dudley made charges against the grievant that are identical to the charges in the instant case but the administration took no action to investigate or correct the behaviors.

The union observes that the courts have fashioned a mechanism to enable public employers to address the misconduct of their employees. It states out that an employer can proceed directly with a criminal prosecution or can demand an accounting of the employee's official performance. The union notes that if the employer decides to

proceed under the second option, it can dismiss an employee who refuses to cooperate in the investigation. It cites in support of this point Joel M. Flaum and Jayne A. Carr, "Public Service: Self-Incrimination v. The Public's Right to an Accounting," Journal of Criminal Law, Criminology, and Police Science, Vol. 63, No. 3 (September 1972); 325-329, which cites Gardner v. Broderick, 392 U.S. 273 (1968), and Uniform Sanitation Men Association v. Commissioner of Sanitation, 392 U.S. 280 (1968).

The union argues that the department must investigate all allegations of misconduct. It indicates that once an employee's rights are protected pursuant to Garrity, he must cooperate and a failure to do so would violate the Standards of Employee Conduct. The union accuses the state of failing to investigate even though "it has been a long-standing practice of DR & C to hold a separate administrative investigation to insure the well-being of the public." (Union Written Closing Statement, page 6)

The union rejects the state's argument that the criminal investigation by the Ohio Highway Patrol met its requirement to investigate. It charges that the state's claim is flawed because the standard of proof is different in criminal and administrative investigations and because of the necessity of addressing misconduct at the earliest possible time for the purpose of correcting it. The union states that "even if the warden's explanation is accepted that the first allegation was investigated to his satisfaction by the OSP, it should be noted that there is no record of this action fulfilling the administration's obligation to address the allegations." (Union Written Closing Statement, page 7)

The union questions the state's contention that no administrative investigation was undertaken because it might have compromised the alleged criminal investigation. It maintains that the collective bargaining agreement, case law, and statutes give the state

the ability to address misconduct where there is the possibility of criminal charges. The union claims that it was unreasonable for the state to wait two years to address the allegations made regarding the grievant and asserts that "an administrative investigation and appropriate action by management would have corrected the behavior." (Ibid.) The union cites two arbitration decisions in relation to its charge that the state failed to investigate in a timely manner. It indicates that in Ohio Civil Service Employees Association, Local 11, AFSCME and Ohio Department of Rehabilitation & Correction; Case No. 27-22-020530-0663-01-03; April 30, 2003, Arbitrator Anna DuVal Smith indicated that if management is aware of conduct and does not counsel or discipline the employee, its tacit acceptance contributed to the problem. The union reports that in State of Ohio - Department of Rehabilitation & Correction and Ohio Civil Service Employees Association, AFSCME Local 11; Case No. 27-32-(200651123)-0830-01-03; September 11, 2006, Arbitrator Dwight A. Washington found that an employee's removal was mitigated by management's failure to correct "passive" violation of the rule for failure to report.

The union argues that there were two additional occasions when the state had the opportunity to correct the grievant's behavior. It points out that in June 2004 Duty was informed by the principal of the Sherman School about concerns that the grievant was "friendly" with inmates but no written report was made and the issue was not addressed by the grievant's supervisors. The union notes that in June 2005 Wittrup was made aware of the grievant's possible involvement in gang activity but the allegations were not documented or investigated. It asserts that "the reason for the duration of the misconduct is firmly grounded in the neglect of the appointing authority to investigate an allegation

of misconduct.” (Union Written Closing Statement, pages 8-9).

The union contends that the degree of discipline given the grievant was punitive rather than corrective. It points out that the Standards of Employee Conduct suggest a two-day suspension or removal for the offenses with which the grievant was charged. The union claims that this means that the state must establish that the misconduct was so egregious that removal was the only option.

The union charges that the rules cited by the state have been unevenly enforced.

It observes that Brunzman testified that there are circumstances where he would impose discipline for the grievant's offenses but would not seek a removal. The union notes, however, that after a graduation ceremony at the Sherman School, inmates were given food without authorization but no action was taken. It adds that “Park testified regarding knowledge of some inmates being given extra chow.” (Union Written Closing Statement, page 9)

The union accuses the state of stacking charges against the grievant in an attempt to justify his removal. It claims that the hearing officer's report demonstrates that the two charges against the grievant are based on the same circumstances and behavior. The union cites OCSEA, Local 11, AFSCME and State of Ohio; Case No. 27-17-(11-13-90)-0117-01-03; September 25, 1991, where Arbitrator Rhonda Rivera found that the state had improperly engaged in “stacking” to justify a removal.

The union challenges the state's claim that the grievant's offense means that he is no longer trustworthy. It claims that the grievant worked in his position for two years under a cloud of suspicion without action being taken by the department. The union states that the state's “lack of action calls to question both the administration's belief that

the nature of the offense was so egregious [and] that the employee can no longer be given the opportunity to correct the behavior.” (Union Written Closing Statement, page 10)

The union maintains that it showed that the grievant was salvageable. It points out that his performance evaluations were good and that he had no active discipline at the time of his removal. The union complains that the alleged concerns regarding the grievant’s performance at the Sherman School, which were elicited during the February 2006 interviews, were never addressed in the appropriate forum.

The union charges that the state ignored the grievant’s length of service and his remorse. It states that the grievant was a long-term employee and has shown remorse for his misconduct. It notes that in Ohio Civil Service Employees Association, Local 11, AFSCME and Ohio Department of Rehabilitation & Correction; Case No. 27-22-020530-0663-01-03; April 30, 2003, Arbitrator Anna DuVal Smith stated that “in light of the employee’s record, years of service, and remorse, he is entitled to an opportunity to learn from his mistakes and amend his behavior.” (Union Written Closing Statement, page 11)

The union asserts that it is interested in discipline being properly administered in a correctional setting. It indicates that union members expect management to respect their safety by addressing alleged security violations as they occur. The union states that the grievant “is not the only employee who would be harmed if management’s practice to set aside the obligation to conduct a timely administrative investigation on potential security violations is condoned.” (Union Written Closing Statement, page 12)

The union concludes that there was not just cause for the grievant’s removal. It asks the Arbitrator to reinstate him to his former position with back pay and benefits as if progressive discipline had been applied. The union specially requests the Arbitrator to

order the state to reimburse the grievant for any medical expenses and any payments for health insurance.

ANALYSIS

The grievant was removed for violating Rules 45(C) and 46(B) of the Standards of Employee Conduct. Rule 45(c) prohibits:

Without express authorization, giving preferential treatment to any individual under the supervision of the Department, to include but not limited to dealing

Rule 46(B) bars unauthorized relationships including:

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

The grievant's admissions in his written statements to Duty and his testimony at the arbitration hearing indicates that he violated both rules. The record reveals that on many occasions the grievant provided an inmate with cigars, scented oil, and food from home and various restaurants. He concealed the food in a trashcan in the inmates' restroom or in a porter's closet where the inmate would pick up the food. The grievant accepted cigarette packs, which function as money in the institution, from the inmates who received the contraband. In addition, the grievant shared personal information with at least two inmates.

The Arbitrator rejects the union's attempt to minimize the extent of the grievant's misconduct. Its claim that he simply gave "left over lunch items, an occasional cigar and a little scented oil" to Kirk is belied by the grievant's own words. (Union Written Closing Statement, page 2) The union's assertion that accepting cigarettes is not a form of payment is inconsistent with Duty's unrebutted testimony that cigarettes serve as a

means of payment in the institution.

The Arbitrator must also dismiss the union's assertion that the state failed to establish that the grievant was involved in "dealing." This word is commonly understood to refer to being involved in transactions. While the union is correct that the veracity of an inmate's testimony must be carefully considered, it is not necessary to rely on the statements of inmates because the grievant acknowledges accepting cigarettes from inmates who received contraband.

The Arbitrator cannot accept the union's suggestion that the grievant's conduct should be excused because the state failed to investigate some prior charges made against him. First, it is not clear that the state was delinquent in investigating charges made against the grievant. When the grievant was accused of bringing marijuana into the institution, the Ohio Highway Patrol conducted an investigation and found no evidence to support the charges. In the other instances, the state appears to have properly determined not to conduct formal investigations based on the unsupported and unsubstantiated allegations of inmates.

Second, even if the state were remiss in not investigating the prior allegations against the grievant, it would not justify ignoring the grievant's misconduct in the instant case where there was physical evidence, the scented oil in Kirk's possession, of a violation of the rules. The serious charges against the grievant cannot be dismissed for the reason offered by the union.

The Arbitrator finds no basis for the union's charge that the state has unevenly enforced its rules. At the pre-disciplinary hearing, the grievant complained that Trent Patterson, the School Administrator, gave inmates leftover cake and punch after a

graduation ceremony and pizza after another event at the school but was never disciplined. After investigating, Duty concluded that the students who participated in the ceremony were authorized to eat the cake and drink the punch and recommended that the two inmates from the culinary arts class, who prepared and served the cake, be authorized to eat or not to eat cake at the function. Obviously, these are very different circumstances than those involved in the instant case.

Given the inescapable conclusion that there was just cause to discipline the grievant, the issue becomes the proper remedy. Under both Rules 45(C) and 46(B) of the Standards of Employee Conduct, the penalty for a first offense ranges from a two-day fine, suspension, or working suspension to a removal. The state argues that the egregiousness of the grievant's behavior justified the removal. The union challenged the state's characterization of the grievant's conduct and complains that the grievant's length of service and remorse were ignored.

The Arbitrator believes that the state established just cause for the grievant's removal. First, the grievant's misconduct continued from the summer of 2005 until the investigation in February 2006. Thus, his actions cannot be characterized or dismissed as a momentary lapse in judgment.

The Arbitrator must reject the union's argument that the state's failure to investigate the grievant in 2004, and presumably discipline him, deprived him of the opportunity to correct his behavior. As indicated above, the record does not indicate that the state was remiss in investigating or disciplining the grievant. Furthermore, there is nothing in the record to support the suggestion that the state tacitly approved of the grievant's conduct.

Second, the grievant attempted to conceal his activities. He would hide the food he brought to inmates in a trashcan or porter's closet where they would retrieve it. The attempt to hide his actions indicates that the grievant knew that his behavior was improper.

Third, the fact that the grievant accepted what can only be construed as payment for the contraband he delivered is a significant consideration. In his report to Brunsmann

Duty stated:

Giving an inmate contraband is one of the most hazardous security violations a correctional employee can commit, but selling contraband is even more dangerous. The State of Ohio pays correctional officers approx. \$18/\$19 per hour, and for a \$6 bottle of scented oil [the grievant] received half a month pay from inmates. The most dysfunctional inmate sees the hypocrisy of a well-paid staff member making a profit from them. [The grievant] was correct when he told the investigator what he had been doing was immoral, and in many an inmates' minds, physical violence levels the playing field to justify the continuance of receiving contraband or a sense of being cheated. (Joint Exhibit 4, page 20)

The Arbitrator must reject the union's contention that the grievant's long service and remorse justify his reinstatement. While Arbitrator Smith properly recognized that these factors are sometimes important in assessing the propriety of a penalty, in the instant case they do not save the grievant from removal. As this Arbitrator recognized in State of Ohio Department of Rehabilitation and Correction and OCSEA, AFSCME Local

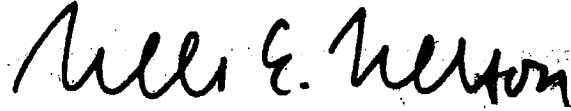
11; Case No. 27-33-980713-0050-01-03-T; February 22, 1999:

... any relationship between a correction officer and a person under the supervision of the department can put the correction officer in a position where he can be manipulated. The threat that this creates to the security and safety of employees and inmates justifies strict rules and harsh penalties for violation of the rules. (Page 9)

The Arbitrator believes that his obligation to help insure the safety of all of the employees and inmates leaves him no alternative but to uphold the grievant's removal.

AWARD

The grievance is denied.



Nels E. Nelson
Arbitrator

January 29, 2007
Russell Township
Geauga County, Ohio