

**ARBITRATION DECISION SUMMARIES
SUMMARY BY ARBITRATION NUMBER**

1) James Knapp G86-0595 (Suspension)

Arbitrator: Frank Keenan

Charges: Sleeping on Duty

Contract sections: 2.02, 24.02, 24.03, 24.05, 43.03

Employment Situation: Department of Rehabilitation and Correction; Orient Correctional Institution; Correction Officer 2

Result: Grievance partially sustained. Suspension sustained. Proviso rescinded.

Reason: Proviso stating that any further misconduct would result in termination was found to be too harsh because it was not restricted to any length of time and was not limited to specific violations.

2) Jeanne Favand G-86-0371

Arbitrator: Nicholas Duda

Charges: Tardiness

Result: Settlement

3) Alfred M. Bond G-86-0259 (Removal)

Arbitrator: Harry Graham

Charges: Refusing an Assignment; Insubordination

Other Issues: Just cause; Commensurate with offense

Employment situation: Department of Rehabilitation and Correction; Chillicothe Correctional Institution; Correction Officer 2

Result: Grievance partially sustained. Discharge reduced to 2-week suspension. Back pay. Benefits.

Reason: Discharge was not commensurate with the offense

4) Frederick R Howard G-86-0223 (Removal)

Arbitrator: Linda D. Klein

Charges: Neglect of Duty; Failure of Good behavior; Tardiness; use of excessive force; Opening cell without properly security procedures

Other issues: Commensurate with offense; Credibility

Employment situation: Department of Rehabilitation and Correction; Ohio State Reformatory; Correction Officer

Result: grievance denied

Reason: management proved just cause. Grievant's testimony lacked credibility since it was inconsistent with his testimony before the use of force committee.

5) **Richard Kline G-86-0579**

Settlement

6) **Michael R Hickey G-86-0508 (Removal)**

Arbitrator: Marvin Feldman

Charges: Neglect of Duty; Absenteeism

Contract section: 29.01

Other Issues: Contract changed after violation; Substitution of charge

Employment Situation: Department of Mental Health; Oakwood Forensic Center.
Psychiatric Attendant

Result: Grievance partially sustained. Reinstatement without back pay but with seniority. Placed at last stage of progressive discipline before discharge and required to report to employee assistance program.

Reason: Under the liberal rules of the new contract, employer did not have just cause for discharge.

7) **Brian McCauley G-86-0224 (Removal)**

Arbitrator: David Pincus

Charges: Absenteeism; Sick Leave violation

Contract Sections: 24.01; 24.02; 24.04

Other Issues: Violation of trust; Notice of work rules; Recommended punishment; Effect of procedural defects; Right to a pre-disciplinary meeting; Progressive discipline; Witnesses, Failure to produce; Arbitrator's authority; Circumstantial evidence; Credibility

Employment Situation: Department of Rehabilitation and Correction; Ohio State Reformatory

Result: Grievance partially sustained. Reinstatement without back pay but with seniority.

Reason: Employer had just cause but violated 24.04 (pre-disciplinary rights) and 24.02 (progressive discipline)

8) **Samuel Ware G-86-0580 (Removal)**

Arbitrator: David Pincus

Charges: Tardiness

Other Issues: Ambiguity of rules; Notice of consequences of violations; double jeopardy

Employment Situation: Department of Rehabilitation and Correction; Ohio State Reformatory; Correction Officer

Result: Grievance sustained. Reinstatement, back pay. Full benefits

Reason: Discharge was not for just cause since grievant had not received notice that discipline would be imposed for conduct of the sort he engaged in.

9) **Bruce Collyer G-86-0476**

Arbitrator: David Pincus

Charges: Tardiness

Other Issues: Ambiguity of rules; Notice of consequences of violations; Double jeopardy

Employment Situation: Department of Mental Health; Broadview Developmental Center; Therapeutic Program Worker

Result: Grievance sustained. Reinstatement with back pay and benefits.

Reason: Employer failed to meet the burden of clear and convincing evidence

10) **Theresa Swan G-86-0147 (Removal)**

Arbitrator: Thomas Michael

Charges: Failure of good behavior; Threatening co-worker; abuse

Other Issues: 45 day time limit; Charge not raised at pre-disciplinary meeting; Arbitrator's authority; Standard of proof

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Apple Creek Developmental Center; Hospital Aide

Result: Grievance sustained. Reinstatement. Back pay. Benefits

Reason: Employer failed to meet its burden of proof.

11) **Barbara A. Jackson G-86-0316 (Removal)**

Arbitrator: Thomas Michael

Charges: Neglect of Duty; Tardiness

Contract Section: 13.06; 24.01; 24.02; 24.04; 24.05; 24.06

Other Issues: Just cause; Commensurate with offense; Notice of disciplinary consequences of violation; Standard of proof

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Cleveland Developmental Center; Custodial Worker

Result: Grievance partially sustained. Reinstatement without back pay. Benefits, rights, and privileges restored.

Reason: Just cause was not present due to procedural defects in the imposition of discipline. However, the grievant's recent work record did not provide a basis for complete reversal.

12) **Broadview Layoffs (Joint Case) G-86-0020 (Broadview layoffs)**

Arbitrator: Jonathan Dworkin

Contract Issue: Layoff

Contract Sections: 18.01; 18.04; 18.06; 25.03

Other Issues: Medication; Arbitrator's authority

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Broadview Developmental Center; Teacher Aides, Stationary Engineers

Result: Grievance partially sustained. Teacher Aides given reinstatement. Stationary engineers given bumping rights. No award to employee who had already declined an opportunity to bump. 50% back wages. Seniority. No guarantee of job security against further layoffs.

13) Randal W. Fullenkamp 12-86-D3-U6 (Suspension, 1 day)

Arbitrator: Nicholas Duda

Charges: Traffic accidents; Carelessness with equipment; Damage to State Vehicle

Contract Section: 25.09

Other Issues: Snowplow operators manual; Notice of disciplinary consequences of violation; Charges defective

Employment Situation: Department of Transportation; Highway Worker 2

Result: Grievance sustained. Suspension rescinded. Back pay.

Reason: State failed to prove just cause; in particular, no proof of carelessness or that there was a rule against backing vehicles on a highway at time of incident.

14) Jeraldine Jones G-86-0328 (Removal)

Arbitrator: Frank Keenan

Charges: Abuse; Failure of good behavior

Contract Section: 24.01; 24.02; 24.03; 24.04; 24.05

Other Issues: Long service; Arbitrator's authority; Modification of discharge in abuse cases; Burden of proof; Standard of proof; Hearsay

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Apple Creek Developmental Center; Licensed Practical Nurse

Result: Grievance partially sustained. Reinstatement. Seniority. No back pay.

Reason: Patient abuse was not proved, but closely related offense of setting up improper medications (which were not administered) was proved. There was mitigation based on unblemished service.

15) Charles Armstrong G-86-0581 (Removal)

Arbitrator: Nicholas Duda

Charges: Threatening or coercing inmate into sexual conduct; Unauthorized relationship with inmate

Contract Sections: 24.01; 24.02; 24.04; 24.05; 24.07

Other Issues: 45-day time limit

Employment Situation: Department of Rehabilitation and Correction; Ohio State Reformatory; Correction Officer 2

Result: Grievance sustained

16) Richard Fulk 6-86-D3-U6 (Suspension, 30 day)

Arbitrator: Linda D. Klein

Charges: Neglect of duty; Traffic accident; Carelessness with equipment; Failure to lift snowplow when crossing railroad track

Employment Situation: Department of Transportation; Surface treatment department; Equipment Operator 2

Result: Grievance sustained. Suspension rescinded. Back pay. Expunge record of discipline from employment records.

Reason: Faulty equipment was a likely cause of the accident.

17) Robert Ringer, et. al 54-86-D8 (Removal)

Arbitrator: Nicholas Duda

Charges: Falsification of test results; Dishonesty; Fraud

Employment Situation: Department of Transportation; District 8; Bituminous Plant Inspector

Result: Grievance sustained with regard to one grievant who had been in training at the time. Reinstated and made whole. All other grievances were denied and discharges were upheld.

Reason: With regard to the reinstated employee, the state had not shown that he willfully falsified any test results. With regard to the rest, their willful falsification of test results endangers the public, harms ODOT's reputation, and may subject the state to great expense if the concrete on roads ages prematurely. Such an offense is so serious that it justifies removal on the first offense. The grievants had notice of the possible disciplinary consequences of their action, in spite of lax supervision, since they all knew that performing the tests was one of the main purposes of their job.

18) Dennis Key G-86-0585

Arbitrator: Linda D. Klein

Charges: Substance abuse; Criminal conviction; Correction officer barred from carrying weapon; Being a parolee

Other Issues: Employer prevented grievant from attending step 3

Employment Situation: Department of Rehabilitation and Correction; Lima Correctional Institution; Correction Officer

Result: Grievance denied

Reason: Arbitrator ignored grievant's explanation that he pleaded guilty for reasons other than guilt. Being a parolee raises a conflict of interest for correction officers. Being prevented from attending step 3 hearing would have effect only if it prejudiced grievant.

19) Larrie Green G-86-0067 (Performance Evaluation)

Arbitrator: David M. Pincus

Contract Issue: Performance evaluations

Contract Sections: 5; 22.01; 22.02; 24.02; 24.06; 43.01; 43.02

Other Issues: Contract interpretation

Employment Situation: Ohio Student Loan Commission; Programmer Analyst 2

Result: Grievance denied.

Reason: The contract permits performance evaluations to occur less than year apart. Frequent performance evaluations provide the employee with due process by giving notice of deficiencies.

20) Larrie Green G-86-1-76 (Removal)

Arbitrator: David Pincus

Charges: Incompetence; Missing deadlines; producing incorrect computer programs

Contract Section: 24.01; 24.02; 43.02

Other Issues: Double jeopardy; Notice of disciplinary consequences of violation; Timeliness in filing grievance; Arbitrator's authority

Employment Situation: Ohio Student Loan Commission; Programmer Analyst 2

Result: Grievance sustained. Reinstatement with back pay.

Reason: Employer failed to prove incompetence, had not provided sufficient supervision necessary for learning the job, and failed to provide grievant with notice concerning disciplinary consequences of his level of performance.

21) George Cleggett G-86-0072 (Holiday pay)

Arbitrator: Marvin Feldman

Contract Issue: Holiday pay; ORC 4117.1

Other Issues: Arbitrator's authority where case brought before him by briefs; Interpretation of contract

Employment Situation: Bureau of Employment Services

Result: Grievance denied.

Reason: A general rule followed by arbitrators is that the employer need not compensate an employee for a day not worked unless there is a contractual requirement or a clear and consistent past practice. There is not a contractual requirement that the employer give holiday pay when the employee has received authorized leave without pay for the day before the holiday. Since the case was brought before the arbitrator by brief

rather than sworn testimony, the arbitrator must resolve the factual question of whether there was past practice in employee's favor.

22) Ann Feldstein G-86-0050 (Physician's statement)

Arbitrator: Thomas Michael

Contract Issue: Physician's statement: Sick leave

Employment Situation: Ohio Civil Rights Commission; Toledo Office; Civil Rights Representative 1

Result: Grievance denied.

Reason: Prior to implementation of sick leave policy referred to in section 29.03 and 29.02, vests discretion in employer to require submission of physician's statement within reasonable period of time to verify employee illness for purpose of sick leave approval, except where there is evidence of discrimination or arbitrary application.

23) Osborn Lee G-86-0977 (Removal)

Arbitrator: David M. Pincus

Charges: Absenteeism; Tardiness; Alcoholism

Contract Section: Article 9; 24.01; 24.02

Other Issues: Last chance agreement; Forgetfulness; Notice of disciplinary consequences

Employment Situation: Department of Mental Health; Fallsview Psychiatric Hospital; Hospital Aide

Result: Grievance denied.

Reason: Continued alcohol induced violations do not obligate employer to provide ever increasing treatment. Forgetfulness is not an excuse. Failure to issue formal discipline after last chance agreement shows patience and willingness to help the grievant rather than bad faith or negligence.

24) Marilyn McClutchen G-86-0354 (Removal)

Arbitrator: Rhonda Rivera

Charges: Neglect of duty; Absenteeism; Physician's statement; Failure to call-in

Contract Section: 24.05

Other Issues: Progressive discipline

Employment Situation: Ohio Civil Rights Commission; Typist

Result: Grievance partially sustained. Removal reduced to 6-day suspension. Back pay.

Reason: While grievant's past record would have justified removal if she had been guilty of additional absenteeism, grievant was not guilty of absenteeism but had only failed to document sick leave in a timely manner and gave documentation to the wrong

person in the chain of command. Call-in requirement was satisfied by a good faith effort using reasonable means of reporting calculated to result in actual notice.

25) David Coffman 10-86-D1 (Seniority under old ODOT member's only contract)

Arbitrator: Rhonda Rivera

Contract Issue: Seniority; Promotion

Employment Situation: Ohio Department of Transportation

Result: Grievance sustained

Comment: Concerned definition of seniority in ODOT contract existing prior to the OCSEA contract.

26) Michael Williams G- 86-1040 (Suspension, 6 day)

Arbitrator: Rhonda Rivera

Charges: Failure to sign out; unauthorized telephone use; abandonment of work area

Other Issue: Progressive discipline

Employment Situation: Department of Mental Health; Western Reserve Psychiatric Habilitation Center; Therapeutic Program Worker

Result: Grievance partially sustained. Reduction to 4-day suspension.

Reason: (1) One of the charges, abandonment of work area, was unproved. There was no clear policy as to whether the basketball court where grievant was located was on or off the unit. (2) The grievant had been encouraged to play basketball with the patients.

27) Michael Williams G-86-1043 (Removal)

Arbitrator: Rhonda Rivera

Charges: Failure to record vital records; Failure to sign out; absenteeism; leaving work early; Neglect of duty; Bed check

Contract Section: 24.05

Other Issues: Penalty not commensurate with offense; Standard of proof

Employment Situation: Department of Mental Health; Western Reserve Habilitation Center; Therapeutic Program Worker

Result: Grievance partially sustained. Reduction to 6-day suspension. Back pay.

Reason: Removal was not commensurate with offenses of failing to make vital record and to sign-out properly. If grievant had been absent, removal would have been appropriate.

28) Solitaire Dispasalgne G-86-0318 (Removal)

Arbitrator: Rhonda Rivera

Charges: Insubordination; Wearing headphones

Employment Situation: Department of Rehabilitation and Correction; Orient Correctional Institution; Account Clerk 1

Result: Grievance denied.

Reason: Grievant was insubordinate since she chose the path of provocation and disobedience rather than obedience and availing herself of the grievance machinery.

29) Dyanne Kuster G-87-1012 (Removal)

Arbitrator: Frank A. Keenan

Charges: Aiding patient in escape. Relationship with patient interpreted as exploitive or sexual; Dishonesty; False statements to institution's police

Other Issues: Credibility

Employment Situation: Department of Mental Health; Cambridge Mental Health Center; Therapeutic Program Worker

Result: Grievance denied.

Reason: Charges proved and removal was just.

30) George Helberg 35-87-D2 (Suspension, 10 day)

Arbitrator: Rhonda Rivera

Charges: Traffic accident; Failure to report accident

Contract Section: 24.02; 24.05

Other Issues: Progressive discipline; Commensurate with offense

Employment Situation: Department of Transportation; Equipment Operator 2

Result: Grievance partially sustained. Reduction to 4-day suspension

Reason: Discipline was not commensurate with the offense. Since a single wrongful act gave rise to all of the charges, grievant should only receive the penalty designated for the most serious charge.

31) Michael Harris G-87-0867 (Removal)

Arbitrator: Jonathan Dworkin

Charges: Sleeping on duty; Threatening an administrative officer

Employment Situation: Department of Mental Health; Cleveland Psychiatric Institution; Therapeutic Program Worker

Result: Settlement through mediation. Removal modified to 40-day suspension. Back pay. Withdrawal of objections for unemployment compensation.

32) Sheryl Holton G-86-0070 (Avoidance of Overtime)

Arbitrator: John E. Drotning

Contract Issue: Avoidance of overtime; Work Schedule

Contract Sections: 13.02; 13.07; 13.10

Employment Situation: Bureau of Employment Services; Employee Service Representative

Result: Grievance sustained. Overtime pay awarded.

Reason: Five day schedules, like 7-day schedules, cannot be changed to avoid overtime.

33) Zane Mustaine G-87-0687 (Removal)

Arbitrator: Rhonda Rivera

Charges: Failure to follow procedure; Breach of confidentiality; Dishonesty

Other Issues: Avoidance of liability; Progressive discipline; Notice of charge; Notice of disciplinary consequences; Grand jury determination; Standard of proof

Employment Situation: Department of Taxation; Tax Agent 3

Result: Grievance denied

Reason: Poor security procedures of employer do not justify the deposit of a state check in a private bank account "for safe keeping."

34) Richard Gaffney G-87-0030 (Suspensions, 2 day and 5 day)

Arbitrator: Jonas Katz

Charges: Profanity; Coercive language

Employment Situation: Department of Rehabilitation and Correction; Lebanon Correctional Institution; Correction Officer

Result: Grievances partially sustained. Suspensions reduced to single 5-day suspension.

Reason: Grievances had been imposed so close together that it was unclear that the grievant had been made aware of the full impact of his earlier conduct before being disciplined the second time.

35) Mary Garren G-87-0409 (Suspension, 3 day)

Arbitrator: Robert A. Carter

Charges: Failure to provide sick leave documentation; Failure to follow order; Absenteeism

Contract Section: 29.03

Other Issues: Conflicting rules; notice of disciplinary consequences of conduct; Interpretation; Admission of evidence

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Columbus Developmental Center; Hospital Aide

Result: Grievance sustained

Reason: Manager who requested sick leave documentation did not have the authority to do so. His order was invalid. Disparate treatment had occurred. Lax enforcement of sick leave requirements had deprived grievant of notice of the disciplinary consequences of her conduct. Finally, the departmental rule could not be enforced because it was stricter than the institutional directive.

36) Michael Shannon G-87-0478 (Removal)

Arbitrator: Hyman Cohen

Charges: Absenteeism, Dishonesty

Contract Section: 24.02, 24.05, 35.02, 35.06

Other Issues: Aggravating circumstances; Progressive discipline; 45-day time limit; Timeliness to begin disciplinary process; Timelines of final disciplinary decision.

Employment Situation: Department of Taxation; Tax Equalization division; Examiner

Result: Grievance denied

Reason: Medical problem does not excuse absenteeism when employee did not inform employer he was absent and accepted pay for the time absent. Section 24.05, as soon as reasonably possible, was not violated since the delay was due to management's making a thorough investigation to make certain the violation was occurring. Also, the progressive discipline requirement is not violated where employee is removed on the first violation if the violation is extremely serious.

37) Carletta Brown G-87-0874 (Removal)

Arbitrator: Marvin Feldman

Charges: Sleeping on Duty, Neglect of Duty; Disparate Treatment

Other issues: Notice of disciplinary rules; Progressive discipline

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Broadview Developmental Center; Direct Care Worker

Result: Grievance Denied

Reason: Sleeping on duty cannot be tolerated in position involving care of profoundly retarded persons. Progressive discipline is not necessarily triggered by major offenses. The notice requirement was met since employee had the rules published to him. No disparate treatment occurred since different institutions do not have to impose the same discipline.

38) Donald Deboe G-87-0208 (Removal)

Arbitrator: Harry Graham

Charges: Sexual impropriety with patient

Contract Section: 25.08

Other issues: Effect of procedural errors; Failure to provide document; Rights to union representation; Standard of proof; Credibility.

Employment Situation: Department of Mental Health; Toledo Mental Health Center; Direct Care Worker

Result: Grievance sustained. Reinstatement. Back pay and benefits. Seniority. Expunge record of discipline from employment record.

Reason: While provisions of synopsis of documents does not meet the requirement if 25.08, where State later provided the complete documents, arbitrator determined that the error was minor and was not sufficient basis for overturning the discharge. Failure to provide notice of right to union representation at police investigatory interview is a minor violation and does not justify overturning discharge where union cannot credibly argue that grievant's defense was compromised by the violation. Nevertheless, the employer failed to meet its burden of proof since the employer's witness lacked credibility.

39) Belinda Woods G-86-0431 (Removal)

Arbitrator: Linda Klein

Charges: Failure to properly perform duties; Incompetency

Contract Section: 24.04, 25.08

Other Issues: Double jeopardy; Failure to provide documents; Burden of Proof, Expert witness

Employment Situation: Department of Mental Health; Dayton Mental Health Center; Hospital Aide

Result: Grievance sustained. Reinstatement. Back pay minus interim earnings and benefits received since termination

Reason: State failed to prove its case and also failed to provide required documents. Incompetence was not established by the grievant's failure to notice patient had died since work rule prohibited grievant from shining light in patient's face while patient was asleep.

40) Mary Kay Bell G-87-0704 (Suspension, 5 day)

Arbitrator: Andrew J. Love

Charges: Negligence; Failure to maintain a safe and clean work environment.

Other Issues: Multiple Duties; Mitigation; Credibility

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Columbus Developmental Center; Hospital Aide

Result: Grievance Sustained. Suspension rescinded. Back pay.

Reason: Grievant's failure to maintain clean work area was justified since grievant had properly prioritized her several duties.

41) Mary Hess G-87-0942 (suspension, 3 day)

Arbitrator: Andrew J. Love

Charges: Smoking

Other Issues: Commensurate with offense; Admission of evidence

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Columbus Developmental Center; Hospital Aide

Result: Grievance denied.

42) John E. Wright G-86-1013 (Removal)

Arbitrator: Hyman Cohen

Charges: Neglect of duty; Sleeping on duty; Dishonesty

Other Issues: Mitigation; Disparate Treatment; Commensurate with offense.

Result: Grievance denied.

Reason: Grievant was found to be deliberately sleeping since he was in room with lights turned off and television volume turned down when he supposed to be at a different location. Sleeping on duty is a serious offense for a Correction officer sine it heightens safety perils. Disparate treatment did not occur since other officer given lesser punishment had longer period of good service. Where grievant had choice of shift when hired, his current shift assignment had no mitigating force, even though a change had been requested. Failure to get enough sleep during time off because of childcare was not given mitigating weight.

43) Anthony Banks G-86-0489 Suspension, 20 day)

Arbitrator: Harry Graham

Charges: Absenteeism; Failure to call-in

Other Issues: Disparate Treatment

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Broadview Developmental Center; Hospital Aide

Result: Grievance denied.

Reason: Disparate treatment was not present. Where grievant has several past disciplines, the fact that other employees have received lesser penalties for the same offense grievant is currently charged with is not sufficient to prove disparate treatment. "Complete homogeneity of discipline can scarcely be expected. What is required is a range of reasonableness, tailoring discipline to individual circumstances." Not necessary that department impose discipline in similar fashion throughout the state. Each facility faces unique circumstances. What is essential is that employees be aware of the rules that apply to them.

44) Gerald Gregory G-87-0351 (Removal)

Arbitrator: Rhonda Rivera

Charges: Insubordination; Neglect of Duty; Failure of Good Behavior

Contract Section: 24.05

Other Issues: Progressive discipline; Prior discipline was pre-contractual; Effect of procedural defects; 45 day time limit; Arbitrator's authority; Interpretation of contract.

Employment Situation: Department of Mental Health; Western Reserve Psychiatric Habilitation Center; Therapeutic Program Worker

Result: Grievance partially sustained. Reduction to 2-day suspension, conditional on seeking counseling,

Reason: Employer violated 45-day time limit for issuing final disciplinary decision.

45) Pamela Maynard G-87-0778 (Suspension, 3 day)

Arbitrator: Andrew Love

Charges: Neglect of Duty; Failure to feed client in living area contrary to instructions.

Other Issues: Arbitrator's authority; Standard of proof; Credibility

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Columbus Developmental Center; Hospital Aide

Result: Grievance sustained. Suspension rescinded. Back pay

Reason: State failed to prove allegations.

46) Betty Mullins G-87-1163 (Suspension, 3 day)

Arbitrator: Andrew Love

Charges: Smoking

Contract Section: 24.02

Other Issues: Progressive discipline

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Columbus Developmental Center; Hospital Aide

Result: Grievance partially sustained. Reduction of 3-day suspension to 2-day suspension.

Reason: Smoking policy had a sound basis but penalty was not commensurate with offense.

47) Daniel Carroll G-86-1076 (Removal)

Arbitrator: Thomas Michael

Charges: Neglect of Duty, Absenteeism; Long service; Alcoholism

Other Issues: Progressive discipline; Prior discipline was pre-contract; Burden of Proof; Standard of Proof; Admission of evidence

Employment Situation: Rehabilitation Services Commission; Account Clerk 2

Result: Grievance denied

Reason: Employer is not barred from presenting evidence of past conduct because the conduct was pre-contract (so long as evidence is not drawn from records which 24.06 required to be destroyed) or because discipline was not imposed. Two instances of being AWOL in 6 months constitute just cause for dismissal. Post termination treatment for alcoholism is not germane to the issue of just cause.

48) Smoking Grievance G-86-1067 No Smoking Policy)

Arbitrator: Hyman Cohen

Contract Section: 25.01; 43.02; 43.03

Other Issues: Past practice; Arbitrator's authority

Employment Situation: Department of Health

Result: Grievance denied.

Reason: The Arbitrator does not have authority to order the employer to bargain with the Union. Smoking policy is peripheral to employment relationship and thus long past practice of allowing smoking does not modify the contract. The only task for the Arbitrator is to determine whether the policy is reasonable which requires balancing legitimate business requirements against employee's right to exercise personal freedom. The ill effects of passive smoking on non-smokers are not outweighed by the ill effects on addicted smokers of a ban on smoking.

49) Kenneth Vogelgesang G-87-0383 (Removal)

Arbitrator: Nicholas Duda

Result: Settlement

50) Henry G. Carter G-86-0578 (Suspension, 5 day)

Arbitrator: Nicholas Duda

Charges: Sleeping on Duty

Other Issues: Commensurate with offense; Progressive discipline

Employment Situation: Department of Rehabilitation and Correction; Ohio State Reformatory; Correction Officer

Result: Grievance denied

Reason: 5-day suspension was justified given grievant's past disciplines for sleeping on duty.

51) Jacqueline S. Tenney G-86-0630 (Suspension, 5 day)

Arbitrator: Nicholas Duda

Charges: Refusal to allow search of personal property; Insubordination; Disorderly conduct

Employment Situation: Department of Rehabilitation and Correction; Ohio State Reformatory; Correction Officer

Result: Grievance partially sustained. 5-day suspension reduced to written reprimand. Back pay and benefits.

Reason: Management did not prove the major offense but did prove a minor offense (insubordination). Progressive discipline and the grievant's good record require a less harsh discipline than a 5-day suspension.

52) Anthony Banks G-87-0482 (Removal)

Arbitrator: Harry Graham

Charges: Sleeping on Duty

Other Issues: Standard of Proof; Credibility

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Broadview Developmental Center; Hospital Aide

Result: Grievance denied

Reason: State's witness was more credible than the grievant since (1) there was no reason for witness to fabricate a story such as a history of animosity or discord with grievant, (2) the conduct of the witness on the day of the incident was consistent with testimony, and (3) the grievant had a history of offenses of the same sort witness accused him of.

53) Ralph Bambino G-87-0205 (Discoverability of Pre-disciplinary Report)

Arbitrator: Rhonda Rivera

Charges: Fighting

Contract Section: 24.04; 25.08

Other Issues: Failure to supply documents; Notice of issues to be raised at arbitration

Employment Situation: Ohio Department of Transportation

Result: Grievance sustained. The pre-disciplinary report is discoverable.

Reason: On its face, 25.08 includes broad discovery. Relevancy in discovery is traditionally significantly more liberal than in evidentiary matters. Since the purpose of the arbitration is to determine whether the decision to discipline was made with “just cause,” any information used to arrive at that decision is “relevant to that grievance” *for the purpose of discovery*.

54) Mark VanSwearingen. G-87-0188 (Removal)

Arbitrator: John Drotning

Charges: Criminal conviction: Off-duty conduct; Nexus

Employment Situation: Department of Transportation; Administrative Assistant

Result: Grievance partially sustained. Reinstatement without back pay.

Reason: There was no connection between conviction for falsifying insurance claims and the employee’s work duties. Employee had 27 years of service without discipline.

55) James Ladden G-86-0101 (Work Schedule Change)

Arbitrator: Harry Graham

Contract Issue: Work Schedule Change

Contract Section: 13, 13.01; 25

Employment Situation: Department of Mental Health; Oakwood Forensic Center; Psychiatric Attendants

Result: Grievance sustained. Work schedule prior to collective bargaining agreement restored.

Reason: Article 5 (management rights) is not controlling since settled rule of interpretation holds that specific language is given more weight than the language of Article 5. 13.01 requires that work days and days off for employees who work non-standard work weeks shall be scheduled according to current practices at the time the agreement was negotiated.

56) Juliette Dunning G-87-0001(A) (Removal)

Arbitrator: David Pincus

Charges: Abuse

Contract Section: 24.01

Other Issues: Bargaining History

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Northwest Ohio Development Center; Direct Care Worker

Result: For the purposes of the Department of Mental Health and the Department of Mental Retardation and Developmental Disabilities, the parties shall be subject to the definition of abuse contained in Ohio Revised Code §2903.33(B)(2) and their respective Ohio Administrative Code Sections (5123-3-14(C)(1) and 5122-3-14(C)(1). For the purposes of all other departments, however, all applicable state laws shall be incorporated only if the parties have traditionally employed the term “abuse” in determining the propriety of termination decisions.

57) Frank Figer G-87-0319 (Removal)

Arbitrator: Thomas Michael

Charges: Absenteeism; Sick Leave

Contract Section: 29.01

Other Issues: Just cause; Standard of Proof

Employment Situation: Department of Transportation; District 12; Highway Worker 2

Result: Grievance denied

Reason: This issue is not whether this arbitrator may himself have meted out a lesser discipline under the circumstances but whether the discipline would be considered fair and appropriate by a reasonable man. The arbitrator agreed that the penalty was severe but could not conclude it was unjust or unfair given that it was the grievant’s third related discipline in three months.

58) Wilma Gilmore G-87-0846 (Removal)

Arbitrator: Rhonda Rivera

Charges: Absenteeism

Other Issues: Clemency; Notice of Defenses to be raised; Arbitrator’s authority

Employment Situation: Department of Mental Health; Dayton Mental Health Center; Psychiatric Aide

Result: Grievance denied

Reason: Arbitrator lacks authority to grant clemency once just cause is established.

59) Calvin Farrow G-87-1006 (Removal)

Arbitrator: David Pincus

Charges: Neglect of Duty; Sleeping on duty

Other Issues: Anti-union discrimination; Mitigation – volunteered service; Burden of Proof; Arbitrator authority

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Cleveland Developmental Center; Hospital Aide

Result: Grievance denied

Reason: Removal for sleeping on duty is not beyond the range of reasonableness given the seriousness of the offense in the clinical environment and the grievant's past work record.

60) Bobby Minard G-87-0094

Settlement

61) Phillip Dameron G-87-0950

Settlement

62) James Whitehead

Settlement

63) William Strahl G-87-0940 (Suspension, 2 day)

Arbitrator: Harry Graham

Charges: Failure to call-in; Sick Leave; Absenteeism

Contract Section: 29.02

Other Issues: Mitigation – illness

Employment Situation: Department of Industrial Relations; Ohio Bureau of Mines; Mine Safety Inspector

Result: Grievance sustained. Back pay. Expunge record of discipline from employee's record.

Reason: 20.02 indicates the parties contemplated that exceptions to the call-in requirement could occur. The grievant's suffering from severe upper respiratory infection and bipolar disease with the associated depression and sleeping gave rise to such an exception.

64) Gary Reinbold G-87-0250 (Removal)

Arbitrator: Jonathan Dworkin

Charges: Insubordination

Other Issues: Stipulated award

Employment Situation: Department of Transportation; District 5 Garage; Custodial Worker

Result: Reinstatement to leave of absence without pay with conditions for returning to active status

Reason: Mitigation; mental retardation

65) Lucille Stoughton G-87-1028 (Removal)

Arbitrator: Hyman Cohen

Charges: Absenteeism

Other Issues: Harassment by Supervisor; Medical problems; Mitigation

Employment Situation: Department of Aging; Data Entry Operator

Result: Reinstatement without back pay.

Reason: Mitigation: medical problems. But no back pay because management had no fault having not been informed of the grievant's medical problems.

66) Heriold James G-87-0985 (Removal)

Arbitrator: Thomas P. Michael

Charges: Drinking on duty

Other Issues: Burden of proof; Standard of proof; Disparate Treatment; Alcoholism

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Warrensville Developmental Center; Hospital Aide

Result: Reduced removal to 90 day suspension

Reason: Disparate treatment occurred but substantial discipline was warranted.

67) Harold McNeal G-87-0813 (Removal)

Arbitrator: Thomas P. Michael

Charges: Absenteeism; Soliciting bribes; Distributing of money or contraband to inmates; Felony; Dishonesty, or moral turpitude; Fraternalization with inmates

Other Issues: Admission of evidence; Tape recordings

Employment Situation: Department of Rehabilitation and Correction; Ohio State Reformatory; Correction Officer
Result: Grievance denied.

68) Michael L. Byles G-87-0970

Arbitrator: Nicholas Duda
Result: Settlement

69) Bruce M. Beachy G-87-0471 (Suspension, 1 day)

Arbitrator: Nicholas Duda
Charges: Tardiness
Employment Situations: Department of Mental Retardation and Developmental Disabilities; Apple Creek Developmental Center; Hospital Aide
Result: Grievance sustained. One day's pay awarded.
Reason: Liberal rules for expedited arbitration do not eliminate state's responsibility to present sufficient evidence to justify a finding of just cause.

70) William Strahl G-87-1187-(Removal)

Arbitrator: Harry Graham
Charges: Absenteeism
Other Issues: Flex Time; Just cause; Mental illness
Employment Situation: Department of Industrial Relations; Ohio Bureau of Mines; Mine Safety Inspector
Result: Grievance partially sustained. Reduced to 2-day suspension.
Reason: Improper to take vacation in midst of emergency but penalty was excessive. Unfitness due to mental illness does not give just cause for dismissal where grievant was charged with absenteeism. Employer cannot discipline employee for attending pre-disciplinary meeting or for using flextime in the manner he is expected to use it.

71) Eugene Dixon G-87-1164 (Removal)

Arbitrator: Thomas Michael
Charges: Sleeping on duty
Other Issues: Burden of proof; Standard of proof; Credibility

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Columbus Developmental Center; Hospital Aide

Result: Grievance sustained. Reinstatement. Back pay and all benefits. Expunge record of discipline from employee's file.

Reason: Employer did not prove that grievant was asleep by a preponderance of the evidence. Accuser's testimony was not sufficiently credible since it was inconsistent with his written statement. Furthermore, accuser had viewed grievant from a distance in a dark room. Grievant was not slumped over and his feet were on the floor.

72) Henry Caldwell G-86-1045 Suspension, 2 day)

Arbitrator: Jerry Fullmer

Charges: Insubordination

Employment Situation: Department of Mental Health

Result: Suspension reduced to written warning.

Reason: Offense committed but mitigated.

73) John Martin G-86-1041 (Suspension)

Arbitrator: Jerry Fullmer

Charges: Insubordination

Employment Situation: Department of Mental Health

Result: Grievance sustained. Back pay.

Reason: Discipline is inappropriate where there is no willful act.

74) Michael Flinn G-86-1037 (Discipline)

Arbitrator: Jerry Fullmer

Charges: Failure to call-in

Employment Situation: Department of Mental Health

Result: Grievance denied

75) Lloyd Tate G-87-0795 (Motion to quash Subpoenas Duces Tecum) Charles Petty G-87-0796 Andre Craig G-87-0696

Arbitrator: Frank Keenan

Charge: Drug Trafficking

Contract Section: 25.08; 43.01

Other Issues: Subpoena Duces Tecum; Highway Patrol Rights; Arbitrator's authority

Employment Situation: Department of Rehabilitation and Correction; Ohio State Reformatory

Result: Arbitrator ruled that he would hear the tapes in private to determine which, if any, portions should not be released to the Union.

Reason: 25.08 requires the State to turn over evidence that is reasonably available. The Union's right is thus not absolute. The Arbitrator must balance the interests of the State and the Union. The State was interested in protecting informants and maintaining confidentiality of investigatory techniques.

76) William Weatherbee G-87-1700 (Suspension, 1 day)

Arbitrator: Andrew Love

Charges: Insubordination, Jeopardizing security; Racial slur

Employment Situation: Department of Rehabilitation and Correction; Marion Correctional Institution; Correction officer

Result: Grievance denied

77) James Fox G-87-1703 (Suspension, 3 day)

Arbitrator: Andrew Love

Charges: Sleeping on duty

Employment Situation: Department of Rehabilitation and Correction; Marion Correctional Institution

Result: Sustained in part. 3-day suspension reduced to 2-day suspension. Reimbursed 1 day's pay.

Reason: Penalty not commensurate with offense since grievant's drowsiness was due to medication and grievant went to doctor and had his prescription changed.

78) Gwendolyn Harris G-87-0239 and G-87-1253 (Removal)

Arbitrator: Rhonda Rivera

Charge: Incompetence

Other Issue: Management's rights; Just cause; Harassment; Work standards

Employment Situation: Department of Taxation; Personal Property Tax Section; Tax Commissioner Agent 2

Result: Grievance denied.

Reason: Progressive discipline had failed. Employer has right to terminate non-productive workers. Otherwise, jobs of all workers would be at risk. Many of the grievant's errors could have been avoided by exercising more care. "Training issues" were not the cause of such errors.

79) William Richie OSR-M-261 (Suspension, 5 day)

Arbitrator: Nicholas Duda

Charge: Sexual Harassment

Other Issues: Notice of Rules and disciplinary consequences

Employment Situation: Department of Rehabilitation and Correction; Ohio State Reformatory; Farm Supervisor

Result: Grievance denied.

80) Durkin Milliron G-87-0564 (Suspension, 5 day)

Arbitrator: Nicholas Duda

Charge: Careless Work; Insubordination

Other Issues: Discrimination because of union activity; Retaliation

Employment Situation: Carpenter 2

Result: Grievance was partially sustained. Reduced to reprimand

Reason: Progressive discipline required that reprimand rather than suspension should have been issued. Grievant had no previous discipline for insubordination and had only received verbal counseling for poor workmanship.

81) William Reeder G-87-0544 (Removal)

Arbitrator: Harry Graham

Charge: Political activities

Other Issues: Disparate treatment; Commensurate with offense; Timeliness for imposing discipline

Employment Situation: Department of Transportation; Garage in Lima; Equipment Operator 1

Result: Grievance partially sustained. Discharge reduced to 20-day suspension.

Reason: Given grievant's satisfactory work record of five years and other employees with less serious political activity offenses were given 5 day suspensions, discharge was not commensurate with the offense.

82) Ralph Jones G-87-1135 (Suspension, 3 day)

Arbitrator: Andrew Love

Charges: Absenteeism; Physician's Statement

Employment Situation: Bureau of Workers' Compensation; Columbus District Office; Delivery Worker

Result: Partially sustained. Reduced to 2-day suspension. Back pay.

Reason: Not commensurate with offense. Arbitrator came to this conclusion on the grounds that grievant's violation was not so much from being absent as from failing to request short term disability leave.

83) Darnell Brown G87-1299 (Removal)

Arbitrator: Rhonda Rivera

Charges: Leaving residents unattended; Permitting roughhousing among residents

Contract Section: 24.01; 25.08

Other Issues: Failure to furnish documents; Timeliness of steps in disciplinary process; Employer's guidelines; Effect of procedural defects

Employment Situation: Department of Youth Services; Scioto Riverview Youth Facility; Youth Worker 2

Result: Grievance partially sustained. Reinstatement without back pay.

Reason: Failure to follow progressive discipline, disparate treatment, failure to supply documents, lack of timeliness in handling disciplinary process. Without procedural errors, discharge would have been upheld. Knowingly allowing residents to engage in gratuitous violence is the sort of violation that justifies discharge on the first offense.

84) Leist, et al. G-87-0522 (Report-in Location)

Arbitrator: Rhonda Rivera

Contract Issue: Report-in Location

Contract Section: 13.06

Other Issues: Scope of award

Employment Situation: Department of Transportation; District 5; Project Inspector

Result: Grievance denied.

Reason: Under 13.06, an employee is a field employee only when assigned field work; the 3rd sentence of the third paragraph only covers employees who are on 1000 hour assignments; thus employees who are neither currently under 10000 hour assignments nor currently assigned to field work are covered by the 4th paragraph. The words of 13.06 have no other reasonable meaning when applied.

85) Charlene Reese G-86-0434 (Suspension, 5day)

Arbitrator: Harry B. Crewson

Charge: Neglect of Duty

Other Issues: Mitigation

Employment Situation: Department of Natural Resources; Department of Reclamation; Environmental Technician II

Result: Grievance partially sustained.

Reason: Lack of discretion from supervisors after written reprimand. Discipline not commensurate with offense. Disciplinary guidelines for neglect of duty lack clarity. Grievant had informed management her workload was increasing.

86) Ralph Bambino G-87-0250 (Removal)

Arbitrator: Rhonda Rivera

Charges: Fighting; Insubordination

Contract Section: 24.05

Other Issues: Mitigation; Admission of evidence

Employment Situation: Department of Transportation; Cleveland Yard, District 12; Equipment Operator 3

Result: Grievance partially sustained. Removal reduced to six-month suspension.

Reason: There was no insubordination since employee obeyed the order. Mere expression of disagreement with order is not insubordination. Punishment not commensurate with fighting offense given mitigating factor of 13 years of service with no previous discipline.

87) Dion Dortch G-87-1128 (Suspension, 2 day)

Arbitrator: Henry E. Helling

Charges: Neglect of duty

Other Issues: Notice of rules and disciplinary consequences; Lax enforcement

Employment Situation: Department of Mental Health; Dayton Mental Health Center; Correction Officer 2

Result: Grievance sustained. Suspension rescinded. Back pay.

Reason: Given lax enforcement of work rule, grievant lacked notice of the disciplinary consequences of his conduct.

88) Willa Johnson G-87-0397 (Suspension, 2 day)

Arbitrator: Henry Helling

Charges: Neglect of duty; Tardiness

Employment Situation: Department of Mental Health; Dayton Mental Health Center; Psychiatric Attendant Coordinator

Result: Grievance denied

Reason: While the Arbitrator was sympathetic with the grievant's reasons for tardiness, the Arbitrator ruled that grievant could have avoided the problem through use of flextime. She should have actively pursued permission for flextime and continued to do so until she got an answer one way or another.

89) Certified Against (arbitrability of grievance concerning replacement of provisional employees who had not taken or passed a civil service exam by persons who had passed the exam)

Arbitrator: John Drotning

Contract Issue: Arbitrability; Replacement of provisional employees

Employment Situation: Provisional employees

Results: Grievance sustained; provisional, non-probationary employees can grieve their terminations based on failure to take or pass civil service examinations.

Reason: The contract does not distinguish between provisional and non-provisional employees. The limitation on grieving in the contract is against probationary employees. It would be difficult for the arbitrator to find that a union dues paying person employed by the state for more than six months but less than 2 years cannot avail himself or herself of the benefits of the collective bargaining agreement by attempting to arbitrate his/her termination.

90) Eva Session G-87-0941 (Removal)

Arbitrator: Frank Keenan

Charges: Neglect of duty (enabling escape of patient)

Other Issues: Just cause; Commensurate with offense; Disparate Treatment; Mitigation

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Columbus Developmental Center; Hospital Aide

Result: Grievance partially sustained. Removal reduced to 20-day suspension. Back pay.

Reason: Disparate treatment. Mitigation; inexperience, understaffing and fatigue of grievant due to working overtime.

91) Leonard Lukes G-87-1054 (Removal)

Arbitrator: Thomas P. Michael

Charges: Absenteeism

Contract Section: 17; 24.01; 24.06;31.01

Other Issues: Progressive discipline; Child care; Shift change; Leave of absence; Burden of proof

Employment Situation: Department of Mental Health; Fallsview Psychiatric Hospital; Hospital Aide

Result: Grievance denied.

Reason: Since the grievant had been orally informed of the denial of his request for leave, the employer substantially complied with the procedural requirements of Article 31 even though there was a two-week delay in receiving a written verification of the denial. Request for leave for childcare purposes does not fall into the categories listed in 31.01 under which the employer is mandated to grant leave. Where employer has discretion to deny a leave request, he must articulate a legitimate nondiscriminatory reason. Denial because of understaffing due to several staff being disability leave is a qualifying reason. The grievant was afforded a reasonable time to arrange for childcare and neither the contract nor any other standard requires more.

92) Stand-by pay (ODOT Signal Electricians) 66-86-D8

Arbitrator: Nicholas Duda

Contract Issue: Stand-by pay

Contract Section: 13.12

Other Issues: Estoppel

Employment Situation: Department of Transportation; District 8; Signal Electrician

Result: Grievance sustained. Employer must pay stand-by pay it failed to pay.

Reason: Since employer had led employees to believe that the stand-by pay policy had been reinstated, and since the employees had relied on supervision's actions, the employer is estopped from denying that the policy was reinstated. Thus, the employer violated 13.12 when it did not pay stand-by pay. ("Estopped" means one is not allowed to make a statement since, given one's previous conduct, it would be unfair or unjust to make the statement).

93) Ladden/Sloan G-86-0103 (avoiding holiday pay by changing rotating schedules)

Arbitrator: Rhonda Rivera

Contract Issue: Holiday pay

Contract Section: 13.07; 26.02

Other Issues: Work schedule

Employment Situation: Department of Mental Health; Oakwood Forensic Center; Psychiatric Attendants, Psychiatric Attendants, Psychiatric Attendants Coordinators, and Correction Officers

Result: An employee is on a “regular” schedule, for the purposes of 26.02 and 13.07, if the schedule is predictable. Thus, even a rotating schedule can be a regular schedule. Management testified that except for changes made to avoid holiday pay, the rotating schedule in question was designed to be predictable. 13.07 and 26.02 prohibit the changing of regular scheduled to avoid paying premium holiday pay.

94) Dacey Lamb and Patricia Howell G-87-1435 (Suspension, 5 day)

Arbitrator: Andrew J. Love

Charges: Sleeping on duty; Insubordination; Inattentiveness to duty

Employment Situation: Department of Rehabilitation and Correction; Marion Correctional Institution; Correction Officer

Result: Grievance sustained

Reason: Grievants were found guilty only of lesser violation of being inattentive. There was also disparate treatment.

95) Rolando Gonzales G-87-1800 (Suspension, 5 day)

Arbitrator: Andrew J. Love

Charges: Absenteeism

Employment Situation: Department of Rehabilitation and Correction: Lima Correctional Institution; Correction Officer

Result: Grievance sustained

Reason: Mitigation: Illness. Grievant was protecting his health so as to be able to work when he returned.

96) William McDonnell G-87-1575 (Written reprimand)

Arbitrator: Andrew Love

Charges: Absenteeism; Failure to call in

Other Issues: Evidence; Credibility

Employment Situation: Department of Mental Health; Oakwood Forensic Center; Psychiatric Attendant

Result: Grievance denied

Reason: Arbitrator was persuaded the grievant had not called in. Signed statement from grievant's mother saying she had called in for grievant, taken for what it was worth, does not overcome the evidence presented by the persons who testified at the hearing.

97) David Rodney G-87-0507 (Suspension, 2 day)

Arbitrator: Andrew Love

Charges: Tardiness

Other Issues: Commensurate with offense

Employment Situation: Department of Mental Health; Oakwood Forensic Center; Criminal Psychiatric Attendant

Result: Partially sustained. Reduced to 1-day suspension. Back pay.

Reason: 2-day suspension not commensurate with offense of being 1 minute late. On the other hand, grievant should leave early enough that delays would not cause him to be late.

98) Marvin Strickland G-87-1526 (Removal)

Arbitrator: Thomas P. Michael

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Broadview Developmental Center; Hospital Aide

Result: Settlement

99) Ronald Vincent G-87-1140 (Suspension, 1 day)

Arbitrator: Henry E. Helling

Charges: Neglect of Duty; Failure to report accident

Contract Section: 24.02

Other Issues: Timeliness of final disciplinary decision; Double jeopardy

Employment Situation: Ohio State Highway Patrol; Springfield Post; Maintenance Repair Worker II

Result: Grievance sustained

Reason: Suspension issued 3 months after incident was untimely and grievant had already received a written reprimand for the incident.

100) David Cutlip, et al. G-86-0249 (Stand-by Pay)

Arbitrator: Dr. David M. Pincus

Contract Issue: Stand-by pay; Callback pay

Contract Section: 13.08; 13.12

Other Issues: Interpretation

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Columbus Developmental Center; Maintenance Repair Worker 2

Result: Grievance denied

Reason: The grievant was “on call” rather than on stand-by status. The distinction between these statuses is that an employee on stand-by is required to keep himself available for work. An employee who is on call is not required to respond when contacted by beeper, nor is he required to accept the work. In differentiating the two statuses the important questions are (1) is employee free to use his time for his own benefit and (2) are the callbacks so frequent that employee is not really free to use the time for his own benefit.

**101) Janet Jordan G-86-0298 (Suspension, 5 day) Patricia Pinson G-86-0299
Jane Crew G-86-0323**

Arbitrator: Henry E. Helling

Charges: Neglect (leaving patient unattended)

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Montgomery Developmental Center; Hospital Aide

Result: Grievance denied

Reason: Grievants neglected their duty when they failed to take a head count before leaving on a trip in a van which failure resulted in leaving a patient behind unattended.

102) Susan Laywell G-87-0928 (Suspension, 1 day)

Arbitrator: Henry E. Helling

Charges: Neglect

Other Issues: Notice of rules and disciplinary consequences

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Columbus Developmental Center; Hospital Aide

Result: Grievance sustained

Reason: Grievant was engaging in behavior normally engaged in by co-workers without discipline. Furthermore, she was attempting to ask a question pertinent to her duties.

103) Leadell Dawkins G-87-0928 (Suspension, 5 days)

Arbitrator: Henry Helling

Charges: Neglect of Duty

Other Issues: Notice of rules and disciplinary consequences; Disparate treatment

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Columbus Developmental Center; Hospital Aide

Result: Grievance sustained. Back pay. Expungement.

Reason: Not commensurate. Disparate treatment.

104) Kathy Frye G-87-1533 (Suspension, 1 day)

Arbitrator: Henry E. Helling

Charges: Profanity

Other Issues: Commensurate with offense

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Columbus Developmental Center; Hospital Aide

Result: Grievance denied

Reason: Employer proved offense was committed and 1-day suspension is commensurate with offense.

105) Henry Carter G-87-1120 (Removal)

Arbitrator: Rhonda Rivera

Charges: Excessive force without intent to abuse

Other Issues: Progressive discipline; Notice of the charges; Just cause; Effect of procedural defects

Contract Section: 24.01

Employment Situation: Department of Rehabilitation and Correction; Ohio State Reformatory; Correction Officer

Result: Grievance denied but grievant awarded full back pay.

Reason: Grievant was guilty but his due process rights were violated when management imposed discipline for a violation different than what he was accused of.

106) Paul Nixon G-87-1008 (Removal)

Arbitrator: Thomas Michael

Charges: Abuse; Failure of Good Behavior

Contract Section: 24.02; 24.04; 24.06; 25.08

Other Issues: Provision of documents. Provision of witnesses; Progressive Discipline; Timeliness of initiating disciplinary process; Burden of proof; Standard of proof; Negligence; Recklessness; Effect of procedural defects

Employment Situation: Department of Youth Services; Buckeye Youth Center, Youth Leader 2

Result: Grievance partially sustained. Removal reduced to 180 day suspension. Back pay from 181st day.

Reason: Employee must be at least reckless before he can be guilty of abuse. Grievant was only negligent. Employer failed to follow its own guidelines concerning prompt investigation.

107) Floyd Gray G-86-0110 (Roll Call Pay)

Arbitrator: Rhonda Rivera

Charges: Roll Call Pay

Contract Section: 36.05

Other Issues: Interpretation of contract; Credibility of documents

Employment Situation: Department of Rehabilitation and Correction; Correction Officers and "Special Duty" Correction Officers

Result: Grievance sustained

Reason: 36.05 is not clear on its face and is susceptible of two reasonable meanings. Thus, the question became, "what was the intent of the parties." The employer's evidence of the intent of the parties was rejected because that evidence consisted of letters, which were internally inconsistent and had been written while the grievance was in process. The evidence of intent provided by the Union was credible.

108) Julliette Dunning G-87-0001(B) (Removal)

Arbitrator: David Pincus

Charges: Abuse

Contract Section: 24.04

Other Issues: Arbitrator's authority; Notice of charges; Removal order; Admission of evidence; Credibility; Just cause; Effect of procedural defects; Notice of charges; Disparate treatment; Neglect of client

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Northwest Ohio Developmental Center; Hospital Aide

Result: Grievance partially sustained. Reinstatement without back pay but with seniority

Reason: Failure to give notice of disciplinary consequences. Disparate treatment.

109) Jeff Sparks G-87-0811 (Suspension, 10 day)

Arbitrator: Rhonda Rivera

Charges: Fighting

Contract Section: 25.08

Other Issues: Just cause; Failure to provide documents; Effect of procedural defects

Employment Situation: Department of Transportation; Highway Worker

Result: Grievance denied

Reason: Where employer cannot determine who was at fault for a fight it is not reasonable to discipline both combatants. Given employer's procedural violations, arbitrator balanced the interests in a substantively correct discipline and ensuring fair procedures in the future. On the grounds that the grievant had not been prejudiced and the employer's violation had not been shown to be deliberate or part of a pattern. The arbitrator decided not to modify the penalty.

110) Paul Ellis G-87-1157 (Suspension, 5 day)

Arbitrator: Andrew Love

Charges: Sleeping on Duty

Other Issues: Mitigation; Harassment

Employment Situation: Department of Rehabilitation and Correction; Southern Ohio Correctional Facility; Correction Officer

Result: Grievance partially sustained. 5 day suspension reduced to 4 day suspension. Back pay.

Reason: Mitigation; harassment by other employees.

111) Robert Bagley G-87-1576 (Removal)

Arbitrator: Harry Graham

Charges: Absenteeism; Tardiness

Other Issues: Progressive discipline; Mitigation

Employment Situation: Department of Mental Health; Oakwood Forensic Center; Psychiatric Attendant

Result: Grievance denied

Reason: Absenteeism is not mitigated by lack of a telephone or car, or by domestic difficulties. Progressive discipline is not violated where grievant has had numerous disciplines for absenteeism, but had been removed before his previous discipline, suspension, had been served.

112) Jodelle E. Mixon G-87-2484 (Written Reprimand)

Arbitrator: Harry Crewson

Charges: Absenteeism

Employment Situation: Administrative Services

Result: Grievance denied without an opinion

113) Jack Smith G-87-2348 (Suspension, 5 day)

Arbitrator: Harry Crewson

Charges: Unauthorized Use Of State Vehicle; Failure of Good Behavior; Dishonesty

Other Issues: Progressive discipline

Employment Situation: Department of Administrative Services; Central Office Supply; Back-up Driver

Result: Grievance partially sustained. Reduction to 3-day suspension. Back pay.

Reason: Grievant was at unauthorized location but employer did not prove dishonesty or failure of good behavior. Furthermore, where the only previous discipline was a verbal reprimand, a 3-day suspension rather than a 5-day suspension is more compatible with progressive discipline

114) Ricky L. Lones G-87-0018 (Suspension, 3 day)

Arbitrator: Nicholas Duda

Charges: Sleeping on Duty

Employment Situation: Department of Rehabilitation and Correction; Lima Correctional Institution; Correction Officer

Result: Grievance denied

Reason: The evidence was clear and convincing. Sleeping on duty while inmates are free to enter the hall and while keys are in one's possession is extremely unsafe.

115) Karyl Styer G-87-1421 (Suspension, 1 day)

Arbitrator: Nicholas Duda

Charges: Insubordination

Employment Situation: Department of Rehabilitation and Correction: Lima Correctional Institution; Correction Officer

Result: Grievance sustained. Back pay

Reason: Management's communications with grievant when offering voluntary overtime were ambiguous. If the grievant had been given clear notice of situation at that time and grievant had accepted the overtime, if he then refused to work the post he was assigned to, his refusal would have been insubordination.

116) Kassandra Jefferson G-87-0366 (Removal)

Arbitrator: Thomas P. Michael

Charges: Abuse; Insubordination; Failure of Good Behavior; Neglect of Duty; Threats of Physical Harm; Profanity; Disrespect for superiors

Contract Section: 24.01; 25.08; 43.01

Other Issues: Federal law; Burden of proof; Standard of proof; Arbitrator's authority to modify removal for abuse; Credibility; Medical problem; Effect of procedural violations; Failure to provide documents; Just cause

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Apple Creek Developmental Center; Hospital Aide

Result: Grievance partially sustained. Reduced to 120-day suspension. Back pay thereafter.

Reason: Failure of employer to obey procedures. Failure to prove abuse or neglect of duty.

117) Delbert Matheny G-87-0355 (Suspension, 30 day)

Arbitrator: Nicholas Duda

Charges: Sexual Harassment; Intentional acts of discrimination; Horseplay

Other Issues: Notice of rules and the disciplinary consequences of violations; Lax enforcement; Progressive discipline; Commensurate with the offense

Employment Situation: Department of Transportation; District 10, Athens Garage; Equipment Operator 1

Result: Grievance partially sustained. Reduction to 5-day suspension. Back pay

Reason: Some of the "findings of fact" which the original findings were based on were not proved at arbitration. The sexual harassment was not as serious as the sort of sexual harassment deserving a more severe penalty on the first offense.

118) Greg Hurst G-87-1494 (Removal)

Arbitrator: David M. Pincus

Charges: Theft; Leaving work area without permission; Unauthorized use of state vehicle; Unsafe act; Neglect of duty; Insubordination

Contract Section: 25.08

Other Issues: Just cause; Effect of procedural violations; Notice of rules and of the disciplinary consequences of violation; Documents, failure to furnish; Arbitrator's authority

Employment Situation: Department of Transportation; Lucas County Garage; Equipment Operator 1

Result: Grievance partially sustained. Reinstated. No back pay. Loss seniority.

Reason: Employer failed to provide requested documents as required by the agreement. Employer did not introduce evidence to support insubordination or neglect of duty. The Arbitrator refused to decide if grievant was guilty of unauthorized use of state vehicle since the employer was confused about the distinction between that charge and a charge of misuse of a state vehicle.

119) Blythe Lampkins G-87-2245 (Suspension, 1 day)

Arbitrator: Andrew J. Love

Charges: Insubordination

Contract Section: 24.05

Other Issues: Progressive Discipline

Employment Situation: Department of Natural Resources; Storekeeper 2

Result: Grievance denied

Reason: Grievant was insubordinate when he stated his refusal to carry out his supervisor's order (even though the arbitrator was convinced that grievant would ultimately have carried out the order). Progressive discipline does not require that previous violations must be of the same sort to be taken into the account. The aim of progressive discipline is to give grievant notice that any misconduct will give rise to discipline.

120) Hugh Wait G-87-2464 (Suspension, 3 day)

Arbitrator: Andrew J. Love

Charges: Absenteeism

Contract Section: 24.02

Other Issues: Commensurate with offense; Progressive discipline

Employment Situation: Department of Natural Resources; Office of General Services; Carpenter 1

Result: Grievance denied

Reason: Given the gravity of the offense (absent without leave and failure to call in even though grievant knew the procedure) the employer can skip steps in progressive discipline.

121) Jeffrey Enberg G-87-1229 (Written Reprimand)

Arbitrator: Andrew J. Love

Charges: Insubordination; Smoking; Tardiness

Contract Section: 24.02

Other Issues: Past practice; Progressive discipline

Employment Situation: Department of Health; Mail Center; Delivery Worker

Result: Grievance partially sustained. Reduced to verbal reprimand.

Reason: The grievant had no prior discipline. Since offenses were minor, progressive discipline schedule must be followed. It follows that verbal reprimand is the appropriate penalty. The laxity of previous supervisors is no excuse where the new supervisor has given clear notice that the rules would be enforced.

122) James L. Wolfe G-87-1911 (Removal)

Arbitrator: Harry Graham

Employment Situation: Department of Rehabilitation and Correction

Result: Grievance partially sustained. Removal reduced to 10-day suspension: Limitation placed upon the use of grievant's past disciplines for progressive discipline. Back pay. Return of workman's compensation if necessary.

Reason: Award given without discussion.

123) Connie Walker G-87-0998 (Removal)

Arbitrator: Jonathan Dworkin

Charges: Insubordination; Neglect of Duty

Contract Section: 5; 11.03; 24.01; 24.02; 24.05

Other Issues: Progressive discipline; Commensurate with offense; Progressive discipline; Pre-contract discipline; Length of service; Timeliness in initiating disciplinary

process; Disparate treatment; Arbitrator's authority; Mitigation; Medical problems; Management rights; Just cause; Arbitrator's method in disciplinary grievances; Safety
Employment Situation: Bureau of Employment Services; District 3, Akron claims Dept; Clerk typist

Result: Grievance denied

Reason: Grievant did not follow general principle-obey now, grieve later. Section 11.03 right to refuse unsafe conditions abnormal to the workplace. While such conditions may have been present, the grievant refusal to vacate her supervisor's office rose to a level of insubordination that was not justified by the unsafe working conditions. She could have merely declined to work at her regular station.

124) James W. Griffin G-87-1768

Arbitrator: Thomas P. Michael

Charges: Abuse

Other Issues: Credibility; Sexual Orientation; Polygraph; Admission of Evidence; Interpretation of Contract

Employment Situation: Department of Rehabilitation and Correction; Southeastern Correctional Institution; Correction Officer

Result: Grievance sustained. Reinstatement. Back wages. Seniority. Benefits

Reason: Employer failed to prove charges. The arbitrator did not find the testimony of the main witness against grievant to be credible since the witness was a convicted felon whose testimony was not consistent with testimony given at an earlier hearing. Polygraph evidence that witness was telling the truth was admitted but given little weight on the grounds that the accuracy of polygraph has been established to a scientific degree insufficient to justify reliance on them for the most important of our everyday affairs.

125) Lucille Stoughton G-87-1028 (Removal)

Arbitrator: Hyman Cohen

Charges: Tardiness; Absenteeism; Neglect of Duty; Sleeping on Duty

Other Issues: Harassment by supervisor; Just cause; Medical problems

Employment Situation: Department of Aging; Golden Buckeye/Silver Saver's Passport Program; Data Entry Operator

Result: Grievance partially sustained. Reinstatement without back pay.

Reason: Grievant's violations were caused by illness. She had a good record prior to illness. No back pay since state was not at fault—grievant had not informed employer of her illness.

126) McKinley Tarrance G-87-1478 (Timeliness of Filing of Grievance)

Arbitrator: Thomas Michael

Contract Issue: Timeliness of filing of grievance

Contract Section: 25.07

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Broadview Developmental Center; Hospital Aide

Result: Grievance denied

Reason: Arbitrator would not make an exception to the requirement in 25.07 that a removal grievance be filed within 14 days on the basis that grievant did not have actual notice of the requirement. The contract gave constructive notice to both the grievant and the union.

127) Cheryl Snider G-87-0051 and G-87-0079 (assignment to supervisory work and retaliation for filing a grievance)

Arbitrator: Hyman Cohen

Contract Issue: Supervisory; Retaliation for filing grievance

Contract Section: 25.02

Other Issues: Effect of procedural violations; Arbitrability; Job Descriptions

Employment Situation: Ohio Civil Rights Commission; Toledo Office; Civil Rights Representative III (Field Representative III)

Result: Grievance denied

Reason: The work assignments did not erode the bargaining unit, and thus did not violate the contract, since the arbitrator found that the work was within the scope of the job description, even if not explicitly listed. That the work is also explicitly listed in supervisor's job description does not have any effect. The evidence of retaliation was insufficient. Evidence that grievant had been given an unreasonable workload or had been disciplined is necessary.

128) Sam Sebree G-87-2316

Arbitrator: Rhonda Rivera

Charges: Absenteeism; Failure to call in; Neglect of duty; Insubordination

Other Issues: 45 day time limit; Effect of procedural violations; fairness of investigation; Notice of charges; Stacking violations

Employment Situation: Department of Transportation; Roadside Park Caretaker

Result: Grievance denied

Reason: The employer proved the charges. The discipline was commensurate. Arbitrator would have overturned the dismissal because of employer's failure to abide by the 45 day time limit in the contract, but did not because of mitigating circumstances: employer's good faith belief that the union had waived the time limit, the issue was not fairly raised at arbitration since it had not been raised in earlier steps, and the removal was justified on the basis of violations with regard to which the 45 day rule had not been violated.

129) Fontelle Burley G-87-1930 (Removal)

Arbitrator: David M. Pincus

Charges: Off duty misconduct; drug trafficking; felony conviction; criminal conviction

Other Issues: Notice of charges and possible discipline; mitigation

Employment Situation: Department of Mental retardation and Developmental Disabilities; Warrensville Developmental Center; Teacher's Aide

Result: Grievance partially sustained. Conditional reinstatement. No back pay or seniority. 1-year probation.

Reason: The arbitrator found disparate treatment where the employer had not treated the nexus, between off duty conduct and job duties, as essential to an off-duty misconduct violation but had in previous cases (even though the arbitrator went on to find that there was a nexus). In addition to disparate treatment, the arbitrator found mitigation in that the employee had a long record as a good employee which suggested that she would not repeat the misconduct.

130) Roger L. Broyles G-87-1688 (Removal)

Arbitrator: Hyman Cohen

Charges: Blocking a fire exit; Abuse; Neglect; Neglect of duty; Failure of Good Behavior

Contract Section: 24.01

Other Issues: Arbitrator's authority; Notice of rules; Work rules; Notice of rules and the disciplinary consequences of violations; Credibility; Failure to provide documents; Effect of procedural defects; Disparate treatment

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Gallipolis Developmental Center; Hospital Aide

Result: Grievance partially sustained. Reinstatement without back pay.

Reason: Disparate treatment.

131) Andre E. Ellis G-87-23-92 (Removal)

Arbitrator: Nicholas Duda

Charges: Improperly performing perimeter patrol

Other Issues: Notice of rules and disciplinary consequences of violations; Effect of settlement agreement

Employment Situation: Department of Rehabilitation and Correction; Dayton Correctional Institution; Correction Officer

Result: Grievance denied

Reason: Even though the rules do not explicitly state that correction officers must maintain radio contact and remain at their post while on perimeter check, these requirements are so obviously implicit in the job that the grievant should have known his conduct would be subject to discipline. While another officer had his removal reduced to a suspension by a settlement agreement, that agreement cannot be considered by the arbitrator since it includes a statement saying it is not precedent setting and is to have no effect on other grievances. Besides, the officer involved in the other settlement was a new employee with no previous disciplines. The officer in this case had several previous related disciplines.

132) Roosevelt Thornton G-87-2329 (Removal)

Arbitrator: Calvin W. Sharpe

Charges: Abuse

Other Issues: Credibility of witness

Employment Situation: Department of Mental Health; Millcreek Psychiatric Center; Therapeutic Program Worker

Result: Grievance sustained

Reason: The charge was not proved. The state's witnesses were less credible than the grievant's witnesses.

133) Warren Mason G-87-1802 (Removal)

Arbitrator: David M. Pincus

Charges: Sleeping on duty

Other Issues: Credibility of witness

Employment Situation: Department of Rehabilitation and Correction; Lima correctional Institution; Correction Officer 2

Result: Grievance denied

134) Lindell Mills G-86-0597 (Sign-in/Sign out Policy)

Arbitrator: Rhonda Rivera

Issues: Work rule change; Time clock

Contract Section: 43.03

Other Issues: Sign-in/Sign-out policy; Reasonableness of a policy

Employment Situation: Department of Health

Result: Grievance denied

Reason: A requirement that employees sign-in and sign-out is reasonable since there is a rational relationship between the rule and a legitimate employer objective: accounting for employee time. The policy does not violate the ban on time clocks since, by the plain meaning of “time clock,” the terms refer to a mechanical device. No evidence was presented to show that the parties intended a wider meaning.

135) Robert Robinson G-86-0443 (Rest Periods)

Arbitrator: Rhonda Rivera

Issue: changing the length of the rest period between shifts

Contract section: 13.04; 13.07

Other Issues: Interpretation of contract; Rest periods

Employment Situation: Department of Mental Health; Western Reserve Psychiatric Habilitation Center

Result: Grievance denied

Reason: With regard to the length of rest periods between regular shifts and overtime, the more specific language of 13.04 takes precedence over the more general language in 13.07. Also, 13.07 is found within a section titled “Overtime” whereas 13.04 is found among other sections dealing with regular time.

136) Marion Dixon G-86-1078 30 day Suspension and Removal

Arbitrator: Thomas P. Michael

Charges: Neglect of Duty; Insubordination; Neglect

Contract Section: 24.01

Other Issues: Progressive discipline; Notice of charges; Disparate treatment; Supervisory fault; Burden of proof

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Broadview Developmental Center; Hospital Aide

Result: Grievance partially sustained. Reduction of 30 day suspension to a 10 day suspension. Reduction of the removal to a 30-day suspension.

Reason: Disparate treatment with regard to the suspension for neglect of duty. Removal reduced because prior disciplines had been reduced in earlier arbitration and therefore, the requirement that discipline be progressive requires reduction of the current discipline. Back pay not given to reflect seriousness of offense.

137) Margaret Burmeister G-87-2361 (Removal)

Arbitrator: Hyman Cohen

Charges: Insubordination; Absenteeism

Contract Section: 24.01; 24.04; 31.01

Other Issues: Notice of rules and disciplinary consequences of violations; Leave of absence; Notice of charges and possible discipline; Just cause; Mitigation

Employment Situation: Department of Transportation; Lucas County Garage; Highway Worker 2

Result: Grievance partially sustained. Reinstatement without back pay.

Reason: Mitigation; Illness, Family problems

138) Robert Sargent G-87-1901 (Removal)

Arbitrator: Thomas J. Michael

Charges: Tardiness

Other Issues: Progressive Discipline; Effect of failure to produce evidence; Notice of charges and possible discipline

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Broadview Developmental Center; Delivery Worker

Result: Grievance denied

Reason: Progressive discipline was present since the grievant had missed an average 4 ½ weeks for each of the last three years because of disciplinary suspensions for absenteeism. In addition, grievant had notice of the possibility that he would be discharged regardless of an unartfully worded sentence in a form notice of disciplinary conference since in his notice for earlier suspensions he had been expressly warned that further violations could result in removal.

139) Richard A. Kelley G-870528 (10 Day Suspension)

Arbitrator: Thomas J. Michael

Charges: Insubordination; Neglect of Duty

Other Sections: Commensurate with the offense

Employment Section: Department of Transportation; Huron County Garage; Roadside Park Caretaker

Result: Grievance partially sustained. Reduction to 7-day suspension.

Reason: One of the charges was not proved.

140) Timothy Tabol G-87-2358 (Removal)

Arbitrator: Jonathan Dworkin

Charges: Fraud; Dishonesty; Absenteeism

Contract Section: 24.02; 24.05; 24.06

Other Issues: Timeliness of initiating discipline; 45 day time limit; Evidence; Military service leave; Disciplinary guidelines; Just cause

Employment Situation: Department of Adjutant General; Air National Guard at Toledo Express Airport; Maintenance Repair Worker

Result: Grievance partially sustained. Removal modified to written reprimand. Seniority and back pay.

Reason: Fraud was not proved. Removal is too harsh for the remaining violation—a mere technical omission.

141) Anthony Nelson 23-13-(1-19-88)-007-01-05 (Removal)

Arbitrator: John E. Drotning

Charges: Drug trafficking; Criminal convictions; Off-duty misconduct

Other Issues: Nexus; Back pay

Employment Situation: Department of Mental Health; Paul Warfield Lewis Center; Housekeeper

Result: Grievance partially sustained. Reinstatement without back pay.

Reason: Employer did not prove any nexus between conviction and conduct at work. On the other hand, employer can expect reasonable behavior on and off the job.

142) Angus Dunn G-86-0335 (Supervisors doing bargaining unit work)

Arbitrator: Frank A. Keenan

Issues: Assignment of bargaining unit work to supervisors; Bargaining unit erosion

Contract sections: 1.03

Other Issues: Scope of grievance; Interpretation of contract

Employment Situation: Department of Administrative Services; Division of Computer Services; Computer Operator 2

Result: Grievance partially sustained. The State is ordered to prepare a sufficient number of bargaining unit members to do the work and, when done, supervisors must cease doing the work. However, the particular grievant received no award.

Reason: Section 1.03 permits supervisors to do bargaining unit work ONLY if they previously performed such work AND one of the circumstances listed in paragraph 2 of 1.03 exists. There was, however, no evidence that compliance with 1.03 would require retraining or use of the grievant to do the work in question.

143) Raymond Dailey G-86-1059 (Steward's pay)

Arbitrator: Harry Graham

Issue: Time, travel, and transportation pay for steward representing another employee at pre-disciplinary conference.

Contract Sections: 3.02

Other Issues: Steward's pay

Employment Situation: Department of Transportation; Muskingum County; Steward

Result: Grievance denied

Reason: Negotiating history indicated that the employer had opposed any pay for stewards when traveling away from the facility where they work. The State yielded to allow that there would be an exception for unusual circumstances. It is the usual circumstance that pre-disciplinary conferences for Muskingum County are held in Licking County. Therefore, the steward cannot receive pay for time and travel to the pre-disciplinary conference in this case.

144) Stephen Jones 23-14-(1-4-88)-001-01-04 (Removal)

Arbitrator: David M. Pincus

Charges: Drug Trafficking; Criminal offense; Off-duty Misconduct

Other Issues: Notice of rules and the disciplinary consequences of violations; Nexus Disparate treatment

Employment Situation: Department of Mental Health; Portsmouth Receiving Hospital; Hospital Aide

Result: Grievance denied

Reason: Duties of Hospital Aide cannot be adequately performed by drug trafficker. Duties include being role model for patients, many of whom have substance abuse problems.

145) Randy Ramey G-87-258 (Removal)

Arbitrator: David M. Pincus

Charges: Criminal offense; Off-duty Misconduct

Other Issues: Fairness of investigation; disparate treatment; Evidence; Criminal conviction; Work release judgment; mitigation; EAP; Alcoholism; Arbitrator's authority; Just cause

Employment Situation: Department of Rehabilitation and Correction; Ohio State Reformatory; Correction Officer

Result: Grievance denied

Reason: A nexus between the criminal conviction and a Correction officer's duties was found to exist for several reasons: (1) adverse publicity to the facility, (2) reinstatement would disrupt the facility's mission of rehabilitating and reintegrating convicts into society; (3) the Correction officer would be subject to manipulation and harassment; (4) the institution may be subject to increased liability, and (5) reinstatement would send the wrong message to inmates.

146) Stan Tyrich G-86-0497 (Overtime Pay Without Management Approval)

Arbitrator: David M. Pincus

Issue: Overtime pay without management approval

Contract Sections: 13.07; 13.10

Other Issues: Evidence; Interpretation of the Contract; Federal Law; Fair Labor Standards Act.

Employment Situation: Department of Human Services; Cincinnati District Office; Case Control Reviewer

Result: Grievance denied

Reason: Article 5 gives management the power to control the use of overtime and the contract sections on overtime do not prevent management from requiring that overtime be authorized as a prerequisite to receiving overtime pay. Note: After losing this arbitration the grievant filed a complaint under the Fair Labor Standards Act and received full back pay.

147) Lu Roth G-86-0285 (Arbitrability of promotion that arguably occurred prior to the date the contract became effective)

Arbitrator: Jonathan Dworkin

Issue: Arbitrability; Promotion

Employment Situation: Department of Taxation; Bargaining Unit 9

Result: Grievance is arbitrable.

Reason: The promotion occurred after the contract became effective. While management's decision was retroactive (so that the person promoted was retroactively paid for the period after the date management specified as the promotion date) to before the contract, the decision was not made until after the contract was in force. Therefore, the promotion decision is subject to the requirements of the contract. Thus, the grievance challenging the promotion is arbitrable.

148) James Boyce G-87-1023 (Suspension, 10 Day)

Arbitrator: Harry Graham

Charges: Absenteeism

Other Issues: Commensurate with the offense

Employment Situation: Department of Transportation; Lucas County Garage; Highway Worker

Result: Grievance denied

Reason: Grievant failed to secure supervisor's permission before leaving work when ill.

149) John F. Kinney, et al. G 87-0791 (Modification of Schedule)

Arbitrator: David M. Pincus

Issue: Avoidance of overtime

Contract Section: 13.01; 13.02

Other Issues: Work schedule; Notice of issues raised at arbitration; Management rights

Employment Situation: Department of Transportation; District 5; 5 Project Inspectors and 1 Highway Worker

Result: Grievance denied

Reason: The employer has the right to schedule work to optimize efficiency so long as the change is not instituted to avoid overtime. The employer's testimony as to the business necessities motivating the schedule change was found to be highly credible.

150) John Polston G-87-1545 (Suspension, 30 day)

Arbitrator: Rhonda Rivera

Issue: Absenteeism

Other Issues: Stipulated award

Employment Situation: Bureau of Employment Services; Dayton office; Account Executive

Result: Stipulated award. Grievance partially sustained. Reduction to 15-day suspension.

Reason: Grievant failed to properly report or call in but employer failed to follow up in a timely manner.

151) Ronald White G-87-1020 and G-87-2813 (6 Day Suspension and Removal)

Arbitrator: John E. Drotning

Charges: Absenteeism; Call-in; Tardiness

Contract Sections: 13.06

Other Issues: Employee Assistance Program; Mitigation; Last Chance Agreement

Employment Situation: Department of Mental Health; Oakwood Forensic Center; Psychiatric Attendant

Result: Suspension grievance denied. Removal grievance partially sustained. Reinstatement without back pay.

Reason: Lack of telephone or automobile does not mitigate the offense. Grievant did not have full opportunity to meet requirements of EAP since he was on medication.

152) Roll Call Discipline Policy 27-01-(88-01-27)-0001-01-03 (Roll Call Discipline Policy)

Arbitrator: Jonathan Dworkin

Issue: Roll Call

Contract Sections: 36.05; 43.03

Other Issues: Arbitrator's authority; Equity

Employment Situation: Department of Rehabilitation and Correction; State Unit 3

Result: Grievance partially sustained. The roll call policies at the time of the agreement must be reinstated. Those persons whose discipline for missing roll call is inconsistent with those policies shall be made whole. Those persons whose discipline is consistent with those policies shall not have their disciplines modified. The arbitrator's authority only extends to interpretation of the contract. The arbitrator cannot modify the contract even if it would be equitable to do so.

153) Donald Domineck G-87-1149 (5 Day Suspension)

Arbitrator: Thomas P. Michael

Charges: Absenteeism; Neglect of duty

Contract Sections: 24.01; 24.08

Other Issues: Burden of proof; Commensurate with the offense; Disparate treatment; Employee Assistant Program

Employment Situation: Department of Mental Health; Office of Support Services; Part-time employee

Result: Grievance denied.

Reason: The employee's attendance record is so bad (absent 31% of the time) that it justifies the 5-day suspension even if the grievant was guilty of the several paperwork violations he was accused of and which the union disputes. Disparate treatment cannot be based on comparing grievant and another employee who was only absent 18% of the time.

154) James Warnock and Floyd Smith 27-23-(88-04-23)-0019-01-03 and 27-23-(88-04-23)-0020-01-03 (10 Day Suspension)

Arbitrator: Nicholas Duda, Jr.

Charges: Fighting; Discrimination; Racial Slur; Profanity

Other Issues: Disparate treatment; Commensurate with the offense

Employment Situation: Department of Rehabilitation and Correction; Ross Correctional Institution; Correction Officer

Result: Warnock's 10-day suspension grievance denied

Reason: Lack of repentance. Only eleven months prior service. A person is responsible for the common meaning of the profane words he uses.

Result: Smith's 10-day suspension grievance partially sustained. Reduction to 5-day suspension.

Reason: Verbal provocation does not justify or excuse fighting. Grievant apologized. Grievant was older man subject to racial and family insult from much younger man.

155) Willard Dill G-87-2389 (Removal)

Arbitrator: Rhonda Rivera

Charges: Interaction with inmates such as barter; exchange, distribution of contraband to inmates; coercion of inmates for personal gain

Other Issues: Credibility; Commensurate with the offense

Employment Situation: Department of Rehabilitation and Correction; Ohio State Reformatory; Penal Workshop Supervisor

Result: Grievance denied

Reason: The arbitrator is not to substitute her judgment for management's on the question of whether punishment is commensurate with the offense unless management's judgment is unreasonable. In this case, the superintendent could reasonably have found an intentional, unremorseful, willful action on the part of the grievant justifying dismissal. While the grievant's conduct, trading sunglasses for cigarettes with an inmate, is not as serious as dealing drugs or weapons, the grievant had several disciplines.

156) Ron Rhonomus G-86-1107 (Bargaining Unit Erosion)

Arbitrator: Harry Graham

Issue: Bargaining unit erosion

Contract Sections: 1.03

Other Issues: Arbitrator's authority

Employment Situation: Department of Mental Health; Office of Housing and Service Environment

Result: Grievance partially sustained. The arbitrator ordered that the work be returned to the bargaining unit. However, he did not order the employer to fill the position.

Reason: In general, arbitrators construe work preservation clauses strictly since they are an essential component of the labor agreement. To determine if erosion has occurred under 1.03, when a supervisor is doing work required by his position description that is also bargaining unit work, the arbitrator looks to whether the work was being done by a supervisor on the day the contract took effect. In this case, the position was vacant when the contract took effect and the same work was being done by bargaining unit members. Thus, the employer violated the contract when the position was filled. The arbitrator does not have authority to order the employer to reassign the duties to a specific bargaining unit member. Thus, he only ordered that the work be done by someone in the bargaining unit.

157) Jeffrey Burg G-87-2438

Arbitrator: Frank A. Keenan

Charges: Interaction with inmates such as barter, exchange, distribution of contraband to; coercion for personal gain.

Other Issues: Racial discrimination; Corpus Delecti

Employment Situation: Department of Rehabilitation and Correction; Lebanon Correctional Institution; Correction Officer 2

Result: Grievance denied

Reason: Mere willingness to engage in exchange of money or drugs for favors is a sufficient basis for removal. While there are some racial problems within the

institution's staff, the evidence falls short of establishing a nexus between the grievant's discharge and the improper racial attitudes of a small number of managers.

158) Dan Meyers G-87-2458 (Timeliness of Appeal to Arbitration)

Arbitrator: Thomas P. Michael

Issue: Timeliness of appeal to arbitration

Contract Sections: 25.02; 25.03; 25.05

Other Issues: Burden of proof; Arbitrability; Equity; Arbitrator's authority; Timeliness of request for arbitration; time limits

Employment Situation: Ohio Student Loan Commission

Result: Grievance denied

Reason: The arbitrator thought that it is unreasonable to suppose that the contract contains both of the following requirements: (1) the union must affirmatively withdraw grievances whenever the employer has failed to respond in a timely manner; and (2) the union must affirmatively appeal the grievance when the employer gives a timely response. The arbitrator concluded that since the contract contains the latter requirement, it would be unreasonable to interpret the contract as including the former requirement.

159) Houston Terrell 23-18-988-02-23)-0030-01-04 (Removal)

Arbitrator: Rhonda Rivera

Charges: Sleeping on duty

Contract Section: 24.08

Other Issues: Employee Assistance Program; Racial discrimination

Employment Situation: Department of Mental Health; Western Reserve Psychiatric Habilitation Center; therapeutic Program Worker

Result: Grievance denied

Reason: If grievant was merely resting his eyes and refusing to answer as he claims, then he was insubordinate. Grievant's testimony was inconsistent and confusing. Other witnesses' testimony about racial discrimination was insufficient in that they could not give non-hearsay evidence about incidents of racial discrimination. No evidence besides the grievant's inconsistent testimony was given to prove that grievant was taking medication that made him drowsy.

160) Jayne Romes G-86-0554 (Report-in Location)

Arbitrator: John Drotning

Issue: Report-in location

Contract Sections: Article 5; 13.06

Other Issues: Travel reimbursement

Employment Situation: Department of Transportation; Division of Tax Equalization; Tax Examiner

Result: Grievance denied

Reason: Management has the power under Article 5 to determine where the report-in location is. The employer must look at the nature of the work and must use a non-discriminatory rationale. That supplies and records are kept at home, that correspondence is received at home, or that that employee has no designated office is not a sufficient basis to conclude that the employee works from home.

161) Timothy Thomas G-87-2403 (Removal)

Arbitrator: Thomas P. Michael

Charges: Neglect

Other Issues: Work rules; Standard of proof

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Cleveland Developmental Center; Hospital Aide

Result: Grievance denied

Reason: The grievant was asking for trouble when he tried to toilet one resident at the time he was bathing another. Even without training in bathing residents, the grievant should have known the danger in leaving a profoundly retarded resident in the bathtub unattended. The employer's rule that makes no distinction between negligence and intentional abuse is not unreasonable since the danger is the same and the patient lacks the intelligence to know the difference and suffer the special insult involved in being intentionally abused.

162) Eugene Strausbaugh 31-09-(88-04-01)-007-01-06 (Removal)

Arbitrator: David M. Pincus

Charges: Absenteeism; Sick leave violation; failure to take care of equipment

Contract Sections: 24.08

Other Issues: Last Chance Agreement; Disparate treatment; Employee Assistance Program; Political discrimination

Employment Situation: Department of Transportation; District 9; Highway Worker 2

Result: Grievance denied

Reason: Grievant violated last chance agreement. The grievant's disparate treatment argument failed because an employee who is under a last chance agreement is not similarly situated as an employee who is not under such an agreement. The arbitrator

found it irrelevant in this case that the agreement did not specify a date when the agreement would terminate. He reasoned that the new violation followed so soon after the agreement was still in force. If the violation had occurred a long time after the agreement, the arbitrator said that failure to specify the agreement's termination date would be significant.

163) Eugene Locker 35-13-(88-02-22)-0146 (Removal)

Arbitrator: Thomas P. Michael

Charges: Failure of good behavior; Verbally and physically abusing fellow employee; Physically abusing supervisor; Leaving work without permission; Insubordination

Contract Sections: 24.01

Other Issues: Burden of proof; standard of proof; Stacking charges; Evidence; Hearsay; Credibility; Supervisory mistake; Injury; Aggravating circumstances; Mitigation; Just cause

Employment Situation: Department of Youth Services; Buckeye Training Center for Youth; Youth Leader 2

Result: Grievance partially sustained. Removal reduced to a suspension with return to work week commencing immediately following 7th day after receipt of this award by the employer. No back pay.

Reason: If employer had a disciplinary grid calling for removal on the first fighting offense, the arbitrator would have upheld the removal. Without such a grid, the arbitrator had to look to the contract to determine what an appropriate penalty would be. While fighting is a serious charge and the fact that a supervisor received a minor injury requires a significant increase in discipline, there were mitigating factors. The employer must bear some of the responsibility for the fight since it assigned spouses, whom it knew were having marital difficulties, to work together.

164) Arbitrability – 24 Cases

Arbitrator: John E. Drotning

Issue: Arbitrability; Timeliness of appeal to arbitration

Contract Sections: 25.02; 25.05

Other Issues: Time limits; Arbitrator's authority

Result: Grievance denied

Reason: The contract says that grievances not appealed within the designated time limits will be treated as withdrawn grievances (25.05). It would be an injustice to both parties for the arbitrator to allow the language of the contract to be outweighed on the grounds of a clerical error by a temporary employee.

165) Renae Rozenblad G-87-2260

Arbitrator: Harry Graham

Charges: Abuse

Contract Sections: 24.01

Other Issues: Credibility

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Youngstown Developmental Center

Result: Grievance denied

Reason: The grievant's testimony was discounted since it was in her interest to deny the violation. The arbitrator found to be credible the testimony of the mentally retarded residents because, given the consistency of their story over a long period of time, the arbitrator did not believe they could have fabricated it as a lie. Having found abuse, the arbitrator held that under 24.01, no consideration may be given any reduction of the penalty imposed by the state.

166) Phillip Payne G-87-2989 (Removal)

Arbitrator: Harry Graham

Charges: Dishonesty; False application for employment; Sick leave violation

Other Issues: Absence from arbitration hearing

Employment Situation: Department of Transportation; Marion Facility

Result: Grievance denied

Reason: Grievant did not appear at hearing. "The Union must not expect, where grievant does not testify in his own behalf, that it could prevail."

167) Thomas Pentecost 24-09-(04-01-88)-40-01-04 (Removal)

Arbitrator: Rhonda Rivera

Charges: Abuse

Other Issues: Fairness of investigation

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Mount Vernon Developmental Center; Hospital Aide

Result: Grievance sustained. Reinstatement with full back pay.

Reason: Employer did not make a "fair and objective" investigation. Furthermore, just cause was not proved.

168) James Meranda G-87-0488 (15 Day Suspension)

Arbitrator: Hyman Cohen

Charges: Neglect of Duty; Failure to report unsafe working conditions; Endangering other employees; Insubordination

Contract Sections: 24.04

Other Issues: Culpability; Just cause; Crew Leader; Weapons; Threats; Notice of rules and possible disciplinary consequences of violations; Disparate treatment Lack of training; Right to representation; Notice of charges and possible disciplines

Employment Situation: Department of Transportation; Brown County Garage; Highway Worker 4

Result: Grievance partially sustained. Reduction to 5-day suspension. Back pay.

Reason: Grievant's duties as crew leader were limited so that the violation was not as serious as management contended. As a bargaining unit member his duties were only to instruct the person waving the knife to go back to work and then to report the incident. His lack of authority to discipline the offending employee limited his ability and duty to intervene.

169) Clarence Castellano G-87-0715 (Avoidance of Overtime)

Arbitrator: Linda DiLeone Klein

Issue: Avoidance of Overtime

Other Issues: Management rights

Employment Situation: Department of Transportation; Geauga County; Highway Workers and Equipment Operators

Result: Grievance denied

Reason: 13.07 disallows changing schedules for the specific purpose of avoiding overtime. However, schedules can be changed to meet operational needs. The state proved it had operational need to change the schedule. Having a night patrol enabled ODOT to respond more efficiently to hazardous snow conditions on the roads.

170) Castle and Thomas G-86-0411 (Promotion of Less Senior employee) (Later vacated in court)

Arbitrator: Rhonda Rivera

Issue: Promotion

Contract Sections: 17.03

Other Issues: Posting

Employment Situation: Ohio Bureau of Employment Services: Labor Market Information; Statistician 3

Result: Grievance sustained

Reason: 17.03 was violated when the employer requires qualifications for a position that were not included in the posting of the position.

171) James Williams 27-13-(8-8-88)-36-01-03 (15 Day Suspension)

Arbitrator: Rhonda Rivera

Charges: Dishonesty; Wearing headphones; Neglect of duty; Action which is a threat to security of the institution

Other Issues: Mitigation

Employment Situation: Department of Rehabilitation and Correction; London Correctional Institution; Correction Officer 2

Result: Grievance partially sustained. Reduction to 10-day suspension

Reason: Violations did not constitute a threat to security as management alleged. Mitigation: no prior discipline. Headphone offense is a minor offense.

172) Mary Lou Patterson (unknown grievance number) (Arbitrability of grievance filed with incorrect agency head)

Arbitrator: Calvin William Sharpe

Issue: Arbitrability

Contract Sections: 25.02

Other Issues: Agency head

Employment Situation: Unemployment Compensation Board of Review

Result: Grievance is arbitrable

Reason: Where the state argued that the grievance was not arbitrable because it was sent to the wrong "agency head" in violation of 25.02, the arbitrator ruled that the grievance was arbitrable because the grievant and the union reasonably believed that they had complied with section 25.02 and the proper agency actually received the grievance within the time limits of 25.02.

173) John R. Murphy III 30-10-(8-23-88)-75-01-09 (Removal)

Arbitrator: Nicholas Duda, Jr.

Charges: Insubordination; Failure of good behavior; Absenteeism; Leaving without permission; Fighting; Striking supervisor; Neglect of duty

Contract Sections: 24.02; 24.05

Other Issues: Stacking Charges; Notice of rules and possible consequences of violations; Commensurate with offense; Progressive discipline

Employment Situation: Department of Taxation; Clerk 2

Result: Grievance partially sustained. Reduction to 3-day suspension

Reason: Most of the charges not proved. Removal is not commensurate with the offense of leaving work area without permission for 2 ½ hours when employee had seven years of good service.

174) Michael Whiteside 23-06-(88-05-20)-0027-01-03 (Removal)

Arbitrator: Linda DiLeone Klein

Charges: Firearm; Criminal offense

Other Issues: Disparate treatment

Employment Situation: Department of Mental Health; Central Ohio Psychiatric Hospital; Psychiatric Attendant

Result: Grievance denied

Reason: Even though the grievant did not carry the weapon onto the grounds at TBMFU, the removal was justified because of the risk created and the grievant was negligent. TBMFU is a facility with mental patients who committed violent crimes. The policy prohibiting the bringing of weapons into the facility is posted outside the gate to the facility.

175) Louis Brown G-87-0062 (Removal)

Arbitrator: John E. Drotning

Charges: Failing Civil Service Exam

Contract Sections: 43.01

Other Issues: Provisional employee; Just cause; Medical benefits

Employment Situation: Department of Transportation; Typist 2 (provisional employee)

Result: Grievance sustained. Reinstatement

Reason: Failing an exam is not, in itself, just cause for removal where the exam did not accurately test for the skills actually needed by the grievant's position (if the classification description requires abilities not actually used, then failure of an exam that tests for those unneeded abilities is not just cause for dismissal). The contractual requirement that the employer must have just cause to remove an employee is not overridden by civil service law. It is the employer's responsibility to make the implementation of civil service law be consistent with contractual requirements. Removal for failing a civil service exam could be just cause for removal if the exam tested for the abilities actually used on the job.

176) Dwight Price 23-18-(88-07-13)-0122-01-04 (Removal)

Arbitrator: David M. Pincus

Charges: Absenteeism

Other Issues: Progressive discipline; Mitigation; Just cause; Call-in; Notice of charges; Disparate treatment

Employment Situation: Department of Mental Health; Western Reserve Psychiatric Habilitation Center; Therapeutic Program Worker

Result: Grievance denied

Reason: The grievant's rendering of many different excuses for his multiple absences did not serve to mitigate the violation but rather to lessen the grievant's credibility. The production of all excuses was seen to be part of the inappropriate conduct which justifies the grievant's discipline. Responsible employees do not rely upon others to call in for them.

The failure of the appointed person to call in is not an excuse for the employee. The disparate treatment argument was rejected on the grounds that there was not sufficient proof that the grievant was similarly situated as other employees who had received lesser disciplines.

177) Constance Leedy 02-04-(88-07-21)-0037-01-14

Arbitrator: John E. Drotning

Issue: Disability separation

Other Issues: Arbitrability

Employment Situation: Department of Administrative Services; Division of Compensation Services; Systems Analyst 2

Result: Grievance is not arbitrable

Reason: In a previous decision, an arbitrator held that if a disability separation was a pretext for discipline, it would be arbitrable. But if it was for health reasons, it was not arbitrable. The union now argues that the ruling was incorrect since it puts an impossible burden upon the union of proving what the employer's motivation was. The arbitrator rejects the union's argument saying that it was clear in this case that the grievant's medical problems justified an involuntary disability separation. Note: The union has appealed this case in court.

178) George Phillabaum G-86-0923 (Call-in; Suspension)

Arbitrator: Jonathan Dworkin

Charges: Sick leave violation; Call-in

Contract Section: 29.02

Other Issues: Work Rules

Employment Situation: Department of Transportation; District 8

Result: Grievance denied

Reason: While ODOT's sick leave rule deprives employees of a bargained for, contractual right, grievant did not meet the contractual conditions for exercising the right. The contract allows conditions for exercising the right. The contract allows an exception to the requirement that an employee must call in personally where the employee was unable to do so. The ODOT call-in rule did not explicitly allow for such an exception because he was able to call in personally. Since the treatment of the employee did not violate the contract, the inconsistency of the rule with the contract is not critical to this grievance. At any rate, the grievant violated the contractual call-in requirement.

179) Ralph Briggs 27-22-(4-13-88)-0013-01-03 (Removal)

Arbitrator: Harry Graham

Charges: Theft

Other Issues: Credibility

Employment Situation: Department of Rehabilitation and Correction; Pickaway Correctional Facility; Correction Officer 2

Result: Grievance denied

Reason: The employer must show that the violation more likely than not occurred. In this case that was done by presenting the more credible testimony. While the state's witnesses were convicted felons, that does not automatically require dismissal of their testimony. Here, their stories were consistent. In some cases, no motivation was shown for false testimony by those witnesses. Felons would have also not voluntarily offer information that could lead to an investigation that could have adverse effects for themselves.

180) Walter White 27-25-(88-05-25)-0025-01-03 (Removal)

Arbitrator: Hyman Cohen

Charges: Excessive use of force

Contract Sections: 24.01

Other Issues: Disparate treatment; effect of procedural defects; Notice of disciplinary rules and the consequences of violations; Long Service

Employment Situation: Department of Rehabilitation and Correction; Southern Ohio Correctional Facility; Correction Officer

Result: Grievance denied

Reason: Inmate abuse was proved by clear and convincing evidence. There was no disparate treatment. The other officers involved in the incident had not been found to have used excessive force. Thus, it was appropriate that their penalties be less severe than the grievant's. The union had argued that there had been another analogous case where an officer had used force but had not been discharged. The arbitrator determined that the cases were not similar because, unlike the grievant, the other officer had not acted maliciously. Since, "in order for there to be disparate treatment, the situations must involve similar circumstances," the arbitrator determined that the grievant was not prejudiced by the procedural defects in the Use of Force Committee's investigation. Consequently, the arbitrator refused to disturb the discharge. He offered two reasons. First, "in many...[arbitration] cases compliance with the spirit of such procedural requirements was held to suffice where the employee had not been adversely affected by failure of management to accomplish total compliance with the requirements." Second, there is precedent for refusing to disturb a discharge where the procedural requirements were not complied with even in spirit, but where the grievant was clearly guilty of a serious offense and had not been prejudiced. The arguments that rules 37 and 22 are overbroad, and that the grievant had no notice that the penalty would be removal, were found to "have no merit" since the grievant's action were "nothing less than outrageous" and "he should have known that they would result in an extremely serious penalty." Since the arbitrator is not engaged in determining that the grievant has any criminal guilt, it is not necessary for the state to prove its claims beyond a reasonable doubt. The state has proved the violations of rules 37 and 22 in this case by clear and convincing evidence. Six years of satisfactory service is not a sufficient mitigating factor to outweigh the excessive use of force and physical abuse incurred and the grievant's failure to disclose the truth to the Use of Force Committee. Furthermore, Section 24.01 of the contract prohibits the arbitrator from modifying the termination of an employee who abuses a person in the care of the state.

181) Michael Wheeler 27-00-(88-01-28)-0029-01-03 and 27-20-(88-01-28)-0031-01-03 (Both were 10 day suspension grievances)

Arbitrator: David M. Pincus

Charges: Call-in; Absenteeism; Physician's statement; Dishonesty

Other Issues: Fraud; Notice of Issues to be raised at arbitration; Perjury; Progressive discipline; Commensurate with the offense; Notice of disciplinary rules and the consequences of violations; Evidence; tardiness; Stacking charges

Employment Situation: Department of Rehabilitation and Correction; Ohio State Reformatory; Correction Officer 2

Result: Falsification of a physician's statement is sufficiently serious to support a 10 day suspension. The integrity of the illness verification system is an important interest of the other employees who are legitimately absent for medical reasons.

182) Patrick Grossenbaugh 31-05-(88-03-14)-0018-01-03 (10 day suspension)

Arbitrator: Rhonda Rivera

Charges: Abusive language; Horseplay; Fighting; ORC 124:34; Action that could harm an employee or member of the public

Other Issues: Stacking charges; Mitigation; Long service; Profanity; Progressive discipline; Commensurate with offense

Employment Situation: Department of Transportation; Equipment Operator 2

Result: Grievance partially sustained. 10-day suspension reduced to 3-day suspension.

Reason: Employee had 11 years of service with no prior discipline. Fighting is differentiated from horseplay by an intent to injure. The employer did not prove the employee had intent to injure. The employer unfairly stacked charges when it charged employee with "catch-all" violations that covered the employees alleged misconduct. A 10-day suspension for horseplay and abusive language is neither commensurate with the offense nor progressive. Some discipline is needed to underscore the seriousness of these offenses which can lead to serious injuries when committed in an ODOT garage.

183) John Rucker G-87-2701 (Removal)

Arbitrator: Jonathan Dworkin

Charges: Dishonesty; Alerting medical statement on occupational injury pay application form

Contract Sections: 24.01

Other Issues: Standard of proof; Circumstantial evidence; Just cause

Employment Situation: Department of Mental Health; Fallsview Psychiatric Hospital Aide

Result: Grievance sustained. Reinstatement but no back pay since grievant could not have returned to work yet due to his medical condition.

Reason: The state failed to meet its burden of proof. The arbitrator suspects the grievant is guilty but must be convinced in order to find just cause. The employer only offered circumstantial evidence where that evidence could have been supported by direct evidence.

184) Gary Redding 31-08-(89-08-07)-0067-01-06 (Removal)

Arbitrator: David M. Pincus

Charges: Accident (traffic); Failure to report traffic accident

Other Issues: Commensurate with the offense; Progressive discipline; Notice of disciplinary rules and possible consequences of violations; Mitigation; Credibility; Just cause; Employer Assistance Program

Employment Situation: Department of Transportation; District 8; Delivery Worker 1

Result: Grievance denied.

Reason: The employer proved each of the three accidents in three months were preventable. The grievant's failure to report one of the accidents harmed his credibility. While the intersection where one of the accidents occurred was hazardous, the grievant frequented the intersection and thus should have known to use more caution. While illegally parked cars were involved in another accident, the grievant could have waited for them to be moved rather than attempting to back between them.

185) Rodney Valentine 27-23-(88-08-01)-0043-01-03 (Removal)

Arbitrator: David M. Pincus

Charges: Coercion and intimidation of inmate

Other Issues: Credibility; Just cause; Progressive discipline; Aggravating circumstances; Employee Assistance Program

Employment Situation: Department of Rehabilitation and Correction; Ross Correctional Institution; Correction Officer 2

Result: Grievance partially sustained. Conditionally reinstated with last chance agreement requiring participation in Employee Assistance Program

Reason: The employer proved the charges. Counseling is not a substitute within the progressive discipline process for formal disciplinary actions. Counseling does not put the employee on notice that the employer will discipline his behavior.

186) Cynthia Lewis 02-03-(88-09-22)-0051-01-09 (Removal)

Arbitrator: Harry Graham

Charges: Absenteeism

Contract Sections: 24.08

Other Issues: Progressive discipline; Notice of disciplinary rules and the consequences of violations; Employee Assistance Program; Resignation; Psychological stress; Commensurate with the offense

Employment Situation: Department of Administrative Services; Office of Deputy Director, Public Works Division; Secretary

Result: Grievance partially sustained

Reason: A doctor testified that the grievant was in a frantic state of mind in which she could not have been expected to carry out the duties of the job and in which she probably did not understand or remember the requirements for seeking leave. This state of mind was brought on by being subject to an alcoholic and physically abusive spouse. These factors mitigate against removal.

187) Michael Lepp G-87-2931 (Arbitrability)

Arbitrator: Frank A. Keenan

Issue: Arbitrability where OCB claimed it had not been received the demand for arbitration.

Contract Sections: 25.01; 25.02

Other Issues: Notice by mail; Appeal to arbitration; Timeliness of appeal to arbitration; Burden of proof; Standard of proof; Credibility; Routine procedures; Moral turpitude; Perjury; Fraud

Employment Situation: Hazardous Waste Facilities Board

Result: Grievance is arbitrable

Reason: The arbitral and legal consensus allows that proof of mailing will suffice to establish notice. Proof of actual receipt is not necessary. The union proved that the mailing occurred by testifying that its normal procedures were followed. The arbitrator said, "Common experience teaches that we are creatures of habit and adhere to established routines, especially ones as long established and mechanistic as the routines involved here." To the state's objection that the witness' testimony was self-serving, the arbitrator said that the circumstances require reliance on the oath taken and his judgment of the demeanor of the witnesses.

188) Eugene Wregzynski G-87-1905 (Arbitrability)

Arbitrator: Hyman Cohen

Issue: Timeliness of filing grievance

Contract Section: 25.01

Other Issues: Burden of proof; Timeliness of filing of grievance; Removal; Back pay

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Broadview Developmental Center; Carpenter 1

Result: Grievance is arbitrable

Reason: While the grievant received the state's notice of termination on May 29, he worked on June 1. The arbitrator concluded the actual termination date was June 1. The envelope the grievance was received in had two different stamps indicating different

dates that the grievance had been received. Since timeliness was an affirmative defense by the state, the state had the burden of proving that the grievance was not timely filed. The state did not prove that the earlier stamped receipt date was not the actual receipt date. Since the earlier date was within the contractual time limit if June 1 was the termination date, the state failed to prove the grievance was not timely filed.

189) Michael Flinn 23-18-(4-19-88)-0064-01-04 (6 day suspension)

Arbitrator: Rhonda Rivera

Charges: Absenteeism; Failure to turn in leave request form; Failure to call in

Other Issues: Notice of disciplinary rules and the possible consequences of violations; Progressive discipline; Just cause; Disparate treatment

Employment Situation: Department of Mental Health; Western Reserve Psychiatric Habilitation Center; Therapeutic Program Worker

Result: Grievance sustained. Suspension expunged. Grievant must be made whole. Return of his seniority, sick leave, vacation, personal leave.

Reason: Supervisor admitted he discounted the employee's past 14 months of service without any discipline because he would have disciplined the employee when the previous supervisor had not. The arbitrator found this to be unfair since it amounts to "ex post facto" discipline. In addition there was prima facie evidence of disparate treatment which was not refuted by the employer. The disparate treatment claim was supported by an independent study by OCRC which found evidence of "inconsistency and arbitrariness" with regard to discipline for "attendance infractions" in the institution.

190) Ernest Parks 17-00-(88-10-27)-0147-01-09 (Removal)

Arbitrator: Nicholas Duda, Jr.

Charges: Neglect of duty; Failure of good behavior; Inefficiency; Dishonesty; Ethics code violation; Processing one's own claim for employee benefits

Contract Section: 24.01

Other Issues: Just cause; Disciplinary guidelines; commensurate with the offense; Progressive discipline; Long Service

Employment Situation: Industrial Commission; Employee Benefits; Claims Examiner 2

Result: Grievance sustained. Reinstatement when and if employee meets medical requirements for work. Seniority restored. Back pay less disability retirement pay received. Benefits.

Reasons: There was no clear rule against processing one's own claim at the time of the incident. Progressive discipline not followed. Removal of employee with 28 years of

good service with no prior discipline is unreasonable. Other charges were either not proved or stale. The penalty was much more severe than penalty prescribed by the guidelines. A supervisor guilty of the same violation had received only a written reprimand. The grievant did not receive any benefits to which he was not entitled.

191) Todd Lewis Revis 24-15-(88-09-14)-0019-01-04 (Removal)

Arbitrator: Calvin W. Sharp

Charges: Failure to call in; Absenteeism

Contract Section: Article 27; 29.02

Other Issues: Automobile break down; Tardiness; Call-in; Personal leave; Progressive discipline; Just cause; Double jeopardy

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Youngstown Developmental Center; Hospital Aide

Result: Grievance sustained. Reinstatement. Back pay reduced by interim earnings. Benefits.

Reason: Grievant called in as soon as he could foresee he would be late. The 90-minute call-in requirement does not apply in such a situation. The grievant was not using his leave taken for medical treatment for vacation as the employer accused him of doing. He was in fact obtaining the treatment. The employee's poor past attendance record alone cannot be used as a basis for removal until the employee commits a new offense.

191A) Todd Lewis Revis 24-15-(88-09-14)-0019-01-04 (Back Pay)

Arbitrator: Calvin William Sharpe

Issues: Back pay; Mitigation of damages; Whether retained jurisdiction extends to grievant's issue of grievant's removal after reinstatement

Contract Section: 25.03

Other Issue: Retained jurisdiction; Arbitrator's authority; Equity; Back pay; Past practice; Burden proof

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Youngstown Developmental Center; Hospital Aide

Result: (1) Where the arbitrator reserved jurisdiction for the limited purpose of resolving disputes about back pay, the arbitrator retained jurisdiction does not include the issue of the grievant's post-award removal. (2) The back pay award includes both straight time and premium holiday pay. (3) The grievant did attempt to mitigate damages and thus gets full back pay less the \$411 he earned during the interim.

Reason: (1) While the arbitrator can decide the issue of jurisdiction, he does so through interpretation of the contract rather than arbitrary choice. Here, the arbitrator was within

his authority to retain jurisdiction. (2) The arbitrator ordered that the grievant be made whole. The contract provides for premium holiday pay since it is not overly speculative that the grievant would have received such pay. (3) The grievant entered his own business which failed to be profitable. The duty to mitigate damages requires only good faith effort, not success.

192) Jeffrey Moore 23-11-(88-03-04)-0003-01-04 (Removal)

Arbitrator: Frank A. Keenan

Charges: Abuse

Contract Section: 24.04; 25.08

Other Issues: Multiple charges; Commensurate with the offense; Standard of proof; Effect of procedural violations; Notice of charges and possible disciplines; Time limits; Disciplinary guidelines; Provision of documents; Predisciplinary hearing; Credibility; Modification of discipline; Negligent performance of duty

Employment Situation: Department of Mental Health; Millcreek Psychiatric Center for children; Therapeutic Program Worker

Result: Grievance partially sustained. Reduction to 45-day suspension. Reinstatement. Seniority. Benefits. Back pay

Reason: Abuse did not occur but grievant's conduct was not without fault. Recidivism in due process failures by the agency.

193) Gary Snyder 31-12-(88-09-26)-0041-01-06 (Removal)

Arbitrator: Frank A. Keenan

Charges: Theft

Other Issues: Progressive discipline; Notice of disciplinary rules and the consequences of violations; Disparate treatment; Criminal convictions

Employment Situation: Department of Transportation; Painsville Garage; Mechanic 2

Result: Grievance partially sustained. Reinstatement. Seniority. No back pay.

Reason: Disparate treatment occurred. That two employees were guilty of same offense, but one was criminally convicted, does not justify variations in discipline between the two. Not having initiated a theft that one participated in is only a slight mitigating factor. This factor is not sufficient to justify a great difference in penalties such as occurred here. The grievant was discharged for theft, but another employee who had participated in a theft without initiating it was given no discipline at all.

194) Raymond Schwab (Demotion)

Arbitrator: Rhonda Rivera

Issue: Demotion

Contract Section: Article 17

Employment Situation: Department of Transportation; Project Engineer 3 demoted to Design Engineer 2

Result: Settlement with force of a precedent where an employee has been demoted from one position control number into a newly created position bearing a different position control number.

195) Robert Mayhew 35-03-(88-10-21)-0083-01-03 (Removal)

Arbitrator: Rhonda Rivera

Charges: Drinking on Duty; Possession of Alcohol

Other Issues: Lay off; Prior discipline

Employment Situation: Department of Youth Services; Cuyahoga Hills Boys School; Maintenance Repair Worker 2

Result: Grievance sustained. Reinstatement. Back pay. Seniority. Benefits.

Reason: The arbitrator ruled that the employer did not prove the charge by clear and convincing evidence since no one had observed the grievant in possession of alcohol, the employer had no objective proof of intoxication, and no one promptly reported their suspicions to management so that no prompt investigation was carried out. While the grievant was observed drinking yellow liquid, the grievant testified that it was ginger ale. The testimony that the grievant had slow speech was countered by the arbitrator's observation at the hearing that the grievant has normally slow speech. Objective, clear convincing evidence of intoxication requires either a blood test or a behavioral test by a medical expert or other expert trained in alcoholism. While one of the witnesses that observed the grievant and testified that he appeared intoxicated had all of the credits necessary for a drug/alcohol certification, but was not certified and never worked in the field, the arbitrator ruled that this was not sufficient to qualify the witness as an expert.

196) Gregory R. Peters 31-08-(07-22-88)-01-07 (Removal)

Arbitrator: Rhonda Rivera

Charges: Traffic Accident; Drinking on Duty; Possession of Alcohol; Neglect of Duty; Insubordination

Other Issues: Standard of proof; Stacking of charges; Disparate treatment; Commensurate with the offense; Arbitrator's authority

Employment Situation: Department of Transportation; Clermont County Garage; Highway Worker 2

Result: Grievance denied.

Reason: Each of the major charges were proved. The employer satisfied the burden of proving intoxication. The arbitrator held it against the grievant that he had continually denied responsibility for the accident and denied the effect of alcohol. The arbitrator's duty is to let the employer's judgment stand if it is reasonable. The arbitrator determined that while she might have suspended rather than removed the grievant, removal was not unreasonable.

197) Freda Cunningham 27-05-(88-10-04)-0018-01-03 (Removal)

Arbitrator: David M. Pincus

Charges: Absenteeism; Dishonesty

Other Issues: Notice of disciplinary rules and possible consequences of violations; Failure to produce important evidence; Effect of procedural errors; Pre-disciplinary conference; Fairness if investigation; Disparate treatment; Incompetence; Progressive discipline

Employment Situation: Department of Rehabilitation and Correction; Correction Reception Center; Correction Officer 2

Result: Grievance partially sustained. Reduction to 6-month suspension. Back pay.

Reason: The patterns as to what the grievant revealed and did not reveal in her employment application indicate that the incomplete responses were intentional. On the other hand, the employer did not provide a full and fair investigation when it refused to grant a continuance at the pre-disciplinary conference while the employee was on disability leave. This failure deprived the grievant of her opportunity to respond to the charges. Disparate treatment also occurred since another employee guilty of the same offense had received no discipline at all. The employer's attempt to distinguish the cases on the basis of the other employee's superior performance, training and experience was rejected. Superior performance was rejected because sufficient records of the grievant's performance had not been maintained. Training and experience are not appropriate bases for imposing different disciplines for the same offense.

198) Denise Stewart 03-00-(88-09-28)-0013-01-03 (Removal)

Arbitrator: Hyman Cohen

Charges: Absenteeism

Other Issues: Physician's statement; Notice by mail; Progressive discipline; Notice of disciplinary rules and the consequences of violations; Insubordination

Employment Situation: Department of Aging; Account Clerk 3

Result: Grievance partially sustained. Reinstatement without back pay.

Reason: Discharge of an employee for chronic, excessive absenteeism is justified even when the employer's absences are due to illness. However, in this case the state did not apply progressive discipline.

199) Gerald Evans G-87-0285 (Call-back Pay)

Arbitrator: David M. Pincus

Issue: Call-back pay

Contract Sections: 13.08

Other Issues: Interpretation of the contract; Past practice; State law

Employment Situation: Department of Transportation; Highway Worker 1

Result: Grievance sustained. The employer must pay 4 hours call back pay to the grievant for coming to work 1 hour prior to his shift.

Reason: The language is unambiguous. The contract supercedes state law to the contrary.

200) Jerry Niswander 27-20-(88-08-02)-0152-01-06 (5 day suspension)

Arbitrator: Jerry A. Fullmer

Charges: Profanity

Other Issues: Credibility; Disparate treatment

Employment Situation: Department of Rehabilitation and Correction; Ohio State Reformatory; Electrician

Result: Grievance partially sustained. 5-day suspension reduced to 1-day suspension. Back pay and roll call pay.

Reason: The employer's witnesses were more credible than the grievant since the grievant's memory did not seem to be clear and since the grievant could not remember who said what at earlier meetings in the grievance process. However, since another employee with a similar disciplinary record was given a written reprimand for a similar offense, the arbitrator concluded that the employer was guilty of disparate treatment.

201) Walden Saunders 31-13-(88-08)-0045-01-06 (10 day suspension)

Arbitrator: Harry Graham

Charges: Tardiness

Other Issues: Credibility; Tardiness; Disciplinary regulations and guidelines; Modification of discipline; Arbitrator's authority

Employment Situation: Department of Transportation; Central Garage Facility in Columbus; Automobile Body Repair Worker 2

Result: Grievance denied

Reason: Running out of gas is not an excuse for tardiness since the employee is responsible for insuring that his tank is kept full. While the penalty appears inconsistent with the disciplinary grid, the grid is only a “guideline,” and thus the employer retains some flexibility. The arbitrator should refrain from modifying the discipline where discipline is warranted if the discipline is progressive and warranted by the circumstances.

202) Roscoe Townsend 31-02-(9-29-88)-0056-01-06 and 31-02-(10-18-88)-0084-01-06 (10 day suspension and Removal)

Arbitrator: Linda DiLeone Klein

Charges: Insubordination; Sleeping on duty; Carelessness; Abusive language toward supervisor

Other Issues: Credibility; Corrective discipline

Employment Situation: Department of Transportation; Craig Bridge; Bridge Lock Tender

Result: Suspension grievance denied

Reason: Regulations required that all obstructions be cleared before operation of the gate and that the full operation of the gate be observed. If grievant had done so, the gate would have not struck the truck. If the employee was not sleeping on duty but resting his eyes because his medication made him drowsy, he would still be subject to discipline for failing to inform his supervisor that he was not physically fit to perform his duties. Failure to perform his duties correctly can cause serious injury and property damage.

Result: Removal grievance partially sustained. Reinstatement with benefits and seniority but without back pay.

Reason: Discharge is too harsh for abusive language toward supervisor, especially since grievant had reason to suspect discriminatory treatment. Employer failed to use corrective discipline.

203) James Stulley 27-25-(89-02-10)-05-01-03 (10 day suspension)

Arbitrator: Harry Graham

Charges: Failure to come to the aid of another officer

Other Issues: Timeliness of grievance filing; Timeliness in general; Effect of procedural defects; Arbitrator’s authority; Employer’s discretion; Credibility; Modification of discipline

Employment Situation: Department of Rehabilitation and Correction: Lucasville Correctional Facility; Correction Officer

Result: Grievance denied

Reason: The arbitrator deferred to the judgment of trained and experienced prison personnel to determine the question of whether the grievant should have come to aid of his fellow officers. The penalty for the offense need only be reasonable once the offense has been found to have occurred. That the arbitrator or the man in the street would have levied a different penalty is not a justification for modifying the discipline. Even though the penalty is unusually harsh, there is no reason to alter the action of the employer.

204) Morris Alexander (10 day suspension)

Arbitrator: Rhonda Rivera

Other Issues: 45-day time limit

Employment Situation: Department of Transportation; District 8; Repair Worker 2

Result: Grievance sustained

Reason: the discipline was not rendered within the contractually mandated 45 days. Given the long delay between the event and the hearing, a witness had died and other witnesses' memories had become vague. Consequently, the state proved unable to meet its contractually required burden of showing "just cause."

205) Wilbert Johnson 31-11-(03-30-89)-0016-01-06 (Removal)

Arbitrator: Rhonda Rivera

Charges: Entering ODOT property while on suspension in direct violation of the suspension order

Other Issues: Commensurate with the offense; Trespassing; Progressive discipline

Employment Situation: Department of Transportation; District 11; Equipment Operator 1

Result: Grievance denied

Reason: ODOT'S direct order that the grievant not enter ODOT property during his suspensions was reasonable where the suspensions were for fighting and for theft. Progressive discipline does not entail a requirement that an employee repeat the same violation before the penalty can be made more severe. The unreasonable consequence of such a requirement would be that an employee could not be severely disciplined after breaking many rules as long as the employee takes care never to violate the same rule twice. Even though removal would not normally be commensurate with such an offense, removal was commensurate with the offense in this case when the offense was viewed in light of the grievant's 2 previous offenses, both of which were sufficient for removal.

206) Richard Morris G-87-1493 (10 day suspension)

Arbitrator: Frank A. Keenan

Charges: Neglect of duty (minor); Insubordination; Theft; Leaving work area without permission of supervisor; Violation of ORC Section 124.34

Result: Stipulated award. Grievance is partially sustained. The 10-day suspension for minor neglect of duty. All other charges expunged. Grievant shall receive back pay. The suspension is to be expunged effective 4-24-89 and shall cease to have any effect. The award shall have no precedential effect and will not be cited in any similar dispute.

207) Brenda Dilley 27-21-(88-09-23)-0017-01-03 (Arbitrability; Probationary removal)

Arbitrator: Linda DiLeone Klein

Issue: Arbitrability; whether removal was probationary removal

Contract Sections: 24.05; 25.01

Other Issues: Probation; Sex Discrimination; Appointing authority

Employment Situation: Department of Rehabilitation and Correction; (Probationary employee)

Result: The removal was probationary removal and thus is not arbitrable except on the issue of sex discrimination.

Reason: While the ordinary process for probationary removal was not followed in its entirety, the reason for the irregularities was, in the arbitrator's opinion, that the grievant deliberately made herself unavailable to meet with management prior to ending of her probationary period.

208) Jamie Remy 27-23-(88-12-14)-0055-01-03 (Removal)

Arbitrator: David M. Pincus

Charges: Absenteeism; Pattern abuse

Other Issues: Last Chance Agreement; Physician's statement; Disparate treatment

Employment Situation: Department of Rehabilitation and Correction; Ross Correctional Institution; Correction Officer 2

Result: Grievance denied.

Reason: The arbitrator found that the grievant had violated her last chance agreement. The terms of such agreements are virtually impossible for arbitrators to modify. The grievant's physician's statement lacked the needed elements; statement of when the employee was seen, the diagnosis, and whether the employee was disabled. In addition,

the employee was guilty of a pattern abuse (a linkage between holidays and absences). Disparate treatment was not found since the grievant's case could be differentiated from the other cases on the grounds that the grievant was under a last chance agreement.

209) Jerry Harris 23-02-(88-01-27)-0007-01-06 (2 day suspension) 23-02-(88-05-04)-0035-01-06 (6 day suspension)

Arbitrator: David M. Pincus

Charges: Absenteeism; Tardiness; Neglect of duty

Other Issues: Progressive discipline; Admission of evidence; Disparate treatment; Verbal reprimand

Employment Situation: Department of Mental Health; Office of Support Services at the Centralized Ford Processing Facility (Dayton); Equipment Operator 1

Result: Grievance denied

Reason: Disparate treatment did not occur. The employer showed reasonable grounds for the different punishments imposed, such as differences in adherence to the call-in procedure, differences in prior discipline (the arbitrator stated that an oral non-documented verbal reprimand cannot be equated with an officially documented verbal reprimand), and differences in frequency of tardiness. The fact that no other employees received a suspension during a certain time does not establish a per se disparate claim.

Result: Grievance partially sustained. Back pay and modification of the employee's disciplinary record.

Reason: The 6 day suspension was not progressive given that the only previous discipline for the same offense was a verbal reprimand. The arbitrator resisted the employer's attempt to class other absenteeism-related offenses together with the tardiness offense by calling them all neglect of duty. Nevertheless the arbitrator only reduced the penalty to a 4 day suspension because of (1) the grievant's record of tardiness to which the employer had attempted to deal with patently through verbal warnings and counseling and (2) the grievant's repetition of dissimilar violations.

210) Pamela Neipling 24-09-(89-02-14)-0174-01-04 (6 day suspension)

Arbitrator: Harry Graham

Charges: Tardiness; Failure to call in

Contract Sections: 13.06; 24.05

Other Issues: Interpretation of the contract; Mitigation; Disciplinary guidelines; Discretion of the employer; Arbitrator's authority; Modification of discipline

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Mount Vernon Developmental Center; Therapeutic Program Worker

Result: Grievance sustained. Back pay and benefits. The whole incident must be expunged from the grievant's record.

Reason: The penalty was not commensurate with the offense. An increase from a 1-day suspension for failure to call in to a 6-day suspension under the circumstances was unreasonable. The employee awoke late through no fault of her own, after starting time, quickly got ready and went to work. Her behavior was not indicative of an employee acting in disregard of the employer's interests. The employer knew the grievant's son was ill and that the grievant had recently suffered from depression. 13.06 requires the employer to take mitigating and extenuating circumstances into account.

211) Michael Lepp G-87-2931 (10-day suspension)

Arbitrator: Frank A. Keenan

Charges: Insubordination

Contract Sections: 24.04

Other Issues: Arbitrator's authority; Management also at fault; Notice of charges; Modification of discipline

Employment Situation: Hazardous Waste Facilities Board; Administrative Law Judge/Hearing Examiner

Result: Grievance partially sustained. Reduction to 5-day suspension. Back pay. Benefits

Reason: Management was also at fault in that grievant would not have reacted improperly if the agency had not engaged in an improper ex parte communication with the grievant. The employer was guilty of a due process violation in that it sought to introduce additional charges against the grievant at arbitration. Nevertheless, the grievant was insubordinate and insubordination is a serious offense.

212) Kristen Hosier 31-07-(89-03-23)-0020-91-06 (Removal)

Arbitrator: John E. Drotning

Charges: Theft

Contract Section: 24.02

Other Issues: Timeliness of initial discipline

Employment Situation: Department of Transportation; District 7; Highway Worker 1

Result: The removal is reduced to a written reprimand. Back pay and benefits.

Reason: The grievant did not have the intent to steal as evidenced by her conduct at the scene and her character as indicated by witnesses and her demeanor at the hearing. She did, however, make an error in judgment in "borrowing" gas from the ODOT garage and

assuming she could make payment the next day when, in fact, there is no past practice of mechanism for making such payments.

213) Thomas W. Owen 11-09-(02-09-88)-0006-01-09 (Written reprimand, 3 day suspension, and 10 day suspension)

Arbitrator: Jonathan Dworkin

Charges: Absenteeism; Sick leave violation; Neglect of duty

Contract Sections: 24.01; 24.02

Other Issues: Absence of grievant from arbitration hearing; Scope of grievance; Notice of disciplinary rules and the possible consequences of violations; Theft; Notice of charges and possible forms of discipline; Abandonment of job; Progressive discipline; Sick leave; Just cause; Corrective discipline; Commensurate with the offense

Employment Situation: Bureau of Employment Services; Piqua Office; Veteran's Counselor

Result: Grievance partially sustained. The written reprimand and the ten-day suspension are set aside. Expunge record of those disciplines from employee's file. The 3-day suspension remains. Back pay and benefits.

Reason: Since the grievant was not informed of previous discipline before additional discipline was imposed, discipline was imposed as punishment rather than for correction, as the contract demands.

214) Melvin Ward G-87-2611 (6 day suspension)

Arbitrator: Harry Graham

Charges: Tardiness

Other Issues: Commensurate with the offense; Modification of discipline; Arbitrator's authority

Employment Situation: Department of Mental Health; Oakwood Forensic Center; Psychiatric Attendant

Result: Grievance denied.

Reason: Tardiness is not excused by road construction on the way to work. The other employees were not tardy. The grievant could have planned ahead and left earlier. While a 6 day suspension for 8 minutes tardiness would be excessive if taken by itself, it was not in this case because of the grievant's extensive history of tardiness.

215) Michael Garrett G-87-0733 (Arbitrability; Seniority; Continuous service; Longevity pay; Vacation accrual)

Arbitrator: Linda DiLeone Klein

Issues: Arbitrability; Seniority; Continuous service; Longevity pay; Vacation accrual

Contract Section: 16.02

Other Issues: Timeliness of grievance filing; Layoff

Employment Situation: OBES employees who had been laid off and reinstated prior to the date the contract became effective.

Result: Grievance is arbitrable. Grievance is sustained. The grievant's vacation accrual and longevity pay shall be adjusted to reflect the inclusion of the 11-month period of layoff.

Reason: While the grievance was filed 4 months after the basis for the grievance arose, it was nevertheless timely because it was initiated as soon as the grievants became aware that their seniority dates were incorrect. Section 16.02 defines seniority and continuous service. Service is continuous unless certain enumerated events have occurred. A layoff is not one of the events. Thus, the grievant's seniority and continuous service must include the period of the layoff and of the employment prior to the layoff. Contract language signifies that seniority can be adjusted retroactively for periods prior to the contract.

216) Rebecca Lillie 23-09-(89-06-23)-0123-01-04 (Removal)

Arbitrator: Harry Graham

Charges: Abuse of patient

Contract Section: 24.01

Other Issue: Neglect of patient; Modification of removal for abuse; Admission of evidence; Self-defense; Grand Jury

Employment Situation: Department of Mental Health; Fallsview Psychiatric Center; Licensed Practical Nurse

Result: Grievance sustained. Reinstatement. Back pay and benefits. Seniority. Expunge record of discipline from grievant's file.

Reason: Self-defense. Desperate situation. Training not adequate to justify any expectation that employee would act otherwise.

217) Darrin Miller 27-23-(89-01-27)-0006-01-03 (Removal)

Arbitrator: Hyman Cohen

Charges: Absenteeism; Call-in violation

Other Issues: Physician's statement; Searches

Employment Situation: Department of Rehabilitation and Correction; Ross Correctional Institution; Correction Officer 2

Result: Grievance denied.

Reason: The state proved the grievant had committed the violations alleged. In light of the grievant's poor disciplinary record, removal was justified.

218) Michael Lepp 12-00-(88-07-27)-0028-01-14 (Removal)

Arbitrator: Frank A. Keenan

Charges: Insubordination; Misuse of state property; Misuse of position for personal gain; Hindering other employees.

Other Issues: Removal; Admission of evidence; Timeliness in initiating discipline; Notice of rules and possible consequences of violations; Searches; Freedom of speech; Misuse of work time; Notice of Rules; Conflict of Interest

Employment Situation: Hazardous Waste Facilities Board; Administrative Law Judge/Hearing Officer

Result: Grievance partially sustained. Reduction to 60-calendar day suspension. Back pay. Benefits. Seniority

Reason: Discharge for misuse of state property would be disparate treatment since others in office used computers for non-work related tasks without being punished.

The arbitrator found that the state had not based removal on that violation. Grievant cannot be punished for the content of the letters since that would be punishing him for exercising First Amendment Freedom of Speech rights. But grievant did create an apparent conflict of interest and suspension is an appropriate discipline.

219) Tim Holbrook 04-00-(88-08-29)-0032-01-06 (Removal)

Arbitrator: Harry Graham

Charges: Absenteeism

Other Issues: Progressive discipline; Theft; Physician's statement; Mitigation; Investigation by a bargaining unit member

Employment Situation: Department of Agriculture; Grain Warehouse Examiner

Result: Grievance denied

Reason: The photographs of the grievant lifting 50 lb. bags of seed overcame the physician's statement excusing the grievant from work for back problems. Duties to the family farm do not justify the taking of leave without pay to operate the family farm. To overturn a discipline just because a bargaining unit member had investigated the violation would place an improper restriction upon the state in its efforts to police its internal affairs.

220) Wiley King G-87-2810 (Removal)

Arbitrator: David M. Pincus

Charges: Absenteeism; Insubordination

Contract Sections: Unsafe working conditions; Effect of procedural defect; Removal order defective; State law; Notice of charges and possible disciplines

Employment Situation: Department of Youth Services; Cuyahoga Hills Boys School; Maintenance Repair Worker 3

Result: Grievance partially sustained. Reinstated without back pay. Seniority.

Reason: Under most circumstances, an employee is insubordinate if he refuses an order. The rule is “obey now, grieve later.” There is an exception where a reasonable person would believe that by carrying out the work assignment, he/she would endanger his/her health or safety. That the grievant did not refuse to work earlier, that the Division of Occupational Safety and Health did not close the plant down, that tests did not reveal that the asbestos exceeded recommended standards, that the grievant’s physician was unable to substantiate that the grievant’s health problems were caused by the working conditions, and that the grievant rejected an offer that would have lowered his contact with the asbestos, were all bases on which the arbitrator concluded that a reasonable person would not have refused to work. Thus, except for procedural defects, the grievant would have been removed. Defects include using the Ohio Revised Code to usurp provisions negotiated in the contract, failure to give grievant timely notice of charges against him, and failure to notify grievant that his conduct could result in discharge, and failure to use progressive discipline.

221) Michael Wheeler 27-20-056-03-01 (Suspension)

Arbitrator: Rhonda Rivera

Charges: Tardiness; Call-in violation

Other Issues: Disparate Treatment

Employment Situation: Department of Rehabilitation and Correction; Ohio State Reformatory; Correction Officer 2

Result: Grievance denied

Reason: Seven minutes of tardiness is not de minimis where the employee has an extensive history of tardiness. Disciplines included 2 last chance suspensions. While a medical emergency is a mitigating circumstance, a planned appointment is not. Disparate treatment is not per se unjust since differences in treatment are just where there are differences in work record or mitigating circumstances. The union must prove purposeful discrimination by clear and convincing evidence.

222) Tony Accordino 31-04-(89-06-15)-0032-01-06 (Removal)

Arbitrator: Harry Graham

Charges: Insubordination; Spitting; Threats

Other Issues: Stacking charges

Employment Situation: Department of Transportation; District 4; Ravenna; Delivery Driver 1

Result: Grievance denied.

Reason: The grievant spat at his steward and at another state employee on another occasion. Employees do not have to accept being spit at by their co-workers and the state should not be expected to retain in its employ those who act in such a fashion. Where the grievant spat on his union steward just prior to his pre-disciplinary hearing for insubordination, it was not stacking charges for the state to include spitting charge with the other charge and remove the grievant.

223) James Warnock 29-23-(88-10-03)-0049-01-03 (10 day suspension)

Arbitrator: Hyman Cohen

Charges: Insubordination; Loss of control of instrument (gun and vehicle); Threat of security

Other Issues: Credibility; Escape of inmate; Correction officer; Failure to present key witness

Employment Situation: Department of Rehabilitation and Correction; Ross Correctional Institution; Correction Officer 2

Result: Grievance sustained

Reason: Employer failed to meet the standard of clear and convincing evidence. The gun the inmate used got into the prison because some of the institution's weapon detecting equipment was not functioning. Other officers and supervisors made similar judgments as the grievant did which indicates that his judgments were reasonable. The grievant was already a hostage before he realized that an escape was in progress. The arbitrator gave greater weight to the grievant's testimony than the state's main witness because the state failed to present a key witness who could have resolved some of the conflicts in testimony between the state's main witness and the grievant.

224) Elza Johnson 27-08-(06-14-89)-014-01-03 (Removal)

Arbitrator: Rhonda Rivera

Charges: Improper relationship with inmate

Other Issues: Failure to produce documents; Privacy of employees; Polygraph; Notice of disciplinary rules; Perjury; Commensurate with the offense; Subpoena power

Employment Situation: Department of Rehabilitation and Correction; Franklin County Pre-Release Center; Correction Officer

Result: Grievance denied.

Reason: Subpoena of the employee's telephone records is proper under ORC Section 5120.30. While it was not shown that the inmate had a sexual relationship with the inmate, he nevertheless did engage in an improper relationship as evidenced by his speaking with the inmate on the telephone on at least 6 occasions and by asking his union representative "if he would get into trouble by allowing the inmate to live in his home after release." The grievant knew that this behavior was wrong since the rules against fraternization with inmates are well known and are stated at length in the Rules of Conduct which the grievant admits he received. Furthermore he lied about the telephone calls at earlier steps in the grievance process and only admitted to them at arbitration when the evidence had become incontrovertible.

225) Jacqueline Cayson 35-05-(8708-89)-0067-01-03 (3, 5, and 7 day suspension)

Arbitrator: David M. Pincus

Charges: Neglect of duty; Insubordination (refusal to work mandatory overtime)

Other Issues: Overtime; Fairness of investigation; Mitigation; Disparate treatment; Long service; Employee Assistance Program; Mandatory overtime

Employment Situation: Department of Youth Services; Cuyahoga Hills Boys School; Youth Leader 3

Result: Grievance sustained. All disciplinary actions and related penalties to be removed from grievant's personnel file and record. Back pay.

Reason: While management has the right to require mandatory overtime and discipline employees to enforce the requirement, that right has certain limitations. In particular management must give full and good faith consideration to reasons advanced by an employee for refusing to accept the overtime assignment. In the present case, the grievant documented medical reason for not working overtime and management did not investigate to determine if the reasons were valid. An iron clad policy against refusal of overtime except for certain minimal specified exceptions is not reasonable since it automatically rejects an entire litany of plausible exemptions. Furthermore, while having such a policy, the institution did not apply it consistently. In addition, in determining the discipline, management did not consider mitigating circumstances such as good work record and the employee's use of EAP.

226) Leroy Williams 11-09-(12-20-88)-0064-01-09 (15 day suspension)

Arbitrator: Harry Graham

Charges: Absenteeism; Charging time and mileage for trips not made; Conflict of interest

Other Issues: Dishonesty; Employer's discretion; Modification of discipline

Employment Situation: Bureau of Employment Services; Toledo Office; Field Examiner

Result: Grievance denied

Reason: The grievant's back problem do not excuse his filing of inaccurate attendance, time and mileage reports. Completion of unemployment compensation contribution reports for one's own business when one is an OBES field Examiner skirts the edge of conflict of interest. The grievant had signed an agreement saying that he would cease such activities but did not. Arbitrators should be reluctant to modify penalties imposed by employers when it is determined that the actions that prompt discipline have actually occurred.

227) Randy Garrett 35-03-(08-02-88)-41-01-03 (Removal)

Arbitrator: Anna D. Smith

Charges: Sleeping on duty

Contract Section: 24.04

Other Issues: Mitigation; Fairness of investigation; Notice of charges and possible discipline; Notice of disciplinary rules and possible consequences of violation; Ex post facto discipline; Removal order defective; Timeliness of pre-disciplinary conference; Timeliness of carrying out discipline

Employment Situation: Department of Youth Services; Cuyahoga Hills Boys School; Youth Leader 2

Result: Grievance partially sustained. Discharge reduced to a 10-day suspension. Reinstated to former position. Full back pay less 10 days and with full benefits and seniority.

Reason: The grievant did sleep on duty. If he was unjustly refused paid leave of absence as he claims, he should have taken the unpaid leave that was offered and grieved the denial of paid leave. Sleeping on duty is a serious offense for a Youth Leader since it creates a dangerous situation. On the other hand, management did not specify that removal was a possible discipline for the offense. Furthermore, the grievant was removed under a rule that was not clearly in force at the time of the violation. The previous rule did not specify removal as the consequence of sleeping on duty. Furthermore, removal order was issued the day after the pre-disciplinary hearing which is strongly suggestive of prejudice. Fifty-one days lapsed before the pre-disciplinary conference was even held and the removal was not enforced until 3 months after the incident, which raises questions as to management's veracity in regarding the grievant to be a continuing threat to the institution's security.

228) Personal leave policy G-87-1687 (Personal leave and life/safety staffing minimums)

Arbitrator: Jonathan Dworkin

Charges: Person leave

Contract Sections: 25.03; Article 27

Other Issues: Equity; Interpretation; Arbitrator's authority; Strikes

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Gallipolis Developmental Center

Result: Grievance sustained. Gallipolis Developmental Center shall amend its personal leave policy so that it shall not imply that supervision has the discretion to deny timely personal leave applications whether or not granting them will jeopardize life/safety staffing requirements. The arbitrator retains jurisdiction to insure the implementation of the award.

Reason: The contract does not grant management the discretion to deny personal leave. The right to do so was given away at the bargaining table. An arbitrator cannot give back what the party gave away at the bargaining table. In addition, 25.03 prevents the arbitrator from adding to or subtracting from the agreement.

229) Kenneth Bills 27-17-(89-04-08)-0020-01-03 (15 day suspension)

Arbitrator: Hyman Cohen

Charges: Improper perimeter check

Other Issues: Credibility; Disparate treatment; Mitigation

Employment Situation: Department of Rehabilitation and Correction; Northeast Pre-Release Center; Correction Officer 2

Result: Grievance denied

Reason: Even most rudimentary perimeter fence check would have been sufficient for discovering the signs of the inmate's escape.

230) Rick R. Tishner, Sr. 31-08-(89-06-27)-0037-01-06 (Removal)

Arbitrator: Anna D. Smith

Charges: Theft; Neglect of duty; Insubordination; Leaving work without permission; Misuse of state vehicle

Contract Sections: 24.02; 24.04; 25.6; 25.08

Other Issues: Credibility; fairness of investigation; Timeliness of notice of pre-disciplinary conference; effect of procedural defect; Failure to provide witnesses

Employment Situation: Department of Transportation; Hamilton County Garage; Equipment Operator 1

Result: Grievance partially sustained. Reinstatement without benefits or seniority

Reason: Grievant was discharged for just cause but employer violated sections 25.06 and 25.08 by not providing union requested witnesses during the grievance process. Even though the employer's violations had little effect, to ignore them would be to remove the relevant sections from the contract. Note: the state has moved to have this decision vacated in court.

231) Melissa L. Morgan 27-12-(89-02)-0030-01-03 (Removal)

Arbitrator: David M. Pincus

Charges: Unauthorized relationship with an inmate, parolee, or ex-inmate

Other Issues: Security in Correction institutions

Employment Situation: Department of Rehabilitation and Correction; Lima Correctional Institution; Food Service Coordinator 1

Result: Grievance denied

Reason: The evidence supporting the existence of an unauthorized relationship was overwhelming. The grievant's failure to recant her version of the events and the considerable extent of the relationship were viewed as exacerbating contingencies.

232) Kenneth Whaley 27-24-(03-20-89)-18-01-03 (Removal)

Arbitrator: Jonathan Dworkin

Charges: Carelessness; Insubordination; Threat to security of institution, staff, or inmates

Contract Section: 24.02

Other Issues: Mitigation; Burden of proof; Disparate treatment

Employment Situation: Department of Rehabilitation and Correction; Southeastern Correctional Institution; Correction Officer

Result: Grievance denied

Reason: While the arbitrator rejected the insubordination and threat to security charges, the grievant's carelessness taken together with his poor employment record were regarded as sufficient to justify removal.

233) Darrell Badgley 31-08-(89-02-01)-12-01-06 (15 day suspension)

Arbitrator: Rhonda Rivera

Charges: Absenteeism

Contract Section: 24.06

Other Issues: Notice of issue to be raised at arbitration; Just cause

Employment Situation: Department of Transportation; District 8; Clermont County Garage; Highway Worker 2

Result: Grievance denied

Reason: While employer failed to notify union of prior discipline as required by 24.05, the union failed to raise the issue prior to arbitration. It would be unfair surprise to consider the issue at this stage. While the jump from a written reprimand to a 15 day suspension seems facially not to be progressive, there were aggravating circumstances. While the arbitrator may have given a lighter penalty, since the arbitrator could not say the discipline was improper under the standards of the contract, she deferred to the employer's judgment.

234) Margaret Hoar 24-09-(89-03-03)-0182-01-04 (20 day suspension)

Arbitrator: Rhonda Rivera

Issue: Whether arbitrator has authority to issue a summary judgment

Other Issue: Arbitrator authority; Summary judgment; Cross examination

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Mt. Vernon Developmental Center

Result: Grievance sustained. The arbitrator did have authority to issue a summary judgment.

Reason: While arbitrators generally do not have the authority to give summary judgment when the employer rests, the arbitrator does have such authority under our contract since the contract places the burden of proof upon the employer. Employer's right to cross-examine the grievant arises only where the grievant testifies. Since grievant did not testify, the employer's right to cross-examine the grievant does not prevent the arbitrator from issuing a summary judgment when the employer rests its case.

Note: The state moved to vacate this decision in court.

235) Marion Wharton 31-02-(89-04-03)-0018-01-06 (Removal)

Arbitrator: Anna D. Smith

Charges: Theft

Other Issues: ORC § 124.34; Standard of proof; Notice of rules and possible disciplinary consequences; Progressive discipline; Disparate impact; Confession

Employment Situation: Department of Transportation; District 2; Equipment Operator 1

Result: Grievance denied

Reason: Even though the grievant was afraid and the police officer had informed him of the possible consequences of his situation, the arbitrator found no evidence of promises, threats, or physical or mental coercion which might lower the credibility of the confession. Theft of the employer's property is so obviously wrong that no prior notification that discharge is a likely consequence is necessary. Theft of employer's property is one of those offenses for which discharge may be warranted on the first offense. The arbitrator rejected the disparate impact claim by distinguishing the case on the basis that the other offenders had not recanted their confessions.

236) Wesley Walker G-87-0984 and G-87-0719 (Suspension/removal/arbitrability)

Arbitrator: Rhonda Rivera

Charges: Absenteeism

Contract Section: 24.08

Other Issues: Progressive discipline; Commensurate with the offense; Employee Assistance Program; Arbitrability; Timeliness of arbitration hearing; Timeliness in general. Laches; Waiver

Employment Situation: Department of Mental Retardation and Developmental Disabilities

Result: Grievance is arbitrable. Grievance denied.

Reason: Both parties were at fault for the untimeliness of the request for arbitration. The employer's fault is taken account of by allowing the grievance to be arbitrated. The union's fault would have been taken account of by decreasing the award if the grievance had been granted. The grievance was denied because (1) the discipline was commensurate and progressive since it was not clearly unreasonable (given the grievant's many attendance violations in such a short period); and (2) the employee's involvement in a detoxification program occurred after his termination and was not part of the official EAP program even though the grievant testified he signed up with EAP, talked to a Social Program Specialist, and regarded himself as being in EAP.

237) Mark McCleese 31-08-(89-05-12)-0034-01-06 (10 day suspension)

Arbitrator: Rhonda Rivera

Charges: Insubordination; Gambling during work hours

Other Issues: Notice of disciplinary rules

Employment Situation: Department of Transportation; District 8; Clermont County Garage; Assistant Auto Mechanic

Result: Grievance sustained

Reason: Insubordination as delineated in 2(b) of A-301 requires a direct order that is disobeyed. Grievant obeyed the only direct order: "Get back to work." There is no rule

against gambling during work hours. The rule against card playing during work hours was not consistently enforced. The grievant was not on notice that lunch breaks during voluntary overtime were not his time to use as he wished.

238) John Clemons 33-00-(89-07-28)-0172-01-05 (Removal)

Arbitrator: Rhonda Rivera

Charges: Abuse of patient

Contract Section: 24.01

Other Issues: Credibility; Modification of removal for abuse; Arbitrator's authority

Employment Situation: Ohio Veterans Home: Custodial Worker

Result: Grievance denied

Reason: The arbitrator found that "abuse" under the agency's definition had occurred. The arbitrator noted that it is equivalent with "abuse" in 24.01 and that, therefore, she was not bound by constraint in 24.01 against modifying a removal for abuse of a patient. Nevertheless, the arbitrator did not modify the removal because of the employee's poor disciplinary record.

239) Carl Eichelberger 34-03-(12-06-88)-0071-01-09

Arbitrator: Rhonda Rivera

Charges: Entry onto state property while suspension

Employment Situation: Ohio Bureau of Workers Compensation

Result: Grievance denied. (Bench opinion)

Reason: The grievance is not arbitrable because it was filed in an untimely manner. The refusal of management to allow the grievant on the property during his suspension did not prejudice the grievant's ability to file the grievance in a timely manner.

240) Ted Williams 21-17-(89-04-03)-0018-01-03 (15 day suspension)

Arbitrator: Anna D. Smith

Charges: Failure to detect escape

Other Issues: Burden of proof; Effect of procedural violations

Employment Situation: Department of Rehabilitation and Correction: Northeast Pre-Release Center; Correction Officer 2

Result: Grievance sustained.

Reason: The fact that the grievant failed to detect signs of the escape that were present and found by a later search does not prove that the grievant failed to search the area or that he searched it negligently. The later search was conducted in daylight and with the

benefit of the knowledge that an escape had probably occurred. The grievant's search had occurred before the sun came up and without the knowledge of a probable escape. While the grievant has a responsibility to cooperate with the employer's investigation, and the grievant's responses were vague, the arbitrator held that the grievant's duty does not shift the burden of proof to the grievant.

241) Jerry Harris 23-02-(88-07-14)-0064-01-06 (Removal)

Arbitrator: David M. Pincus

Charges: Incompetence; Absenteeism; Neglect of duty; Tardiness

Contract Sections: 13.06; 24.04

Other Issues: Mitigation; Disparate treatment; Arbitrariness; Notice of charges and possible discipline; Progressive discipline

Employment Situation: Department of Mental Health; Office of Support Services at the Centralized Food Processing Facility (Dayton); Equipment Operator 1

Result: Grievance partially sustained. Reinstatement without back pay.

Reason: Employer failed to utilize progressive discipline by not disciplining the grievant until he had compiled several violations. This deprived the grievant of an opportunity to improve his conduct prior to removal. The employer failed to substantiate some of the charges against the grievant.

242) Mark Mayer G-89-0643 (Demotion of supervisor into the bargaining unit)

Arbitrator: Jonathan Dworkin

Issues: Seniority; Promotion

Contract Sections: Article 5; Article 17; 17.02

Other Issues: Position; Position control number; Promotion; Award; Demotion

Employment Situation: Department of Transportation; Burbank outpost; Highway Worker 4

Result: Grievance sustained. The most senior Highway Worker in category A of 17.05 shall receive the difference between his/her earnings and what he/she would have earned as a Highway Worker 4 during the period the bargaining unit position was filled by the demoted supervisor.

243) Jerry Stevens 35-03-(08-10-89)-0046-01-03 (Removal)

Arbitrator: Anna D. Smith

Charges: Sleeping on duty

Contract Section: 24.02

Other Issues: State law. Timeliness initiating discipline; Mitigation; Notice of disciplinary rules and possible consequences of violations

Employment Situation: Department of Youth Services; Cuyahoga Hills Boys School; Youth Leader 2

Result: Grievance denied

Reason: The grievant should have known that removal was a possible consequence of his conduct because his past disciplines had become increasingly severe. The employer's change of directives which increased the severity of discipline for sleeping on duty did not deprive the grievant of notice of possible discipline because the grievant had seen the directive and had not been disciplined after the initiation of the directive in a manner inconsistent with the directive. While the arbitrator sympathizes with the grievant's problems causing him to fall asleep on duty, the grievant chose to work rather than take leave and thus created a dangerous situation.

244) Melvin Ward 23-12-(89-09-25)-0146-01-03 (Removal)

Arbitrator: Rhonda Rivera

Charges: Tardiness; Physician's statement

Employment Situation: Department of Mental Health; Oakwood Forensic Center; Psychiatric Attendant

Result: Grievance denied

Reason: While one could argue that the actual time involved in this discipline was minimal and the failure to have a doctor's slip was minor and might succeed in another case, given the grievant's previous disciplines, the grievant was clearly on notice as to expected behavior with regard to absenteeism, tardiness, etc. In that position, the grievant should have gone to extra lengths to be on time, sign in and sign out properly, etc.

245) Melvin Ward 23-12-(89-06-01)-01-03 (6 day suspension)

Arbitrator: Rhonda Rivera

Charges: Tardiness

Employment Situation: Department of Mental Health; Oakwood Forensic Center; Psychiatric Attendant

Result: Grievance denied

Reason: The duty of the grievant was to get to work on time. If a car has a faulty battery, the grievant has a number of options: get a new battery, call a cab, call a friend,

or start walking in sufficient time. If the grievant was held up at the metal detector or by the basketball team, his responsibility was to adjust his time to allow for such problems. The arbitrator also determined that the grievant had given false testimony.

246) Maurice Winston 31-07-(06-16-89)-0027-01-06 (Removal)

Arbitrator: David M. Pincus

Charges: Profanity; Insubordination; Fighting

Contract Sections: 24.04; 24.05

Other Issues: Disparate treatment; Fairness of investigation; Admission of evidence; Disciplinary recommendation; Notice of charges and possible discipline

Employment Situation: Department of Transportation; Miami County Garage; Highway Worker 2

Result: Grievance denied

Reason: The grievant was the aggressor and the employer can choose only to punish only the aggressor without being guilty of disparate treatment. The defense of “provocation” requires that the provocation is foreseeable to provoke an ordinary reasonable person to a heat of rage and aggression. Here the other party had raised his voice but only so that he could be heard across the room. The grievant’s response was not foreseeable. Self-defense is limited to force reasonably necessary to defend oneself from aggression. Here the grievant was found to be the aggressor and, in any event, the force used would have been found to be excessive. The appointing authority has the authority to impose different penalties than those recommended as long as they are not arbitrary or capricious.

247) Todd Revis 24-15-(89-10-25)-0051-01-04 (Removal)

Arbitrator: John Drotning

Charges: Sleeping on duty

Other Issues: Credibility

Employment Situation: Department of Mental Retardation and Development Disabilities; Youngstown Developmental Center; Hospital Aide

Result: Grievance denied

Reason: The testimony of 2 witnesses stating that the grievant was sleeping outweighs the testimony of the grievant. To conclude otherwise is to decide that the grievant’s self-serving testimony is true and that of Rosati and McCarthy is false, even though there is no evidence to find that the latter two employees were out to get the grievant. The only reasonable conclusion is that the grievant was sleeping.

248) David Phillips 14-00-(89-08-31)-0057-01-09 (Removal)

Arbitrator: Linda DiLeone Klein

Charges: Job Abandonment; Absenteeism; Failure to call-in; Failure to provide physician's statement; Dishonesty; Misuse of agency billing system for personal reasons; Misuse of agency mail

Contract Section: Article 24

Other Issues: Just cause

Employment Situation: Department of Mental Health; Account Clerk 1

Result: Grievance denied

Reason: The grievant abandoned his job by not returning to work at the end of his approved disability leave, not calling-in, and not providing adequate medical documentation. When the grievant was asked to bring in medical documentation, he falsely claimed it was at home, but he never brought it in. Those offenses alone would be sufficient to warrant removal. However, the grievant also misused the agency billing system by ordering items for himself on the account, failing to pay promptly, claiming he did pay and would bring in the cancelled check to prove it, failing to admit his mistake when could not find the cancelled check, and still not paying until the pre-disciplinary meeting when forced to acknowledge he had not paid.

249) John Ruolo 31-12-(89-12-04)-0055-01-06 (Removal)

Arbitrator: Anna D. Smith

Charges: Absenteeism; Failure to call-in

Other Issues: Lax enforcement; Substance abuse

Employment Situation: Department of Transportation; District 12; Lake County; Painesville Yard; Auto Service Worker 1

Result: Grievance partially sustained. Removal reduced to a 10-day suspension. Reinstatement with continued employment conditioned on the grievant following the advice of his Employee Assistance Program Counselor.

Reason: The grievant had extensive absenteeism during the 4 months he had worked for ODOT. Nevertheless, he had not received any corrective discipline, but was removed at the end of the 4 months. The employer's lax enforcement condoned the grievant's repeated violations and led him to believe that nothing would happen to him when he did not report to work. Thus, the employer shares some of the fault for the grievant's conduct and, consequently, discharge is inappropriate. Nevertheless, the rule requiring employee attendance is reasonable and the grievant must be put on notice that continued violations could result in removal. Since the arbitrator believed that the underlying cause

of the absenteeism was substance abuse, she ordered that the grievant's reinstatement be contingent upon the grievant's following the advice of his EAP counselor.

250) Richard Pettit 23-08-(89-07-07)-0256-01-06 (Removal)

Arbitrator: Hyman Cohen

Charges: Dishonesty; Falsification of physician's statement

Other Issues: Intent; Timeliness of notice of charges; Disparate treatment; Settlement agreement

Employment Situation: Department of Mental Health Center; Delivery Worker

Result: Grievance denied

Reason: While dishonesty requires intent, the intent requirement is satisfied where the person performs that act and has knowledge with substantial certainty that deception would occur. Even though the grievant may have wanted to let management "know what was going on," he falsified the dates on the doctor's excuse and knew that the excuse would be taken as verification for a reason for his absence. Disparate treatment was not proved. Settlement agreements cannot be used to prove disparate treatment since the parties have many motives when settling a grievance and their use to prove disparate treatment would discourage their use. Also, the grievant's offense is more serious than the offense of working through one's break and leaving a proportionate amount early, but signing out as having left at the normal time. Hence the former may be penalized even when no penalty is imposed for the latter.

251) Mark Landacre 31-06-(89-04-13)-0006-01-06 (Removal)

Arbitrator: Hyman Cohen

Charges: Absenteeism

Contract Section: 24.08

Other Issues: Lax enforcement; Notice of disciplinary rules and the consequences of violations; Disciplinary Guidelines; Standard of proof; Reasonableness; Employee Assistance Program; Supervisory hostility; Incarceration

Employment Situation: Department of Transportation; District 6; Delaware County; Highway Worker 2

Result: Grievance partially sustained. Reinstatement without back pay.

Reason: The grievant's violation was serious. He knew ahead of time that he would be incarcerated, yet used up his available leave allowance. He also violated his duty to insure that he could report to work by engaging in activity for which he could be incarcerated. On the other hand, the evenhandedness of the supervisor who imposed the discharge was called into question by her history of hostility toward the grievant. In addition, there were mitigating factors: 5 years of service as a satisfactory employee and an eagerness displayed by the grievant to retain his job as evidenced by his calling in as soon as he was sentenced, having his grandmother call in for him every day during the

incarceration, and reporting to work directly after being released. While the department's guideline would impose removal for 3 days of unauthorized absence, the ultimate standard that must be used is not the guideline, but just cause.

252) Pam Jones 07-00-(89-12-27)-0059-01-09 (Removal)

Arbitrator: Rhonda Rivera

Charges: Absenteeism; Failure to call in

Other Issues: Fairness of investigation

Employment Situation: Department of Commerce: Administrative Secretary

Result: Grievance sustained. Reinstatement with back pay. Since the employer cannot find a position with a different supervisor, the arbitrator retains jurisdiction for 2 years to insure the grievant is treated fairly.

Reason: The employee was abducted. The supervisor simply chose not to believe the employee's account. The employer did not investigate. The employer's notion that investigation is solely the union's burden "flies in the face of labor management law." To find just cause, the employer cannot rely on the mere subjective feeling of supervisors. The grievant's failure to report in or call in are overcome by the mitigating circumstance that she was unable to do so because she had been abducted.

253) Larry Betz 23-12-(89-08-04)-0186-01-04 (Removal)

Arbitrator: Jonathan Dworkin

Charges: Patient Abuse

Contract Sections: 24.01; 25.03

Other Issues: Burden of proof; Credibility; Arbitrator's authority

Employment Situation: Department of Mental Health; Oakwood Forensic Center; Psychiatric Attendant Coordinator

Result: Grievance denied.

Reason: The standard of proof to be applied is that the evidence shows to a high degree of probability that the grievant committed the offense. The witness testifying against the grievant was very credible. She was certain and consistent in recounting what she had seen. There was no evidence to support a speculation that she had fabricated a story as part of a secret vendetta against the grievant. The arbitrator's task is not to give awards based on speculation without supporting evidence. Thus, the arbitrator concluded that the grievant had kicked the patient in the face, as the witness had testified, while the patient was being held down. The arbitrator did not determine a definition of abuse to apply in every case but applied a test which he took to be sufficient to establish abuse. An act is abuse if the act would be abuse if it were committed on a dog. He determined

that the grievant's act would be abuse if committed on a dog. Having found abuse, the arbitrator held that the sections 24.01 and 25.03 taken together deprive him of the authority to modify the removal based on the absence of just cause. The arbitrator noted that if just cause were the standard in this case, he would have found that just cause was absent since removal was summary, without consideration of mitigating factors.

254) Aparicio Curry 24-14-(89-08-04)-0186-01-04 (Removal)

Arbitrator: Anna D. Smith

Charges: Abuse of patient

Other Issues: Credibility; Court transcripts; Criminal convictions or acquittals; Admission of evidence; Physical restraint of patient; Notice of charges and possible discipline; Holiday pay; Overtime; Remedy

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Northeast Developmental Center; Hospital Aide

Result: Grievance partially sustained. Removal reduced to written reprimand. Grievant is to be reinstated with back pay and benefits including holiday pay.

Reason: The grievant used poor judgment but did not abuse the patient. Management and the grievant were both credible. Both gave self-serving testimony since both were interested in prevailing. That testimony is self-serving does not mean that it must be discredited, but that it must be viewed with closer scrutiny. The supervisor did not observe the incident from the beginning and could easily have misinterpreted what he saw. Thus, the employer did not satisfy its burden of proof.

255) Isaac G. Bland 35-03-(89-08-10)-0045-01-03 (Removal)

Arbitrator: Hyman Cohen

Charges: Sleeping on duty; Neglect of duty

Contract Section: 24.04

Other Issues: Disparate treatment; Management also at fault; Notice of charges and possible discipline; Youth Leader

Employment Situation: Department of Youth Services; Youth Leader

Result: Grievance partially sustained. Grievant was reinstated without pay.

Reason: The arbitrator found that the grievant was sleeping on duty. The employer failed to give notice before the pre-disciplinary conference of what the possible discipline would be. The violation was intentional because management was afraid it could not replace the grievant. That is no excuse for the employer's violation of the contractual requirement that the grievant be notified of the possible discipline. Section 24.04 was also violated by untimeliness in holding the pre-disciplinary meeting.

256) Brian Olson G-87-1552 (Working outside of classification, change in work rules)

Arbitrator: Linda DiLeone Klein

Issue: Working outside of classification; Change in work rule

Contract Section: 43.03

Employment Situation: Ohio Veterans Children's Home; Child Care Worker

Result: Grievance denied

Reason: When Child Care Workers were assigned the task of supervising recreation periods, the arbitrator determined that 43.03 had not been violated because the assignment was a "programmatic change" rather than a work rule change. In addition, the arbitrator concluded that Child Care Workers were not being required to work out of their classification. The arbitrator gave the following reasons for this classification. The arbitrator gave the following reasons for this conclusion: (1) exercising its rights under Article 5, management determined that it was necessary to have Child Care Workers (CCW's) present during recreational activity periods to monitor the children's conduct and insure the safety of those entrusted to their care. (2) No evidence was presented showing that CCW's had to plan or implement recreation programs, nor were they actively required to participate. CCW's were only instructed to supervise the conduct of the children and encourage the children to participate. Thus they did not assume the duties of the Recreation Aide. (3) The classification specification ranks the overseeing and monitoring of social and recreational activities as one of the most important functions of a CCW. (4) The arbitrator determined that supervision of recreation periods was also implicitly included in the position description which required supervision and guidance of children and performing other duties as required when directed by the immediate supervisor in regard to care and needs of children in the home. (5) Combining the recreation director's position with another supervisory position does not violate the contract. (6) The recreation aide position has not been absorbed by the CCW position since an interim recreation aide has been hired while one of the original aides was on the other position. (7) While the CCW's are not given as much opportunity to seek to build the children's character and self-esteem within the private environment of the cottage situation, they now have an opportunity to pursue the same goals in the recreational situation.

257) Virginia (Reed) Werling 27-21-(89-02-24)-0029-01-03 (Removal)

Arbitrator: David M. Pincus

Charges: Inmate fraternization; Failing to cooperate in an investigation

Contract Sections: 24.02; 24.04; 25.08

Other Issues: Admission of evidence; Timeliness of initiating discipline; Notice of disciplinary rules and the consequences of violations; Failure to provide documents; Disparate treatment; Dishonesty; Mitigation; Performance evaluations

Employment Situation: Department of Rehabilitation and Correction; Lima Correctional Institution

Result: Grievance denied.

Reason: The grievant admitted to the incidents sufficient to establish the violations. Protection of one's job is not a defense against failure to cooperate with an official investigation. The arbitrator did not believe the grievant that the statements in the notes she gave to grievant were meant to defuse his advances because, (1) they tended to nurture the relationship, (2) the topics were such that one would not discuss with mere acquaintances, and (3) the grievant had other alternatives such as to notify her superior of the grievant's advances. The arbitrator determined that the grievant had notice of the rules against inmate fraternization since (1) she smuggled notes out of the prison in her socks and (2) she initially lied to investigators by denying the relationship. She also engaged in improper dealings with an inmate when she gave the inmate pictures to draw a portrait. Disparate treatment was not proved when no evidence was presented to prove that other employees and managers who had received the same service from the inmate had not followed established craft procedures.

258) Rosalyn Majors Sherrod 15-01-(89-07-07)-0002-01-09 (Removal)

Arbitrator: David M. Pincus

Charges: Absenteeism (tardiness)

Other Issues: Commensurate with the offense; Tardiness; Medical problem; Discrimination; Harassment

Employment Situation: Department of Highway Safety; Traffic Crash Records Section; Statistician 1 – Fatal accident Reporting System Analyst

Result: Grievance denied

Reason: The removal was commensurate with the offense, even though the two incidents added up to only 3 minutes of unauthorized leave because these violations were only the last straws in a history of attendance problems and demonstrate that further efforts at corrective discipline would be futile. The grievant had been progressively disciplined, had signed a last chance agreement, had been properly forewarned that further violations would result in termination, and received a great deal of forbearance when given a 5 day suspension in lieu of discharge for the previous violation. The grievant did not supply a physician's Statement or consistent testimony to support her claim that a medical problem was the cause of her violations. There was no evidence of discrimination or harassment. The employer had simply adhered to its absenteeism policy.

259) Hugh Williams G-87-2070 (Contract Issue: providing work shoes)

Arbitrator: David M. Pincus

Issue: Provision of work shoes

Contract Section: 11.02

Other Issues: Interpretation of contract; Past practice

Employment Situation: Department of Transportation; District 6; New Albany Garage; Equipment Operator 1

Result: Grievance denied.

Reason: Employer did not require safety shoes, but prohibited tennis shoes and sandals. The department's regulation only recommends safety shoes or heavy work shoes. No one has been disciplined for the shoes they wore except when they wore tennis shoes or had also been guilty of insubordination because they had refused to change shoes after being ordered to do so. The employer's department's policies about shoes have been in place for several years. Failure to grieve earlier constituted acquiescence to the employer's interpretation of the contract. Finally, 33.01 and 33.02 reference specific requirements regarding the furnishing of uniforms and tools. If the union wanted the employer to supply shoes, it should have negotiated that benefit. For the arbitrator to impose such a requirement would have been adding to the contract in violation of 25.03, which prohibits the arbitrator from doing so.

260) Wendell Hill 35-16-(89-09-17)-0042-01-03 (Removal)

Arbitrator: Anna D. Smith

Charges: Abuse of youth entrusted to state care; Failure of good behavior; Failing to report the use of force

Contract Section: 24.04

Other Issues: Credibility; Standard of proof; Defective removal notice; Effects of procedural defect; Stat law; Right to representation

Employment Situation: Department of Youth Services; Training Center for Youth Service; Youth Leader 2

Result: Grievance denied

Reason: While the charge is so serious that any real doubt must be resolved in favor of the grievant, no such doubt was raised. While the group of youths who accused the grievant of the abuse had complained about his militancy there was no evidence that they had fabricated the story. If they fabricated the story, it is more likely that they would have come forward with the accusation rather than risk that the injury would not be detected by medical staff. A mistake in the removal notice of one day as to the date of

the incident was held to be insignificant. Reference to the Ohio Revised Code in the removal letter was held to be a violation of the contract since it was clear that the grievant was disciplined for violation of a reasonable, published work rule and just cause prevailed. The employer was found to have violated 24.04 by denying the grievant his right to union representation by issuing a notice on the site stating that the grievant would be disciplined if he did not complete a written statement. However, the arbitrator did not modify the grievant's discipline because there was no indication that the employer's violation was deliberate and no prejudice to the grievant resulted.

261) Eugene Locker 35-16-(89-10-10)-0045-01-03 (Removal)

Arbitrator: Hyman Cohen

Charges: Abuse of youth in the care of the state

Other Issues: Credibility; Admission of evidence; Grievant's testimony; State law; Removal order defective

Employment Situation: Department of Youth Services; Training Center for Youth; Youth Leader 2

Result: Grievance denied.

Reason: The arbitrator found the testimony of two youths under the care of DYS to be highly credible where the two had not seen each other for a year and had not been friends when at the facility because of the similarity of their descriptions of the events and the instrument used in the alleged abuse. The grievant implicitly acknowledged the abuse in a discussion with a supervisor. The arbitrator inferred from the grievant's failure to deny the abuse that the grievant had committed the abuse. Reference to the Ohio Revised Code in the removal order does not prejudice the grievant because the arbitrator is deciding the case based on just cause rather than the Code. The grievant had a previous suspension for abuse. That grievant had a caring attitude and a drill sergeant approach to cleanliness, manners, and hygiene, and without more, does not prove motive for the youths to lie about grievant's abuse.

262) Anthony Kent 35-08-(89-10-05)-0097-01 (Removal)

Arbitrator: Harry Graham

Charges: Abuse of youth in the care of the state

Other Issues: Precedent

Employment Situation: Department of Youth Services; Training Institution Central Ohio; Youth Leader

Result: Grievance sustained. The grievant is to receive reinstatement, back pay, lost benefits, and all record of the event is to be expunged from his record.

Reason: The youth had been messing with the grievant's food and responded with a burst of profanity including a racial slur when confronted. The youth was forming a fist and starting to throw a punch when the grievant struck first. A vigorous fight ensued. The youth appeared to want to fight. When the grievant struck first in the face of this extreme provocation, his act did not constitute evidence of abuse to warrant discharge, since the grievant had a bona fide fear for his safety. Cases offered by the state in favor of its argument had no weight since all of the cases involved grievants who had been removed for violations other than abuse.

263) Dorothy Bolton 24-09-(89-03-03)-0181-01-04 (13 day suspension)

Arbitrator: David M. Pincus

Charges: Fighting

Contract Sections: 24.04; 25.08

Other Issues: Credibility; Provision of documents; Admission of evidence

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Mount Vernon Developmental Center; Therapeutic Program Worker

Result: Grievance sustained.

Reason: The employer failed to prove just cause. The other combatant's testimony was not credible since it was riddled with inconsistency and was much more detailed at the arbitration hearing than it had been at earlier stages of the grievance process and in the investigation. Grievant's testimony was credible to the effect that she acted in self-defense after being attacked. The grievant engaged in conduct reasonably necessary to defend herself from aggression. Self-defense completely justifies the grievant's conduct.

264) Dirk Esmonde 23-12-(88-11-02)-0063-01-03 (6 day suspension)

Arbitrator: David M. Pincus

Charges: Tardiness

Contract Sections: Overtime

Employment Situation: Department Mental Health; Oakwood Forensic Center; Psychiatric Attendant

Result: Grievance denied

Reason: The employer's overtime policy stated that when one volunteered to work overtime, normal attendance rules would apply. An employee can be docked for not showing up for overtime and disciplined for not calling in. Section 13.07, which concerns overtime, does not preclude the application of other relevant disciplinary policies when an employee fails to fulfill an overtime obligation and engages in collateral

misconduct. If the parties had intended such a result, the language in 13.07 would have said so explicitly.

265) Robert Kreiling 27-20-(89-09-14)-0336-01-09 (Removal)

Arbitrator: John Drotning

Charges: Allowing inmates to steal food and make “hooch.”

Other Issues: Credibility of witnesses; Credibility of documents; Standard of proof

Employment Situation: Department of Rehabilitation and Correction; Ohio State Reformatory; Correctional Food Service Coordinator 1

Result: Grievance partially sustained. Reinstatement without back pay.

Reason: The employer’s case rested upon the testimony and written statements of 3 inmates. It is crucial that inmates’ testimony be supported, and in this case it was not. The written statement of one inmate was discredited because the inmate testified he had been forced to write the statement. The written statement of another inmate was discredited because the inmate refused to testify. The arbitrator gave some credence to the written statement of the third inmate, even though he too refused to testify, because he provided so much information that it was hard to believe he had been forced to write the statement. While the evidence was not sufficient to support the discharge, the arbitrator held that it was sufficient to rule against back pay.

266) Carl Eichelberger 34-03-(91-01-30)-0005-01-09 (Removal)

Arbitrator: Harry Graham

Charges: Fighting

Other Issues: Burden of proof; Credibility; Prior discipline

Employment Situation: Bureau of Workers’ Compensation

Result: Grievance partially sustained. Discharge was reduced to a 20-day suspension. Back pay minus interim earnings and unemployment compensation. The record of the discharge is to be expunged from the grievant’s personnel file.

Reason: The other employee was not disciplined because the grievant was alleged to be the aggressor. The only evidence that the grievant initiated physical aggression was the testimony of the other combatant. That testimony was discredited since (1) he had a motive to lie and (2) his testimony was determined to contain a lie about another matter. Because grievant did start the argument and did raise his voice, he did deserve some penalty, given the grievant’s prior disciplinary record.

267) Belinda Burnett 24-07-(89-08-25)-0206-01-04 (7 day suspension)

Arbitrator: Hyman Cohen

Charges: Abuse of resident; Neglect of resident; Failure of good behavior; Failure to give medication to resident; Knowingly making false statements

Other Issues: Credibility; Grievant's testimony; Intent; Dishonesty; Disparate treatment; Medication of patients; Post-violation change policy

Result: Grievance denied.

Reason: The State's witness was found to be more credible than grievant because the state's witness had nothing to gain but much was at stake for the grievant. There was nothing in the evidentiary record to indicate that the state's witness possessed any personal bias or hostility toward the grievant. While medication errors were common and no one had ever been disciplined for a medication error before, the arbitrator held that the grievant was not subject to disparate treatment because she was guilty of more than a medication error; the arbitrator held that she made several misrepresentations or attempts at misrepresentations concerning her failure to administer the medication. These misrepresentations concerning the medication of patients constitute a serious violation of her duties.

268) Catherine Hoover 27-08-(89-08-04)-0016-01-03 and 27-08-(89-08-04)-0018-01-03 (Removal)

Arbitrator: David M. Pincus

Charges: Falsification of employment application; Dishonesty at investigating hearing

Contract Section: 24.06

Other Issues: Notice of disciplinary rules and the possible consequences of violations; Special characteristics of correction institutions; Prior discipline; Credibility; Disparate treatment; Pretext for discipline; Performance evaluations; Timeliness of initiating discipline

Employment Situation: Department of Rehabilitation and Correction; Franklin Pre-release Center; Correction Officer 2

Result: Grievance denied.

Reason: The grievant willfully falsified the application for her present employment and her previous employment with the state. An omission of clearly requested information is a falsification. While the grievant had not yet received a copy of the rules when she filled out the application, she was put on notice that falsification could result in severe penalty including removal by the fact that she was required to sign an oath personally administered by a notary. While the person helping her with that application advised the grievant to focus on her good points, he did not advise her to omit information. An institution which houses felons requires a higher level of trust, honesty and confidence than is normally necessary in other work settings. In addition to falsification of her

employment application the grievant failed to cooperate with the investigation but instead answered with half-truths, omitting important facts. Disparate treatment was not established because no evidence was given as to whether the examples for comparison involved willfulness, prior patterns of falsification, or mitigating factors. One of the cases could be distinguished on the grounds that the employee had cooperated with the investigation and her falsification was not willful.

269) Sandra Davis G-87-2566 (Right to representation at performance evaluation appeals)

Arbitrator: Jonathan Dworkin

Issue: Whether there is a right of representation at performance evaluations appeals

Contract Section: 3.01; 22.03

Other Issues: Past practice; Bargaining history; right to representation

Employment Situation: Department of Health; Arbitrator authority; State law

Result: Grievance denied

Reason: Prior to the 1989 negotiations, the contract language was ambiguously silent on whether there is a right to representation at appeals of performance evaluations. In the 1989 negotiations the union sought to make the right explicit in the contract. When the union dropped the demand for explicit language, the union negotiator called it a “major movement,” demanding an equivalent movement from the employer. The arbitrator took this “major movement” to be an adoption of management’s view that there is no right to representation rather than a return to the status quo. Given that, the arbitrator found that the union had relinquished the right during negotiations in return for some quid pro quo concession from the state. He held that the union cannot retrieve in arbitration what it purposely gave up in negotiations.

270) Raymond Samuels, Jr. 35-03-(89-08-10)-0047-01-03 (Removal)

Arbitrator: David M. Pincus

Charges: Sleeping on duty

Contract Sections: Article 5; 24.02

Other Issues: Timeliness of initiating discipline; corrective discipline; Notice charges and possible discipline; Notice of disciplinary rules and the possible consequences of violations; Disparate treatment; Effect of procedural defects

Employment Situation: Department of Youth Services; Cuyahoga Hills Boys School; Youth Leader 2

Result: Grievance partially sustained. Reinstatement without back pay.

Reason: The grievant was sleeping on duty. He was wrapped in a blanket with eyes closed, did not respond to attempts to garner his attention and was startled when someone entered the room. But for the employer's procedural errors, the grievant's removal would be upheld. (1) The employer was untimely in initiating discipline. (2) The grievant was not issued a warning regarding an earlier incident in which he had been sleeping. That failure precluded the employee's opportunity to correct his conduct. (3) The various notices received by the grievant differed as to what the grievant was charged with. (4) The grievant never received clear notice of the directive that he was removed whereas the grievant under became effective. (5) A similarly situated employee was given several reprimands before being removed whereas the grievant was removed for the first offense. An employer must be penalized for failure to comply with the contract. On the other hand, the infractions engaged in by the grievant should not be disregarded.

271) Edward Jenkins, Jr. 27-24-(89-07-19)-0034-01-03 (Removal)

Arbitrator: Hyman Cohen

Charges: Absenteeism; Job abandonment; Physician's statement; Failure to call in.

Employment Situation: Department of Rehabilitation and Correction; Southeastern Correctional Institution; Correction Officer 2

Result: Grievance denied.

Reason: The grievant failed to call-in each of the days between May 6 and June 20 except for 2 days. He was specifically told he must call in each day on June 1. He also failed to provide a physician's statement as required. He finally produced a statement at the pre-disciplinary meeting, but the statement did not explain why the grievant could not return on June 12 which was the return date specified by the physician on his "statement of disability." The arbitrator ruled that the statement was too little, too late and did not excuse the grievant's blatant disregard of the employer's policies regarding calling-in and physician's statements. That grievant was granted disability leave benefits does not excuse the grievant's conduct either. That the grievant received a grant of leave without pay for part of the period also does not excuse his conduct.

272) Leslie Garner 35-02-(11-14-89)-12-01-03 (Removal)

Arbitrator: Patricia Thomas Bittel

Charges: Abuse of Youth in the care of the state

Other Issues: Removal notice defective; Progressive discipline; Notice of disciplinary rules and the consequences of violations; Credibility

Employment Situation: Department of Youth Services; Buckeye Youth Center; Youth Leader

Result: Grievance denied.

Reason: The grievant deliberately threw a crate in the direction of roughhousing youths in an attempt to get their attention. He was reckless and in disregard of his responsibility to protect them from physical danger. The grievant's claim that he had lost control of the crate was not credible because he had not made the claim at earlier stages of the investigation. When one of his charges was injured, the grievant did not call for help as he was trained to do. The arbitrator upheld the grievant's removal despite his high performance evaluations and honorable discharge from the military because the grievant had received two previous suspensions for abuse. Defects in the removal notice such as citing standards other than contractual standards were minimal and did not prejudice the grievant's position. The grievant was on notice that removal was a possible consequence of his conduct since (1) abuse is a serious offense and (2) the grievant already had two suspensions for abuse.

273) Lawrence Davis 27-07-(89-12-15)-0028-01-03 (Removal)

Arbitrator: Anna D. Smith

Charges: Job Abandonment

Employment Situation: Department of Rehabilitation and Correction; Dayton Correctional Institution; Correction Officer 2

Result: Grievance denied.

Reason: The arbitrator agreed with arbitrator Dworkin that when an employee abandons his/her job, management has no need to apply progressive discipline. When an employee cannot be found or does not respond to employer communications, it is nonsensical to require the employer to track down the employee so the employer can apply corrective discipline. The grievant took unauthorized leave continuously for four weeks without notifying his employer and therefore, effectively abandoned his job. While the grievant might be excused for not staying in contact while incarcerated, there is no excuse for his failure to do so upon release. The employer made several attempts to contact the grievant. While the employer did not exhaust every possible means of contacting the grievant, the arbitrator refused to hold that management was required to do so. While the grievant may not have made a conscious decision to quit, he still effectively abandoned his job.

274) Paul Holt 27-20-(08-30-88)-0173-01-03 and 27-20-(12-30-88)-0406-01-03 and 27-20-(02-02-89)-0043-01-03 (10 day suspension, 5 day suspension, Removal)

Arbitrator: Rhonda Rivera

Charges: Tardiness; Late call-in; Falsification of documents

Other Issues: Physician's statements; tardiness; Stacking of charges; Following orders; Dishonesty

Employment Situation: Department of Rehabilitation and Correction; Ohio State Reformatory; Correction Officer

Result: Grievances denied.

Reason: The arbitrator determined that a ten day suspension was fair and progressive since the grievant's last punishment for tardiness was a 3 day suspension and the "waiting period" had not passed. The employer's choice to put no credence in the grievant's physician's statements was not unjust. The first notice did not say that the grievant had been seen on the date in question. The second and third notes imply that the grievant was treated for an old injury rather than a new reinjury as the grievant had claimed. The grievant's excuses for tardiness, that he overslept and had car trouble were not given any weight by the arbitrator. The arbitrator found the grievant's excuse for submitting a false car repair slip to document his tardiness to be unbelievable. The employer did not stack charges by charging the grievant with both tardiness and submitting false documentation. While the two charges arose from the same incident, the falsification behavior was separate and distinct from the tardiness.

275) Ray Dailey (Snow emergency grievance) G-87-1380 (Emergency pay)

Arbitrator: Harry Graham

Issue: Emergency pay

Contract Section: 13.15

Employment Situation: Department of Transportation

Result: Grievance sustained. All employees who worked overtime on the day of the storm in ODOT District 5 are to be paid double time.

Reason: Section 13.15 of the agreement gives the authority to declare a snow emergency to the employer, but does not specify that the Director of Highway Safety is the sole and exclusive authority to issue declarations of emergency. The Deputy Director of ODOT of District 5 called the situation an emergency when asking employees to report to work and work overtime to the limits of their capabilities. It is reasonable for the employees to believe that he had proper authority to do so and they are entitled to rely upon his representations in such circumstances. The case is the same for those employees who had previously received a letter stating that they were to report to work when the Director of Highway Safety declared an emergency. Those employees are not to be expected to ask the Deputy Director if he is acting upon the authority of the Director of Highway Safety before reporting to work, but are entitled to rely upon his representations. When management makes a representation that an emergency exists they are estopped (not permitted) to later deny that there was no emergency.

276) Langston B. Jones 35-03-(89-08-21)-0052-01-03 (Removal)

Arbitrator: Patricia Thomas Bittel

Charges: Sleeping on duty; Neglect of duty

Contract Sections: 24.02; 24.04

Other Issues: Notice of disciplinary rules and the consequences of violations; Past practice; Notice of charges and possible discipline; Progressive discipline; Timeliness of initiating discipline

Employment Situation: Department of Youth Services; Cuyahoga Hills Boys School; Youth Leader 2

Result: Grievance partially sustained. Reduction of removal to 5-day suspension. Back pay (not including overtime) minus interim earnings or unemployment compensation. Restoration of lost seniority and benefits.

Reason: The grievant was held to have been sleeping on duty since he had failed to respond to waving arms of the superintendent. The arbitrator found that the grievant's claim that he knew the superintendent was present but made a conscious decision not to raise his head was not credible since it was rare that he was visited by the head of the institution. The grievant's discipline was reduced because of the many procedural errors. The rules under which the grievant was punished did not make clear that his conduct would result in removal. One (B-38) distinguished two categories of sleeping on duty, only one of which was subject to dismissal for the first offense. But the distinction between the two kinds was not clear. While the employer's interpretation of the distinction was reasonable, so was the union's. Past practice can be legitimately relied upon by either party until there is clear notice that the employer was about to discontinue its past practice of disciplining sleeping on duty with suspensions. The employer also failed to give notice of the possible discipline prior to the pre-disciplinary conference, did not follow the principles of progressive discipline, and was untimely in initiating discipline.

277) Edwin D. Bailey 31-04-(89-06-06)-0030-01-06 (10 day suspension)

Arbitrator: Rhonda Rivera

Charges: Abusive language toward a supervisor

Contract Section: 25.08

Other Issues: Profanity; Corrective discipline; Providing of documents

Employment Situation: Department of Transportation; Highway Worker IV

Result: Grievance partially sustained. Reduction to 5-day suspension.

Reason: The grievant's supervisor had orders which he passed on to the grievant. The grievant had planned the work for the day such that the new order was inconsistent with his plan. One party had to yield. Given the grievant's position in the hierarchy it was his duty to yield and to do so respectfully. He violated that duty by uttering some swear

words together with the statement “you are afraid of your job.” While shoptalk is common in highway maintenance work, even between crewmen and supervisors, and is usually harmless, language directed specifically at another human being, if said in anger and contempt, crosses the line into abuse. Abusive language directed at a subordinate or at a supervisor undermines the hierarchy and order giving. On the other hand, the arbitrator ruled that the 10-day suspension was excessive and punitive rather than corrective and progressive given the grievant’s 9-year record as a good employee. The arbitrator stated that the purpose of discipline is not to punish arbitrarily but to correct. In addition, the supervisor’s credibility was suspect because he lied about previous discipline which was received for a similar offense.

278) John L. Eilerman 27-26-(89-06-29)-0109-01-06 (Rescind resignation)

Arbitrator: Jonathan Dworkin

Contract Issue: Rescind resignation. Employee’s attempt to rescind voluntary quit

Contract Section: 5

Topic Headings: Back pay; remedy; Resignation; Voluntary quit

Employment Situation: Department of Rehabilitation and Correction; Marion Correctional Institution; Inmate Supervisor 1

Result: Partially sustained. Conditional reinstatement if found fit for job duties. No back pay.

Reason: The grievant became frustrated when his numerous requests for a transfer were continually denied. In a state of severe anxiety and depression the grievant quit. The grievant an hour later telephoned the Personnel Office to rescind his resignation. The grievance was sustained on the narrow ground that the employee tried to withdraw his quit before it was acted on or approved. The Superintendent’s discretion has to be exercised judiciously with careful consideration of all the surrounding facts. The State did not show evidence of due consideration of the grievant’s timely attempt to rescind his resignation.

279) Eddie Sizemore 27-11-(89-12-29)-0036-01-03 (Removal)

Arbitrator: Harry Graham

Charges: Grievant could not adequately perform job duties without driver’s license

Arbitrator: Harry Graham

Charges: Grievant could not adequately perform job duties without driver’s license

Contract Sections: 24.01 and 24.04

Topic Headings: Driver’s license; Job Requirements; Just Cause; Pre-disciplinary Hearing

Employment Situation: Department of Rehabilitation and Correction; Lebanon Correctional Institution; Correction Officer

Result: Grievance denied. Removal upheld.

Reason: The arbitrator found that a driver's license is a reasonable requirement for the position of Correction Officer. The grievant's license is suspended for ten years for accumulating twelve driving under the influence citations. Without a license the grievant cannot fulfill one of the requirements for a position. The State is allowed to adjust the requirements for a position. The arbitrator decided that even though the grievant had not had to drive for the past six years it did not mean he would not be called upon to drive in the future. A Correction Officer may be dismissed if he/she fails to meet one of the basic requirements for the position. The Union's procedural objection to the pre-disciplinary hearing being held in the jail where the grievant was incarcerated was overruled. The employer went out of its way to afford the grievant his rights.

280) Marsha Bradford; Thomas Haithcock; Carol Cotterman - Oakwood Job Abolishments 23-12-(90-02-08)-0179-01-09 (Job abolishments)

Arbitrator: Harry Graham

Contract Issue: Job abolishments

Contract Sections: Article 18; 1.03; Ohio Revised Code 124:321-327, Ohio Administrative Code 123:41-01-22, 123:1-17-16

Topic Headings: Arbitral authority; Bargaining unit erosion; Layoffs, Remedy

Employment Situation: Department of Mental Health; Oakwood Forensic Center; Computer Operator II; Delivery Worker 1 and Medical Laboratory Technician 1

Result: The grievance was sustained. All three grievants were reinstated with back pay, seniority credit, holiday and vacation pay.

Reason: The arbitrator found that the State did not carry the burden of proving the specific lack of work for the grievants. The State did not provide a specific comparison between the work levels before and after the layoff. A general statement that the client population was decreasing was not enough to justify the job abolishments. The work that the laid off grievants previously performed was taken over by supervisors and other employees who were working out of their classification. The job abolishment cannot be proper when this occurs.

281) Tommie Lawson 24-06-(89-09-06)-0152-01-04 (Removal)

Arbitrator: Harry Graham

Charges: Client abuse

Contract Sections: 24.01; 24.02

Topic Headings: Abuse of resident, patient or inmate; Credibility of Witnesses

Employment Situation: Department of Mental Health; Columbus Developmental Center; Part-time Hospital Aide

Result: Grievance denied

Reason: It was more probable than not that the grievant was involved in physically abusing a client. The grievant was seen pushing a client into the wall and driving his knee into the client's stomach. The Union's generalized statements that the State's witnesses were falsely accusing the grievant was not enough to rebut the State's case. The arbitrator did not believe that the other employees were jealous of Columbus Developmental Center employees and would accuse the grievant of abuse for no reason. Discharge was for just cause.

282) Michael Woodfork 27-24-(89-07-03)-0033-01-03 (Removal)

Arbitrator: David M. Pincus

Charges: Negligence

Contract Sections: 24.01

Topic Headings: Counseling; Work rules notice

Employment Situation: Departmental of Rehabilitation and Correction; Southeastern Correctional Institution; Correction Officer 2

Result: Grievance denied.

Reason: The fourth violation of an identical rule violation for improperly counting inmates supports the idea that the grievant was on notice of his work deficiencies and that further rehabilitative efforts would not work. The grievant's negligence in not following the proper inmate counting procedure is a serious work rule violation. The testimony that others followed their own counting procedures was not convincing. The grievant endangered the safety of coworkers and inmates by not properly checking off the inmates. The grievant contradicted himself in explaining why he did not properly count the inmates. Even if the inmates did move and intermix, the grievant should have recounted the inmates.

283) Terry Rice 24-06-(90-02-20)-0204-01-04 (Removal)

Arbitrator: Linda DiLeone Klein

Charges: Client Abuse

Contract Section: 24.01

Topic Headings: Abuse of resident, patient or inmate

Employment Situation: Department of Mental Health; Columbus Developmental Center; Part-time Hospital Aide

Result: Grievance sustained. Notice of removal rescinded and expunged from grievant's record. The grievant will be reinstated with back pay, seniority and benefits. There will be no compensation for missed overtime opportunities.

Reason: The client needed close supervision and was on a one-on-one care plan. There was an uproar at the water fountain and the supervisor claimed the grievant abused the client. There was insufficient evidence of client abuse; the State did not prove just cause. The grievant was in all likelihood restraining, not abusing, the client. The client was known to attack and destroy property including sinks and paper towel containers. The client's history of self-abuse combined with the fact that the client attacked the Unit Manager seconds after the alleged incident of abuse, points towards the conclusion that the grievant did not abuse the client.

284) Victoria Greene 27-19-(90-02-21)-0131-01-03 (Removal)

Arbitrator: Linda DiLeone Klein

Charges: Excessive Absenteeism

Contract Sections: 24.01, 29.02, 29.03

Topic Headings: Absenteeism; Physician's statement; Sick Leave

Employment Situation: Department of Rehabilitation and Correction; Ohio Reformatory for Women; Correction Officer 2

Result: Grievance denied.

Reason: The grievant had a long history of excessive absenteeism. She extended weekends with unauthorized leaves and did not fill out the proper forms when she returned to work. The employer notified the grievant that future absences due to illness must be verified by a physician's statement. The grievant called in sick with diarrhea and stomach cramps. Even if she did not need medical care the grievant was still obliged to go to a doctor to obtain a physician's statement and was removed. The arbitrator viewed the charge of absenteeism as a cumulative offense. Although the grievant has not missed work since her previous fifteen-day suspension for absenteeism, the absence was a continuation of a long pattern of excessive absenteeism. The grievant was aware of the consequences of any unauthorized absenteeism and the arbitrator found that the removal was justified.

285) Victoria Greene 27-19-(89-06-13)-0048-01-03 (10 day suspension)

Arbitrator: Linda DiLeone Klein

Charges: Absenteeism

Contract Section: 24.01

Topic Headings: Absenteeism

Employment Situation: Department of Rehabilitation and Correction; Ohio Reformatory for Women; Correction Officer 2

Result: Grievance denied

Reason: See # 284. The arbitrator found that the employer has the right to expect its employees to report with reasonable regularity and acceptable frequency. The grievant failed in this regard. The grievant missed 13 days in six weeks. In addition, most of the absences occurred in conjunction with non-scheduled days, thus indicating pattern abuse. The grievant did not even fill out the forms because she knew she had no sick leave remaining. A low or non-existent sick leave balance does not excuse the grievant from following the proper procedures. The grievant was fully aware of the work rules and policies relating to attendance; she was also fully apprised of the consequences of any continued unauthorized absenteeism.

286) Robert L. Beck 15-02-(90-02-1-26)-0004-01-09 (Removal)

Arbitrator: Anna D. Smith

Charges: Sexual Harassment

Contract Sections: 2.01, 24.01, 24.05, 25.08

Topic Headings: Discovery, Personal records; Sexual Harassment

Employment Situation: Ohio Department of Highway Safety; Bureau of Motor Vehicles; Field Representative

Result: The grievance is denied in part and sustained in part. The discharge is modified to a fifteen-day suspension without pay or benefits. The grievant will be reinstated to his former position contingent upon his enrollment in the Employee Assistance Program for counseling on sexual harassment. Back pay is to be reduced by any interim earnings of the grievant. Further unprofessional conduct will subject the grievant to removal.

Reason: The grievant was charged with sexual harassment. The definition of sexual harassment in the work rules of the agency are sufficiently general that absent training or counseling one might not know what constituted a violation of the work rule. The grievant pinched an employee just below her brassiere and clasped the woman's upper thigh. This is sexual harassment. The only reason the grievant's removal was not upheld is that the employer did not instruct him on the nature of sexual harassment. The grievant's supervisor just cautioned the grievant to "be careful with the girls." The grievant is afforded this last chance only because his employer failed to more carefully instruct him on the nature of sexual harassment.

287) Idella Trapp 24-03-(89-07-07)-0171-01-04 (Removal)

Arbitrator: Jonathan Dworkin

Charges: Client neglect

Contract Section: 24.02

Topic Headings: Client neglect; Discipline; Just Cause; Progressive discipline

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Broadview Developmental Center; Hospital Aide

Result: The grievance is sustained in part and denied in part. The grievant will be reinstated with full, unbroken seniority, but the State shall not be liable for the employee's lost wages.

Reason: The State alleged that the grievant had deliberately not fed the clients in her cottage and by wedging a towel under a door had locked two residents in a room without supervision. It was impossible for the clients to have been fed and the area cleaned up in the fifteen minutes the grievant claimed it took. The grievant did commit neglect, but the State did not prove that the grievant locked the clients in the bedroom. The employer had a choice between the lowest penalty, a ten-day suspension and the most severe penalty of removal. The State offered no reason why it imposed the most severe penalty in the face of the grievant's exemplary work record and long service to the State.

288) Veda Wise 13-00-(89-01-27)-0003-01-09 (Suspension and removal)

Arbitrator: Patricia Thomas Bittel

Charges: Neglect of duty; Poor work performance

Contract Section: 24.02

Topic Headings: Bias; Just cause; Progressive discipline; Neglect of duty; Suspension

Employment Situation: Ohio Exposition Commission; Account Clerk 2

Result: The ten-day suspension was without just cause. The grievant will be paid five days back pay for this part of the grievance. The removal of grievant was for just cause and this portion of the grievance is denied.

Reason: The State argued that the grievant was holding up the processing of invoices because she was distracted by phone calls from her children. The arbitrator found that the grievant was capable of performing her duties during her initial months in the position. It is not that grievant's work that is unduly burdensome. There are objective facts that point towards the deficiencies in the grievant's work performance. The ten-day suspension was chosen by management to jolt the grievant back into concentrating on her job. Continuing to suspend the grievant eventually becomes so unrelated to any discernable benefit that it ceases to fall within the limitations of just cause. A five-day suspension was more than enough to place the grievant on notice of her work deficiencies; the next five days were excessive. The ultimate termination was supported by just cause and will be upheld.

289) **Leroy Payton 35-03-(89-09-01)-0056-01-03 (Removal)**

Arbitrator: Jonathan Dworkin

Charges: Neglect of duty; sleeping on duty

Contract Sections: 24.01

Topic Headings: Last Chance Agreements; Mitigation; Retirement; Sleeping on duty

Employment Situation: Department of Youth Services; Cuyahoga Hills Boys School; Youth Leader 2

Result: The grievance is sustained in part and denied in part. The grievant will be reinstated without back pay or lost benefits four weeks after the pay period ending July 29, 1990. The period until reinstatement will be termed a disciplinary suspension for sleeping on the job. The grievant is allowed to continue to work until he accumulates thirty years of service credit with the Public Employment Retirement System (PERS).

Reason: There were unusual aspects to the case which suggested a possible basis for mitigating the penalty. The grievant needed only one more year to be eligible for retirement. A settlement was worked out with the approval of the grievant and the Union and was rendered in the form of a stipulated award. The grievant is to be reinstated and will either retire voluntarily at the end of his thirty years or the State will be free to transfer the grievant automatically to the payroll status of a voluntary quit. If the grievant committed further misconduct he could be dismissed without regard to the time remaining before the grievant's retirement.

290) **Dean Swaldo G 87-2634 (Issue)**

Arbitrator: Rhonda Rivera

Contract Issue: Bidding Rights; Office, Institution or County; The State violated Article 17 by not promoting the grievant.

Contract Sections: 17.04, 17.05

Topic Headings: Bidding Rights; Waiver; Promotion; Waiver of bidding rights

Employment Situation: Ohio Department of Transportation

Result: Grievance denied.

Reason: The grievant claimed that he should have been allowed to bid on a posted vacancy of Utilities Relocation Tech. 3. He believed he was in a same or similar class related series and therefore fell under Article 17.04(a) or (b) of the Agreement. The posted vacancy was in New Philadelphia, District 11. The grievant worked at the Northeast Region of ODOT but was carried on the central office ODOT payroll. The employer claimed the grievant was not "within the office, institution, or county where the vacancy is listed." The arbitrator decided that the Agreement language is not perfectly clear as to whether the grievant was allowed to have bidding rights. The grievant did sign an acceptance form that clearly stated that he had no bidding rights in

District 11. There has been no change in the grievant's work situation since the signing of that form. The grievant voluntarily gave up his rights to bid in District 11.

291) Catherine Zwiebel 02-03-(90-03-15)-0124-01-03 (Removal)

Arbitrator: Rhonda Rivera

Charges: Unauthorized use of sick leave

Contract Sections: 24.01; 24.02; 24.04; 24.06; 25.02

Topic Headings: Fraud; Just cause; Sick Leave; Stacking charges; Step 3 hearing

Employment Situation: Department of Administrative Services; Division of Public Works; Old Blind School; Security Officer 1

Result: Grievance denied.

Reason: Employer had just cause for the dismissal. The grievant called in sick while she was working a second job. The arbitrator considered this fraud. This was by far the most serious offense the grievant committed but the list of the grievant's misconduct is lengthy. The grievant was away from her post on numerous occasions without authorization and did not wear the required uniform and no badge, the grievant claimed she could not wear the uniform because of her religion. The employer provided the grievant with the skirts that would not offend her religious beliefs and the grievant still did not come properly dressed to work. Considering the grievant's long history of misconduct, the removal was justified.

292) Ronald Tawney 27-25-(90-02-06)-0092-01-03 (Removal)

Arbitrator: Jonathan Dworkin

Charges: Inmate abuse

Contract Sections: 24.01; 24.02; 25.03

Topic Headings: Abuse of inmate; Delay; Discovery; Incorporation of the Agreement; Inmate testimony; Predisciplinary hearing; Timeliness of discipline, forty-five day time limit

Employment Situation: Department of Rehabilitation and Correction; Southern Ohio Correctional Facility (Lucasville); Correction Officer

Result: Grievance denied.

Reason: The grievant allegedly beat three inmates with his nightstick and kicked them. The medical evidence was compelling; the inmates did sustain injuries sometime after they were taken to their cells. The injuries were severe and not believed to be self-inflicted. The State proved to a sufficient certainty that the grievant committed the misconduct charged. Since the misconduct undeniably constituted abuse, Article 24, Section 24.01 prohibits arbitral modification of the penalty.

293) Ruth A. Krafthefer 27-03-(90-02-05)-0029-01-03 (Removal)

Arbitrator: Hyman Cohen

Charges: Unauthorized relationship with an inmate

Contract Sections: 24.01; 24.07

Topic Headings: Inmate testimony; Polygraph testing

Employment Situation: Department of Rehabilitation and Correction; Chillicothe Correctional Institution; Correction officer

Result: Grievance denied.

Reason: The grievant endangered the safety of the facility by engaging in an unauthorized personal relationship, possessing the man down alarm behind closed doors with an inmate, and giving preferential treatment to an inmate. The Union's argument of discrimination was discounted. Female adults understand quite well that there are certain cues or gestures that generate certain responses by males. This is especially true in a correctional facility housing adult males. The grievant was apprised of how to act and handle herself around the inmates. The testimony of fellow Correction Officers corroborates the inmate testimony that the grievant was carrying on an unauthorized relationship with an inmate. The removal was for just cause.

294) Danny Brown and Marsha Clary 24-07-(90-05-18)-0257-01-04 (Removal)

Arbitrator: Harry Graham

Charges: Client abuse

Contract Section: 24.01

Topic Headings: Credibility of witnesses; Evidence, medical

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Gallipolis Developmental Center; Therapeutic Program Workers

Result: Grievance sustained. The grievants are to receive all pay they would have received but for this incident. The employer may deduct from back pay any interim earnings the grievants received from the date of their discharge to the date of this award. The grievants will also be credited with seniority and benefits.

Reason: The State did not meet its basic task of proving that the alleged abuse actually occurred. The client did have his shoes taken away from him but this was a normal occurrence. They are stored away so that the client does not hide them, throw them at other people or perhaps use them as weapons. The other employees do not remember anything out of the ordinary on the day that the grievant allegedly abused the client. If the grievant had in fact dropped his full weight on the client and kned him there would have been some medical evidence of the incident. The client was in no way injured. The

lone testimony of one fellow worker did not convince the arbitrator that the grievant abused the client.

295) Leticia Williams 27-11-(90-03-19)-0048-01-03 (Removal)

Arbitrator: Rhonda Rivera

Charges: Job abandonment

Contract Sections: 24.01; 29.01; 29.03; 35.03

Topic Headings: Absenteeism; Disability; Abandonment of job; Mitigation

Employment Situation: Department of Rehabilitation and Correction: Lebanon Correctional Institution; Teacher's Aide 2

Result: Grievance denied in part. The discipline will be reduced to a ten-day suspension. Since the grievant claimed that she could not have worked until January 29 that is her "start" date and the suspension will begin then. The grievant must also produce a personal affidavit and doctor's statement attesting to her ability to return to work. Any back pay award shall be reduced by unemployment compensation. The grievant will be returned to her position if available or a comparable position if her PCN has been filled.

Reason: The grievant did abandon her job, but there are mitigating factors: the grievant had no prior discipline and the warden did not call the grievant back to clarify the situation. The warden had a reasonable duty to contact the grievant. In a disability case there is a duty to investigate whether the grievant can actually return to work. The fact that the warden claims he saw the grievant bowling does not relieve him of the duty to call the grievant back to investigate.

296) Dennis Jennings 23-06-(89-11-13)-0121-01-03 (Removal)

Arbitrator: Rhonda Rivera

Charges: Incompetence; Client abuse; Failure to follow procedure

Contract Section: 24.01

Topic Headings: Aggravating factors; Discovery; Disparate treatment; Failure to follow proper procedures

Employment Situation: Department of Mental Health; Central Ohio Psychiatric Hospital; Psychiatric Attendant

Result: Grievance denied.

Reason: The grievant failed to file an incident report concerning an injury to a patient that occurred during the grievant's watch and in the grievant's presence. The client grabbed the grievant's arms and when the grievant tried to free himself the client stumbled and hit his lip on a metal door frame. The grievant intentionally hid the

material he used to clean up the client's cut. This failure resulted in over six hours elapsing between the injury and proper medical care for the patient. The grievant's work history of seven years is riddled with discipline. The grievant placed the health of a patient in danger and the removal was for just cause.

297) Eugene Jablonowski G-87-1287 (Issue)

Arbitrator: Patricia Thomas Bittel

Contract Issue: Article 17 posting; Whether the employer should have posted the position

Contract Sections: 17.02; 17.03; 17.04; 17.05; 17.07; 25.01; 43.02

Topic Headings: Certified against; Class grievance; Incorporation of law; Preservation of benefits; Posting a position

Employment Situation: Ohio Bureau of Employment Services; Cincinnati Office; Employment Service Representative

Result: Grievance granted. The supervisory employee who transferred back into the Employment Service Representative (ESR) position which was not posted will be removed from that position. The employer, in compliance with Article 17, will identify the most senior employee eligible to bid on that position and place that person in the ESR position. This individual will be compensated with the difference between their pay at their previous position and the ESR position for the time the employer violated Article 17 and the employee was able to work at the ESR position.

Reason: The employer violated Article 17 by not posting the ESR position. A supervisory employee was certified against and moved back into the bargaining unit because he failed a DAS given test. Article 17 takes precedence over any rights to demotion into the bargaining unit designated by the Ohio Administrative Code. The employer must follow Article 17 when there is a vacancy. The position that the supervisory employee filled was a permanent, full-time position and should have been posted. The bargaining unit employee should have the opportunity to bid on the position.

298) Dominic Fiozza 31-12-(90-04-23)-0030-01-06 (Removal)

Arbitrator: Patricia Thomas Bittel

Charges: Neglect of duty; Insubordination

Contract Sections: 24.01; 24.06

Topic Headings: Aggravating circumstance; Investigation, initial; Prior discipline; Lax enforcement; Mitigation

Employment Situation: Department of Transportation; Warrensville; Highway Maintenance Worker

Result: Grievance denied.

Reason: The grievant, by sitting idle and evading work, failed to meet even the most basic expectations of the employer. The grievant hid from the trucks that were going out to the work site. The grievant claimed that he was not given the proper work assignment, but the arbitrator found that even if this were true, which was doubtful, the grievant should have inquired about where he was assigned. The grievant has been purposefully left behind in the past. Prior to the arbitration hearing the grievant threatened witnesses who were to testify. The grievant's repeated discipline weighed against mitigation of his removal.

299) Dennis Cowell G-87-0096 (Issue)

Arbitrator: Rhonda Rivera

Contract Issue: Emergency pay

Contract Sections: 13.05; 13.07; 13.08; 13.15

Topic Headings: Apparent authority; Emergency pay; Estoppel; Reliance

Employment Situation: Department of Rehabilitation and Correction; Ohio State Reformatory; Correction Officers

Result: Grievance granted. All employees who worked overtime are to be made whole by being paid double time for that overtime.

Reason: The arbitrator found that during the escape the Correction Officer reasonably relied upon the statements of a supervisor that there was an emergency. The agency did not follow the proper overtime procedures in that they failed to use the overtime roster to call out employees for the escape. Fairness demands that the employer is estopped when it violates Article 13.15 (overtime rules). When a supervisor calls the situation an emergency and the agency leads the Union to believe it is an emergency, then the employees shall receive emergency pay as specified in Article 13.15 of the contract.

300) Bruce Starks 35-16-(90-05-29)-0031-01-03 (Removal)

Arbitrator: Rhonda Rivera

Charges: Abuse

Contract Section: 24.01; 24.04; 24.05

Topic Headings: Abuse; Burden of proof; Commensurate discipline; Credibility of witness; Discovery; Overtime

Employment Situation: Department of Youth Services; Training Center for Youth; Youth Leader 2

Result: The grievance is denied in part and sustained in part. The discharge is modified to a three-day suspension. The grievant will be reinstated after the suspension with back pay and seniority.

Reason: The State did not prove its case of abuse. The grievant allegedly threw the youth to the floor, hit him with a chair and held the youth up against a heater. All these allegations were not proven. The State did show that the grievant failed to report the use of physical force; there was an incident that involved a chair and the heater. Even if the grievant was restraining the youth, a report should have been filed. Removal is too harsh a penalty for a first offense of this type; a three-day suspension is more commensurate.

301) Paul Livingston 35-07-(90-05-30)-0011-01-03 (Removal)

Arbitrator: Rhonda Rivera

Charges: Abuse

Contract Sections: 24.01; 24.02

Topic Headings: Abuse of youth; Burden of proof

Employment Situation: Department of Youth Services; Scioto Village; Youth Leader 2

Result: The grievance is granted. The grievant will be reinstated with full back pay, restoration of benefits and seniority.

Reason: The employer did not prove abuse. The employer's charge of the grievant sexually abusing a youth was not sufficiently proven. The grievant is a 14-year employee with no prior discipline dealing with abuse. The testimony of the youth is not believable and insufficient evidence exists to discipline the grievant for abuse. The "abused" youth's roommate did not corroborate the youth's story and, in fact, weakened the case against the grievant.

302) Jerry Atwood 27-05-(90-02-01)-0062-01-03 (Removal)

Arbitrator: Jonathan Dworkin

Charges: Inmate abuse

Contract Sections: 24.01; 24.04; 25.08

Topic Headings: Abuse; Discovery; Due Process; Mitigation; Notice; Procedural violations

Employment Situation: Department of Rehabilitation and Correction; Orient Correctional Institution; Correction Officer

Result: The grievance is sustained to the extent that the grievant will be reinstated with full seniority. The employer shall not be liable to the grievant for back wages or lost benefits resulting from his removal. This will result in a suspension of nearly a year.

Reason: Since the primary reason for the grievant's removal was the charge for prisoner abuse – a charge which the employer did not prove to a sufficient probability - the grievant will be reinstated. There were other charges that are serious violations of the work rules. The grievant gave a prisoner access to the inmate's file and did not report or

intervene when another employee abused an inmate. If the grievant had been charged with this misconduct, instead of inmate abuse, the removal might have been upheld.

303) Gary Bizjak 25-12-(90-05-23)-0075-01-06 (Issue – work schedules)

Arbitrator: Harry Graham

Contract Issue: The State changed the grievant's work schedule to avoid the payment of overtime.

Contract Sections: 13.01; 13.07

Topic Headings: Overtime; Avoidance; Past practice; Work schedules

Employment Situation: Department of Natural Resources; Punderson State Park; Parks Conservation Crew Leader

Result: Grievance denied.

Reason: The State must provide a standard workweek of 40 hours. This workweek must be followed by two consecutive days off. The employer did not violate the Agreement by scheduling the grievant from Tuesday to Saturday during the golf season. The State does not have to provide a workweek of Monday through Friday. There is no violation of the Agreement. The grievant's schedule was changed during the golf season to supposedly meet seasonal needs. The arbitrator agreed with the employer that the standard workweek does not have to be a Monday-Friday schedule. One year, the grievant's schedule was not changed to fit the golf schedule and he worked Monday-Friday the entire year. This was not enough to constitute a past practice that the employer had to follow. That schedule was prior to the collective bargaining agreement and did not restrict management's right to change the grievant's work schedule.

304) Edith Deluca 31-02-(88-09-29)-0059-01-06 (Suspension – fifteen days)

Arbitrator: David M. Pincus

Charges: Neglect of duty; Insubordination

Contract sections: 11.03; 24.01; 24.02; 24.04; 24.05

Topic Headings: Abandonment of work area; Neglect of duty; Insubordination; Safety

Employment Situation: Department of Transportation; Sandusky; Highway Worker 2

Result: Grievance denied.

Reason: The grievant left her position as a flagger to sit in a truck during a rainstorm. The other employees counted on her to direct traffic. Her actions endangered the work crew and the driving public. The grievant should have contacted her supervisor before leaving her post. The arbitrator found that the grievant was trained in the proper procedures to take during a thunderstorm. The suspension was justified.

305) David Donart 31-07-(90-05-14)-0037-01-06 (Removal)

Arbitrator: Jonathan Dworkin

Charges: Job abandonment

Contract Sections: 24.01; 24.02; 24.05; 24.08

Topic Headings: Abandonment of job; Agency rules; Corrective discipline; Employee Assistance Program; Just cause

Employment Situation: Department of Transportation; District 7 garage (Sydney); Auto Body Repair Worker 1

Result: The grievance is sustained in part and denied in part. The removal is reduced to a sixty-day suspension. The grievant will receive back pay for the difference between the removal and the sixty-day suspension. The grievant will also receive seniority.

Reason: The discipline leveled against the grievant in this case was shockingly harsh. The demands of just cause are almost never met when discharge is based entirely on a rule violation. Management must be cautious in inflicting penalty. The Agency took a risk by acting against the grievant's misconduct reflexively, without consideration of whether lesser discipline (or no discipline) would have sufficed. The charge of job abandonment was based on a rule that three consecutive unauthorized absences may result in a removal. This rule cannot be enforced without regard to mitigating factors and just cause. The grievant was in jail, charged with Driving Under the Influence. He notified the employer, through his mother, who initially called in everyday. She stopped calling, believing the calls to unnecessary. The arbitrator agreed with the mother; the calls were pro forma. The employer waited until a week after the grievant's mother stopped calling and removed him for job abandonment. The removal was modified by the arbitrator.

306) George Stover 27-12-(90-02-01)-0060-01-03 (Removal)

Arbitrator: Harry Graham

Charges: Inmate abuse

Contract Sections: 24.01; 24.04

Topic Headings: Abuse; Notice; Procedural violations

Employment Situation: Department of Rehabilitation and Correction; Correctional Reception Center; Correction Officer 2

Result: Grievance denied.

Reason: The evidence of abuse is clear. The grievant and another employee placed the inmate in the cell. No other person could have abused the inmate. The inmate suffered a bruise on his left rib, a contusion above his right eye and a contusion above his kidney that looked like a boot print. It would be difficult for the inmate to self-inflict this last injury. One Correction Officer heard a thump in the cell. The arbitrator decided that the inmate was abused and the testimony placed the grievant within the inmate's cell. Based

upon the language in the Agreement, Section 24.01, the arbitrator does not have the authority to modify penalties once abuse has been determined to have occurred.

307) Cary R. Sexton 27-19-(90-05-03)-0153-01-03, 27-19-(90-05-03)-0155-01-03 (Suspension; Removal)

Arbitrator: Patricia Thomas Bittel

Charges: Engaging in sexual intercourse with inmate.

Contract Sections: 24.01; 24.02; 24.05

Topic Headings: Abuse; Delay; Due process; Forty-five day time limit; Investigation, criminal; Polygraph examination; Procedural violations

Employment Situation: Department of Rehabilitation and Correction; Ohio Reformatory for Women; Correction Officer

Result: The grievance is granted. The grievant shall be reinstated to his previously held second-shift position with back pay exclusive of overtime. The grievant shall be deemed unqualified for placement into any direct contact position for five years. If the placement of the grievant is found to be a violation of the Collective Bargaining Agreement, the grievant shall be placed under Article 18 of the Agreement.

Reason: The arbitrator was not convinced that the inmate was sexually abused, but the evidence was far from frivolous and cannot be summarily discounted. The inmate claimed that the grievant raped her twice. Both the grievant and the inmate's stories suffer from inconsistencies. The grievant did not remember the man-down alarm going off during the alleged rape until a year later. The inmate did not tell the hospital staff that she douched and her story differs from the account she gave on the Geraldo Rivera television show. The evidence presented gives rise to concerns over the protection and welfare of inmates. There is an interest in barring the grievant from inmate contact.

NOTE: The Union and State agreed that the arbitrator's determination to place the grievant in a non-contact post for five years and that the grievant would be laid off if not placed in such a position, violated the pick-a-post agreement. For that reason the Union and State entered into a settlement agreement which stated that:

The grievant would still receive full back pay and benefits but waive the remainder of the remedy granted by the arbitrator. The grievant would be transferred to the Ross Correctional Institution with administrative leave until this transfer goes into effect. There will be no break in State seniority but there will be a break in institutional seniority. The only portion of #307 that can be cited as precedent is the factual analysis of no just cause and reinstatement with back pay and benefits. The employer agreed to withdraw its motion to vacate the award.

308) Thaddeus Turner 35-16-(90-05-02)-0032-01-03 (Removal)

Arbitrator: Rhonda Rivera

Charges: Abuse, mistreatment of youth

Contract Sections: 24.01; 24.02; 24.04; 24.05

Topic Headings: Discovery; Incorporation of the Ohio Revised Code; Pre-disciplinary hearing; Progressive discipline; Youth statements

Employment Situation: Department of Youth Services; Training Center for Youth; Youth Leader 2

Result: The grievance is denied in part and sustained in part. The removal of the grievant is set aside and a suspension of 180 days without pay is imposed. Back pay and benefits are to be reinstated as of the 181st day following the removal.

Reason: The grievant did clearly fail to report another employee's abusive actions. Termination for this offense does not follow the Agreement's progressive and commensurate guidelines. The grievant acted negligently.

309) Stephen Zink 27-12-(90-05-11)-0170-01-03 (Removal)

Arbitrator: Rhonda Rivera

Charges: Immoral/Indecent conduct

Contract Sections: 24.01; 24.02; 24.08

Topic Headings: Correction employees; Indecent exposure; Mitigation; Nexus between offense and work; Off duty behavior

Employment Situation: Department of Rehabilitation and Correction; Lima Correctional Institution; Correction Officer

Result: Grievance denied.

Reason: The arbitrator found that when the inmates were being bused to a special work program the grievant pulled along side and exposed himself. The grievant was off duty but still in uniform. To allow discipline, a clear nexus must exist between the behavior and the job. The arbitrator found that nexus in this case. The end result of the grievant's behavior is that the inmates would justifiably fear an unknown Correction Officer. Sexual abuse of prisoners by Correction Officers is not unknown

310) William L. Strahl 18-00-(90-06-08)-0010-01-07 (Removal)

Arbitrator: Jonathan Dworkin

Charges: Improper sick leave notification

Contract Section: 24

Topic Headings: Back pay; Disability; Just cause; Notice; Sick leave; Work rules, new

Employment Situation: Department of Industrial Relations; Division of Mines; Underground Mine Inspector

Result: Grievance sustained but the Union's demand for back pay is denied. According to the grievant's own admission he has remained disabled since his removal and could not have returned to work. It follows that there is no wage loss to be compensated.

Reason: The grievant was only charged with improper sick leave notification; the evidence brought up by the employer on the other charges was regarded by the arbitrator as irrelevant. The employer did not properly communicate the new work rules regarding sick leave notification. No other employee was asked to follow these new policies. New and unprecedented work rules must be conveyed before they can be enforced. The fact that the Labor Relations Officer told the Union steward does not relieve the employer of the duty to inform the grievant.

311) Jimmy Williams and Edward Hamner 11-09-(89-10-26)-0119-01-06/ 11-09-(89-10-23)-0120-01-06 (Issue)

Arbitrator: Harry Graham

Contract Issue: Job abolishments

Contract Sections: 18; 43.02; Ohio Revised Code 124:321-327; Ohio Administrative Code 123:1-41-01

Topic Headings: Absence of grievant from arbitration hearing; Back pay; Health benefits; Job abolishments; Layoffs; Interpretation of the Agreement; Preservation of benefits; Remedy

Employment Situation: Bureau of Employment Services (Cincinnati); Parking Facility Attendants

Result: Grievance sustained. The grievants were granted back pay, seniority, holiday pay, vacations, and other accrued leave. The employer was also directed to pay any health expenditures that would have been paid by the health insurance provided by the State.

Reason: The grievance was arbitrable. The employer failed to carry its burden of proof that the job abolishments were proper. The employer did not provide specific proof of the decreased need for these positions or a resulting gain in efficiency, and therefore provided an insufficient rationale for the job abolishment. The Union provided information that the parking lot still had just as many cars and there was still a need for the grievants' services. The parking lot at the Cincinnati facility is a hotbed of vandalism and theft. This was proven by documents the grievants filled out before they knew that their jobs might be abolished. The parking facility attendants protect employees, clients, and automobiles. The arbitrator cited Bispeck in that the "Evidence of not having to pay salaries on its own is not sufficient to prove increased efficiency and economy as required." The State did not prove its case.

312) James Howard 27-24-(89-11-17)-0051-01-03 (Removal)

Arbitrator: Patricia Thomas Bittel

Charges: Unauthorized relationship with an inmate; providing drugs for an inmate

Contract Section: 24

Topic Headings: Correction employees; Credibility of witnesses; Evidence, phone records; Inmate testimony; Unauthorized personal relationship

Employment Situation: Department of Rehabilitation and Correction; Southeastern Correctional Institution; Correction Officer

Result: Grievance denied.

Reason: There was sufficient evidence that the grievant carried on an unauthorized personal relationship with an inmate. The claim that the grievant sold drugs to an inmate stood rebutted. A letter from the inmate was intercepted and it named terms to blackmail the grievant for selling the inmate marijuana. There were a series of collect person-to-person calls from the inmate's area to the grievant's house that served as objective proof of the relationship. Without the objective evidence of the collect phone calls which the grievant could not explain, the grievant might not have been removed.

313) Timothy Follrod 27-15-(90-05-15)-0098-01-03 (Removal)

Arbitrator: Anna D. Smith

Charges: Unauthorized relationship with inmate

Contract Section: 24

Topic Headings: Correction employees; Just cause; Mitigation factors; Unauthorized relationship

Employment Situation: Department of Rehabilitation and Correction; Madison Correctional Institution; Correction Officer 2

Result: Grievance sustained. The discharge was modified to a thirty-day suspension without pay or benefits. The grievant is to be reinstated; back will be reduced by interim earnings.

Reason: The employer is allowed a great deal of flexibility in dealing with this offense. The grievant's offense involved a single financial transaction with only a tenuous and limited connection to an inmate or with his family member. The grievant heard of a rowboat for sale from an inmate. The grievant bought the rowboat from someone at the inmate's wife's house. It is not known with whom the grievant actually exchanged money. The employer argued that even the appearance of impropriety would tarnish the reputation of the grievant and he would be unable to perform his job as a Correction Officer. His fellow workers would not trust him since he would be open to inmate blackmail attempts. The arbitrator found that the grievant's fellow workers still trusted him. The removal was overturned.

314) Jerry Niswander 27-20-(88-11-18)-0333-01-06 (Removal)

Arbitrator: Rhonda Rivera

Charges: Aiding an inmate escape

Contract Section: 24

Topic Headings: Correction employees; Investigation, initial; Just cause; Prior discipline

Employment Situation: Department of Rehabilitation and Correction; Ohio State Reformatory; Correction Officer

Result: Grievance sustained. Grievant is to be reinstated and granted all benefits. The arbitrator also warned against overzealous supervision upon the upon the grievant's return.

Reason: The employer claimed the grievant aided prisoners to escape. A basic requisite of just cause is a fair investigation. The only evidence against the grievant was testimony from a highly suspect inmate whose "cooperation" paid off. The trooper who conducted the investigation was intent on one thing – proving the grievant guilty. The trooper did not even ask the basic questions of who had keys to the doors that the inmates escaped through.

The employer's charge that the grievant, in exchange for the promise of money from inmates in the future, would abet an escape is not believable. The grievant was employed since 1979 with only one prior discipline: a one day suspension for abusive language to his supervisor. The grievant was also a reputable artisan in the community. It is ludicrous to think he would throw this all away for a promise of future money from escaped inmates. There was no just cause for the dismissal.

315) Ellen Jenkins 35-06-(89-03-28)-0016-01-09 (Resignation)

Arbitrator: Rhonda Rivera

Charges: The employer constructively discharged the grievant without just cause.

Contract Sections: 25.01; 25.03; 24.04; 24.07

Topic Headings: Arbitrability; Resignation; Voluntary quit

Employment Situation: Department of Youth Services; Mohican Youth Center; Receptionist

Result: Grievance denied.

Reason: The grievant knowingly and voluntarily resigned. She returned from a polygraph examination which was given to investigate an incident of theft. The trooper told the grievant that she failed miserably. The grievant did not act hysterically. She talked with co-workers, ate lunch and read the paper. When she was called into her supervisor's office she decided to resign. The decision to resign was found by the arbitrator to be a knowing, voluntary choice. The grievant was not denied representation.

The employer properly accepted the grievant's resignation. The grievant, as an ex-employee, does not have standing and the grievance is therefore not properly before the arbitrator.

316) Barbara Anderson 24-09-(89-03-03)-0183-01-04 (Suspension)

Arbitrator: Hyman Cohen

Charges: Resident neglect; failure to act

Contract Section: 24

Topic Headings: Abuse; Negligence

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Mount Vernon Developmental Center; Therapeutic Program Worker

Result: Grievance sustained.

Reason: The State could not prove by clear and convincing evidence that the grievant committed the offense of resident neglect. The grievant acted on the basis of her own informed discretion in restraining the resident. She followed the Individual Behavior Program in the best possible manner, given the circumstances. The arbitrator found that the grievant acted to restrain the resident so as to cause the least possible harm. The grievant was not instructed in the specific hold the employer claimed she should have used on the resident. There was even testimony that this hold was not appropriate with a resident who was running away.

317) Mary Peal 35-02-(90-05-02)-0170-01-03 (Removal)

Arbitrator: Anna D. Smith

Charges: Sexual abuse of youth

Contract Sections: 24.02; 24.05; 25.08

Topic Headings: Absence of the grievant; Delay; Discipline; Double jeopardy; Due process; Holiday pay; Notice; Overtime pay; Procedural violation; Sexual abuse; Step 3 meeting; Youth statements

Employment Situation: Department of Youth Services; Buckeye Youth Center; Youth Leader 2

Result: Grievance sustained. The grievant was reinstated with all benefits including holiday pay but excluding overtime pay.

Reason: The employer offered an un rebuttable proposition – the grievant sexually abused a youth sometime in September. The grievant could not offer evidence to rebut such a general charge except to deny that she did it. The charge was too general for the grievant to be able to fairly respond to it. The evidence was not sufficient to sustain the charge.

318) Gerald Peters 22-02-(90-05-23)-0134- 01-05 (Removal)

Arbitrator: Rhonda Rivera

Charges: Altering of records; Commensurate; Employee Assistance Program; Mitigation; Notice; Progressive; Sick Leave

Employment Situation: Department of Administrative Services; State Personnel Payroll Processing Unit; Payroll Processing Specialist

Result: Grievance is denied in part and sustained in part. The removal is modified to a thirty-day suspension.

Reason: The grievant took off an Internal Revenue Service hold on his payroll record. This hold automatically deducted a portion of his salary to pay back taxes. The arbitrator found that for the same offense committed by the grievant previously he had only received a three-day suspension. Removal is not commensurate or progressive. The other charge of excessive sick leave usage violated the letter and the spirit of the sick leave policy (Section 29.04). The grievant has a life threatening illness. The supervisor knew this and there were no charges that the grievant was fraudulently taking sick leave. The employer did not counsel the grievant or even inform him that his sick leave was a problem. The removal was modified to a thirty-day suspension.

319) Terry Stoughton 27-24-(89-12-19)-0054-01-03 / 27-24-(90-05-02)-0068-01-06 / 27-24-(90-06-28)-0080-01-06 Issue

Arbitrator: Harry Graham

Charges: Insubordination for refusal to shave beard

Contract Section: 24

Topic Headings: Beard; Insubordination; Respirators; Safety

Employment Situation: Department of Rehabilitation and Correction; Southeastern Correctional Institution; Welder

Result: Grievance denied

Reason: The rule that employees be clean-shaven to wear a respirator in asbestos filled work areas is reasonable. It was insubordination for the grievant to refuse to shave and there was just cause for the removal. The medical defense of the grievant, claiming he had a skin condition that was aggravated by shaving, was discounted by the arbitrator. Medical testimony showed that the grievant could have shaved with barber clippers instead of a razor.

320) Virginia M. Marcum 27-17-(90-05-29)-0094-01-09 Removal

Arbitrator: Jonathan Dworkin

Charges: Unauthorized relationship with inmate

Contract Section: 24

Topic Headings: Correction employees; Unauthorized relationship with inmate

Employment Situation: Department of Rehabilitation and Correction; Northeast Pre-Release Center; Account Clerk

Result: Grievance denied but the grievant shall be permitted to voluntarily resign from her job and the employer shall expunge all records of this incident from her record and give no less than a neutral recommendation to the grievant's future employers.

Reason: The grievant by her nature is out of place in a Correctional setting. She treats everyone with friendliness and compassion, even inmates. She sent a Valentine's Day card to an inmate. The arbitrator was convinced that the grievant was just friends with the inmate but this is still an unauthorized relationship. Prisons must have employees who can keep a certain detachment and distance between themselves and the inmates. There was just cause so the arbitrator could not set aside the discipline, but the arbitrator did give the grievant a chance to voluntarily resign instead of being dismissed.

321) Virginia Marcum 27-17-(90-04-11)-0086-01-09 Suspension

Arbitrator: Jonathan Dworkin

Charges: Gross carelessness

Contract Section: 24

Topic Headings: Just cause; Negligence

Employment Situation: Department of Rehabilitation and Correction; Northeast Pre-Release Center; Account Clerk

Result: Grievance sustained. The grievant is to be made whole for the four-day suspension.

Reason: Allegedly the grievant, due to her carelessness, did not properly handle the accounts payable, properly maintain records or deal with vendors. This alleged carelessness cost the employer a great deal of money. The evidence was confusing and inconsistent. The grievant's evaluations during the time when she was later charged with gross carelessness were excellent. Her accounts were praised as being orderly and accurate. The employer did not establish just cause for the suspension.

322) Marilyn Hale, Donna Wright and Doug Fouch 30-10-(90-06-22)-0190-01-09, 07-00-(88-12-29)-0025-01-14, 60-00-(90-02-27)-0060-01-09, 11-05-(89-11-22)-0052-01-09

Arbitrator: John E. Drotning

Contract Issue: Bereavement leave; Employer did not properly follow 30.03

Contract Section: 30.03

Topic Headings: Bereavement leave

Employment Situation: Bureau of Employment Services; Student Loan Commission; State Fire Marshall's Office

Result: One grievant was granted bereavement leave, the two others were denied bereavement leave.

Reason: The fundamental question in interpreting Section 30.03 (bereavement leave) is whether a step parent "stands in the place of a natural parent." Indications of this are whether the grievant's natural parent was still alive and whether the other parent was married to the step-parent. The terms of the Agreement must be followed in a narrow legalistic sense. The arbitrator cannot decide this issue based on the quality of the personal relationship. One grievant could not receive bereavement leave since the Agreement does not cover those who stand in the place of a son or daughter without being a legal step-child.

323) David A. Baker 27-11-(90-06-20)-0067-01-03

Arbitrator: Patricia Thomas Bittel

Charges: Drug usage on institution grounds

Contract Sections: 24; 43.03

Topic Headings: Agency policies; Drug detection; Drug testing

Employment Situation: Department of Rehabilitation and Correction; Lebanon Correctional Institution; Correction Officer

Result: Grievance denied.

Reason: The grievant allegedly smoked marijuana in a guard tower. The Correction Officer on the shift after the grievant smelled the marijuana. Three other people, all trained in drug identification, smelled marijuana in the tower. Drug usage on Correction grounds is a serious offense. The employer did not violate Section 43.03 of the Agreement in drug testing the grievant. It was not a random drug test which is the only kind of drug test that the Agreement does not allow. A drug test based on reasonable suspicion is not barred by the contract. The grievant's positive test results threw doubt on the grievant's credibility. The grievant denied smoking marijuana at first and later explained that he had smoked marijuana when off duty. The arbitrator found this admission called into question the reliability of the grievant.

324) David St. Clair 31-02-(90-08-01)-0026-01-06 Removal

Arbitrator: Rhonda R. Rivera

Charges: Sexual harassment

Contract Section: 24

Topic Headings: Corrective discipline; Sexual harassment

Employment Situation: Department of Transportation; Ottawa County work Unit; Highway Maintenance Worker 2

Result: Grievance denied

Reason: The arbitrator found that the grievant did in fact sexually harass two women by exposing himself and grabbing one woman near her genitals. The women did not consent to the grievant's actions. The grievant's testimony that both women wanted him and were trying to seduce him was unbelievable. The arbitrator did not believe that the grievant only allowed himself to be seduced because of the stress of marital problems and because of his vulnerability. The grievant was not amenable to correction. He lied, blamed others, and steadfastly refused to take responsibility for his actions.

325) Sandra McCreedy and Sharon Brown G-87-01590 and G-87-0750 Issue – Right to Union Representation

Arbitrator: Hyman Cohen

Contract Issue: The employer violated Section 24.04 of the Agreement by not allowing Union representation in a State Highway Patrol investigation

Contract Section: 24.04

Topic Headings: Arbitral authority; Investigation (investigatory interview); Union representation

Employment Situation: Ohio Department of Mental Retardation and Developmental Disabilities; Gallipolis Development Center; Activity Specialist

Result: Grievance denied

Reason: The employee does not have the right to Union representation under the Agreement in an external investigation. The State Highway Patrol's investigation was not the employer's investigation and there was no investigatory interview in this case. A criminal investigation is beyond the scope of Agreement between the parties. Union representation rights apply solely to the employer-employee relationship.

326) Santiago Vanegas 35-04-(90-08-30)-0042-01-03 Removal

Arbitrator: Anna D. Smith

Charges: Abuse of youth

Contract Sections: 24.04; 25.08

Topic Headings: Abuse; Agency rules; Delay; Discovery; Investigation; Photographs; Pre-Disciplinary Hearing Officer's report; Procedural violation; Youth Statements

Employment Situation: Department of youth Services; Indian River School; Youth Leader 2

Result: Grievance denied in part and sustained in part. The discharge is overturned but the grievant will receive no back pay for the time period from his removal to the decision date. The grievant will also not receive any other benefits or seniority for this time period.

Reason: The grievant was not found guilty of abuse but he was found guilty of fighting. The arbitrator did not know who started the fight. The grievant acted recklessly in his misguided attempt to control the youth and his failure to wear his beeper. The grievant was close to being out of control. If not for the employer's procedural violations the grievance would have been denied. The employer violated discovery rules by not providing youth witness statements or the pre-disciplinary hearing report. The employer also did not conduct a fair and thorough investigation. The grievant was never interviewed during the investigation.

327) Kenneth Whatley 35-16-(90-07-10)-0049-06-03 Removal

Arbitrator: Patricia Thomas Bittel

Charges: Abuse of youth

Contract Section: 24

Topic Headings: Credibility of witnesses; Cross-examination; Overtime pay

Employment Situation: Department of Youth Services; Training Center for Youth; Youth Leader 2

Result: Grievance sustained. Reinstatement with back pay. No overtime pay.

Reason: The grievant allegedly abused a youth. The State was unable to produce a single witness at the arbitration hearing. The written statements of the youths lack the important safeguards of truthfulness. The Union was never given the opportunity to cross-examine the youth, observe the witnesses' behavior and there was no administration of an oath. The arbitrator can admit these statements into evidence but without these safeguards the statements lose much of their credibility and weight. The employer did not prove that the grievant abused a youth.

328) Gregory Dyer 35-02-(90-07-02)-0013-01-06 Removal

Arbitrator: Hyman Cohen

Charges: Abuse of youth

Contract Section: 24

Topic Headings: Abuse; Arbitral authority; Credibility of witnesses; Procedural violations

Employment Situation: Department of Youth Services; Buckeye Youth Center; Youth Leader 2

Result: Grievance denied

Reason: Based on the testimony of a fellow Youth Leader, the grievant allegedly hit a youth in the abdomen and chest. There is no evidence that the grievant's coworker would lie. There was no testimony of hard feelings between the two of them. The

employer provided clear and convincing evidence that the grievant abused a youth, and therefore, the arbitrator could not modify the removal. The employer's citing of the Ohio Revised Code section defining abuse did not prejudice the grievant's case. The arbitrator used the correct standard of just cause in reviewing the grievance, not the lesser Ohio Revised Code standard.

329) Christopher Beam, et al. G-87-1922 Removal

Arbitrator: Harry Graham

Contract Issue: Did the employer violate Section 13.07? The employer changed work schedules in order to avoid the payment of overtime.

Contract Section: 1307

Topic Headings: Overtime; Avoid payment of; work assignments; volunteering

Employment Situation: Department of Transportation; Xenia Garage and Huffman Dam Outpost

Result: Grievance denied.

Reason: The employer decided that it needed for operational reasons to operate a bump grinder on the second shift. The machine was being used to improve the surface of State Route 42. Volunteers were solicited for this project. The Union did not demonstrate that the State staffed a machine so as to avoid the payment of overtime. The employer did not even change the work schedules; the employees themselves volunteered for the different shifts. Management has the right to decide how to allocate scarce resources – including labor. The employees did not work out of their classification and if some other work was not completed, that is a managerial decision. Also, the fact that in other counties ODOT did pay overtime for the same kind of work does not mean that in this case they must pay overtime.

330) Lettye Johnson 24-14-(90-08-22)-0333-01-04 Suspension

Arbitrator: Patricia Thomas Bittel

Charges: Client neglect

Contract Section: 24

Topic Headings: Just cause; Negligence; Notice

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Warrensville Developmental Center; Therapeutic Program Worker

Result: Grievance sustained. Thirty day suspension was modified to a ten day suspension and the grievant was given back pay for the difference.

Reason: The grievant was suspended for thirty days for harmful neglect when her actions were not shown to have caused harm. One of the grievant's clients choked to

death on cereal. The arbitrator found that the grievant did violate specific doctor's orders to visually observe the client eat. She had to serve twelve severely retarded clients who stole food from one another. To even attempt to serve food in this setting was violating the doctor's orders. The grievant did in fact serve improperly prepared food to the client but the client did not choke on this food. The grievant's action did not result in direct harm to the client. The arbitrator also found that it cannot be said that the grievant's failure to monitor the client was the cause of the client choking to death. The client could well have choked to death even if the staff followed all of the doctor's instructions.

331) Christopher Dominic and Joseph Rice 11-08-(88-06-21)-0012-01-09 / 11-03-(88-03-18)-0009-01-09 / 11-03-(89-15-08)-0050-01-09 Issue

Arbitrator: Rhonda R. Rivera

Contract Issue: The employer denied leave for job related veteran meetings; the employer violated Section 30.06 of the Agreement.

Contract Sections: 30.06; 2.02

Topic Headings: Meetings, Reimbursement for; Travel reimbursements

Employment Situation: Bureau of Employment Services; Akron Office; Local Veterans Employment Representative (LVER) and Disabled Veterans Outreach Specialist (DVOS)

Result: Grievance denied in part. Section 30.06 does not mandate future paid excused leave for DVOS's and LVER's veteran meetings. Grievance sustained in part. Grievants are to be made whole for the specific days of leave requested in the three grievances because the denials were discriminatory.

Reason: The employer was not required to pay for the meetings which the DVOS and LVER employees attended. These meetings did not fall under Section 30.06 of the Agreement. The arbitrator drew the line between mandatory meetings and those that are not required. In this case, though, since the employer paid for other meetings that it was not required to, the grievants were discriminated against. The arbitrator awarded the grievants money for the meetings but did not set a precedent for the employer having to pay for future meetings.

332) Larry Reyka 24-01-(91-07-31)-0056-01-04 20-day suspension

Arbitrator: Harry Graham

Charges: Theft; Neglect of Duty

Contract Section: 24

Topic Headings: Delay of Step 3 hearing; Due process; Neglect of duty; Notice; Procedural violation; Theft

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Central Office; Contract Evaluator/Negotiator

Result: Grievance denied

Reason: The use of the State's computer system for grievant's own private purpose during work hours is theft. The grievant used the computer to send graphic jokes correspondence regarding a laptop computer group and material regarding the Humanist Community of Central Ohio. These activities involved use of such State facilities as Internet and Compuserve. The charge of neglect of duty was proven by the employer. The State showed reams of paper that the grievant generated from the computer system. Some of this use was during work time. The State certainly was justified in suspending the grievant for twenty days.

333) Susan Clime 31-03-(90-07-10)-0058-01-06 (10-day Suspension)

Arbitrator: Rhonda R. Rivera

Charges: Neglect of duty, Insubordination

Contract Sections: 24

Topic Headings: Mitigation, Theft

Employment Situation: Department of Transportation; Crawford County Garage; Highway Worker 2

Result: Grievance denied in part and sustained in part. The ten day suspension is reduced to a one day suspension.

Reason: The grievant, by letting a tailgate fall before the other employee was clear of the tailgate, did commit the offense of neglect of duty. There were a host of mitigating factors that convinced the arbitrator to lessen the ten day suspension to a one day suspension. The tense situation between the grievant and the other employee was in part caused by the supervisor's indifference. The grievant was understandably jumpy around the coworker since she believed that the co-worker had previously tried to injure her. The grievant thought that prior to the tailgate incident that the coworker purposefully let a tire fall on her. Her reaction of calling the police was put off by her supervisor. The supervisor's action of again pairing the two employees was a contributing cause of the tailgate incident.

334) Denis Barber and Rebecca Cooper-Cullison 27-10-(90-10-23)-0067-01-03 and 27-10-(90-10-23)-0066-01-03 (Removal)

Arbitrator: Rhonda R. Rivera

Charges: Bringing drugs on to the prison grounds

Contract Section: 24

Topic Headings: Correction employees; Drugs, possession of on State property; Investigation; Stacking charges

Employment Situation: Department of Rehabilitation and Correction; Hocking Correctional Facility; Correction Officers

Result: Grievance denied

Reason: The charge of bringing drugs on to State property is so serious that progressive discipline is unwarranted. The employer did not violate the Agreement by not allowing Union representation since there was no investigatory interview. The Highway Patrol searched the prison parking lot with drug sniffing dogs. The dogs pinpointed the grievants' cars. The Highway Patrol merely asked to search the cars of the grievants. The grievants consented. It was found that the grievant did bring contraband onto the State facility. There was no merit to the Union's claim that the grievants were not granted Union representation. This was an external investigation by the Highway Patrol. The arbitrator did not find it relevant that the employer had invited the Highway Patrol to search the parking lot.

335) Evelyn Morrison 24-14-(90-08-22)-0334-01-04 Suspension

Arbitrator: Hyman Cohen

Charges: Neglect of duty

Contract Section: 24

Topic Headings: Negligence

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Warrensville Developmental Center; Cook 1

Result: Grievance denied.

Reason: Even though the client choked on the properly prepared food (dry cereal as opposed to the banana which the grievant did not peel or mash as she was supposed to) it does not excuse the grievant's negligence. The improper preparation of the food created a serious risk to the client. The Union's argument that the clients were only supervised by one staff member does not help the grievant. It is therefore even more important for the grievant to properly perform her job. The client had a long history of choking and not properly preparing his food was a serious work rule violation.

336) David Slone 23-12-(90-02-23)-0183-01-03 Issue

Arbitrator: Jonathan Dworkin

Contract Issue: The Union grieved the fact that supervisors bumped into the bargaining unit.

Contract Section: 18

Topic Headings: Bumping Rights; Supervisors; Incorporation of law

Employment Situation: Department of Mental Health; Oakwood Forensic Center; Psychiatric Attendant Supervisor 1

Result: Grievance denied.

Reason: The Agreement is held to be silent on the right of displaced exempt employees to bump into bargaining unit positions. Laid-off supervisors may cross into the unit but their rights are defined by the Agreement. Their privileges are the same as, and no greater than, those of any other laid-off represented employee. If their State seniority is sufficient they may bump into a class series similar or related to the one they previously held.

337) David Parks et al. 31-04-(90-07-21)-0029-01-06 Issue

Arbitrator: Rhonda R. Rivera

Contract Issue: The employer violated Section 13.15 of the Agreement by not allowing emergency pay.

Contract Section: 13.15

Topic Headings: Emergency pay

Employment Situation: Department of Transportation; Shadyside cleanup

Result: Grievance denied.

Reason: The cleanup of the Shadyside flood damage was reasonably foreseeable to the place of employment and the position description of the grievants. The employer did not declare an emergency and cannot be estopped from failing to give emergency pay. The arbitrator found the situation was not an “emergency” under Section 13.15 of the Agreement. Management did not mandate the employees to report to Shadyside. Testimony showed that all the grievants were asked whether they could work. There was no mandatory call-out procedure. Management used overtime rosters to get employees to work and management did not create the impression that there was an emergency.

338) Johanna Graham 35-08-(90-10-18)-0019-01-05 Removal

Arbitrator: Rhonda R. Rivera

Charges: Unauthorized relationship with released youth

Contract Section: 24.06

Topic Headings: Last Chance Agreement; Privileges against giving testifying or giving evidence; Unauthorized relationship

Employment Situation: Department of Youth Services; TICO; Cook 1

Result: Grievance sustained. The grievant is to be reinstated without back pay on a last chance agreement with regard to having an unauthorized relationship.

Reason: The grievant, after receiving permission from the youth’s father, decided to take a released youth to the fair. Without the grievant’s knowledge the father later withdrew his permission. The grievant allowed the youth to stay over at her house with

her husband and son. The grievant was a six year employee with a good work record; she has a potential for learning. The grievant's silence was a legitimate exercise of her rights and should not be counted against her. The offense was serious but a fellow employee who committed almost the same offense received only a fifteen day suspension. The discipline was deemed punitive by the arbitrator. The State attempted to have the last chance agreement made a part of the employee's personnel file forever, but the arbitrator limited the agreement to two years, if there is no intervening discipline.

339) Merrile David Munyon 27-13-(90-09-18)-0326-01-03 Removal

Arbitrator: Hyman Cohen

Charges: Unauthorized relationship with inmate

Contract Section: 24

Topic Headings: Evidence, phone records; unauthorized relationship

Employment Situation: Department of Rehabilitation and Correction; London Correctional Institution; Correction Officer

Result: Grievance denied.

Reason: An inmate allegedly set the grievant up for a date with the inmate's sister. The grievant did meet the sister of an inmate. The grievant has been counseled twice for the same offense for which he was removed. The State proved by clear and convincing evidence that the grievant was engaged in an unauthorized relationship with sister of an inmate. There were phone records and the inmate's mother who also met the grievant could describe the grievant's car and remember that the grievant had a back injury. There were no mitigating circumstances to persuade the arbitrator that the State abused its discretion.

340) Paul Caldwell 24-03-(88-10-25)-0079-01-04 Issue**

Arbitrator: David M. Pincus

Contract Issue: The employer improperly abolished the positions

Contract Sections: 25.01; 43.02; 18

Topic Headings: Absence of the grievant (arbitration hearing); Arbitrability; Bargaining unit erosion; Burden of proof; Job abolishments; Layoffs; Preservation of benefits; Public Employees Retirement System (PERS)

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Broadview Developmental Center

Result: Some grievances were denied. Other grievances were sustained.

Reason: The grievance is arbitrable. The right to appeal a job abolishment falls within the authority of the arbitrator under Section 25.01 and Section 43.02. The employer

bears the burden to prove the abolishments were proper. The Arbitrator found that the Grievant violated the work rule on Neglect of Duty. There is just cause to discipline the Grievant for Minor Neglect but there are also mitigating circumstances present in the other employee's prior behavior and in the failure of adequate supervisory guidance.

341) Lyvonne Moore 33-00-(90-08-06)-0267-01-05 Removal

Arbitrator: Rhonda R. Rivera

Charges: Unauthorized use of sick leave

Contract Sections: 24; 29.04

Topic Headings: Employee Assistance Program (EAP); Sick leave

Employment Situation: Ohio Veterans' Home; Food Services Administrator

Result: Grievance denied.

Reason: The grievant had a long history of absenteeism. The employer went the extra mile by arranging and paying for a physical examination. That examination indicated that the employee had no legitimate excuse for missing work. The employee was counseled and offered enrollment in the Employer Assistance Program. The employee declined EAP. During this the employee failed to call off properly 5 times in a 7 day period and was absent as well. Removal is just, commensurate, and progressive.

342) Ricardo Vargas 35-03-(90-10-12)-0075-01-03 Removal

Arbitrator: Jonathan Dworkin

Charges: Abuse of youth

Contract Sections: 24.02

Topic Headings: Abuse; Mitigation; Neglect of Duty

Employment Situation: Department of Youth Services; Cuyahoga Hills Boys School; Youth Worker

Result: The grievance is denied in part and sustained in part. The discharge is modified to a disciplinary suspension covering the entire period of the time from the grievant's removal to June 2, 1991. The grievant will not be reinstated until the start of the first pay period to accommodate the employer's record keeping needs. The grievant shall be reinstated to his classification on the same shift but at a location other than the dorm where he previously worked.

Reason: The State alleged that the grievant beat a youth with a belt and the grievant gave his keys to another youth "cadre" and instructed the youth to lock him in the isolation room. The employer did not prove its case of abuse. The grievant was in charge of maintaining discipline and security in the F dorm. The grievant did give away his keys to a youth and allow himself to be locked in a room that could only be opened from

the outside. The grievant showed no remorse for this cavalier act of irresponsibility. The grievant intentionally disabled himself. He left the rest of the youth without supervision. For this reason the arbitrator did not grant any award other than the grievant would be reinstated and the removal would be termed a disciplinary suspension.

343) Frances Reisinger G-87-1764 Issue

Arbitrator: Harry Graham

Contract Issue: The employer violated the Agreement by not paying employees emergency pay for working during a severe snowstorm.

Contract Sections: 13.15

Topic Headings: Emergency pay

Employment Situation: Department of Rehabilitation and Correction; Marion Correctional Institution; Correction Officer

Result: Grievance denied.

Reason: Just because a Sergeant at the institution used the word emergency does not mean the State is declaring an emergency. The Sergeant does not occupy an appropriate place in the organization chart of the State to qualify for declaring an emergency. The snowstorm that struck was severe and nonessential traffic was prohibited by the County Sheriff, but the employer did not declare an emergency. The appropriate person in State government who declares an emergency for travel purposes is the Director of Highway Safety not the County Sheriff.

344) Misty Tademey 31-13-(91-02-25)-0014-01-09 Probationary Removal – Issue

Arbitrator: Anna D. Smith

Contract Issue: The grievant was removed. She continued to be carried as a probationary employee after sixty days of employment and was not credited with seniority for her previous State Service.

Contract Section: 25.02

Topic Headings: Arbitrability; Probationary employee; Timeliness; Seniority for previous State service

Employment Situation: Department of Transportation

Result: Grievance denied. The grievance is not arbitrable.

Reason: The arbitrator found that the triggering incident for the employee to grieve is the date when she was wrongfully listed as a probationary employee. The grievant had prior State service and should have served a shortened probationary period. The grievant did not grieve within thirty days after this date and the grievance is therefore untimely and not arbitrable. The Union's argument that that grievant was not harmed until she was later removed was dismissed by the arbitrator.

345) Richard T. Svoboda 11-09-(89-10-04)-0112-01-09 Issue

Arbitrator: Rhonda R. Rivera

Contract Issue: The employer violated Section 37.03 of the Agreement by failing to pay overtime when the grievant was denied overtime for working more than 40 hours during a training session.

Contract Sections: 37.03; 37.04; 13.01

Topic Headings: Arbitral authority; Timeliness in raising issue; Travel reimbursement

Employment Situation: OBES; Painesville; DVOP

Result: Grievance denied.

Reason: The DVOPs and the LVERs went to the National Veteran's Employment and Training Services Institute. This training was recommended but the training was voluntary and not required by the employer. The employer did not act in a capricious or discriminatory manner by classifying this training as voluntary. The main issue in this case was whether the training should be characterized as voluntary or mandatory and whether the employees who attended should be paid for travel time. The employer did treat training differently in the past but that was because it was a pilot program. The arbitrator found that for the employer to differentiate (require or not require the meeting) after a trial period is not capricious.

346) Bill Hayward G-87-2401 Issue

Arbitrator: Jonathan Dworkin

Contract Issue: The employer improperly denied the Union's request for meeting space.

Contract Sections: 3.02; 3.04; 3.05; 3.11

Topic Headings: Meeting space for the Union

Employment Situation: Department of Health; Northeast District (Summit County)

Result: Grievance sustained. The employer is directed to cease and desist from applying an interpretation of Article 3, Section 3.04 which excludes County Executive Boards or any other subdivisions of the Union from meeting space in State facilities. Such space is to be granted to any Union subdivision which applies, regardless of its composition, so long as granting the application is feasible. No Union request for meeting space is to be unreasonably denied.

347) Denise Devoe 31-12-(90-11-21) 0059-01-007 Issue

Arbitrator: Patricia Thomas Bittel

Contract Issue: Arbitrability

Contract Section: 25

Topic Headings: Arbitrability; Timeliness

Employment Situation: Department of Transportation; Garfield Heights

Result: Grievance denied.

Reason: The timeliness of the Agreement are clear and mandatory. A grievance must be filed at the Third Step within fourteen days of notification. The employer proved the grievant was notified. The grievant did not appeal until the 16th day after notification. In the event the deadline is missed the grievance is deemed withdrawn. There is no evidence of a mutually agreed upon extension either in writing or otherwise. The grievance is therefore not arbitrable.

348) Latonya Wilson G-87-2178 Issue

Arbitrator: John E. Drotning

Contract Issue: The employer should have provided the grievant with 400 more hours of OIL.

Contract Sections: 29; 34.04; Appendix K

Topic Headings: Occupational Injury Leave

Employment Situation: Department of Mental Health; Central Ohio Psychiatric Hospital; Hospital Aide

Result: Grievance denied.

Reason: There is no guarantee that the injured employees receive the total 960 maximum hours allowed under the OIL section set out in Appendix K of the Agreement. There must be some control by physicians, otherwise the subjective feelings of the employee might be the determining factor in the choice of whether to return to work or not. It is the task of the designated and attending physician to assess impairment and disability in the light of the demands of the job. The grievant was not shown to be unable to work. The grievance was denied and the grievant did not receive the additional 400 hours of OIL.

349) Christine Haberny 11-06-(88-12-27)-0043-01-09 Issue

Arbitrator: Harry Graham

Contract Issue: The employer did not properly fill a vacancy

Contract Section: 17.05

Topic Headings: Step 4 appeal; Posting a position

Employment Situation: Bureau of Employment Services; Moved employee from Bellefontaine to the Middletown branch

Result: Grievance sustained. The employer must post the position presently filled by the moved employee. The position must be filled pursuant to the bidding, selection and transfer sections of the Agreement. If the employee selected for the position is different from the moved employee, that person shall receive any applicable back pay and benefits.

Reason: The voluntary transfer of an employee without posting a vacancy is different from the situation where the employer may use managerial discretion (See #329). In this situation there is specific language in the Agreement that limits the employer – section 17 of the agreement. The position was a permanent and full time job. The filling of such positions clearly requires the employer to post the position and allow employees to bid for the position. The employer transferred an employee to another office without posting the permanent, full-time position at that office. The bargaining unit was deprived of the opportunity to bid on the position.

350) Roy M. Camp 04-00-(90-08-22)-0022-01-07 / 04-00-(90-10-12)-0029-01-07 / 04-00-(90-12-28)-0044-01-07 Suspension / Removal

Arbitrator: Hyman Cohen

Charges: Absenteeism; Call off procedures; Neglect of duty

Contract Section: 24

Topic Heading: Just cause

Employment Situation: Ohio Department of Agriculture; Meat Inspection Division

Result: Grievances denied.

Reason: The employer proved by clear and convincing evidence that all three grievants were disciplined for just cause. The grievants were meat inspectors. One was disciplined for being absent without leave and the three day suspension was justified. The second grievant was suspended for ten days for failing to follow the proper call-in procedure. The day the grievant failed to properly call in was a “kill day” at Lauerhaus Custom Butchering. The slaughterhouse lost two and a half hours where no work could be done since the animals were not first okayed – the job of the grievant. The arbitrator upheld the ten day suspension. The third grievant was removed for failure to report in for two days. The grievant offered the excuse that he “fell off the wagon” and got drunk. He also claimed that his wife did call in one day but was cut off by the answering machine. The grievant could not remember which day this occurred since he was sick in bed. The arbitrator also upheld the grievant’s removal.

351) Mike Kvarness 27-21-(88-09-08)-0030-01-03 Issue

Arbitrator: David M. Pincus

Contract Issue: Arbitrability; travel pay

Contract Sections: 25; 32.02

Topic Headings: Settlement; Timeliness

Employment Situation: Department of Rehabilitation and Correction; Orient Correctional Institution; Correction Officer

Result: Grievance denied. The grievance is not arbitrable which precludes an evaluation of the merits.

Reason: It was the Arbitrator's opinion that the grievance was not arbitrable because of timeliness deficiencies. The grievant was seeking pay for travel time when he had to report to the hospital for duty. The hospital was located farther from his home than the correctional facility where normally reported for work.

352) Lawrence Shackelford 14-00-(90-07-05)-0054-01-07

Arbitrator: Rhonda R. Rivera

Charges: Insubordination; Failure of good behavior

Contract Section: 24

Topic Headings: Last Chance Agreement; Settlement

Employment Situation: Ohio Department of Health; Plumbing Inspector

Result: Grievance denied.

Reason: The arbitrator indicated at the close of the arbitration hearing that she would find just cause for the grievant's removal but asked the employer and the Union to consider a settlement. The arbitrator did not order reinstatement but suggested that the parties agree to a settlement. With the arbitrator's mediation efforts both parties agreed under a Last Chance Agreement (LAC) reinstate the grievant. The grievant refused to sign the LCA. The arbitrator upheld the removal of the grievant.

353) Robert J. Thomas Un-numbered (Removal; Timeliness; Arbitrability)

Arbitrator: Jonathan Dworkin

Charges: Grievant was removed for his fourth "preventable" accident.

Contract Sections: 24; 25

Topic Headings: Arbitrability; Timeliness

Employment Situation: Department of Transportation; District 5 Maintenance Facility

Result: Grievance is deemed withdrawn because it was untimely filed at the Step 3 stage.

Reason: The arbitrator was reluctant to summarily dismiss grievances on purely technical grounds but at the same time realizes his limitations. The arbitrator does not have the power to dispense justice or fairness if doing so would violate the terms of the Agreement. The grievance was filed after the 14 day limit specified in the contract and therefore the grievance is not arbitrable.

354) Dennis Berry 32-00-(90-08-14)-0201-01-05

Removal

Arbitrator: Rhonda R. Rivera

Charges: Falsification of job application

Contract Section: 24.04

Topic Headings: Falsification of job application; Procedural Violations; Remedy

Employment Situation: Ohio Veterans' Children's Home; Custodial Worker

Result: Grievance denied in part and affirmed in part. The grievant is dismissed; however, his dismissal date is the date of the arbitration decision (at which time the grievant has finally had his 24.04 rights). Grievant shall be awarded back pay from his dismissal date to the date of the arbitration decision.

Reason: The grievant falsified his job application by not disclosing that he had a felony conviction. There are a host of procedural errors by the State. The Superintendent failed to disclose the source of the information that the grievant was a felon, used an unofficial source to look over the grievant's criminal record, failed to carry out a full and fair investigation and the Superintendent failed to attend the pre-disciplinary hearing, without excuse. These procedural errors were not enough to overcome the grievant's conduct of falsifying information on his job application; the discharge was for just cause. The arbitrator found that the removal would not be effective until the grievant had his due process (24.04) rights. The grievant was awarded back pay between the time of his removal and the time of the arbitration decision.

355) Gerald L. Edgar and Katherine Raber 04-00-(88-01-07)-0003-01-07 Issue

Arbitrator: Anna D. Smith

Contract Issue: Arbitrability; Mileage reimbursement

Contract Sections: 25; 32.02

Topic Headings: Continuing violation; Mileage reimbursement; Timeliness

Employment Situation: Department of Agriculture; Division of Meat Inspection; Meat Inspectors

Result: The grievance was timely filed. The grievance is denied.

Reason: The grievants were displaced by the job abolishments at the Holmes County poultry processor. The grievants elected to bump into Wayne County as meat inspectors. Before the layoff the grievants were reimbursed twenty-two cents per mile for the use of their personal vehicles to get from their homes to their assigned facility. After bumping into Wayne County the grievants were only paid mileage from the Wayne County line to the facility – not the entire distance from their homes to the facility.

The grievance was arbitrable. Each time the grievants were not reimbursed for their mileage a new grievable event occurred. That nearly four months of these events

took place prior to the timely filing of this grievance does not make a reoccurrence in the fourth month unarbitrable. What matters is that the grievance was filed within the time limitations for any one of these events. The denial of mileage reimbursement was found to be a continuing act and since the grievant filed ten days following the last occurrence in the series, it was timely.

The grievance was denied because the grievants were not required to travel from plant to plant. Although some meat inspectors are required to have a personal vehicle to travel from plant to plant, the grievants were not and cannot be found to be required by the employer to use their vehicle. It was found that other meat inspectors that are required to travel from plant to plant could receive 22 cents per mile for their home to plant commute.

356) Herman L. Dickinson 35-03-(90-10-16)-0077-01-03 Removal

Arbitrator: Patricia Thomas Bittel

Charges: The grievant violated the proper procedures for disability leave.

Contract Section: 24

Topic Headings: Back pay; Disability; Investigation; Lax Enforcement; Mitigation; Unauthorized Leave

Employment Situation: Department of Youth Services; Youth Leader

Result: Grievance sustained. The removal of the grievant was without just cause. He shall be reinstated with retroactive benefits (excluding time off). However, due to the grievant's negligence in responding to management's demand for proper evidence of his inability to work, grievant shall receive no back pay for the period of his absence.

357) Harley L. Wing 31-10-(91-01-08)-0002-01-06 Removal

Arbitrator: Jonathan Dworkin

Charges: Fighting; assaulting coworkers

Contract Section: 24

Topic Headings: Agency policies; Arbitral authority; Fighting; Just cause; Mitigating factors; Procedural violations; Self-defense

Employment Situation: Department of Transportation; Hocking County District; Highway Maintenance Worker 3

Result: Grievance denied.

Reason: The grievant was involved in an altercation with a coworker. The arbitrator commented that since the employer had reacted in a knee jerk fashion in imposing discipline the arbitrator could second guess the employer. The arbitrator found that the removal was for just cause. Even though the foreman and not the grievant was the

aggressor, the grievant's actions of picking up a shovel and striking the foreman three times was found by the arbitrator not to be in the heat of the moment, but deliberate. The assault was not self-defense – at least not after it proceeded beyond the first strike. One of the blows by the grievant was from behind and another while the foreman was helpless. There is a point where even the most forgiving concept of self-defense ends, and the victim becomes the aggressor. The arbitrator found that while the first clout with the shovel might have been “free”, the other two were not.

358) Marlene Diano 11-03-(90-11-290-0118-01-09 30-day Suspension

Arbitrator: Jonathan Dworkin

Charges: Grievant gave improper job referrals for her family members

Contract Sections: 24.05; 24.01

Topic Headings: Fraud; Theft

Employment Situation: OBES; employment Interviewer; Canton Office

Result: Grievance denied.

Reason: The grievant was found to have recommended her daughter for two positions that her daughter was not qualified to fill. The grievant was supposed to get her supervisor's permission before referring any family member for a job interview. The arbitrator considered the opportunity to give job referrals an asset and the grievant's misappropriation of these opportunities as theft. Even though the discipline was imposed almost two years after the incident, the discipline was still corrective. It is a reasonable presumption to believe that discipline imposed almost two years after the incident is being used as punishment. This is a rebuttable presumption. The grievant's testimony revealed that her violation was never corrected; she believed she was entitled to recommend her unqualified relatives because her boss did it. The suspension continued to have a corrective element.

359) Ronald Augustus 16-00-(90-12-06)-0134-01-09 Removal

Arbitrator: Rhonda R. Rivera

Charges: Insubordination, Neglect of Duty (abandonment of position)

Contract Sections: 24.01; 25.02; 35.02

Topic Headings: Disability; Timeliness

Employment Situation: Department of Human Services; Mail Clerk Messenger

Result: Grievance denied.

Reason: The grievant's basis for his refusal to return to work after his disability leave was that he was under a doctor's care and that the doctor had not yet ordered him to return to work. The grievant also argued that since the doctor prescribed medication he

could not drive a vehicle. The State offered proof that the grievant was able to return to work. The grievant could not support either excuse for not returning to work. There was just cause for removal.

360) Charlene Shockley 17-00-(88-02-04)-0008-01-09 Issue

Arbitrator: John E. Drotning

Contract Issue: The employer violated 36.02 of the Agreement in not giving the grievant the same pay as in her previous position.

Topic Headings: Arbitrability; Probationary Employee; Pay range; Promotions

Employment Situation: Rehabilitation Services Commission moved to the Industrial Commission; Technical Typist

Result: Grievance denied

Reason: The grievance was found to be arbitrable. The grievant, on advice from her steward, waited almost six months until she was no longer a probationary employee to grieve the issue.

On its merits the grievance was denied. The grievant did not transfer from one office to another. Rather she was forced to resign from the first agency, she applied for a new position with a different agency, received it, and served a probationary period. The employer treated her just like any new hire. Article 17 of the Agreement defines promotions as moving to a higher pay range and a lateral transfer as a movement to a different position at the same pay range. It does not specify that a lateral move from one agency to another agency within the State must be at the same step within the same pay range.

361) William C. Ollom 15-03-(91-01-15)-0001-01-07 Removal

Arbitrator: Hyman Cohen

Charges: Falsifying a school bus license

Contract Section: 24

Topic Headings: Driver's license; Falsifying documents; Mitigation

Employment Situation: State Highway Patrol; Department of Highway Safety; Drivers' License Examiner

Result: Grievance denied in part and sustained in part. The grievant will be reinstated without pay to his former position and without having accumulated seniority. The time between the grievant's removal and the reinstatement will be considered a disciplinary suspension.

Reason: The grievant was charged with using his position to gain a School Bus Driver's License. The grievant administered the test himself. Even though the grievant did

commit the misconduct, the employer did not show just cause for the removal. There were a variety of mitigating factors. The grievant never drove a bus for hire with the license that he received by certifying himself. The grievant also was a fourteen year employee with only one verbal reprimand for being tardy in his work record. The publication of the grievant's case in the local newspaper has taught the grievant a costly lesson.

362) Raymond E. Brown 31-02-(91-01-11)-0003-01-06 Removal

Arbitrator: Anna D. Smith

Charges: Theft

Contract Section: 24.01

Topic Headings: Aggravating circumstances; Commensurate discipline; Employee Assistance Program (EAP); Theft

Employment Situation: Department of Transportation; Oak Harbor garage; Highway Maintenance Worker 3 assigned into a temporary work level Highway Maintenance Worker 4

Result: Grievance denied

Reason: The grievant stole stone worth approximately thirty dollars. He used a State truck and dumped the stone on a private driveway. The arbitrator found that theft of property is so violative of the necessary bond of trust between the employer and the employee that the discharge for a first offense is reasonable. The grievant's attempts at restitution do not amend the breach of trust and the arbitrator cannot require the employer to adjust the penalty because of these attempts. This would send an inappropriate signal to the work place that one can escape discharge for the first acts of detected theft if restitution is made. The value of the item stolen is irrelevant. The employee in an Employee Assistance Program. The claim that the theft was the product of the stress of family illness baffled the arbitrator.

There were also aggravating factors in this theft. The grievant stole the stone with the employer's truck on the employer's time.

363) Virgil Johnson 34-04-(90-07-25)-0105-01-09 Fifteen day suspension

Arbitrator: John E. Drotning

Charges: Failure to carry out work assignments, insubordination

Contract Section: 24.01

Topic Headings: Commensurate discipline

Employment Situation: Bureau of Workers' Compensation; Clerk 2

Result: The grievance is denied in part and sustained in part. The fifteen day suspension is modified to a five day suspension.

Reason: The employer's charge that the grievant failed to carry out work assignments was based on the grievant's inability to complete a one day turn around on warrants. Witness testimony showed that it is not always possible to complete the warrants on time. The supervisor even said that she did not always issue discipline to those employees who did not complete this work. This charge justifies a written warning, if that.

The second charge of insubordination does justify a suspension since the employee does have a prior disciplinary record. The rude behavior towards his supervisor does not support a fifteen day suspension; a five day suspension is justified.

364) Joe Cipriani, Jr. 23-18-(90-11-30)-0580-01-06 Removal

Arbitrator: Patricia Thomas Bittel

Charges: Theft

Contract Section: 24.01

Topic Headings: Disparate Treatment; Theft

Employment Situation: Department of Mental Health; Western Reserve Psychiatric Hospital; Carpenter 1

Result: Grievance denied

Reason: The grievant allegedly stole copper tubing and spouting from State grounds and sold it to a recycling center. The Union claimed disparate treatment and cited other employees who were not removed for theft. The arbitrator distinguished these other cases. The grievant, unlike other employees, intentionally tried to hide and steal State property. The grievant deliberately stole and sold State property. The removal was for just cause.

365) John Patrick 31-01-(88-04-21)-0020-01-03 Issue

Arbitrator: Linda Dileone Klein

Contract Issue: The employer violated the Agreement by not properly equalizing the overtime distribution.

Contract Sections: 13.07; 25

Topic Headings: Arbitrability

Employment Situation: Department of Transportation; Design Engineer 2

Result: Grievance denied.

Reason: Although it must be held that the grievant knew that he had worked less overtime than junior employees, the purging of the overtime roster was the event which

caused him to be aware that any inequity in past overtime roster was the in past overtime distribution could not be recitified through additional overtime opportunities. Therefore, his grievance was timely filed.

The arbitrator also found that she was restricted to considering only those events which occurred within ten days prior to the filing of the grievance. Since there were no overtime opportunities for which the grievant was skipped during the ten days prior to the filing of the grievance, the grievance on its merits is denied. An employee cannot wait until the purge date of the overtime roster and expect to be paid for missed overtime opportunities which occurred weeks or months previously.

366) John Fragmin 27-19-(90-05-02)-0151-01-03 (Removal)

Arbitrator: Harry Graham

Charges: Conducting union business on work time and inmate fraternization

Contract Sections: 2.02, 24.01, 24.04, 25.02, 25.08

Topic Headings: Credibility of Witnesses; Discovery; Pre-Disciplinary Hearing; Representation by Union; Sexual Harassment; Step 3

Employment Situation: Department of Rehabilitation and Correction; Ohio Reformatory for Women; Correction Officer

Result: Grievance denied, removal upheld.

Reason: The arbitrator determined that it had not been proven that the grievant had either sworn in Italian at inmates or conducted union business on work time. It was also found that the employer's failure to issue a Step 3 response for 6 months did not prejudice the grievant. The arbitrator found that the charge of sexual harassment of inmates was proven as the inmate was a more credible witness than the grievant.

367) Rick Carpenter G 87-1313 (Arbitrability, Job Audits, Pre-positioning)

Arbitrator: Jonathan Dworkin

Contract Issue: Pre-positioning by improper use of job audits

Contract Sections: 25.01; Articles 17, 19

Topic Headings: Arbitrability; Job Audits; Promotions

Employment Situation: Department of Transportation; Highway Worker

Result: The grievance was denied.

Reason: The arbitrator rejected the employer's arguments against arbitrability because the grievant would have no standing to raise an Article 19 Job Audit grievance and, thus, no avenue for redress. It was held that the vacancy for which the grievant had bid was filled, however the arbitrator found the job audit procedure to be a second path to promotions and equal to Article 17 promotions. Additionally, pre-positioning was not proven to have occurred in the job audit procedure, or in work assignments in the grievant's work area.

368) Byron Turner 27-03-(90-10-19)-0059-01-03 (Removal)

Arbitrator: Anna D. Smith

Charges: Abuse of an inmate and excessive use of force

Contract Sections: 24.01; 24.08; 43.01; Article 9

Topic Headings: Abuse of Residents, patients, or inmates; Drugs; Notice to employer of use of prescription drugs; EAP; Incorporation of Ohio Revised Code; Mitigation; Self-Defense

Employment Situation: Department of Rehabilitation and Correction; Chillicothe Correctional Institution; Correction Officer

Result: The removal was reduced to a thirty-day suspension.

Reason: The arbitrator found that the grievant used excessive force but that excessive use of force is not equal to abuse. The Ohio Revised Code definition of abuse, as incorporated by the Dunning decision, was applied and the arbitrator found that the grievant had not knowingly caused serious physical harm. The grievant was not held responsible for failing to inform the employer of the possible side effects of the medication he was taking, Prozac and Klonopin, because the grievant had no knowledge of the side effects.

369) Annette Charles et al 23-07-(90-01-10)-0028-01-01 (Time Clock Installation)

Arbitrator: David M. Pincus

Contract Issue: Time clock installation

Contract Section: 13.16

Topic Headings: Time Clocks

Employment Situation: Department of Mental Health

Result: The grievance was denied.

Reason: The arbitrator found that the employer had not violated the restriction on installation of time clocks within the contract's nine-month window period. He made this finding despite the fact that one system had been installed, removed, and a second updated system replacing the first was installed later. It was found that the first installation was not a sham. The triggering event was the installation of the first clock system in 1986.

370) Emmett W. Tolbert 23-18-(90-10-25)-0562-01-04 Removal

Arbitrator: Hyman Cohen

Charges: Dishonesty and Neglect of Duty, Unapproved Leave

Contract Section: 24.01

Topic Headings: Absenteeism; Burden of Proof; Dishonesty; Disparate Treatment; Investigation, Criminal; Nexus; Off-duty Conduct; Removal; Theft

Employment Situation: Department of Mental Health; Western Reserve Psychiatric Hospital; Therapeutic Program Worker

Result: The grievance was denied; removal upheld.

Reason: The arbitrator found that the grievant was a central figure in a check cashing scheme concerning returned Bureau of Workers' Compensation checks which were stolen by another state employee. The grievant's acts were found to be related to his job because the checks stolen were state property, albeit from another agency. The grievant was also found not to have been subjected to disparate treatment when compared to others not removed for absenteeism while incarcerated. The property stolen was state property, thus the grievant was not similarly situated to other employees not removed.

371) Hervey Williams 34-04-(91-02-04)-0019-01-09 (Removal)

Arbitrator: David M. Pincus

Charges: Absenteeism

Contract Sections: 24.01; 24.05; 24.08

Topic Headings: Abandonment of Job; EAP; Estoppel; Forty-five Day Disciplinary Time Limit; Last Chance Agreement

Employment Situation: Bureau of workers' Compensation; Clerk 2

Result: The grievant was reinstated pursuant to a last change agreement conditioned upon his completion of an EAP.

Reason: The arbitrator found that the grievant was guilty excessive absenteeism by accumulating 104 hours of unexcused absence. The employer was found to have violated the contract because the grievant had not received notice of his removal until 52 days after the pre-disciplinary hearing (other arbitrators have looked to the date the decision to discipline is made, see #372). The employer was also found to have given negative notice to the by overlooking prior absences. Because the grievant's absences were caused by personal problems his reinstatement was conditional on completion of an EAP.

372) Rand W. Speer 27-15-(90-12-18)-0136-01-03

Arbitrator: Anna D. Smith

Charges: Misuse of position for personal gain, giving preferential treatment to an inmate, and exchange of personal information with an inmate.

Contract Sections: 24.01; 24.04; 24.05

Topic Headings: Forty-Five Day Disciplinary Time Limit; Inmate Testimony; Investigation, Initial; Pre-Disciplinary Hearing Officer.

Employment Situation: Department of Rehabilitation and Correction; Correction Officer

Result: The grievance was denied, removal upheld.

Reason: The arbitrator found that there was no contract violation committed because the decision to remove was made 44 days after the pre-disciplinary hearing but the grievant received notice on the 46th day (see #371). The pre-disciplinary hearing report was found to be proper as it need not contain all information, merely relevant information. The Employer proved that the grievant committed the acts alleged and that the investigation was proper as it was not supervised by an interested person.

373) John Garnes 15-02-(90-11-06)-0040-01-09

Arbitrator: Hyman Cohen

Charges: Job Abandonment

Contract Sections: 24.01; 24.04; 24.05; 24.08

Topic Headings: Abandonment of Job; Arbitrability; Interpretation of Agreement; Job Abandonment; Just Cause; Physician's Statements; Removal; Step 3.

Employment Situation: Department of Highway Safety, Bureau of Motor Vehicles.

Result: The grievance was denied, removal upheld.

Reason: The grievance was found arbitrable despite the fact that the Union did not proceed for 30 days after the date on the Step 3 response. The employer failed to prove that the union missed the thirty-day limit contained in section 25.02. Section 25.02 does not indicate whether dating the Step 3 response starts the time period or receipt of the Step 3 response by the union starts the running of the 30-day arbitration request period. The employer did meet its burden in proving just cause for removal, in that the grievant abandoned his job. He had received a five-day suspension, which he served while off work, for failing to follow call in procedures. The arbitrator held that the grievant left work without attempting to contact the Employer to remedy the problem

374) Julie Simpson (27-07-(91-01-29)-0060-01-03 (Removal)

Arbitrator: Rhonda R. Rivera

Charges: Unauthorized relationship with an inmate

Contract Sections: 24.01; 24.02; 43.03

Topic Headings: Agency Policies, Rules; Commensurate Discipline; Correction Employees; Inmates Fraternalization; Just Cause; Removal

Employment Situation: Department of Rehabilitation and Correction; Dayton Correctional Institution; Correction Officer

Result: The grievance was denied; removal upheld.

Reason: The grievant was found to have had clear notice of the rules against inmate relationships. The employer proved that the grievant engaged in 197 phone calls with an inmate for a period of 134 hours. She did not voluntarily disclose the relationship with an inmate and due to the serious security needs for correctional institutions, removal was found warranted.

375) Steven A. Holt 24-06-(91-03-14)-0273-01-04 (Removal)

Arbitrator: John E. Drotning

Charges: Absenteeism

Contract Sections: 24.01; 24.02

Topic Headings: Absenteeism; Just Cause; Progressive Discipline; Removal

Employment Situation: Bureau of Workers' Compensation; Statistician

Result: Grievance denied, removal for absenteeism upheld.

Reason: The grievant had received 4 prior disciplines including a 10-day suspension for absenteeism and had been enrolled in EAP twice. The removal was found to be progressive despite the fact that the Employer had reduced the grievant's most recent prior discipline.

376) Linda White 34-04-(91-03-07)-0045-01-09 (Removal)

Arbitrator: John E. Drotning

Charges: Absenteeism

Contract Section: 24.01; 24.02

Topic Headings: Absenteeism; Just cause; Progressive; Discipline; Removal

Employment Situation: Bureau of Workers' Compensation; Statistician

Result: Grievance denied.

Reason: The grievant had received 4 prior disciplines including a 10 day suspension for absenteeism and had been enrolled in EAPs twice. The removal was found to be progressive despite the fact that the employer had reduced the grievant's most recent prior discipline.

377) Michael Ward 27-03-(91-02-11)-0068-01-03 (Removal)

Arbitrator: Anna D. Smith

Charges: Violation of work rules, watching inmates play cards outside their housing unit without permission.

Contract Sections: 24.01; 24.04; 24.05; 25.08

Topic Headings: Absence of Grievant from Arbitration, Pre-arbitration Meetings, Pre-Disciplinary Hearing; Correction Employee; Discovery; Documents, Employer's Failure to Produce; Forty-Five Day Disciplinary Time Limit; Just Cause; Pre-Disciplinary Hearing; Procedural Violations; Removal; Representation by Union, Weingarten Rights.

Employment Situation: Department of Rehabilitation and Correction, Dayton Correctional Institution; Correction Officer.

Result: Grievance denied, removal for rules violation upheld.

Reason: The Employer proved that the grievant was watching inmates play cards while outside their housing unit without permission. The arbitrator found that no procedural violation was caused by the absence of the Employer's representative at the pre-disciplinary hearing. She stated that the union may waive the entire meeting and that because the union representative did not object to the absence, that requirement had been waived. The 45-day limit was also found not to have been violated as it runs from the actual hearing, not scheduled hearing.

378) Randy S. Faubert 31-13-(91-03-19)-0015-01-06 (Removal)

Arbitrator: Hyman Cohen

Charges: Theft of state property, gasoline

Contract Section: 24.01

Topic Headings: Intent to Violate Employer's Rules; Just Cause; Removal; Theft

Employment Situation: Department of Transportation; Sign Worker 5

Result: Grievance sustained, the grievant was reinstated without back pay.

Reason: The arbitrator found that the grievant used poor judgment in not stopping to buy gasoline before work, knowing he was dangerously close to running out of fuel. It was proven that the grievant did siphon gasoline from a state vehicle, however the arbitrator found that the circumstances showed a lack of intent to steal the gasoline. That the grievant told others that he intended to borrow it and he siphoned it in plain view of at least 50 other workers was evidence of his lack of intent to steal.

379) Luis Vizarrondo 27-17-(90-11-13)-0117-01-03 (Removal)

Arbitrator: Rhonda R. Rivera

Charges: Sexual relations with inmates

Contract Section: 24.01

Topic Headings: Burden of Proof; Evidence; Correction Employees; Inmate Fraternalization; Inmate Testimony; Removal; Stacking Charges

Employment Situation: Department of Rehabilitation and Correction, Northeast Pre-Release Center; Correction Officer

Result: The grievance was sustained. The grievant was reinstated with full back pay and it was recommended that he be transferred to a male institution.

Reason: The Employer failed to meet its burden of proof that the grievant engaged in sex with inmates. The Employer's evidence, the inmates' statements made while they were in Security Control, was not subject to cross examination, and thus lacked credibility. There was no corroborating physical evidence but for one item which places the grievant outside the facility when one of the incidents was to have occurred. The Employer also was found to have stacked charges by citing a catchall rule when a specific rule applied to the circumstances.

380) Robert Howard 42-07-(91-03-22)-0001-01-07 (Removal)

Arbitrator: John Drotning

Charges: Conversion of state property through improper use of his telephone card and disclosure of confidential information.

Contract Section: 24.01

Topic Headings: Disclosure of Confidential Information; Just Cause; Lax Enforcement of Work Rules; Removal

Employment Situation: State Medical Board of Ohio; Investigator

Result: The grievant was reinstated without back pay.

Reason: The Arbitrator found that the grievant did use his state telephone card improperly by making personal calls. The Employer was found to have not imposed discipline on others despite notice of other employees improperly using telephone cards. The arbitrator distinguished confidential documents created during an investigation and other documents which may contain some confidential information and noted that the Employer's rules regarding such documents were ambiguous. Thus, just cause was found for some discipline but not for removal.

381) Mark Miller 07-00-(91-05-27)-0121-01-14 (Removal)

Arbitrator: Harry Graham

Charges: Failure to follow absence reporting rules.

Contract Sections: 24.01; 24.02

Topic Headings: Absenteeism; Just Cause; Progressive Discipline; Removal

Employment Situation: Department of Commerce, Division of Real Estate

Result: The grievance was denied, removal upheld

Reason: Despite the grievant's 13 years of seniority, he had received discipline including a 15 day suspension for related offenses within the past year. The arbitrator held that while the grievant had considerable freedom while performing his job, the

Employer's rules were not burdensome, thus he was obligated to follow the rules regarding reporting in and out. As the grievant showed no sign of correcting his behavior, just cause was found.

382) Karen Castle & Linda Thomas G 87-0411 (Demonstrably Superior Standard; Substantial Difference Standard)

Arbitrator: Harry Graham

Contract Issue: Demonstrably Superior and Minimum Qualifications.

Contract Sections: 17.05; 17.06; (17.04; 17.05 1986 contract);

Topic Headings: Burden of Proof; Demonstrably Superior; Interpretation of the Agreement; Job Requirements; Minimum Qualifications; Promotions

Employment Situation: Bureau of Employment Services; Statistician 2

Result: The grievance was denied.

Reason: The arbitrator found that the Employer has the burden to prove demonstrable superiority in a junior employee, and that demonstrable superiority is reached only after applicants have been evaluated for minimum qualifications. Demonstrable superiority was defined to mean a "substantial difference" between the applicants. The arbitrator found that the grievants failed to possess the minimum qualifications for the posted position, thus the Employer's selection was proper.

383) Sandros Boddie 12-12-(91-03-13)-0251-01-03 (Removal)

Arbitrator: Hyman Cohen

Charges: Absenteeism

Contract Sections: 24.01; 24.02, 24.05; 24.08

Topic Headings: Absenteeism; Commensurate Discipline; EAP; Forty-Five Day Disciplinary Time Limit; Pre-disciplinary Hearing; Procedural Violation; Removal

Employment Situation: Department of Mental Health, Oakwood Forensic Center; Psychiatric Attendant

Result: The grievance was sustained in part, the grievant was reinstated without back pay.

Reason: The grievant was guilty of the absenteeism charges for which he was removed, despite his enrollment in an EAP. His doctor had released him to work yet he failed to report. The arbitrator found that the Employer's procedural errors warranted a reduced penalty. A valid pre-disciplinary hearing was held in September, and a subsequent meeting in February, where union representation was provided, was not a proper pre-disciplinary hearing. Thus, removal was not imposed within 45 days of the hearing.

384) Sharon Harbin 23-04-(91-04-10)-0157-01-09 (Removal)

Arbitrator: Rhonda R. Rivera

Charges: Job Abandonment, Failure to Follow Order of Return to Work

Contract Sections: 24.01; 24.05

Topic Heading: Abandonment of Job; Constructive Discharge; Job Abandonment; Just Cause; Procedural Violations; Removal; Supervisory Hostility

Employment Situation: Department of Mental Health, Cambridge Mental Health Center; Technical Typist

Result: Grievance denied, the removal was upheld.

Reason: The grievant had been off on disability leave due to work-related stress allegedly caused by her supervisor, however supervisory harassment or constructive discharge was not proven at arbitration. All her supervisor's acts were found to be within the scope of her authority and for business purposes. The removal was found to be timely despite a 3-year lapse between the violations and the removal. The arbitrator stated that the grievant caused the delay by pursuing her disability claim with the Industrial Commission and then in court. The grievant was found to have abandoned her job by not returning as ordered.

385) Pauline Mincks 31-10-(90-02-22)-0014-01-07 (Emergency Pay)

Arbitrator: Hyman Cohen

Contract Issue: Emergency Overtime

Contract Section: 13.15

Topic Headings: Emergency Pay; Estoppel

Employment Situation: Department of Transportation, District 10; Survey Technicians

Result: The grievance was denied.

Reason: The grievants were ordered by their supervisor to repair a culvert as an emergency job, with meals and lodging paid while working on the project. The arbitrator held that emergency pay requires a formal announcement and that the supervisor's statements and internal documents failed to meet that standard. The Employer was not found to be estopped from arguing that no emergency existed because of the statements and documents.

386) Rosalyn Royster 24-01-(90-12-11)-0064-01-09 (Suspension, 10-day)

Arbitrator: Rhonda R. Rivera

Charges: Insubordination, Failure to Follow Direct Orders, Poor Work Performance

Contract Sections: 24.01; 25.02

Topic Headings: Insubordination; Neglect of Duty; Notice to the Union; Progressive Discipline; Remedy; Step 3; Supervisory Hostility; Suspension

Employment Situation: Department of Mental Retardation and Developmental Disabilities, Central Office; Systems Analyst 1

Result: Ten day suspension reduced to a seven-day suspension.

Reason: The arbitrator found that the grievant did commit the acts for which she was suspended. She failed to complete work assignments and failed to follow orders to set other work aside and complete specified assignments. The Employer committed a procedural error by failing to send a Step 3 response to the union. This was not held to be a default by the Employer, but warranted a reduced penalty.

387) Mark Barnes 15-02-(91-03-01)-0012-01-09 (Removal)

Arbitrator: David M. Pincus

Charges: Absenteeism

Contract Section: 25.01

Topic Headings: Absenteeism; Arbitrability; Interpretation of the Agreement; Neglect of Duty; Notice to the Union

Employment Situation: Department of Highway Safety, Bureau of Motor Vehicles; Storekeeper 2

Result: The grievance was held to be untimely and not arbitrable.

Reason: The grievant received notification of his removal for absenteeism on February 8, 1991, the Union's Executive Director received notification on February 19, and the grievance was received by the Employer on March 1, 1991. The arbitrator held that the time limit runs from the grievant's receipt of notice until the Employer's receipt of the grievance. Section 25.01 was found to use calendar days and not work days, excluding the date of receipt by the grievant, but including the postmarked date of the grievance. Therefore, the grievance was untimely filed.

388) Charles F. Smith 35-16-(91-01-17)-0064-01-03 (Removal)

Arbitrator: David M. Pincus

Charges: Failure to Follow Agency Rules, bringing a facsimile of a weapon onto state property.

Contract Sections: 24.01; 24.02, 43.03

Topic Headings: Agency Policies, Rules; Commensurate Discipline; Intent to Violate Employer's Rules; Just Cause; Mitigation; Removal

Employment Situation: Department of Youth Services, Training Center for Youth; Youth Leader 2

Result: The grievance was sustained in part; the grievant's removal was reduced to a 30 day suspension.

Reason: The arbitrator found that the grievant did violate the Employer's rule against bringing contraband onto state property by bringing his son's broken BB gun with him. The fact that the gun was not operable and that the grievant had no intent to bring it onto state property warranted a reduction in penalty to a 30-day suspension. Additionally, a basis for discipline which had been withdrawn by the Employer, earlier in the disciplinary process, could not be used to prove just cause at arbitration.

389) Norman Gambill 14-00-(89-11-24)-0079-01-07 (Longevity Pay)

Arbitrator: Anna D. Smith

Contract Issue: Longevity Pay

Contract Sections: 25.01, 43.01; 43.02, Article 18

Topic headings: Arbitrability Incorporation of Ohio Revised Code; Interpretation of Agreement; Longevity Pay; Retirement

Employment Situation: Department of Health

Result: Grievance sustained, the grievant was entitled to longevity pay based on his prior service with the Highway Patrol.

Reason: The arbitrator found that longevity pay was an employment benefit controlled by the contract, not a retirement benefit due to the grievant's status as being retired from another state agency. As such, the grievance was arbitrable and because section 36.07 was found to look only to length of service to calculate longevity pay, the arbitrator granted the grievance.

390) Richard Svoboda, 11-03-(90-09-26)-0100-01-09

Carl Luebking, 11-05-(90-11-15)-0095-01-09

Nancy Simons, 11-03-(90-10-04)-0101-09-09 (Layoff; Federal Law Pre-Emption; Arbitrability of Layoff Rationale)

Arbitrator: David M. Pincus

Contract Issue: Whether positions created and funded by the federal government are controlled by contractual layoff procedures.

Contract Sections: 25.01; 25.03; 43.01; 43.02; Article 18

Topic Headings: Arbitrability; Arbitral Authority; Burden of Proof; Federal Law Incorporation; Incorporation of Ohio Revised Code; Job Abolishment; Layoff & Recall; Preservation of Benefits; Remedy

Employment Situation: Bureau of Employment Services; Disabled Veterans' Outreach Specialists (DVOPS), Local Veterans' Employment Representatives (LVERS)

Result: The grievance was sustained in part. The layoff of persons in federally controlled and funded positions is not arbitrable. The layoff of non-federally controlled employees was controlled by the contract and Ohio Revised Code. As the Employer failed to meet its burden of proof, the layoffs were improper and the grievants were awarded lost wages for the period of improper layoff.

Reason: United States Code sections 41 through 43 controls and funds the positions affected, (DVOPS and LVERS). Thus, the federal law was found to conflict with the contract and there was found no federal provision which permits the contract to supersede federal law. The arbitrator concluded that he had no authority over job abolishments controlled by federal law. The positions not controlled by federal law were held arbitrable and controlled by the Ohio Revised Code as incorporated into the contract. The arbitrator found that the Employer failed to meet its burden of proof that the layoff achieved economy or efficiency and granted that part of the grievance.

391) Ronald Adams 34-00-(90-12-13)-0170-01-07 (Removal)

Arbitrator: Hyman Cohen

Charges: Failure to Follow Call-in Procedures; Absenteeism

Contract Sections: 24.01; 24.08

Topic Headings: Absenteeism; EAP; Last Chance Agreement; Mitigation; Remedy; Removal

Employment Situation: Bureau of Worker's Compensation, Division of Safety & Hygiene; Industrial Safety Consultant 3

Result: The grievant was reinstated pursuant to a last chance agreement.

Reason: The arbitrator held that the grievant did violate the Employer's rule regarding call-in procedure and was absent without notifying his supervisor for extended periods. Mitigating circumstances were found in that the grievant had been a good employee since 1981 until his removal and had sought help with drug problems through enrollment in an EAP.

392) Minimum Qualifications Standards Applicable to Arbitration Decisions #393-#397

Arbitrator: Harry Graham

Contract Issue: Whether the Union may grieve the establishment of minimum qualifications found on Position Descriptions.

Contract Sections: 17.05; 17.06; 25.01; 36.05

Topic Headings: Arbitrability; Demonstrably Superior; Interpretation of the agreement; Job Requirements; Minimum Qualifications; Promotions

Employment Situation: Not Applicable

Result: The grievance was sustained; the establishment of minimum qualifications was held to be arbitrable.

Reason: The arbitrator looked to the contractual language found in section 36.05 which states that the Employer has authority to issue and modify specifications but the parties are to use the arbitration mechanism to resolve disputes concerning their specifications. The arbitrator also held that the qualifications must be reasonable related to the position to be filled.

393) Linda Hoffer 30-10-(90-07-09)-0191-01-09 (Minimum Qualifications; Promotions)**

Arbitrator: Harry Graham

Contact Issue: Whether the grievant had been improperly denied a promotion due to failure to meet minimum qualifications.

Contract Sections: 17.05; 17.06; 25.03

Topic Headings: Bidding Rights; Demonstrably Superior; Minimum Qualifications; Promotions; Remedy

Employment Situation: Department of Taxation; Clerical Specialist

Result: The grievance was sustained and the grievant was awarded the promotion with back pay and benefits.

Reason: The arbitrator found that the grievant met the minimum qualifications for the posted position. The Employer had used a worker characteristic, which was to be developed after employment, to determine whether the grievant met minimum qualifications, thus violating the contract.

394) Rachel Grove 29-04-(88-11-10)-0036-01-09 (Minimum Qualifications; Promotions)**

Arbitrator: Harry Graham

Contract Issue: Whether the grievant had been improperly denied a promotion based upon failure to meet minimum qualifications.

Contract Sections: 17.05; 17.06; 25.03

Topic Headings: Bidding Rights; Demonstrably Superior; Minimum Qualifications; Promotions; Remedy

Employment Situation: Rehabilitation Services Commission

Result: The grievance was denied.

Reason: The grievant was found to lack one required course in work processing when the time for submitting applications had closed, thus she lacked the minimum qualifications for the promotion. The fact that she was enrolled at that time and completed the course shortly afterward was found not to be relevant. The grievant must have possessed the minimum qualifications at the close of the application process.

395) Shirley Snyder 29-01-(89-08-30)-0019-01-09 (Minimum Qualifications; Promotions)

Arbitrator: Harry Graham

Contract Issue: Whether the grievant had been improperly denied a promotion due to failure to meet minimum qualifications.

Contract Sections: 17.05; 17.06; 25.03

Topic Headings: Bidding Rights; Demonstrably Superior; Minimum Qualifications; Promotions; Remedy

Employment Situation: Rehabilitation Services Commission

Result: The grievance was sustained. The grievant received the promotion with back pay and benefits,

Reason: The Employer determined that the grievant met all minimum qualifications except course work in algebra. The arbitrator found that by virtue of the grievant's completion of college-level FORTRAN computer programming coursework, the grievant possessed the required knowledge of algebra. Because the minimum qualifications require the specified courses or their equivalent, the grievant was found to have met the minimum qualifications.

396) Lynn Ogden 14-00-(90-03-05)-0021-01-13 (Minimum Qualifications; Promotions)**

Arbitrator: Harry Graham

Contract Issue: Whether the grievant had been improperly denied a promotion due to failure to meet minimum qualifications.

Contract Sections: 17.05; 17.06; 25.03

Topic Headings: Bidding Rights; Demonstrably Superior; Minimum Qualifications; Promotions; Remedy

Employment Situation: Department of Health; Microbiologist 2

Result: The grievance was sustained. The grievant received the promotion to Microbiologist 3 with back pay and benefits.

Reason: The Employer improperly accepted the application of the selected applicant because it had not been notarized when submitted. The arbitrator also found that the Employer had not treated all applicants equally. The arbitrator stated that when the Employer considers qualifications not contained on the applications for one person but

not another, it does so at its own risk. The grievant was found to meet the minimum qualifications due to her eleven years as a Microbiologist 2.

397) Mark Bundesen 14-00-(90-03-05)-0018-01-13 (Minimum Qualifications)**

Arbitrator: Harry Graham

Contract Issue: Whether the grievant had been improperly denied a promotion due to failure to meet minimum qualifications.

Contract Sections: 17.05; 17.06; 25.03

Topic Headings: Bidding Rights; Demonstrably Superior; Minimum Qualifications; Promotions; Remedy

Employment Situation: Department of Health

Result: The grievance was sustained. The grievant was awarded the promotion to Microbiologist 3 with back pay and benefits.

Reason: The arbitrator found that the Employer held the grievant to standards which were not applied to the successful applicant. If the Employer looks beyond the application for one applicant, it must do so for others. The grievant was found to possess the minimum qualifications for the vacancy because of his prior service, and other requirements can be obtained after being selected.

398) Charles Christian 15-02-(91-04-30)-0040-01-09 (Removal)

Arbitrator: Rhonda R. Rivera

Charges: Falsification of Documents

Contract Sections: 24.01; 24.04; 24.06; 25.08

Topic Headings: Burden of Proof; Discovery; Dishonesty; Falsification of Documents; Investigation, Initial; Just Cause; Prior Discipline; Procedural Violations; Removal

Employment Situation: Department of Highway Safety, Bureau of Motor Vehicles; Salvage Processor

Result: The grievance was granted and the grievant was reinstated with full back pay.

Reason: The arbitrator found that some facts indicate that the grievant did sign documents indicating that dangerous materials had been destroyed, when in fact they had not. The arbitrator held, however, that the Employer failed to meet its burden of proof. Additionally, the Employer committed procedural violations by not investigating the grievant's claims of forgery and failing to comply with the union's request for documents and witness names, which was found to prejudice the grievant in defending himself.

399) Dale Morgan 11-07-(88-06-02)-0015-01-09 (Promotions; Improper Transfer)

Arbitrator: David M. Pincus

Contract Issue: It was stipulated that the contract was violated by filling a vacancy by transfer rather than posting. The remaining issue was the appropriate remedy.

Contract Sections: 17.04; 17.08

Topic Headings: Back Pay; Posting Vacancies; Promotions; Remedy; Transfers

Employment Situation: Bureau of Employment Services; Claims Examiner 2

Result: The vacated position was ordered posted for bids under Article 17. The transferred employee was permitted to remain in the position until completion of the selection process. Should the transferred employee not receive the position, the arbitrator ordered that she be placed back into her former position. The arbitrator refused to also award back pay to the person who would have received the position and characterized such an award as punitive.

Reason: The parties stipulated that the contract had been violated by filling a vacancy with a transfer rather than through the posting process. The arbitrator found the appropriate remedy as explained above.

400) Margaret Boyd 24-03-(90-07-30)-0329-01-04 (Suspension, 10-day)

Arbitrator: Rhonda R. Rivera

Charges: Sleeping on Duty

Contract Sections: 24.01; 24.02; 24.05; 43.03

Topic Headings: Agency Policies, Rules; Animus Toward Employees, Union; Bias of Supervisor; Commensurate Discipline; Corrective Discipline; Just Cause; Sleeping on Duty; Supervisory Hostility; Suspension

Employment Situation: Department of Mental Retardation and Developmental Disabilities, Broadview Developmental Center; Therapeutic Program Worker

Result: The grievant's ten day suspension was reduced to a five day suspension.

Reason: The arbitrator found that the grievant may have dozed off, however the real reason for the suspension was found to be the hostility toward the union held by supervision. The arbitrator found that management had a reckless disregard for union relations, as evidenced by a paddle with the words "Union Buster" hanging in the supervisors' lounge. The arbitrator also held that the Employer failed to prove that its rule had been properly applied to the grievant and that a mandatory penalty is not commensurate nor corrective, thus, just cause was not proven.

401) Virgil E. Johnson 24-04-(91-02-19)-0030-01-09 (Removal)

Arbitrator: Jonathan Dworkin

Charges: Theft of state property, falsification of employment application

Contract Section: 24.01

Topic Headings: Application for Employment; Burden of Proof; Discovery; Dishonesty; Documents, Management's Failure to Produce; Estoppel; Evidence; Falsification of Documents; Intent to Violate Employer's Rules; Investigation, Criminal; Just Cause; Procedural Violations; Removal; Theft

Employment Situation: Bureau of Workers' Compensation

Result: The grievance was denied, the removal was upheld.

Reason: The arbitrator held that the Employer could not remove the grievant for failing to disclose his felony convictions on his job applications for two reasons: The grievant did not intend to deceive the Employer and there had been ample time for the falsification to have been discovered as the grievant was an eight year employee who had been removed once before. The grievant was also removed for his involvement in a check-cashing scheme with other state employees. The arbitrator found that the Employer had met its burden of proof that the grievant had been the supplier of checks, which had been returned to the Bureau of Workers' Compensation, to the others who then cashed, deposited, and split the proceeds with the grievant. The Employer was barred from introducing the criminal investigation report because the Employer had failed to provide it to the union pursuant to document requests. The arbitrator did allow the investigator to testify at the hearing and found that the investigator's testimony was more credible than the grievant's.

402) Rosalyn Royster 24-01-(91-04-30)-0069-01-09 (Removal)

Arbitrator: John E. Drotning

Charges: Poor work performance, insubordination

Contract Sections: 24.01; 24.02; 24.05; 24.06

Topic Headings: Commensurate Discipline; Insubordination; Just Cause; Poor Job Performance; Prior Discipline; Removal

Employment Situation: Department of Mental Retardation and Developmental Disabilities; Systems Analyst 2

Result: The grievance was denied, the removal was upheld.

Reason: The Employer had proven that the grievant was unable to complete her work assignments within set deadlines or in acceptable condition and that she had disobeyed an order to set projects aside to complete one specified. The grievant's performance evaluations had been below expectations for years and she had received prior discipline for poor job performance, thus the arbitrator found that the discipline was commensurate with the offense.

403) Anthony Clacko 15-03-(91-04-01)-0033-01-07

Arbitrator: Rhonda R. Rivera

Charges: Falsification of Documents

Contract Sections: 24.01; 24.02; 24.04; 24.05

Topic Headings: Animus Toward Employees, Union; Commensurate Discipline; Dishonesty; Disparate Treatment; Falsification of Documents; Just Cause; Pre-Disciplinary Hearing; Removal

Employment Situation: Ohio State Highway Patrol; Model Facility; Drivers' License Examiner

Result: The grievance was denied. The removal was upheld.

Reason: The arbitrator found that the grievant knew he was violating the employer's rules by altering the score on a commercial drivers' license test from a failing to a passing score. No procedural violation was found due to the employer's failure to present eyewitnesses at the pre-disciplinary hearing, or because no management witnesses were present at the grievance Step meetings. The Union failed to prove disparate treatment because other examiners who had been removed for falsification either had mitigating circumstances, or there was less harm to the employer caused by their actions.

404) Larry E. Fairburn 23-12-(90-06-13)-0202-01-03 (Suspension, 6-day)

Arbitrator: Anna D. Smith

Charges: Insubordination and sleeping on duty

Contract Sections: 24.01; 24.02; 24.05; 25.06

Topic Headings: Commensurate Discipline; Insubordination; Just Cause; Mitigation; Prior Discipline; Progressive Discipline; Sleeping on Duty; Suspension

Employment Situation: Department of Mental Health, Oakwood Forensic Center; Psychiatric Attendant

Result: Grievance denied, six-day suspension upheld.

Reason: The arbitrator noted the grievant's dilemma: That he had no alternative childcare and had to be home when his children came home from school. Insubordination was proven when the grievant left work after being mandated for overtime. The grievant was found to be aware of the mandatory overtime provisions and is responsible for making personal arrangements to accommodate the Employer's demands. The Employer failed to prove that the grievant had been sleeping on duty, however the arbitrator found the insubordination charge to be sufficient to support the six-day suspension.

405) Antoinette Savage G 87-1214 (Minimum Qualifications, Promotion)

Arbitrator: Harry Graham

Contract Issue: Whether the Employer improperly failed to promote the grievant.

Contract Sections: 17.05; 17.06

Topic Headings: Back Pay; Bidding Rights; Demonstrably Superior; Interpretation of the Agreement; Job Requirements; Minimum Qualifications; Promotions; Remedy

Employment Situation: Department of Aging; Accountant 2

Result: The grievance was sustained. The grievant was awarded lost wages from the time she would have been promoted until she left state service.

Reason: The arbitrator interpreted Article 17 to set up a process whereby only after applicants in section 17.05 group (A) have been evaluated and "found wanting" may the Employer consider those in lower groups. Additionally, demonstrably superior was found only applicable to junior applicants, not senior applicants. The Employer was found to have violated both requirements of Article 17. The arbitrator also found that the grievant possessed the minimum qualifications for the position and was entitled to lost wages only, as she had left state service.

406) Joe Sorrell (27-16-(89-06-07)-0920-01-06 (Bargaining Unit Work Performed by Supervisors)

Arbitrator: Hyman Cohen

Contract Section: 1.03

Topic Headings: Bargaining Unit Erosion; Interpretation of the Agreement; Remedy; Supervisor Performing Bargaining Unit Work

Employment Situation: Department of Rehabilitation and Correction, Marion Correctional Institution

Result: The grievance was sustained. The supervisor was ordered to stop performing the duties and a Penal Workshop Specialist position was ordered posted.

Reason: The arbitrator found that when a supervisor began to perform the work done by a retired bargaining unit member, the work done constituted a substantial increase in bargaining unit work done by supervisors. The arbitrator rejected the Employer's argument that because there had been no increase in the type of bargaining unit work performed, there was no contract violation. It was found that the substantial increase in amount of bargaining unit work performed violated the contract.

407) Todd Penn 35-02-(91-01-25)-0028-01-03 (Removal)

Arbitrator: John E. Drotning

Charges: Abuse of a youth

Contract Section: 24.01

Topic Headings: Abuse of Residents, Patients, or Inmates; Back Pay; Burden of Proof; Just Cause; Removal

Employment Situation: Department of Youth Services, Freedom Center; Youth Leader

Result: The grievance was sustained in part. The removal was reduced to a one-month suspension.

Reason: The arbitrator found no just cause for removal, however he did find that the grievant used excessive force in restraining the youth. The grievant was found to have used poor judgment in not calling for assistance to restrain the youth and overreacting to the situation, but lacked intent to abuse the youth.

408) Joseph G. Daffner 11-02-(90-11-27)-0087-01-07 (Removal)

Arbitrator: Hyman Cohen

Charges: Misuse of position for personal gain, selling confidential information

Contract Sections: 24.01; 24.02; 24.04; 24.05; 43.03

Topic Headings: Agency Policies, Rules; Burden of Proof; Commensurate Discipline; Disclosure of Confidential Information Evidence; Failure to Follow Agency Procedures; Investigation, Criminal; Just Cause; Misuse of Position, Employment, Union; Mitigation; Removal

Employment Situation: Bureau of Employment Services; Investigator

Result: The grievance was denied; removal upheld.

Reason: The Employer met its burden of proof that the grievant violated the Ohio Revised Code and work rules by selling confidential information to private investigators. The Employer presented the Highway Patrol investigator's testimony and the grievant's supervisor's testimony on the grievant's acts which were not controverted by the union. The grievant's thirteen years seniority was an insufficient mitigating circumstance to reduce the penalty.

409) Tamara Jones 24-07-(91-02-14)-0396-01-04 (Removal)

Arbitrator: David M. Pincus

Charges: Abuse of a patient

Contract Sections: 24.01; 25.03; 43.03

Topic Headings: Abuse of Residents, Patients, Inmates; Agency Policies, Rules; Arbitral Authority; Credibility of Witnesses; Failure to Follow Agency Procedures; Just Cause; Removal

Employment Situation: Department of Mental Retardation and Developmental Disabilities, Gallipolis Developmental Center; Therapeutic Program Worker

Result: The grievance was denied: the removal was upheld.

Reason: The arbitrator found that the grievant abused a client, who was acting out while eating, by restraining him in a manner not consistent with the client's program or the agency's restraint policy. The Employer's witnesses were found more credible than the grievant on the issue and neither collusion, nor Employer coercion were proven by the union. As just cause was found, the arbitrator has no authority to alter the penalty.

410) Luther L. Jones 35-07-(91-01-30)-0034-01-03 (Removal)

Arbitrator: Hyman Cohen

Charges: Possession of controlled substances while off duty

Contract Sections: 24.01; 24.02; 24.05; 24.08

Topic Headings: Commensurate Discipline; Delay; Disparate Treatment; EAP; Evidence; Forty-Five Day Disciplinary Time Limit; Just Cause; Nexus; Off-Duty Conduct; Procedural Violations; Removal

Employment Situation: Department of Youth Services, Scioto Village/Riverview Complex; Youth Leader

Result: The grievance was denied, the removal was upheld.

Reason: The grievant had pleaded guilty to possession of cocaine while on leave in Texas, which was an admission of the acts alleged and taken as an admission against interest by the arbitrator. The arbitrator found that this, and his later arrest in Ohio for drug related domestic violence, affected his ability to work with other state employees. The Employer was not held to have violated the contract by postponing discipline until after the conclusion of the criminal proceedings in Texas. The grievant was also found not to have been prejudiced because the Employer failed to inform him of the investigation and there is no obligation to allow employees to enroll in an EAP to avoid discipline. Lastly, no disparate treatment was proven by the union.

411) Floyd Dean Pullins 31-10-(91-01-06)-0013-01-06 (Probationary Removal)

Arbitrator: David M. Pincus

Charges: Failure to meet the minimum requirements, probationary removal

Contract Sections: 6.01; 25.01; 25.02

Topic Headings: Arbitrability; Estoppel; Notice; Probationary Employee; Removal; Timeliness

Employment Situation: Department of Transportation, District 10; Delivery Worker

Result: The grievance was held not to be timely filed, and thus was not arbitrable.

Reason: The union argued that the grievant was entitled to just cause protection because his probationary period should have been shortened due to prior service and he was not a probationary employee when he was removed. The arbitrator held that the trigger for

filing a grievance related to the grievant's probationary period was when he believed his probationary period to have ended. No duty is placed on the Employer to notify the grievant of a shortened probationary period to which the Employer did not believe the grievant was entitled. As the trigger for filing was the alleged end of the probationary period, not the removal, the arbitrator held that the grievance was untimely filed.

412) Timothy Pingle (30-10-(91-05-21)-0259-01-14 (Removal)

Arbitrator: Anna D. Smith

Charges: Poor work performance, neglect of duty

Contract Sections: 24.01; 25.03; 25.08

Topic Headings: Arbitral Authority; Back Pay; Corrective Discipline; Discovery; Just Cause; Last Chance Agreement; Procedural Violations; Remedy; Supervisory Hostility

Employment Situation: Department of Taxation; Tax Commissioner Agent 2

Result: The grievance was sustained in part. The removal was upheld but the grievant received four weeks back pay because of the Employer's failure to comply with discovery requests.

Reason: The grievant was removed for poor work performance under a last chance agreement. The arbitrator held that the last chance agreement applied to incidents which occurred prior to the last chance agreement but which were not discovered until after the last chance agreement was signed. It was found that the agreement was not limited to a specified rule violation, was valid and not in bad faith, and the agreement removed the arbitrator's authority to apply just cause. The removal was upheld despite arbitral notice of supervisory hostility, stacking charges, and the fact that the discipline did not allow for the grievant to correct his behavior.

413) John Hargrave 27-15-(91-07-05)-0017-01-03 (Removal)

Arbitrator: Rhonda R. Rivera

Charges: Job abandonment

Contract Sections: 24.01; 24.02; 24.03; 24.05

Topic Headings: Abandonment of Job; Arbitral Authority; Commensurate Discipline; Corrective Discipline; Driving While Under the Influence of Alcohol; EAP; Job Abandonment; Just Cause; Progressive Discipline; Remedy; Removal

Employment Situation: Department of Rehabilitation and Correction, Madison Correctional Institution; Correction Office

Result: The grievance was sustained in part. The grievant was reinstated pursuant to a last chance agreement without back pay.

Reason: The arbitrator found that the grievant's behavior met the standard for job abandonment. The grievant also had a verbal reprimand for absenteeism caused by his driving under the influence of alcohol. The removal was held not to be commensurate with the offense, corrective, or progressive as the immediately preceding verbal reprimand failed to give notice of the seriousness of the grievant's situation. The arbitrator noted the relationship between progressive discipline and EAP provisions.

414) John Martin 23-10-(91-07-03)-0130-01-04 (Removal)

Arbitrator: Anna D. Smith

Charges: Client abuse

Contract: Sections: 24.01; 25.08

Topic Headings: Abuse of Residents, Patients, Inmates; Credibility of Witnesses; Discovery; Documents, Management's Failure to Produce; Procedural Violations; Removal

Employment Situation: Department of Mental Health, Massillon Psychiatric Center; Therapeutic Program Worker

Result: The grievance was denied; removal upheld

Reason: The arbitrator held that the various procedural errors committed by the Employer, the most serious being failure to produce the Incident Report, were not sufficient to overturn the discipline imposed. The arbitrator found the Employer's witnesses more credible than the grievant, thus, she held that the grievant abused a client by slapping him after the client spit in the grievant's face. The arbitrator stated that the contract reserves to the Employer the right to determine discipline in cases of abuse.

415) Larry E. Fairburn 23-12-(91-08-05)-0270-01-03 (Removal)

Arbitrator: Anna D. Smith

Charges: Refusal of mandatory overtime, failure of good behavior, insubordination

Contract Sections: 24.01; 13.07

Topic Headings: Aggravating Circumstances; Insubordination; Just Cause; Mitigation; Neglect of Duty; Overtime, Refusal of; Removal

Employment Situation: Department of Mental Health, Oakwood Forensic Center; Psychiatric Attendant

Result: The grievance was sustained in part. The removal was reduced to a sixty day suspension.

Reason: The arbitrator found that the grievant willfully violated the Employer's rules by refusing the mandatory overtime ordered. The grievant, however, was found to have had a legitimate excuse; he was needed at home because his children were coming home

from school. The arbitrator reduced the penalty to a sixty day suspension because of the grievant's history of insubordination and failure to make alternative arrangements for childcare (see #404).

416) Michael Owens 23-18-(90-10-09)-0556-01-05 (Removal)

Arbitrator: David M. Pincus

Charges: Abuse of a client

Contract Sections: 24.01; 25.01

Topic Headings: Abuse of Patients, Residents, Inmates; Arbitrability; Back Pay; Burden of Proof; Class/Individual/Union Grievance; Just Cause; Remedy; Removal; Settlement, Criminal Case

Employment Situation: Department of Mental Health, Western Reserve Psychiatric Hospital; Custodial Worker

Result: The grievance was sustained. The grievant was reinstated with full back pay, seniority, benefits, and the incident was expunged from the grievant's record.

Reason: The grievant was involved in an incident with a patient for which criminal charges were brought against the grievant. The charges were withdrawn pursuant to an agreement that the grievant would not grieve his removal. The arbitrator held that the agreement was not binding as a proper settlement would have required involvement of the union. The arbitrator also found that the Employer failed to prove that the grievant abused a patient and subjected the grievant to disparate treatment when compared to others who had been involved in similar incidents with the patient. The grievant's actions were found to be reasonable and not abusive.

417) Gisela Babette 11-09-(89-01-19)-0107-01-09 (Suspension)

Arbitrator: Anna D. Smith

Charges: Theft

Contract Sections: 17.08; 24.01; 43.03; Article 17\

Topic Headings: Agency Policies, Rules; Burden of Proof; Corrective Discipline; Double Jeopardy; Intent to Violate Employer's Rules; Just Cause; Suspension; Theft; Transfers

Employment Situation: Bureau of Employment Services; Data Processor

Result: The grievance was sustained in part. The thirty day suspension was reduced to a one day suspension with back pay for twenty-nine days and expungement of her record of the theft charge.

Reason: The grievant had been suspended for theft, however the Employer failed to prove that the grievant intended to steal the state's property rather than merely borrow it (see Hurst arbitration). The arbitrator concluded that due to the grievant's lack of intent,

the discipline imposed was not commensurate nor corrective. The arbitrator also held that the grievant had not been subjected to double jeopardy by being transferred as well as suspended.

418) Laurie Stelts (Julie Zimmerman)

24-09-(90-06-26)-0402-01-04 (Promotion; Minimum Qualifications)

Arbitrator: Harry Graham

Contract Issue: Whether the grievant had been improperly denied a promotion due to failure to meet minimum qualifications.

Contract Sections: 17.04; 17.05; 17.06

Topic Headings: Back Pay; Interpretation of the Agreement; Job Requirements; Minimum Qualifications; Posting Vacancies; Promotions; Remedy

Employment Situation: Department of Mental Retardation and Developmental Disabilities, Mount Vernon Development Center

Result: The grievance was sustained. The grievant was awarded the position with back pay as of the date it had been filled improperly, provided the grievant promptly obtains the required certificate.

Reason: The arbitrator found that the Employer used a worker characteristic which may be acquired after receiving the job for the purposes of evaluating applicants. The grievant was found to have shown willingness to obtain the required water safety instructor certificate. The arbitrator found that the Employer may not hold applicants to preferred characteristics, only characteristics which are required. Thus, it was held that the Employer violated the contract by its use of the preferred worker characteristic to screen applicants.

419) Steven Williams 12-00-(89-09-29)-0028-01-13 (Promotions; Reclassifications)

Arbitrator: Rhonda R. Rivera

Contract Issue: Whether the Employer improperly filled a Geologist 4 vacancy by reclassifying an employee rather than posting the vacancy.

Contract Section: 17.04

Topic Headings: Posting Vacancies; Promotions; Reassignment; Remedy

Employment Situation: Ohio Environmental Protection Agency, Division of Groundwater; Geologist

Result: The grievance was sustained. The grievant was awarded the Geologist 4 position with back pay and benefits. The improperly assigned employee was placed back to her former position and the Employer was prohibited from recouping the additional wages received while improperly assigned.

Reason: The arbitrator stated that while the Employer has discretion to rename positions, that power cannot be used to circumvent the seniority provisions of the contract. The relevant facts were not the labels attached to the position, but the job duties. Because the Geologist 4 position entailed supervision, while the Environmental Engineer position did not, the change resulted in the improper filling of a vacant position.

420) Ruth Johnson 24-14-(88-04-11)-0156-01-04 (Occupational Injury Leave)

Arbitrator: Hyman Cohen

Contract Issue: Whether the Employer improperly denied the grievant's Occupational Injury Leave application

Contract Sections: 25.01; 25.02; 34.04

Topic Headings: Appendix K; Arbitrability; Interpretation of the Agreement; Occupational Injury Leave; Remedy; Settlement, Effect of Mistake

Employment Situation: Department of Mental Retardation and Developmental Disabilities, Warrensville Developmental Center

Result: The grievance was arbitrable due to a mistake resulting in the settlement and was sustained in part. The grievant believed that her OIL application would be approved when the settlement was signed, not that one basis for denial would be dropped by management. The employer believed that it was merely removing the initial basis for denial of OIL and nothing more. The arbitrator held that DAS has discretion to approve OIL claims, but the employee's attending physician has discretion to release the employee back to work. OIL was held not to be limited to new injuries, but extended to cover aggravation of pre-existing injuries, and that disputes involving OIL are arbitrable. The grievant was awarded 285 hours of OIL.

Reason: The arbitrator found that the settlement between the parties ineffective to bar arbitration because it was made under mistaken beliefs. The Employer believed it was merely agreeing not to deny OIL because the grievant was conducting union business while the grievant believed that the Employer was agreeing to approve her OIL application. Appendix K was found, by its terms, to reserve to DAS the discretion to approve OIL applications and to grant to the employee's attending physician authority to release an employee back to work. Appendix K also was found not to limit OIL to new injuries. Thus, pre-existing injuries may qualify for OIL benefits upon DAS approval. The arbitrator awarded the grievant 285 hours of OIL based upon her physician's judgment because the Employer did not rebut his evaluation.

421) Darin Cox 27-25-(91-05-31-0215-01-03 (Removal)

Arbitrator: Rhonda R. Rivera

Charges: Abuse of an inmate

Contract Sections: 24.01; 25.05

Topic Headings: Abuse of Residents, Patients, Inmates; Burden of Proof; Credibility of Witnesses; Just Cause; Removal; Forty-Five Day Disciplinary Time Limit

Employment Situation: Department of Rehabilitation and Correction, Southern Ohio Correction Facility; Correction Officer

Result: The grievance was denied, the removal was upheld.

Reason: The arbitrator found that discipline had been imposed timely despite the fact that the incident occurred on January 4 and removal was effective May 29. The delay was caused by the Employer's investigation and was found not to be prejudicial to the grievant and the only time limit imposed on the Employer runs from the date of the pre-disciplinary hearing. The Employer was found to have met its burden of proof that the grievant abused an inmate. The testimony of the Employer's witness was more credible than the union's witnesses and the grievant was found to have a motive and opportunity to commit the offense.

422) E. Cecelia Boyer 31-13-(91-07-03)-0029-01-14 (Removal)

Arbitrator: Rhonda R. Rivera

Charges: Insubordination, failure to call in when absent

Contract Sections: 24.01; 24.02

Topic Headings: Absenteeism; Bias of Supervisor; Commensurate Discipline; Insubordination; Just Cause; Mitigation; Progressive Discipline; Remedy; Removal

Employment Situation: Department of Transportation; Computer Operator

Result: The grievance was sustained in part. The removal was reduced to a thirty-day suspension and the grievant was reinstated pursuant to a last chance agreement and was encouraged to enroll into an EAP. The arbitrator retained jurisdiction to rule on the last chance agreement's contents.

Reason: The arbitrator noted that removal was progressive for the grievant's failure to attend the mandatory training without calling in, however mitigating circumstances warranted a reduced penalty. The arbitrator found that the grievant's 23 years service and her supervisors testimony that she was a competent employee constituted mitigation and a finding that removal was not commensurate with the offense. The arbitrator also noted that the grievant, a mature black woman, had difficulty receiving direction from her recently promoted supervisors, who were young white men, and that discussing her medical condition would have been agonizing and embarrassing.

423) Gary D. Long 25-18-(89-10-02)-0007-01-06 (Promotions; Arbitrability)

Arbitrator: David M. Pincus

Contract Issue: Which contract controls selection for a promotion made after the effective date of the present contract, but which was posted under the prior contract.

Contract Sections: 17.05; 17.06; 25.01

Topic Headings: Arbitrability; Bidding Rights; Controlling Contract; Promotions

Employment Situation: Department of Natural Resources, Senecaville State Fish Hatchery; Fish Hatchery Technician

Result: The grievance was found arbitrable and that the Employer must select from the applicant pool according to the new contract.

Reason: The arbitrator held that the grievance was arbitrable because the matter was controlled by the contract under which the triggering events took place. As the triggering event was the selection, not the acceptance of bids, the grievant had standing to grieve based upon his section 17.05 applicant group. The grievant had no standing to grieve under the prior contract groupings. The arbitrator held that the new contract controlled because critical elements of the selection process took place after the new contract's effective date and that the incidents which created the basis for the grievance occurred after that date.

424) Anita Robinson 23-13-(91-08-29)-0474-01-04 (Removal)

Arbitrator: Anna D. Smith

Charges: Insubordination, switching work assignments without permission

Contract Sections: 13.05; 24.01; 24.02; 24.06; 25.03

Topic Headings: Insubordination; Intent to Violate the Employer's Rules; Just Cause; Prior Discipline; Progressive Discipline; Reassignment; Removal; Work Assignment

Employment Situation: Department of Mental Health, Pauline Warfield Lewis Center; Licensed Practical Nurse

Result: The grievance was denied, the removal was upheld.

Reason: The arbitrator found that the grievant was given a direct order by her supervisor to work in her original area despite the grievant's anxiety over being attacked again by a patient in the area. It was also found that the grievant was mistaken in her belief that she could switch with another employee and that her behavior was inappropriate. Due to the grievant's prior discipline for insubordination, removal was held to be proper.

425) Lionel Vaughn 22-10-(91-05-20)-0003-01-09 (Removal)

Arbitrator: Marvin J. Feldman

Charges: Dishonesty, redeeming lottery tickets

Contract Sections: 24.01; 43.01; 43.02; 43.03

Topic Headings: Agency Policies, Rules; Dishonesty; Incorporation of Ohio Revised Code; Intent to Violate Employer's Rules; Just Cause; Notice; Removal

Employment Situation: Ohio Lottery Commission

Result: The grievance was sustained in part; the grievant was reinstated without back pay but no loss of seniority.

Reason: The grievant was found guilty of redeeming lottery tickets in violation of the Employer's rules and Ohio Revised Code section 3770.07(A), however he was not found to have had notice of the rule prohibiting lottery employees from doing so. The Employer failed to present any evidence of theft of lottery tickets. The arbitrator found that the Employer based its decision on the unfounded belief that the grievant had stolen the tickets, thus removal was not commensurate with the offense.

426) Rae Jacobozzi 11-02-(91-08-02)-0103-01-09

Leonard Groboske 11-02-(91-08-16)-0104-01-09

Jessie McClain 11-02-(91-08-29)-0107-01-09 (Re-employment; Intermittent)

Arbitrator: Anna D. Smith

Contract Issue: Whether the OBES violated the contract when it failed to consider intermittent appointments as re-employment.

Contract Sections: 43.01; 43.02; Article 16

Topic Headings: Incorporation of Ohio Revised Code; Interpretation of the Agreement; Layoff & Recall; Remedy; Seniority, 1989 Memorandum of Understanding on Seniority

Employment Situation: Bureau of Employment Services

Result: The grievance was sustained, with the grievant's seniority dates being corrected to show no break in service. Any personnel action caused by the erroneous seniority dates was ordered rescinded with the grievants to be made whole for lost wages.

Reason: The arbitrator found that the term re-employment carried its ordinary meaning, not its meaning as used in the Ohio Administrative Code, thus it was not limited to full-time or part-time appointments. Because the grievants had been appointed to intermittent positions within the one year period applicable to layoffs prior to 1986, they were found not to have experienced a break in service.

427) Livingston McClinton 15-02-(91-07-22)-0056-01-09 (Promotions; Minimum Qualifications)

Arbitrator: Harry Graham

Contract Issue: Whether the grievant possessed the minimum qualifications for the position posted.

Contract Sections: 17.05; 17.06

Topic Headings: Job Requirements; Minimum Qualifications; Promotions; Remedy

Employment Situation: Bureau of Motor Vehicles; Data Entry Operator

Result: The grievance was sustained and the Employer was ordered to re-open the selection process as it had not been completed previously.

Reason: The arbitrator found that the Employer used the semantic difference between retrieval, the grievant's present position, and reproduction, the position posted, rather than actual job duties to determine minimum qualifications. It was also found that the grievant possessed the minimum qualifications for the position. Because the Employer had not interviewed the grievant the matter was remanded to the Employer to complete the selection process.

428) Ronald Vick 31-12-(90-05-03)-0031-01-06 (Promotions; Minimum Qualifications)

Arbitrator: Harry Graham

Contract Issue: Whether the grievant was improperly denied promotion.

Contract Sections: 17.05; 17.06

Topic Headings: Interpretation of the Agreement; Minimum Qualifications; Promotions

Employment Situation: Department of Transportation, Burton Yard; Auto Mechanic 2

Result: The grievance was denied, the grievant failed to meet the requirement for the posted position.

Reason: The arbitrator found that the contract requires applicants to possess the minimum qualifications found on the class specification and to be proficient in the minimum qualifications on the position description. The grievant was found to possess the minimum qualifications in the class specification. He was not found to be proficient in those on the position description as he had been temporarily assigned to the position and failed to perform satisfactorily. The arbitrator noted that the temporary assignment had been made in good faith and limited this decision to its facts.

429) Jeanette Sammons 29-04-(91-06-24)-0102-01-09 (Removal)

Arbitrator: Anna D. Smith

Charges: Absenteeism, drug use

Contract Sections: 24.01; 24.02; 24.04; 24.08; 43.03

Topic Headings: Absenteeism; Agency Policies, Rules; Animus Toward Employees, Union; Back Pay; Corrective Discipline; Dishonesty; Drugs, Possession on State Property; EAP; Federal Law Incorporation; Investigation, Initial; Just Cause; Mitigation; Progressive Discipline; Remedy; Removal

Employment Situation: Rehabilitation Services Commission, Bureau of Disability Determination; Office Assistant 2

Result: The grievance was sustained. The removal was reduced to a ten-day suspension with back pay for excess time off. The record of the grievant's absences were ordered to be changed to reflect unpaid leave. The grievant was ordered to enter an EAP and that another violation of the federal Drug Free Workplace Policy will be just cause for removal.

Reason: The arbitrator found that while the grievant may have violated the federal Drug Free Workplace Rule, removal is not a mandatory penalty, thus just cause applies through the contract. The grievant was found not to be guilty of dishonesty for not reporting her misdemeanor arrest as she was acting on the advice of her attorney. The grievant was also found to have an alcohol and absenteeism problem, however the incident for which the Employer based discipline was unusual and the Employer failed to consider that. The Employer was also found to have imposed discipline which was neither corrective nor progressive because it followed a one day suspension.

430) Randy Burley 07-00-(89-06-12)-0041-01-07 (Suspension, 5-day)**

Arbitrator: Rhonda R. Rivera

Charges: Dishonesty

Contract Sections: 24.01; 24.04; 2408; 43.03

Topic Headings: Agency Policies, Rules; Discovery; Dishonesty; Falsification of Documents; Investigation, Initial; Just Cause; Misuse of Position, Employment, Union; Pre-Disciplinary Hearing; Procedural Violations; Suspension

Employment Situation: Department of Commerce; Inspector

Result: The grievance was sustained in part; the 5 day suspension was reduced to 1 day.

Reason: The arbitrator held that the Employer committed several procedural violations by failing to provide a list of witnesses under section 24.04, the pre-disciplinary hearing notice was not sufficient to provide notice of the specific charges, the designation of the pre-disciplinary hearing officer was improper as she had an interest in the discipline, and the investigation was incomplete and unfair. No discrimination based on race or unionism were proven by the union. The arbitrator also found the grievant not guilty of neglect of duty; but he was found to have been AWOL for working at home on the day in question and guilty of falsification of travel vouchers. The arbitrator reduced the penalty because of the Employer's procedural violations, despite noting the grievant's contemptuous actions at the arbitration hearing.

431) Harold Diss 24-04-(90-12-06)-0283-01-04 (Removal)**

Arbitrator: Hyman Cohen

Charges: Abuse of a patient

Contract Section: 24.01

Topic Headings: Abuse of Residents, Patients, Inmates; Just Cause; Removal

Employment Situation: Department of Mental Retardation and Developmental Disabilities, Cambridge Developmental Center; Therapeutic Program Worker

Result: The grievance was sustained in part, the grievant was reinstated without back pay.

Reason: The arbitrator applied the analysis from the Dunning decision and found that despite the proof that the grievant abused a client by pouring a bucket of water onto him, removal is not automatic and just cause still applied to determine whether removal was appropriate for the grievant. Therefore, despite the finding that the grievant abused the client, removal was not found to be appropriate for the grievant. Therefore, despite the finding that the grievant abused the client, removal was not found to be appropriate because of the grievant's length of service and above average performance evaluations.

432) Michael Fitch 02-03-(91-08-05)-0207-01-05 (Removal)

Arbitrator: Anna D. Smith

Charges: Failure of good behavior, theft

Contract Sections: 24.01; 24.02; 24.05; 25.02; 43.03

Topic Headings: Agency Policies, Rules; Commensurate Discipline; Dishonesty; Failure to Follow Agency Procedures; Just Cause; Notice; Procedural Violations; Removal; Step 3; Theft

Employment Situation: Department of Administrative Services, Division of Public Works; Custodial Worker

Result: The grievance was denied, the removal was upheld.

Reason: The arbitrator held that the failure of the Employer to provide a Step 3 response was insufficient to warrant a reduced penalty. That the Step 3 response was months late does not indicate an unwillingness to settle; additionally it was not proven that the union sought the response and thus was equally guilty. The remedy for late Step responses is contained within Article 25 and it requires proceeding to the next step. The lack of a Step 3 response was also found not to have prejudiced the grievant. The grievant was found to have had notice of the rule prohibiting possession of state property, even if taken from the trash. Due to the grievant's position the taking of property warranted removal.

433 John McAlpine 24-03-(91-06-20)-0417-01-04 (Removal)

Arbitrator: Anna D. Smith

Charges: Failure of good behavior

Contract Sections: 24.01; 24.02; 24.05; 24.06 43.03

Topic Headings: Agency Policies, Rules; Commensurate Discipline; Dishonesty; Intent to Violate the Employer's Rules; Just Cause; Lax Enforcement of Work Rules; Notice; Prior Discipline; Removal; Theft

Employment Situation: Department of Mental Retardation and Developmental Disabilities, Broadview Developmental Center; Therapeutic Program Worker

Result: The grievance was denied, the removal was upheld.

Reason: The arbitrator found that the grievant lacked intent to steal the clients money intended to be used for an outing. He did plan to pay it back after using it to bail himself out of jail to go back to work. The Employer poorly communicated its rules on use of client funds, however the grievant was found to have had notice of the rule. The grievant also failed to promptly repay the money, thus just cause was found for the removal.

434) Siegrun Fink 15-03-(91-07-24)-0069-01-07 (Removal)

Arbitrator: David M. Pincus

Charges: Driving while under the influence of alcohol

Contract Sections: 24.01; 24.02; 24.05

Topic Headings: Commensurate Discipline; Disparate Treatment; Driving While Under the Influence of Alcohol; Evidence; Just Cause; Removal

Employment Situation: State Highway Patrol; Mail Clerk Messenger

Result: The grievance was denied; the removal was upheld.

Reason: The arbitrator found that the grievant was guilty of driving while under the influence of alcohol and causing an accident while working. No valid mitigating circumstances existed as the grievant failed to take responsibility for her drinking problem and failed to enroll into an EAP. The arbitrator excluded from his consideration any post-removal behavior of the grievant, as the only facts available to the person imposing discipline were those available when the removal decision was made.

435) Jeffrey Parsons 35-04-(91-11-15-0046-01-03 (Suspension, 10-day)

Arbitrator: Douglas E. Ray

Charges: Neglect of duty

Contract Section: 24.01

Topic Headings: Credibility of Witnesses; Just Cause; Neglect of Duty; Suspension

Employment Situation: Department of Youth Services, Indian River School, Youth Leader

Result: The grievance was sustained and the grievant made whole.

Reason: The arbitrator found that the grievant was more credible than the Employer's witnesses. Just cause was not found for the suspension because the grievant sought

medical assistance for a youth who had caught his finger in a door as soon as he knew of the injury. Thus, the grievant was found not guilty of neglect of duty.

436) Ralph Jones 34-04-(91-06-06)-0095-01-09 (Removal)

Arbitrator: John E. Drotning

Charges: Sleeping on duty

Contract Sections: 24.01; 24.02; 24.05

Topic Headings: Commensurate Discipline; Just Cause; Removal; Sleeping on Duty

Employment Situation: Bureau of Workers' Compensation; Data Technician

Result: The grievance was sustained, but the grievant was ordered to go on disability leave or, if unavailable, he must resign.

Reason: The grievant had received prior discipline for repeatedly sleeping on duty. He had notified the Employer of his sleeping disorder, sleep apnea, for which he was under a doctor's care. Because the Employer had been notified, no just cause for removal was found, however, the grievant was found unable to perform his job in his present condition.

437) Mary Babb (Penny Jo Hatfield)

34-04-(91-07-08)-0117-01-09 (Minimum Qualifications)

Arbitrator: Harry Graham

Contract Issue: Whether the grievant was improperly denied promotion.

Contract Sections: 17.05; 17.06

Topic Headings: Job Requirements; Minimum Qualifications; Promotions

Employment Situation: Bureau of Workers' Compensation; Clerk 2

Result: The grievance was denied.

Reason: The grievant was found neither to possess the minimum qualifications on the class specification nor to be proficient in the minimum qualifications in the position description for the posted position. Her application did not indicate that she possessed the required word processing course work. The arbitrator noted that the Employer went beyond its obligated duty by contacting the technical college to determine the content of the grievant's course work.

438) Karen B. Hastings 23-10-(91-11-07)-0140-01-04 (Removal)

Arbitrator: Rhonda R. Rivera

Charges: Neglect of duty, dishonesty, failure of good behavior

Contract Sections: 24.01; 25.05

Topic Headings: Corrective Discipline; Credibility of Witnesses, Dishonesty; Just Cause; Neglect of Duty; Removal

Employment Situation: Department of Mental Health, Massillon Psychiatric Hospital; Cosmetologist

Result: The grievance was denied, the removal upheld.

Reason: The grievant was found to have violated the Employer's rules concerning being away from the facility during work hours. The arbitrator found the grievant's explanation not credible due to the absence of the person who the grievant claimed was mistaken for her and discrepancies in her story of what happened. The arbitrator found no mitigating circumstances. Additionally, the arbitrator stated that the grievant's dishonesty, deception, and lack of remorse were so egregious that removal was warranted.

439) Anthony Munnerlyn 10-03-(91-12-03)-0070-01-05 (Removal)

Arbitrator: Mitchell B. Goldberg

Charges: Theft of school property

Contract Sections: 24.01; 24.01; 24.05; 25.02

Topic Headings: Burden of Proof; Commensurate Discipline; Intent to Violate the Employer's Rules; Just Cause; Procedural Violations; Removal; Step 3; Theft

Employment Situation: Department of Education, Ohio State School for the Blind; Custodian

Result: The grievance was sustained and the removal was reduced to a 30 day suspension with back pay and benefits. The arbitrator retained jurisdiction to resolve disputes over back pay.

Reason: The arbitrator looked to the Hurst decision for the standards applicable to cases of theft. It was found that while the grievant did carry a track suit out of the facility, no intent to steal was proven; removal of state property was proven, not theft. No procedural error was found based on the fact that the same person recommended discipline and acted as the Step 3 designee. The Employer was found not to have met its burden of proof, thus the removal was not for just cause.

440) David Bowman 27-20-(91-10-08)-1383-01-03 (Removal)

Arbitrator: Harry Graham

Charges: Drug Purchase

Contract Sections: 24.01, 25.03

Topic Headings: Removal, Just Cause, Criminal Charges, Drug Trafficking, Credibility

Department: Rehabilitation and Correction
Site/Office: Mansfield Correctional Institution
Position: Correction Officer 2

Result: Grievance denied

Reason: The outcome of a grievance does not rest on the fact that a grievant is acquitted in court, but instead is based on the nature of evidence and testimony provided to the Arbitrator. The evidence here showed that the grievant engaged in the purchase of three pounds of marijuana. That the grievant planned to smuggle those drugs into the prison was supported by various testimony. The grievant's claim that he wanted to discover the drug supplier rather than smuggle drugs into the prison is not credible because he did not previously consult his supervisor or any policing authority.

441) Roger Napier 31-08-(91-11-26)-87-01-06
Removal

Arbitrator: Marvin J. Feldman

Charges: Inability to Accomplish Workload; Absent without Leave

Contract Sections: 2.01; 24.01; 24.03

Topic Headings: Removal, Just Cause, Driving While Intoxicated, Failure to Maintain a Driver's License, Criminal Charges, Disparate Treatment, Discrimination

Department: Transportation

Site/Office: Warren County Garage

Position: Highway Maintenance Worker II

Result: Grievance sustained in part. Provided the grievant has a valid modification order from the Bureau of Motor Vehicles allowing him to drive, the grievant shall be reinstated July 1, 1992, without back pay but without loss of seniority. The grievant shall provide to his Employer on a weekly basis for a period of six months proof of attendance at some recognized alcohol rehabilitation session at least three times per week. Failure to attend or further substandard conduct of any nature may trigger an immediate just cause discharge by the Employer.

Reason: The grievant was charged with driving while intoxicated, resulting in the loss of his driver's license. In addition, he was absent without leave when he decided to enter a rehabilitation center and had not yet accumulated enough sick leave to cover the in-patient treatment. These two rule violations prevented the grievant from accomplishing his job duties which involved the operation of state vehicles and which required a valid Ohio driver's license. The Union failed to present evidence of supervisory intimidation, discrimination on the basis of handicap or disparate treatment. However, the grievant's efficiency ratings were not below expectation levels, and he showed tenacity to become rehabilitated. Therefore, the grievant deserved a modification of termination.

441(A) Roger Napier 31-08-(91-11-26)-0067-01-06

Award Classification

Arbitrator: Marvin J. Feldman

Contract Issue: State's Failure to Comply with Award

Contract Sections: 24.01; 25.03

Topic Headings: Removal, Just Cause, Failure to Maintain a Driver's License, Driving While Intoxicated. Failure to Comply with Award, Clarification of Arbitration Award

Department: Transportation

Site/Office: Warren County Garage

Position: Highway Maintenance Worker II

Result: Grievance denied.

Reason: The grievant was to return to work on July 1, 1992, if he had obtained a valid modification order allowing him to drive. The grievant did not comply with this condition. The grievant could not get a valid modification order because he had let his driver's license expire, and he did not renew his license and obtain a valid modification order until 17 days after the day he was to report back to work. He disregarded his Employer's needs without regard for the previous arbitration award. There was just cause for the removal.

442) Beverly Clark 27-24-(91-11-12)-0111-01-05

Removal

Arbitrator: Nels E. Nelson

Charges: Unauthorized Relationship with an Inmate

Contract Sections: 24.01

Topic Headings: Removal, Just Cause, Unauthorized Relationship with an Inmate

Department: Rehabilitation and Correction

Site/Office: Southeastern Correctional Institute

Position: Food Service Coordinator

Result: Grievance Denied

Reason: The grievant violated Rule 45 which prohibits giving preferential treatment to inmates, and Rule 46(e) which prohibits personal relationships with inmates. Testimony showed that the grievant and inmate had a personal and sexual relationship; the grievant rented a post office box in order to correspond with the inmate; the grievant and inmate were alone together in a locked officer's dining room on several occasions; an inmate allegedly observed them having intercourse. These are very serious rule violations which threaten the security of the prison, and as such, removal is not an excessive penalty.

**443) Marsha Clary 24-07-(91-10-28)-0439-01-04
Removal**

Arbitrator: Clarence D. Rogers

Charges: Patient Abuse, Failing to Follow Prescribed Treatment

Contract Sections: 24.01

Topic Headings: Removal, Just Cause, Patient Abuse

Department: Mental Retardation and Developmental Disabilities

Site/Office: Gallipolis Developmental Center

Position: Therapeutic Program Worker

Result: The removal is reduced to a 90-day suspension without pay. The grievant shall be reinstated and receive full benefits and seniority, except for the 90-day period of suspension.

Reason: The evidence pertaining to whether the grievant physically abused the patient is not clear and convincing. However, there has been sufficient evidence produced which showed that the grievant failed to follow the proper course of action and did not use good judgment in dealing with the client. This violation alone is not enough to show abuse, yet it does warrant a degree of discipline.

**444) Anna Bisbee 27-15-(91-08-05)-0172-01-03
(Removal)**

Arbitrator: David M. Pincus

Charges: Job Abandonment, Leaving the Work Area Without Permission of a Supervisor, Failure to Follow Post Orders

Contract Sections: 24.01; 24.02; 29.04

Topic Headings: Removal, Just Cause, Failure to Follow Orders, Job Abandonment, Suspension, Specific vs. General Charges, Call Off Procedures, Medical Verification, AWOL, Delay, Progressive Discipline

Department: Rehabilitation and Correction

Site/Office: Madison Correctional Institution

Position: Correction Officer

Result: The removal is modified to a 60-day suspension to commence on the day the grievant was removed. The Employer shall compensate the grievant at straight-time rates for all days she would have been scheduled to work if a 60-day suspension had been imposed, rather than a removal. The Employer shall restore the grievant's full seniority and compensate her for all actual demonstrated losses stemming from the removal rather than the 60-day suspension.

Reason: The Employer had proper cause to discipline the grievant, but the Employer did not have just cause to remove the grievant. The modification of the discipline is

justified for several reasons: the Employer did not initiate discipline as soon as reasonably possible; the Employer, without justification, merged separate infractions occurring at different times, which prevented progressive discipline; the Employer charged the grievant with a general work rule violation rather than a more specific charge, leading to confusion; the doctor's verification standard was unclear and thus made it difficult to comply. The grievant did not abandon her job. However, she did not follow the call off procedure or sick leave policy, and therefore some measure of discipline is warranted.

**444(A) Anna Bisbee 27-15-(91-08-05)-0172-01-03
(Remedy Clarification)**

Arbitrator: David M. Pincus

Charges: Job Abandonment, Leaving the Work Area Without Permission of a Supervisor, Failure to Follow Post Orders

Contract Sections: n/a

Topic Headings: Removal, Remedies, Clarification of Award

Department: Rehabilitation and Correction

Site/Office: Madison Correctional Institution

Position: Correction Officer

Result: The Employer will compensate the grievant for paid holidays. After the Employer has canvassed first shift, the grievant will be allowed to bid on any position within her job classification and will receive the position based on her seniority. The Employer will compensate the grievant for all medical bills and receipts for the period between her removal date and reinstatement, less the cost of medical insurance premiums.

**445) Franco Iulianelli 30-10-(91-02-25)-0242-01-04
(Constructive Discharge)**

Arbitrator: Hyman Cohen

Contract Issue: Arbitrability, Voluntary Resignation

Contract Sections: 25.03

Topic Headings: Resignation, Job Abandonment, Arbitrability, Constructive Discharge

Department: Taxation

Site/Office: Estate Tax Division

Position: Tax Commissioner Agent 5

Result: Grievance denied.

Reason: The grievance is not arbitrable because the grievant submitted to the State an executed handwritten statement of resignation on February 7, establishing the

requirements of finality of employment and intent to terminate employment. Therefore, the grievant voluntarily quit his employment with the State and was not constructively discharged.

**446) Yvonne Jackson 70-00-(92-01-28)-0005-01-10
(Removal)**

Arbitrator: Rhonda R. Rivera

Contract Issues: Request for Unpaid Leave

Contract Sections: 17.01; 31.01

Topic Headings: Removal, Just Cause, Medical Verification; Unpaid Leave, Verbal Promise

Department: Public Defender

Position: Legal Secretary

Result: Grievance sustained. The request for unpaid leave under 31.01(c) shall be granted from December 2, 1992 to July 1, 1992. On July 1, 1992, the Agency shall offer the grievant a position as secretary, i.e., the position she had before becoming the assistant to the librarian. At that point the grievant may choose to request leave without pay for an illness supported with a doctor's verification or to return to work. The grievant may also voluntarily choose to return to the librarian assistant position, but if she chooses to do so, the grievant must receive training in the handling of legal materials, and the librarian must receive formal training in supervision with an emphasis on interpersonal skills.

Reason: The grievant's unpaid leave was improperly denied. The State has a right to a second medical opinion (other than that offered by the grievant's doctor in the doctor's verification), but the second medical opinion was ambiguous and not the proper basis for a decision that the grievant was physically capable in mind and body to return to work. The grievant was promised that if her transfer to a position working for the law librarian did not work out, she would be returned to her job as a legal secretary. No time limit was set on this offer. The interpersonal problems between the grievant and the law librarian were not of the grievant's sole making. The grievant received four years of excellent reviews prior to working with the law librarian. The librarian was in some measure the source of the interpersonal conflict. Her charges that the grievant's performance was lacking was totally unsupported in the record.

**447) Candes Brooks 23-13-(91-08-29)-0473-01-04
(Removal)**

Arbitrator: Mitchell B. Goldbert

Charges: Neglect of Duty, Patient Abuse

Contract Sections: 24.01; 24.02

Topic Headings: Removal, Just Cause, Neglect of Duty, Patient Abuse, Progressive Discipline

Department: Mental Health

Site/Office: Pauline Warfield Lewis Center

Position: Licensed Practical Nurse

Result: The removal is reduced to a three-day suspension. The grievant shall be reinstated to her former position with full seniority, applicable back pay and benefits, less any interim earnings for governmental payments received by the grievant.

Reason: The charges that the grievant failed to properly complete her charts, to complete a finger stick test on a diabetic patient and to execute her narcotic/drug logbook are without support. The evidence and record fail to establish that the grievant committed any act of abuse as defined by Directive A-48. She cannot be blamed for becoming distraught and upset as a result of her asthma condition. Discipline is not warranted as a result of her failure to explain to her superiors that her unit was without any staff when she left the premises. However, before this time she should have alerted her supervisor that there was a lack of staff on her unit. She made an error in judgment, but did not commit an act of recklessness. Some type of discipline is warranted, particularly considering her past infractions regarding neglect of duty, but the Employer did not have just cause to remove the grievant.

**448) Sherrie Ware 24-09-(89-02-28)-0179-01-05
(Temporary Reassignment Under Pick-A-Post)**

Arbitrator: David M. Pincus

Contract Issue: Temporary Reassignment

Contract Sections: 5, 13.05; 17.09

Topic Headings: Work Schedule, Work Area Agreement, Remedy, Pick-a-Post, Goldstein Award, Temporary Reassignment

Department: Mental Retardation and Developmental Disabilities

Site/Office: Mount Vernon Developmental Center

Position: Food Service Worker

Result: Grievance sustained. The Employer shall compensate the grievant for the premium pay lost as a result of the Employer's temporary reassignment decision.

Reason: The Employer's ability to implement scheduling changes is restricted by the "work area" language negotiated by the Parties. Work schedule changes must be confined to the work area selected via the pick-a-post process, and doing otherwise would violate the negotiated work area agreements. Operational needs cannot be used to bypass the work area requirements as agreed.

**449) Bert Carter 27-05-(91-12-30)-0188-01-06
(Removal)**

Arbitrator: Mollie H. Bowers

Charges: Stealing an Institution Check

Contract Sections: 24.02

Topic Headings: Removal, Timely Discipline, Delay, Theft

Department: Rehabilitation and Correction

Site/Office: Correction Reception Center

Position: Correction Officer

Result: Grievance sustained. The grievant shall be reinstated with full back pay minus any interim earnings, will full seniority and benefit rights from the period of his termination.

Reason: The Employer failed to timely take disciplinary action against the grievant.

450) Five Year Rule

Arbitrator: Rhonda R. Rivera

Contract Issue: Bumping Rights, Five Year Rule

Contract Sections: 18.01, 25.03

Topic Headings: Bumping Rights, Five Year Rule, Contract Interpretation, Layoffs

Result: The Five Year Rule is not excluded or overcome by Article 18 and remains applicable where relevant under the Contract.

Reason: In Article 18, the parties explicitly referred to specific Ohio Administrative Code and Administrative Rules sections for the procedures and rules covering "layoff" unless expressly modified in the rest of Article 18. The parties chose to start Article 18's language in an entirely different way than almost all other articles. The presumption is that the parties knew what they were doing and chose their words carefully and intentionally. Nothing in sections 18.02 through 18.08 contradict, modify or eliminate the Five Year Rule. If the parties intended that sections 18.02 through 18.05 should completely supersede the OAC and ORC sections, it would have been made clear. In addition, nowhere in 18.02 through 18.05 is any mention made of any time limitations on these rights. The only way these sections could eliminate the Five Year Rule would be to do so clearly.

**451) Audrey Quinn 27-07-(91-10-22)-0089-01-03
(Removal)**

Arbitrator: David M. Pincus

Charges: Unauthorized Relationship with an Inmate

Contract Sections: 24.01

Topic Headings: Removal, Post-Discharge Actions, Unauthorized Relationship with an Inmate/Parolee, Failure of Grievant to Appear at Arbitration, Just Cause

Department: Rehabilitation and Correction

Site/Office: Dayton Correctional Institution

Position: Correction Officer

Result: Grievance denied.

Reason: The Employer had just cause to remove the grievant for violating Rule 46 (e) of the Standards of Employee Conduct. She engaged in an unauthorized personal relationship with a parolee. The grievant engaged in a long-term relationship with the parolee prior to and following her appointment as a Correction Officer. The Grievant failed to disclose this after orientation and training involving this work rule. After removal, the grievant continued her relationship, even while he was incarcerated. She knew of the work rule but continued her misconduct.

452) Jack Ludwick 27-16-(91-09-05(-0719-01-03

Removal

Arbitrator: Rhonda R. Rivera

Charges: Racial Comments

Contract Sections: 2.01, 24.01

Topic Headings: Removal, Just Cause, Racial Slurs, Disparate Treatment, Specific vs. General Charges

Department: Rehabilitation and Correction

Site/Office: Marion Correctional Institution

Position: Correction Officer 2

Result: Grievance denied.

Reason: The grievant admitted his remarks, i.e., "These niggers have it made", violating Rule 14. No record appears of an apology. The grievant did not testify as to his intention nor current state of mind, and he had a significant record of discipline, mitigated by 11 years of service. The Employer had just cause to remove the grievant, and absent a finding that the Employer violated the Agreement, the Arbitrator cannot substitute her judgment for that of the Employer. The Union failed in its burden of establishing disparate treatment.

453) Anthony W. Rawlings 16-00-(91-11-19)-0081-01-09

(Removal)

Arbitrator: Marvin J. Feldman

Charges: Falsification of Job Application

Contract Sections: 2.01, 2.02, 24.01

Topic Headings: Removal, Just Cause, Falsification of Documents, Discrimination

Department: Human Services

Site/Office: Claims Services

Position: Data Entry, Operator 2

Result: Grievance denied.

Reason: The grievant repeatedly lied on his applications for both temporary and permanent positions with the State and provided falsified recommendations. The State did not have a free choice to pick and choose its employee upon the real work experience and education of the applicant. The grievant's work record is irrelevant. The allegation that the grievant was discriminated against is unfounded.

454) ODNR Job Abolishments 25-20-(91-08-07)-0001-01-09, 25-17-(91-08-07)-0002-01-09, 25-20-(91-08-07)-0002-01-09, 25-20-(91-08-07)-0003-01-09

Arbitrator: Harry Graham

Contract Issue: Job Abolishments

Contract Sections: 18.01, 25.03

Topic Headings: Job Abolishment, Layoff Arbitrability

Department: Natural Resources

Result: Grievances denied

Reason: It is well established that the burden to demonstrate rationale for layoff decisions rests on the Employer. In this case, the Employer fulfilled its burden. Support staff was no longer necessary in the Equal Employment section because the managerial employee had been moved to a different section. The Clerk I position in Employment Services primarily provided support for the support positions previously mentioned, and thus were no longer necessary. The Radio Operator's position was justifiably abolished, as his work was sufficiently covered by other employees. The General Services Office Inventory Control Specialist I was performing duties outside his classification, and spent only 20 percent of his time performing duties within that classification. That 20 percent has been assumed by other members of the bargaining unit. There is no evidence that work done by a Fiscal Officer 3 who is not a member of the bargaining unit contributed to the layoffs in the Office of Budget and Management. As to Ms. Mackey's layoff, the revisions of Appendices A-1 of the contract were not accepted until after her layoff, and therefore are irrelevant.

**455) James Coleman 35-08-(91-11-27)-0021-01-03
(Probationary Removal)**

Arbitrator: Rhonda R. Rivera

Contract Issue: Probationary Employee, Timeliness of Grievance

Contract Sections: 6.01, 25.05

Topic Headings: Probationary Removal, Probationary Period, Transfer, Resignation and Rehire, Timeliness of Grievance, Probationary Employees

Department: Youth Services

Site/Office: Freedom Center & TICO

Position: Youth Leader/Youth Leader Specialist

Result: Grievance denied.

Reason: Using the "should have known" test, the Arbitrator determined that the grievance was not timely filed. Section 25.02 requires that a grievance must be presented no later than ten working days from the date the grievant became or should have become aware of the occurrence giving rise to the grievance, not to exceed a total of 30 days after the event. The triggering event was the alleged improper classification of the grievant as a probationary employee. Numerous occasions occurred to put the grievant on notice of his status, such as the issue regarding whether he needed to resign rather than transfer to take another position at TICO. In addition, the fact that he received less money, indicating that he was a new hire rather than a transfer, and the documents signed which clearly notified him of his status, should have put him on notice that he was still on probation. These events should have caused the grievant to recognize his status no later than September 30, 1992. He missed the deadline to grieve by more than 60 days. Therefore, the issue as to whether the grievant was in fact a probationary employee could not be reached.

**456) Eugene F. McGlinchy 31-08-(92-01-06)-0002-01-06
Removal**

Arbitrator: Nels E. Nelson

Charges: Absent without Leave

Contract Sections: 9.04, 24.01, 24.09

Topic Headings: Removal, Just Cause, AWOL, EAP, Mitigation, Call Off Procedures, Remedies

Department: Transportation

Site/Office: Lorain County Garage

Position: Highway Maintenance Worker I

Result: The removal is modified to reinstatement with full seniority but without back pay and benefits. His reinstatement is conditioned on his continued treatment for substance abuse and/or emotional problems and the maintenance of a satisfactory attendance record.

Reason: It is undisputed that the grievant was off work five days while in jail, that he had no leave balance to cover the time, and that the State does not excuse employees who are in jail. However, the State does not have just cause to remove the grievant under Article 24.01. Article 9 embodies the approach to attempt to rehabilitate rather than terminate the employee. Article 24.08 states that disciplinary action may be delayed until completion of the Employee Assistance Program. The record showed that the grievant enrolled in EAP prior to his discipline, that he tried to properly call off from work, that he was a satisfactory employee in all areas other than attendance, that the State was not substantially harmed by his absence, and that he had five years of service with the State. The Arbitrator emphasized that the grievant's unauthorized absence was a serious breach of the rules, and it is only the grievant's recognition of his substance abuse and seeking help that saves him from removal. The Arbitrator denied back pay and benefits stating that the grievant must bear responsibility for his poor attendance and two incarcerations.

**457) Kathleen Stewart 02-04-(88-08-05)-0039-01-14
(Promotion)**

Arbitrator: Anna D. Smith

Contract Issue: Bidding Rights

Contract Sections: 17.03, 17.05, 17.06

Topic Headings: Bidding Rights, Promotion, Minimum Qualifications, Postings

Department: Administrative Services

Site/Office: Computer Services Division

Position: Systems Analyst I/Acquisition Analyst

Result: Grievance denied.

Reason: The State improperly co-mingled bidders for promotion categorized under both Article 17.05(A) and (E) in the interview process for two Systems Analyst I positions. (The classification was changed to Computer Acquisition Analyst after class modernization.) Bidders in 17.05(A) must be evaluated and be determined unqualified before consideration of applicants under 17.05(E) takes place. While Article 17 permits agency discretion in scheduling interviews, this discretion may only be exercised within each subsection's group of bidders. In this instance Ms. Noe, a subsection (E) candidate, should not have been interviewed until the State had fully evaluated all of the subsection (A) candidates.

Whether the 17.05(A) candidates Ms. Tipton and Ms. DeJesus were harmed by the Employer in this regard depends on whether they were qualified. Senior applicants do not have to be equally or better qualified. They must merely be qualified. Therefore, if there are one or more qualified bidders within the subsection pool under consideration, the Employer has the obligation to select the most senior, even if he or she is not the best qualified, except where the Employer can show that a junior bidder from the same subsection is demonstrably superior. In this case, the State may select the junior 17.05(A) bidder it deems best qualified if either of the senior 17.05(A) bidders Ms. Tipton and Ms. DeJesus are unqualified or if it can show the junior bidder to be demonstrably superior to these two senior level bidders. To select the level (E) applicant, Ms. Noe, the State does not have to show demonstrable superiority if the level (A) bidders are unqualified, but the State may not select her if either of the two 17.05(A) applicants are qualified.

The State may not hold bidders to qualifications it desires, only to qualifications that are required. The State may not go beyond what it sets forth on the specific position description and generic classification specification as requirements for the position. A person who possesses these attributes must be deemed qualified. Applying these principles to this case, the State was free to go beyond the classification specification and develop the position description to meet its needs. However, the applicants should not have been measured against additional requirements stated in the posting. Regardless, Ms. Tipton did not possess several attributes listed in the position description, and therefore was not qualified. Ms. DeJesus lacked a broad base of technical knowledge, which the Arbitrator was persuaded is required to perform the duties described on the position description. While it was established that Ms. DeJesus met the minimum qualifications for the classification, it was not shown that she either studied or had experience with a broad spectrum of hardware so that she had sufficient knowledge to perform the duties of the position. It is the Union's burden to show the senior bidders were qualified, which it failed to do. Although the Employer erred both in its evaluation sequencing and choice of criteria for selection, neither was harmed by the Employer's actions.

458) Lula Smith 11-09-(91-08-13)-0123-01-09
Duane Tinkler 11-09-(91-09-11)-0195-01-09
David Epstein 11-09-(91-08-28)-0190-01-09
ERI

Arbitrator: John E. Drotning

Contract Issue: Early Retirement incentive (ERI)

Contract Sections: 18.01, 25.03, 44.04

Topic Headings: Job Abolishment, Layoff, ERI, Arbitrability

Department: Employment Services

Result: Grievance sustained in part and denied in prt.

Reason: Ohio Revised Code 145.298 requires that under certain conditions of layoff, the Employer is required to establish a retirement incentive plan for employees of the employing unit in which the layoffs are to take place. Ohio Revised Code 145.297(A)(2) defines "employing unit" as "any entity of the state, including any department, agency, institution of higher education, board, bureau, commission, council, office, or administrative body or any part of such entity that is designated by the entity as the employing unit". The State had discretion to designate Public Assistance Service Operations (PASO) as the employing unit. In situations of a massive total elimination of a unit, as existed with the elimination of PASO, it would be less chaotic for the Employer to designate a narrow employing unit and have contractual bumping to put the proper people in correct slots. The Union did not show how the decision to identify PASO as the employing unit was inconsistent with the Contract. However, 43.04 provides some basis for finding that the Employer should have extended ERI to OBES employees indirectly affected by being bumped as a result of PASO functions being transferred to ODHS. Such a finding may not be overwhelming but it is sufficiently compelling. Therefore, there is reason to offer the ERI plan to eligible employees outside the employing unit who faced the alternative of being laid off from active employment as the indirect result of the abolishment of the PASO employing unit.

458(A) Lula Smith 11-09-(91-08-13)-0123-01-09

Duane Tinkler 11-09-(91-09-11)-0195-01-09

Dave Epstein 11-09-(91-08-28)-0190-01-09

Award Clarification

Arbitrator: John E. Drotning

Contract Issue: Early Retirement Incentive (ERI), Job Abolishment, Layoff

Contract Sections: 18.01, 44.04

Topic Headings: ERI, Job Abolishment, Layoff, Clarification of Arbitration Awards

Department: Employment Services

Result: In this clarification, the Arbitrator clarified his earlier holding. Initially, the grievance was granted in part, but it was denied in its entirety in this subsequent holding.

Reason: There is no language in the Collective Bargaining Agreement which specifically defines Early Retirement Incentive plans. The 1989-1991 Collective Bargaining Agreement does not support the claim that people outside the PASO unit have a contractual right to be offered Early Retirement Incentives.

459) **George Stringfellow 24-09-(91-09-20)-0590-01-06**

Technological Change

Arbitrator: John E. Drotning

Contract Issue: Technological Change, Job Abolishment, Layoffs

Contract Sections: 18.01, 38

Topic Headings: Technological Change, Job Abolishment, Layoff

Department: Mental Retardation and Developmental Disabilities

Site/Office: Mount Vernon Developmental Center

Position: Boiler Operator 2, Stationary Engineer 2

Result: Grievance denied. However, the Arbitrator maintained jurisdiction as to David Kuninger, asking that the parties attempt to work out a mutually acceptable answer to this problem. If there is no solution by July 31, 1992, the parties are directed to submit briefs on this issue.

Reason: The Employer did not violate Article 38 or Article 18 when it abolished ten positions, laying off four employees in the Boiler Operator 2 classification and six in the Stationary Engineer 2 classification, as a result of the change from a central coal fired furnace to a satellite system of gas fired furnaces. The Employer showed that the new boilers did not require operators or stationary engineers. Because the new system required fewer people and less maintenance, the Employer had discretion to hire three Maintenance Repair Workers rather than retraining all ten laid off employees to work with this new system. Presumably, the three most senior employees laid off should have been offered the newly created Maintenance Repair Worker positions. Article 17.09 requires Employer approval in demoting an employee to a lower pay range. Because of a lack of clarity in the record, it is not known whether a contract violation occurred when David Kuninger was not rehired. The Arbitrator maintained jurisdiction, asking that the parties attempt to work out a mutually acceptable answer to this problem.

460) **Russell Boyce, Alvin Whyte, Thomas LoPresti**

24-01-(91-06-26)-0073-01-14

Layoff

Arbitrator: Anna D. Smith

Contract Issue: Layoff, Job Abolishment

Contract Sections: 18.01

Topic Headings: Layoff, Job Abolishment

Department: Mental Retardation and Developmental Disabilities

Site/Office: Policy and Planning

Position: Planner 2

Result: Grievance denied

Reason: The Employer has the burden to prove by a preponderance of the evidence that the layoffs through job abolishments were justified. The Employer made its case for abolishment of the Planner 2 position in Policy and Planning, demonstrating that those duties were absorbed into other division. Likewise, the Employer showed that because of a shift in emphasis in the Department, the Planner 2 positions in the Office of Project Approval and Budget Management were no longer necessary. Because of this shift, very little remains for the Planners to do, and the weight of the evidence demonstrates that this was the case when the abolishment occurred in 1991. The Employer has borne its burden of proof to show that both positions were justifiably abolished when a reduction or elimination of duties and responsibilities, caused by statutory, philosophical and operational changes, resulted in a lack of continued need for the positions and a reorganization of the Department for economy and efficiency.

461) John W. Jackson, Jr. 15-02-(91-08-26)-0064-01-09 Removal

Arbitrator: David M. Pincus

Charges: Sexual Harassment, Failure of Good Behavior

Contract Sections: 2.01, 24.01

Topic Headings: Removal, Just Cause, Sexual Harassment, Failure of Good Behavior, Notice

Department: Highway Safety

Site/Office: Bureau of Motor Vehicles, Temporary Tag Division

Position: Data Processor 1

Result: Grievance denied.

Reason: The Employer had just cause to remove the grievant for sexual harassment and failure of good behavior. The grievant was provided with proper notice concerning the sexual harassment policy articulated in the Work Rules and Procedures. The grievant was the only member of the Temporary Tag Division to state that he never received the sexual harassment training. Witnesses provided plausible and realistic explanations for their non-disclosure surrounding the grievant's activities. Those raised were embarrassment, hesitancy, intimidation, and fear of retaliation. Management's lack of awareness of the grievant's behavior was plausible, as the grievant only engaged in this behavior in out of the way places, out of sight of supervisors. Once the grievant had been reported by two of his targets, the Employer conducted the investigation fairly and objectively. The Employer obtained substantial evidence that the grievant was guilty as charged. Witness testimony demonstrated that the grievant's lewd, harassing behavior created an oppressive working environment. Considering the grievant's disciplinary record (four verbal reprimands, one written reprimand, six counseling sessions, and two one-day suspensions), the assessed penalty is justified.

**462) George Cullison 27-10-(90-06-13)-0058-01-03
Promotion Pay Raise**

Arbitrator: Douglas E. Ray

Contract Issue: Promotional Pay Raise

Contract Sections: 25.03, 36.04

Topic Headings: Promotion, Step Increase, Arbitrator Authority, Pay Range, Promotional Pay Raise

Department: Rehabilitation and Correction

Site/Office: Hocking Correctional Facility

Position: Correction Officer

Result: Grievance denied.

Reason: When the grievant was promoted, he moved from the top step of Pay Range 27, which pays the same hourly rate, preventing him from being placed in a higher step which would give him at least a four percent increase, as stated in Article 36.04. However, the Arbitrator did not find the language of Article 36.04 clear and unambiguous. If the contract merely stated that employees who are promoted shall be guaranteed at least an increase of four percent, the matter would be clear. However, this section provides that employees who are promoted "shall be placed in a step" to guarantee them at least an increase of four percent. There is no step in the grievant's current pay range that could achieve the four percent raise. In order to resolve this apparent conflict, the limitations expressed in Appendix L, Pay Schedules, control. By the parties' negotiations, they have determined that there is to be no step above Step 6 in Pay Range 7. To create an additional step under these circumstances would expand the contract, an act which would be outside the authority granted by the Article 25.03 of the Contract to the arbitrator.

463) Thelma Walters 23-18-(91-08-05)-0702-01-04 Six-day Suspension, 23-18-(91-10-21)-0734-01-04 (Removal)

Arbitrator: John E. Drotning

Charges: Patient Abuse

Contract Sections: 2.01, 24.01

Topic Headings: Suspension, Call-Off Procedure, Disparate Treatment, Patient Abuse, Removal, Just Cause, Self-Defense

Department: Mental Health

Site/Office: Western Reserve Psychiatric Center

Position: Therapeutic Program Worker

Result: Grievances denied

Reason: I. Six day suspension

The grievant received copies of the sick leave and call-in policies, as well as in-service training on the same policies. Considering the grievant's two-day suspension for the same violation, and the fact that she had just been re-trained regarding the call-in policy three days before the first of seven late call-off infractions between April 3 and May 4, 1991, the Employer had just cause to issue a six-day suspension.

II. Removal

The grievant admits hitting the client, but failed to prove that her actions were self-defense. Such a defense requires two elements: 1) the existence of a clear and immediate threat of serious danger, and 2) the non-existence of any other available means of handling the danger. Walters did not face danger in this instance. The client was being held by another employee, and the grievant could have moved away from the client's swinging arms while that employee maintained control of the client. Even if the client struck the grievant when she entered the room, there was no self-defense reason for the grievant to punch the client in the face. In addition, the Union did not carry its burden of proving discrimination. The Employer's finding of patient abuse is well founded, and there is just cause for its decision to terminate the grievant.

**464) Jerald M. Gerber 12-00-(90-05-18)-0018-01-13
(Stand-by Pay)**

Arbitrator: Anna D. Smith

Contract Sections: 13.12, 25.05

Topic Headings: Stand-by Pay, Arbitrability, Timeliness of Grievance, Continuing Violation, Remedies, Continuing Violation

Department: Environmental Protection Agency

Site/Office: Emergency Response Section

Position: On-Scene Coordinator

Result: Grievance sustained. The grievant is to be paid 25 percent of his base rate of pay for each hour he has been on stand-by status, back to May 8, 1990, ten days prior to filling this grievance. The Arbitrator retains jurisdiction for 60 days to resolve any disputes over the calculation of the award.

Reason: First, the grievance was timely filed. The filing window commenced each time the grievant was on call and not compensated with stand-by pay. Regarding the merits, the status of the On-Scene Coordinator (OSC) does not depend on whether one calls it on-call or stand-by, but whether he or she is "required by the Agency...to be available for possible call to work", under Article 13.12 of the Contract. Employees who are restricted in their physical location and personal condition or whose time is so

interrupted by Employer calls that they are not free to use the time effectively for their own purposes are working. In addition, employees must be informed that they are required to be available. The grievant in this case was on call all but two days out of each 14-day period; he was phoned and called out frequently; he was additionally required to stay within 10 minutes of a phone, even though he was provided a mobile phone; he was required to remain within 30 minutes of his state vehicle; he was required to remain sober. The grievant's vacancy posting, position description and class specifications state continuous on-call status as a job duty. It is clear that the grievant had no option but to be on-call and respond to calls. The Employer's claim that discipline would not result if the grievant did not respond is without merit. Therefore, "On-call" as used for the On-Scene Coordinators means "stand-by" within the meaning of Article 13.12.

**465) George Robinson 23-18-(91-12-30)-0751-01-04
(Removal)**

Arbitrator: Lawrence I. Donnelly

Charges: Violation of Last Chance Agreement

Contract Sections: 9.04, 24.01, 24.09

Top Headings: Removal, Just Cause, Last-Chance Agreement, EAP, Patient Abuse

Department: Mental Health

Site/Office: Western Reserve Psychiatric Hospital

Position: Therapeutic Program Worker

Result: Grievance denied

Reason: The Employer followed progressive discipline, and none of the grievant's earlier disciplinary actions was grieved. The Employer ordered the removal of the grievant based on an allegation of patient abuse. The grievant signed a last-chance agreement stating that his removal would be held in abeyance for 90 days provided the grievant complete an Employee Assistance Program (EAP), as allowed by Article 24.08 of the Contract. No grievance was filed on this charge. The grievant did not complete the EAP program, thus violating the last chance agreement. Regardless of any possible mitigating circumstances, the Employer has just cause to activate the discipline held in abeyance because of the failure to meet the conditions of the Agreement.

**466) Dennis Fields 31-04-(91-12-30)-0049-01-06
Removal**

Arbitrator: Nels E. Nelson

Charges: Driving State vehicle without drivers' license; failing to inform a supervisor about the suspension of his driver's license.

Contract Sections: Article 17 - Promotions and Transfers

§17.09-Demotions

Article 24 - Discipline

§24.01-Standard

§24.02-Progressive Discipline

§24.05-Imposition of Discipline

§24.08-Employee Assistance Program

Topic Headings: Removal; Driving Without a License; Failing to Report Suspension of License

Commercial Driver's License; Employee Assistance Program

Department: Department of Transportation

Site/Office: Ashtabula County, District 4

Position: Highway Maintenance Worker 2

Result: The grievance is denied

Reason: There is no basis to the Union's charge that the State failed to use progressive discipline and that the penalty was not commensurate with the offense. Driving State vehicles for four months without a license is a very serious matter. More importantly, the grievant's removal has a non-disciplinary aspect based upon the fact that the grievant cannot perform his job without a driver's license. In such an instance, progressive discipline and penalties commensurate with an offense are not applicable.

467) Fran Reisinger 27-16-(90-03-02)-0290-01-06 (Bargaining Unit Work)

Arbitrator: John E. Drotning

Issue: "Did management violate the contract between the State of Ohio and the Ohio Civil Service Employees Association, AFSCME Local 11, AFL-CIO Section 1.03 - Bargaining Unit Work and Section 13.07 Overtime?"

Contract Sections: Article 1 - Recognition

§1.03-Bargaining Unit Work

Article 13 - Work Week, Schedules and Overtime

§13.07-Overtime

Topic Headings: Bargaining Unit Work Overtime

Vocational Training Programs; Erosion of Bargaining Unit; Inmate Work

Department: Department of Rehabilitation and Correction,

Site/Office: Marion Correctional Facility

Position: Correction Officer

Result: The grievance is denied.

Reason: There was little proof that using the renovation as a vocational training experience was a sham. There were educational opportunities and goals in assigning inmates to do the work. In addition, this did not involve the transfer of work normally done by the bargaining unit, as described in Article 1.03, but rather it constituted new work. Since the work was carried on during the regular work day, Unit 6 employees did not lose work or overtime opportunities. Thus there was no violation of Articles 13.07 or 1.03.

- 468) **Randy Burley 07-00-(91-07-17)-0127-01-07
07-00-(91-05-22)-0120-01-07 and
07-00-(91-05-06)-0116-01-07
(Suspension, 7-day)**

Arbitrator: Harry Graham

Charges: AWOL

Contract Section: Article 29 - Sick Leave

§29.03-Notification; Article 31 - Leaves of Absence

§31.03-Authorization for Leave; Article 43 - Duration

§43.03-Work Rules

Topic Headings: Physician's Verification ; Requirements; Suspension; Denial of Leave Without Pay; Management Bias in Disciplinary Process

Department: Department of Commerce

Site/Office: Columbus Office

Position: Investigator

Result: The suspension was reduced from seven to two days, but other related grievances were denied

Reason: The Arbitrator decided that a seven-day suspension was excessive as compared with the grievant's offense, especially since the grievant's record indicated that his most recent discipline was a one-day suspension. Therefore, the disparity between the one and seven day suspensions was unjustified.

- 469) **Mike Moschell (on behalf of Cynthia Pelley) 12-00-(91-08-26)-0009-01-13
(Life Insurance)**

Arbitrator: Mollie H. Bowers

Issue: The grievance was filed on behalf of a deceased bargaining unit member who was employed by the Ohio Environmental Protection Agency (OEPA) from November 5,

1990 to August 12, 1991 when she was killed in an auto accident. The deceased had been employed for less than one year. State employees had two options for insurance coverage: 1) state sponsored insurance provided for all employees with at least one year of state service pursuant to Article 35.

Contract Sections: Article 25 – Grievance Procedure

§25.02-Grievance Steps; §25.03-Arbitration Procedures; Article 35 – Benefits;

§35.02-Joint Health Care Committee; §35.04-Health Maintenance Organizations

Topic Headings: Life Insurance

Rules of Contract Construction

One Year Employment Eligibility Requirement

Department: Environmental Protection Agency

Site/Office: EPA

Position: Unknown

Result: Grievance denied.

Reason: The fact that the State articulated a one-year waiting period with respect to vision and dental benefits, but failed to do so with life insurance was insignificant in deciding this grievance. Appendix M was drafted after Article 35.04, and the Union failed to contest the language of Article 35.04 in either of its contract negotiations. The Union should have raised the issue at the bargaining table rather than attempting to gain a benefit not bargained for in arbitration.

**470) Curtis Guard 27-05-(91-12-02)-0176-01-03
(Removal)**

Arbitrator: Anna D. Smith

Charges: Inmate Abuse

Contract Sections: 1.04, 24.01, 24.02, 24.05

Topic Headings: Timeliness of Discipline, Removal, Inmate Abuse, Just Cause, Delay, Inmate Testimony, Criminal Investigation

Department: Rehabilitation and Correction

Site/Office: Correctional Reception Center

Position: Correction Officer

Result: Grievance denied.

Reason: Ordinarily, the Arbitrator would take a dim view of the nine months elapsing from the time the incidents of inmate abuse were reported until the pre-disciplinary notice was served. However Article 24.04 expressly grants the Employer the right to delay when a criminal investigation is underway. The pre-disciplinary notice was issued reasonably promptly on October 22, within two weeks after the County declined to prosecute and one day after the City decided likewise and the Highway Patrol closed its case. This time frame does not constitute an abuse of discretion. In addition, the

Arbitrator rejects the Union's argument that a 10-month discipline process is unwarranted under any circumstances. Lack of witness cooperation, an ongoing criminal investigation, and a change in wardens justified the delays in this case. As to the incidents of inmate abuse, the case must be decided on credibility. After careful examination, the Arbitrator concluded that the inmates' accounts were more credible than those of the officers, which were rife with problems and contradictions. The investigatory interview transcripts portray evasion, equivocation and cover-up. The Arbitrator concluded that the officers' statements about the incidents were self-serving, and when weighed against the inmates' statements, which were consistent, non-evasive and supported by credible corroboration, they come up short. Although the grievant's conduct constitutes a first offense, Management had just cause to remove him as a threat to the institution's security.

**471) Barbara Northup 11-02-(91-10-02)-0112-01-09
(Layoff and Intermittents)**

Arbitrator: Rhonda R. Rivera

Contract Issue: Order of Layoff

Contract Sections: 7.03, 18.01, 18.02

Topic Headings: Layoff, Job Abolishment, Bumping Rights, Intermittents, Order of Layoff

Department: Employment Services

Site/Office: Sandusky

Position: Unemployment Claims Examiner 2

Result: the grievant is to be awarded a full-time intermittent position of Claims Examiner 2 in the Sandusky Office as of October 5, 1991. She shall be paid and given whatever benefits would have accrued to her from that date until November 28, 1991.

Reason: When the PASO unit of OBES was abolished, the grievant's position was not. She was laid off because she could not bump someone else. The grievant was clearly a laid off person. Even if the cause of her layoff was a job abolishment further up the line, ORC §124.321(B) makes a job abolishment a layoff. Ohio Revised Code §124.323(A), the order of layoff provision, applies to layoffs, whatever their origin. Thus, before the grievant could be laid off as a permanent full-time employee in the classification of Unemployment Claims Examiner 2, intermittent employees in that same classification must be laid off first. Section 18.02 of the Contract explicitly mandates layoff in inverse order of seniority to protect bargaining unit employees. Unless the intermittent personnel are laid off first, a full-time employee with greater seniority will lose her job. That employee with greater seniority will lose her job. That result is contrary to the intention of the contract and the Ohio Revised code. However to place the grievant back in

her full-time permanent position would involve the Arbitrator in managing the workforce for the Employer. This is not within the mandate of the Arbitrator.

**471(A) Barbara Northup 11-02-(91-10-02)-0112-01-09
(Clarification of Reward)**

Arbitrator: Rhonda R. Rivera

Contract Issue: Order of Layoff

Contract Sections: 18.02, 18.03

Topic Headings: Job Abolishment, Layoff, Bumping Rights, Clarification of Arbitration Awards, Order of Layoff

Department: Employment Services

Site/Office: Sandusky

Position: Unemployment Claims Examiner 2

Result: The award is not modified in any manner. This merely clarifies the meaning of the award.

Reason: 1) When the arbitrator used the phrase “full-time intermittent,” it was inappropriate, and she did not modify nor intend to modify the contractual definition of “intermittent” employees as defined in Article 7.03 of the contract. The Purpose of the remedy was to award the grievant the pay and benefits that an intermittent Claims Examiner 2 in the Sandusky OBES Office earned from 10/5/91 to 11/18/91. 2) Appointment Categories are irrelevant within the bargaining unit with regard to the order of layoff because the seniority provisions of the Contract take precedence. 3) When layoff is proper, bargaining unit employees will first exhaust all bumping rights under the Contract. If bargaining unit into the lesser appointment category according to the order of layoff provisions found in the Revised Code and Administrative Code and which are incorporated by reference into the Contract. Bargaining Unit employees who bump employees in lesser appointment categories that are outside the bargaining unit shall be given the maximum retention points available for their performance evaluations. This award of retention points shall be calculated according to the Code provisions. 4) Once bargaining unit employees bump outside the bargaining unit, subsequent displacements shall occur according to the appropriate provisions of the Revised Code and the Administrative Code.

472) Erin Gurwin Kennedy 18-00-(91-04-03)-0021-01-04 (Removal from Bargaining Unit)

Arbitrator: David M. Pincus

Charges: Fiduciary Designation

Contract Sections: 1.02, 24.01, 24.09

Topic Headings: Just Cause, Arbitrability, Termination, Bargaining Unit Status, Exempt Employee, Fiduciary Employee, Removal from Bargaining Unit

Department: Industrial Relations

Position: Liaison Officer I

Result: The grievant is to be reinstated to her former position with back pay and all other benefits restored for the period she was deprived of her position as Liaison Officer I.

Reason: Because the nature of the grievance deals with the grievant's standing within Bargaining Unit 14, the statutorily defined unit, the matter is arbitrable. Neither the arbitration clause nor any other provisions preclude a substantive analysis of the disputed matter. SERB is the ultimate decision maker where bargaining units are involved. The Employer's decision to change the grievant's classification status based on a unilateral action flies in the face of the authority vested in SERB under Ohio Revised Code §4117.06(A). The grievant's termination should have been preceded by the statutorily defined procedures, and the Employer should have petitioned SERB to determine whether a community of interests exists or whether the appropriate unit requires the exclusion of Liaison Officer 1 positions. The fiduciary exception specified in ORC §4117.01(C) is not an exception to the definition of "public employee." A fiduciary determination may play a critical role in any finding under 4117.06(A), but SERB has the authority to determine the appropriateness of each bargaining unit, and nothing in the statute precludes an evaluation of units which may be composed of excluded employees. Bypassing SERB's unit determination authority caused an improper designation of the grievant as a fiduciary. As such, her bargaining unit status was never properly modified at the time of her termination. Since the grievant retained her bargaining unit status, she could only be removed and/or disciplined pursuant to the provisions of Section 24.01 of the Agreement. The Employer violated the Contract when it terminated the grievant's employment without just cause.

473) **Randolph Burley 07-00-(91-07-17)-0128-01-07**
Pamela Sullivan 15-03-(91-07-17)-0068-01-07
Shirley Williams 31-13-(91-03-22)-0016-01-09
Gracie Flowers 34-04-(90-12-31)-0176-01-09
Claudia Maxie 30-01-(91-07-02)-0272-01-09
(Witness Duty Pay)

Arbitrator: Harry Graham

Contract Issue: Denial of Witness Duty Leave

Contract Sections: 30.05

Topic Headings: Witness Duty Pay

Department: Commerce, Highway Safety, Taxation, Transportation and Workers' Compensation

Result: Four of the grievances are denied. However, Gracie Flowers was subpoenaed for a court appearance on November 13, 1990, in connection with a juvenile proceeding. Ms. Flowers is eligible for witness leave under the Agreement. The State should make the appropriate witness pay to Ms. Flowers for that date.

Reason: An examination of bargaining history indicates without doubt that the parties had reached an agreement that the Ohio Administrative Code would be applied to witness leave situations, and when the parties bargained again in 1989 they continued the existing language in the agreement. In this situation, where grievants were either parties to the court proceeding or were testifying as a parent or guardian on behalf of a juvenile, notwithstanding the clear language of Section 30.05 of the Agreement, it must be read in connection with the explicit agreement of the parties that led to the imprecise expression of their resolution of this issue. When that is done, it is clear that the Employer must prevail. Section 30.05 of the Agreement is to be interpreted as reflecting the operation of Ohio Administrative Code §123:34-03, Court Leave. Therefore, Section 30.05 of the Agreement is to be interpreted to mean the following: 1) Employees subpoenaed to appear before any court, commission, board or other legally constituted body authorized by law to compel the attendance of a witness shall be granted leave with pay at the regular rate of that employee EXCEPT that if that employee is a party to the dispute, he or she may be granted use of vacation time, personal leave, compensatory time or leave of absence with out pay. 2) A party shall be considered to be an employee who is either the plaintiff, petitioner or defendant in a judicial or administrative proceeding. This should be considered to include those proceedings which may involve juveniles. 3) A grievant under the Agreement would not be considered a party for purposes of Section 30.05 of the Agreement.

**474) 27-01-(92-05-22)-0036-01-03
(Grooming Policy)**

Arbitrator: Nels E. Nelson

Contract Issue: Grooming Policy

Contract Sections: 2.01, 5, 25.03, 44.03

Topic Headings: Grooming Policy, Religious Discrimination, Sex Discrimination, Work Rules, Duty to Bargain, Notice

Department: Rehabilitation and Correction

Result: Grievance denied.

Reason: It is widely recognized that an employer has the right to adopt and enforce reasonable work rules not in conflict with the Contract. Section 44.03 recognizes this right. The Department complied with this section by notifying the Union about the new

policy and providing a draft copy. The final version of the policy incorporated a number of the Union's suggestions resulting from discussion about the new policy. The policy itself is "reasonable" as required by 44.03. The employer's rationale for a grooming policy that a conservative and uniform appearance is useful in controlling inmates, indicates that the policy is not arbitrary or capricious in the sense that it was adopted without any basis other than the prejudices of those responsible for the policy. Other agencies and states have adopted similar policies. In addition, Federal Circuit Court and U.S. Supreme Court decisions have supported the conclusion that such a policy is reasonable. The grooming policy does not violate Article 2.01 of the Agreement, which prohibits discrimination based on sex. It is clear that there are many distinctions based upon sex but not every one of those distinctions constitutes sex discrimination. Courts have held that differences in grooming requirements for males and females do not violate Title VII of the Civil Rights Act. Nor does the grooming policy discriminate based on race, creed, religion or national origin as prohibited by Section 2.01 of the contract. The policy contains restrictions which are uniform in application with respect to race, creed, religion, and national origin. The policy is reasonable based upon the legitimate interests and needs of the department. Furthermore, there is no evidence of any intent to discriminate, and the testimony presented by the Union did not establish that the beliefs of Native Americans require long hair.

475) Bruce Raines 27-05-(91-03-29)-0138-01-06
Personal Leave

Arbitrator: Mollie H. Bowers

Contract Issue: Personal Leave

Contract Sections: 13.02, 27.04

Topic Headings: Personal Leave, Contract Interpretation, Class Grievance

Department: Rehabilitation and Correction

Site/Office: Correction Reception Center

Position: Food Service Coordinator

Result: Grievance sustained. The agency shall cease and desist from violating the agreement by denying employees' timely requests for personal leave under Section 27.04.

Reason: As an initial matter, the Arbitrator ruled that because there was no foundation laid for a class action grievance, this was an individual grievance. Regarding the merits, the Arbitrator ruled that the Employer violated Section 27.01 when it denied the grievant's timely request for personal leave. The "plain meaning" rule applies to language which appears clear and unambiguous on its face. Section 27.04 contains such language, and thus its meaning must be determined from the Agreement without resort to evidence outside the contract. This leads to the conclusion that the language in the first

sentence of the section. "Personal leave shall be granted if an employee makes the request with on (1) day notice," is mandatory. The argument that Section 13.02 gave management authority to deny personal leave under Section 27.04 is simply not supported by the bargaining history. In fact, the Union strongly objects to any modification of 27.04 in the 1989 negotiations. Since Section 13.02 was so hotly contested, the parties would have been very careful to say exactly what they meant in drafting the language. There is no express language in the Contract stating that Section 13.02 would apply to Section 27.04.

476) Ann Throckmorton 56-00-(91-09-19)-0002-01-14 (Job Abolishment)

Arbitrator: Rhonda R. Rivera

Contract Issue: Job Abolishment

Contract Sections: 1.04, 18.01, 25.03

Topic Headings: Bargaining Unit Erosion, Layoff, Arbitrator's Authority, Job Abolishment

Department: Ohio High Speed Rail Authority (OHSRA)

Position: Administrative Assistant 1

Result: Grievance denied.

Reason: The tasks formerly performed by the grievant, as delineated in her job description, have either been eliminated or have been consolidated with the tasks of the Administrator. While there are reasonable concerns involving the timing and method of abolishing the grievant's position, there is not enough evidence of bad faith, on balance, to outweigh the reasonable concerns of money and efficiency. The proposition by management that an arbitrator rule on the procedural propriety of the abolishment but can rule on the substantive propriety of the abolishment flies in the face of logic and common sense. The union failed to show that the procedural defect prejudiced the grievant in any way. Therefore the authority's action substantially complied with ORC 4981.02 and the grievance is denied.

**477) Dorothy Ward 17-00-(92-07-06)-0039-01-09
(Removal)**

Arbitrator: Rhonda R. Rivera

Charges: Job Abandonment

Contract Sections: 24.01, 24.02, 29.04, 35A.04

Topic Headings: Job Abandonment, Suspension, Removal, Just Cause, Disability Leave, Call-Off Procedures, Progressive Discipline

Department: Industrial Commission

Site/Office: Cleveland

Position: Word Processing Specialist 2

Result: The removal is set aside and a 20-day suspension is imposed. The grievant is to be restored to her job with full back pay, benefits, and seniority as of the 21st day after the overturned removal. The Arbitrator imposes the following rule upon the grievant: for the next two years, any absence that runs longer than 2 days shall require a written doctor's certificate. This requirement is similar to the permissible requirement found in the Section 29.04 (III) of the Contract.

Reason: Clearly, the Employer had cause to discipline the grievant. She failed to call off for 7 working days. However, the last discipline of the grievant was a one-day suspension. Removal following a one-day suspension does not appear progressive unless the offense was so serious as to warrant removal. One of the major tests of just cause is whether the rule applied is reasonably related to efficient and safe operations and whether the application is just under the specific circumstances. In this case the removal was not progressive, commensurate nor fairly applied. Unless the individual situation is examined, a removal after three days unauthorized leave without more is simply unreasonable. The Employer's testimony that the grievant said she might be going on disability leave contradicts their letter to the grievant stating that the grievant told her supervisor she was in fact going on disability leave. In choosing removal, the Employer failed to consider that the employee was competent, and that she was an employee for 14 years. The Arbitrator does not condone the behavior of the grievant. She would have known that the Employer could expect her to seek medical authorization for long absences. She knowingly violated call-in rules and sick leave policy, but those violations did not rise to the level of job abandonment. Once apprised of the Employer's concerns, she responded immediately.

**478) David L. Slone 23-12-(91-11-27)-0282-01-03
(Job Abolishment)**

Arbitrator: Marvin J. Feldman

Contract Issue: Job Abolishment

Contract Sections: 1.04, 18.01

Topic Headings: Bargaining Unit Erosion, Job Abolishment, Layoff

Department: Mental Health

Site/Office: Oakwood Forensic Center

Result: Grievance granted in part and denied in part. The State is required to hire an Administrative Assistant 1, a Secretary and one Psychiatric Attendant Coordinator.

Reason: The Secretary and Administrative Assistant positions were abolished, but all of the work remained and a substantial part of it was reassigned to non-Union personnel, in violation of Article 1.03 of the Agreement. Laying off five of nine psychiatric attendant

coordinators left none scheduled for the third shift. Those duties would then fall to non-Union personnel, further eroding the bargaining unit. Therefore, the most senior psychiatric attendant coordinator should be retained to cover the third shift. The record is clear that there is sufficient payroll to support these three positions (Secretary, Administrative Assistant, Psychiatric Attendant Coordinator). Regarding the remaining abolishments, it is apparent that the patient count went down, that the employer is hard pressed for funds throughout the State, and that the layoffs in fact caused substantial savings.

**479) David Tokar 27-17-(92-03-23)-0238-01-03
(Removal)**

Arbitrator: Mitchell B. Goldberg

Charges: Inmate Abuse

Contract Sections: 24.01

Topic Headings: Inmate Abuse, Removal, Just Cause, Criminal Charges

Department: Rehabilitation and Correction

Site/Office: Northeast Pre-Release Center

Position: Correction Officer

Result: Grievance denied.

Reason: The grievant, with full knowledge, entered a plea of guilty to the criminal charge of gross sexual imposition, and he voluntarily waived his right to enter a plea of no contest, which cannot be used against an accused in a civil proceeding. A guilty plea is in and of itself evidence of the underlying factual allegations, and accordingly, the Arbitrator finds that the grievant committed the acts alleged on the basis of his voluntary guilty plea and conviction. The Employer did not abuse its discretion in removing the grievant considering the seriousness of the misconduct and its direct relation to the grievant's responsibilities and job performance. The grievant's standing, as a Correction Officer, is irreparably impaired, and the Employer would be exposed to continue liability in the event the grievant committed another similar violation. The Employer's decision not to retain in its employ a person who has been convicted of a sex-related offense with an inmate is not unreasonable.

**480) Nathan Mims 23-18-(92-07-06)-0835-01-04
(Removal)**

Arbitrator: Harry Graham

Charges: Sleeping on Duty

Contract Sections: 2.01, 24.01

Topic Headings: Removal, Just Cause, Disparate Treatment, Sleeping on Duty

Department: Mental Health

Site/Office: Western Reserve Psychiatric Center

Position: Therapeutic Program Worker

Result: Grievance denied.

Reason: The Employer bears the burden of convincing the Arbitrator that the events occurred as claimed and that the discipline is appropriate for the offense. The account provided by the State's principal witness is more credible than that provided by the grievant. The denial by the grievant that he was sleeping in the face of the record he has compiled is viewed skeptically. The allegations of racial hostility are taken seriously by the Arbitrator, but there was no evidence of personal animosity existing between the State's principal witness and the grievant. There must be some evidence other than the allegations at issue here in order to support the claim of disparate treatment.

481) **Spaun Peace 27-05-(92-02-12)-0195-01-03**

(Removal)

William Whiting 27-05-(92-02-11)-0194-01-03

(Removal)

Arbitrator: Douglas E. Ray

Charges: Inmate Abuse

Contract Sections: 24.01, 24.02

Topic Headings: Removal, Just Cause, Inmate Abuse, Timeliness of Discipline, Credibility, Inmate Testimony

Department: Rehabilitation and Correction

Site/Office: Correction Reception Center

Position: Correction Officers

Result: Grievances sustained. The Employer is directed to reinstate the grievants and make them whole. The Arbitrator retains the jurisdiction for 60 days following the date of this award in the event the parties are unable to agree on the implementation of the award.

Reason: While the arbitrator is troubled by a seeming lack of urgency on the part of the State, given the Contract's clear requirement of timely initiation under Article 24.02, there is no need to rule on the timeliness issue due to the resolution of the remaining issues. Regarding the merits, although the State has sought to show inconsistencies in prior statements of grievants and their witnesses, these inconsistencies pale beside the inconsistencies in the testimony of the inmates and others who accused the grievants. The State relied on subpoenaed witnesses, many of whom have criminal records. Their testimony was inconsistent, and in some cases not credible. Even the testimony of the State's principal witness was inconsistent, and the testimony of the supervisor on the scene did not support the State's case. In addition no reports were filed on the incident

nor were medical exams conducted until days later. Material evidence was not secured, and a detailed investigation was apparently not conducted by the Employer immediately after the incident. The State has not sustained its Section 24.01 burden of proof to establish just cause for discipline.

**481(A) Spaun Peace and William Whiting 27-02-(92-02-12)-0195-01-03 / 27-02-(92-02-11)-0195-01-03
(Clarification of Award)**

Arbitrator: Douglas Ray

Charges: Inmate abuse

Contract Sections: 24.01

Topic Headings: Removal, Inmate Abuse, Remedy, Award Clarification

Department: Department of Rehabilitation and Correction

Site/Office: Correction Reception Center

Position: Correction Officer

Result: Originally the grievances were sustained, and the grievants' removals were overturned. Because the parties were unable to agree on a portion of the remedy, the parties resubmitted the issue of remedy to the arbitrator.

Clarification: The Arbitrator decided that both grievants were entitled to lost overtime opportunities for two months (with restrictions); the second grievant was entitled to reimbursement for his child's medical expenses; the second grievant was placed on a temporary assignment for a period of 30 days during which he was directed to obtain a valid Ohio driver's license (If the second grievant obtained a valid license, the assignment designation was to be dropped; otherwise, he would be required to bid for available opening which did not require a license); and neither grievant was entitled to roll call pay.

**482) Scott Shine 27-02-(92-01-27)-0146-01-03
(Removal)**

Arbitrator: Rhonda R. Rivera

Charges: Off-duty Criminal Conduct

Contract Sections: 2.01, 24.01

Topic Headings: Off-duty Conduct, Removal, Just Cause, Criminal Charges, Disparate Treatment, Nexus

Department: Rehabilitation and Correction

Site/Office: Allen Correctional Institution

Position: Correction Officer

Result: Grievance denied.

Reason: The issue of disparate treatment was not properly raised by the Union, which had the burden of proof. The grievant claimed that his lawyer had given him a judgment entry, telling him that the defendant named in the entry was also a Correction officer and that she had not been removed. While evidentiary rules are more flexible in arbitration than in court, these rules are not flexible enough to admit such evidence. As to the merits, the Union's contention that the grievant could do his job, demonstrated by performing his job during the period between arraignment and conviction, is not correct. He was on limited duty without inmate contact. The grievant knew or should have known that a drug-related crime was off-duty conduct subject to discipline, as specified by the Standards of Employee Conduct. In order for the State to discipline its employees for off-duty conduct, there must be a rational relationship (nexus) between the questioned conduct and the employee's ability to do the job. Given the "role model" requirement its most narrow reading, the prison employer can show a rational relationship between the correction officer's off-duty criminal behavior, whether it constitutes a felony or misdemeanor, and his ability to function as a Correction officer. A direct conflict exists if a Correction officer, whose job essentially consists of confining criminals, is a criminal himself. Such a conflict of interest can seriously undermine his ability to do the job. While the grievant had only minor discipline up to this point, the nature of the crime was serious. He pled no contest to the original felony charge, even though he was found guilty of a lesser offense. The State had just cause to remove the grievant.

**483) Kenneth Hilliard 25-12-(91-11-18)-0150-01-06
(Job Abolishment)**

Arbitrator: Rhonda R. Rivera

Contract Issue: Job Abolishment

Contract Sections: 18.01, 37.08

Topic Headings: Job Abolishment, Layoff, Licensure

Department: Natural Resources

Site/Office: Hocking Hills State Park

Position: Treatment Plant Operations Coordinator

Result: Grievance denied.

Reason: To meet the standards for job abolishment, the employer must prove by a preponderance of the evidence that the grievant's job, Treatment Plant Operations Coordinator, was permanently deleted, i.e., that the tasks were consolidated or redistributed among other workers who, according to their class specifications, were permitted to perform such duties. Such was the case here. The grievant's duties had been absorbed by the Treatment Plant Operator and the Maintenance Workers 3 and 2, and this redistribution has not added an inordinate amount of time to their regular tasks.

In addition, the grievant's position description did not require appropriate licensure for such operations, and the Employer justified its rationale of improved efficiency by showing that there was little need for a position where the alleged lead worker does not have the appropriate license. Moreover, if the various plants can be run by the Treatment Plant Operator, then the direct supervision of a Treatment Operations Coordinator becomes unnecessary. The work is being done with fewer people and the part of the work requiring licensure has been appropriately covered by a licensed operator. The Union's charge that the Employer acted in bad faith by failing to inform the grievant of licensure requirements is unfounded. The grievant received notices offering training leading to licensure, and even if he did not know, the grievant should have known of the importance of licensure. The Union further argued that Article 37.08 should have been applied to the grievant. However, 37.08 only applies if a change in licensure occurs. No change in licensure has occurred since July 1, 1986, and therefore, 37.08 does not apply.

484) Janet Collins 14-00-(91-03-12)-0020-01-09

(Class Modernization Back Pay)

Arbitrator: Douglas E. Ray

Contract Issue: Class Modernization Back Pay

Contract Sections: 25.03

Topic Headings: Class Modernization, Back Pay, Arbitrability, Class Grievance

Department: Health

Result: Grievance sustained in part. The State is directed to make retroactive payments to all affected state employees according to the terms of the memorandum, provided the employees were employed on October 22, 1990.

Reason: The Arbitrator reads this grievance to contemplate a statewide class grievance. It is clearly a class grievance as allowed by Article 25. The State has recognized this as a statewide issue and reacted accordingly. This is an issue that, by the admission of State officials at the Department of Health, could not be resolved at the agency level. The Step 3 Response demonstrated also that the State had notice and that this was not merely a single agency matter. The decision to pay or not pay back pay as a result of class modernization was made by the Department of Administrative Services, not the Department of Health. As to the merits, there is a basis for granting relief to at least some of the employees who left employment before receiving their retroactive pay. The parties agreed in writing that retroactive payments were to be paid to employees and were to be included in the employees' normal paycheck. Persons employed on October 22, 1990, when the agreement was signed, were the beneficiaries of this settlement. To allow the State to refuse them payment because they left employment prior to receiving the money would be to reward the State for delay. If payments had been made quickly, all persons employed at the time could have received their payments in "normal paychecks." In the absence of language indicating an intent to pay persons who left

before October 22, the Arbitrator feels constrained to limit the recovery to those people who were employed at the time the memorandum of agreement was signed. This grievance is arbitrable because certain employee rights may have vested before the employees left service. The rights of the employees in this case vested at the time of the agreement.

**485) Geri Mangas 23-01-(91-12-16)-0138-01-14
(Job Abolishment)**

Arbitrator: Mollie H. Bowers

Contract Issue: Job Abolishment

Contract Sections: 1.04, 18.01

Topic Headings: Bargaining Unit Erosion, Job Abolishment, Layoff

Department: Mental Health

Site/Office: Allen Correctional Institution

Position: Administrative Assistant 1

Result: Grievance denied.

Reason: The Employer did not violate Articles 1.04 or 18.01 when it abolished the grievant's position. The Employer had the burden of proving by a preponderance of the evidence that the job abolishment was accomplished in accordance with ORC §124.321 - .327 as provided in Article 18.02 of the Agreement. The Union was unable to show that the action was taken for the purpose of eroding the bargaining unit, or that bargaining unit work was being performed by employees outside the bargaining unit. In addition the Union could also not demonstrate that bias or some other impermissible rationale was used, or that the budgetary assessment underlying the abolishment was flawed. The Employer, in contrast, adequately described how the work requirements of the Administrative Assistant 1 would be met.

**486) Mark Holcomb 31-12-(92-06-09)-0007-01-06
(Removal)**

Arbitrator: Mollie H. Bowers

Charges: Driver's License Suspension

Contract Sections: 24.01, 24.02

Topic Headings: Removal, Just Cause, Progressive Discipline, Driving While Intoxicated, Criminal Charges, Failure to Maintain a Driver's License

Department: Transportation

Position: Highway Maintenance Worker 2

Result: Grievance denied.

Reason: The grievant was aware of the seriousness of not having a valid driver's license, as indicated by his actions in notifying his supervisor the day after receiving a D.U.I. ODOT has a self-insurance program which does not cover employees who are operating under license suspension or revocation. ODOT policy prohibited any ODOT employee from operating or driving any department equipment unless or until their modifying order is documented on the employee's driving record at the BMV. The grievant's termination might be viewed as unreasonably punitive except that more than 70 percent of the grievant's duties consisted of driving ODOT equipment. During snow season 100 percent of grievant's time was spent operating snow equipment. The grievant never complied with the requirements for receiving a modification order of the D.U.I. that would have provided limited driving privileges, and therefore the Employer acted reasonably under the circumstances in terminating the grievant. The Employer had a right to expect the grievant to meet the minimum requirements for the job. The Union's contention that removal was contrary to progressive discipline is not well taken. The language in Employer's policy clearly gives management the authority to remove employee who violate Rule 35. Given the responsibilities of the grievant and his job requirements, balanced with the Department's responsibility to the public, the termination was for just cause.

**487) Suzanne Jackson 26-00-(90-02-05)-0005-01-14
(Minimum Qualifications)**

Arbitrator: Lawrence R. Loeb

Contract Issue: Promotion, Minimum Qualifications

Contract Sections: 2.01, 17.05, 17.06, 36.05

Topic Headings: Promotion, Seniority, Minimum Qualifications, Discrimination

Department: Public Utilities Commission

Position: Utility Rate Analyst 2

Result: Grievance denied.

Reason: The Arbitrator disregarded the State's claim that it would be unfairly prejudiced by the Arbitrator's consideration of the Union's discrimination claim. The State was neither unfairly surprised nor disadvantaged because it should have recognized that the Union was relying on Article 36.05 of the contract as the basis for its pre-positioning charge. Likewise, the Arbitrator rejected the argument that the grievant did not meet the minimum qualifications for the Utility Rate Analyst 3 position. The State effectively conceded that the grievant was minimally qualified for the position by granting her an interview. Nonetheless, the grievant lacked the necessary familiarity and proficiency with the computer software as required by the position description. The grievant failed to demonstrate her proficiency and therefore had no contractual right to the position. Having decided that the grievant was unqualified due to her lack of proficiency, it is unnecessary to decide whether the State was guilty of pre-positioning in violation of Article 36.05. In any event, the State could have properly used the

“demonstrably superior” language in Article 17.06 to select the junior applicant over the more senior grievant even if the grievant met and was proficient in the minimum qualifications. Because of the different training the members of each department received and the specialized duties and responsibilities of the Utility Rate Analyst 3, it was virtually impossible for a candidate working outside the Forecasting Department to compete with a candidate who had inside knowledge and experience. Despite the unfair results, the State did not violate the Contract.

**488) Robin Methena 24-10-(91-11-12)-0340-01-04
(Removal)**

Arbitrator: Mollie H. Bowers

Charges: Absent Without Leave

Contract Sections: 24.01, 29.04

Topic Headings: AWOL, Call-Off Procedures, Removal, Just Cause

Department: Mental Retardation and Developmental Disabilities

Site/Office: Northwest Ohio Development Center

Position: Therapeutic Program Worker

Result: Grievance denied.

Reason: Absenteeism can adversely affect the efficiency of an employer’s operations. This is particularly true here, given the mission of the NODC. There is no contention that the Employer’s attendance rules are unreasonable. The grievant’s argument that she was out on approved leave is not persuasive. The fact that the grievant submitted the leave form with doctor’s statement does not excuse her from call-off responsibilities. She had been provided adequate notice of the rule and of the consequences for violating it as part of her initial orientation. The grievant also failed to call in on five dates in August, after being explicitly instructed to do so. The two attendance related infractions coupled with the grievant’s overall disciplinary record during her short employment history at NODC justify sustaining the State’s decision to discharge the grievant. There is insufficient evidence of mitigating circumstances to warrant modification of the termination decision.

489) Jack O’Boyle 31-08-(88-08-12)-0073-06-01
(ODOT Subcontracting)**

Arbitrator: Harry Graham

Contract Issue: Subcontracting

Contract Sections: 1.04, 25.08, 39

Topic Headings: Subcontracting, Bargaining Unit Erosion, Document Requests for Arbitration

Department: Transportation

Site/Office: District 8

Position: Signal Electrician 1's and 2's

Result: Grievance sustained. The Employer is to produce documents requested by the Union in order to process grievances and prepare for arbitration proceedings. The Employer is to cease and desist from contracting out loop repair work in ODOT District 8 without making a careful assessment of the factors of economy and efficiency. The Employer is to fully comply with the terms of Article 39 which require it to meet with the Union, at the Union's request, to discuss proposed contracting out and to provide to the Union an opportunity to present alternatives. The Union and the Employer are to meet to determine any overtime payments that may be due to Signal Electrician 1's and 2's for work that was performed by employees of Miller Pipeline Company.

Reason: Given the commitment of the State to utilize bargaining unit employees to perform work they were performing when the Contract came into effect, the second sentence of Article 39 places upon the State the burden of demonstrating to the Arbitrator that the contract with Miller Pipeline company to do loop repair work met the contractual criteria of "greater efficiency, economy, programmatic benefits and other related factors." The State was unable to satisfy the "economy" standard established by the Contract. The employer also failed to satisfy the "efficiency" standard. Actual layoff of the bargaining unit members does not have to occur in order for an employer to be found to have compromised the integrity of the bargaining unit. In this situation, there exists passive reduction of the bargaining unit. It is clear that the bargaining unit was eroded by the contract with Miller Pipeline Company which called for it to perform work that had historically been performed by State employees and which they were capable of performing during the lifetime of the contract with Miller. As to the issue of document availability, the Union should pay the copying costs of those documents requested. However, it is the Employer's responsibility to inform the Union that information relevant to the dispute is available, although in a form unknown to the Union. Should the State be able to unilaterally withhold evidence that the Union regards as relevant to its case, the grievance and arbitration procedures will be fatally compromised.

**490) George J. Moore No Number
(Removal)**

Arbitrator: Rhonda R. Rivera

Charges: Arbitrability of Removal

Contract Sections: 25.02

Topic Headings: Arbitrability, Removal

Department: Mental Health

Site/Office: Millcreek Psychiatric Hospital

Position: Therapeutic Program Worker

Result: The Arbitrator found that no matter existed that was properly before the Arbitrator.

Reason: At a minimum, the Union had to show that the grievance was put in an envelope, properly addressed, properly stamped, and properly placed in a U.S. Mail box. Insufficient proof existed that any grievance with regard to the grievant had ever been filed, and therefore, the grievance failed to meet the contractual standards under Article 25.02 of the contract.

491) Fran Reisinger 27-16-(90-09-12)-0439-01-03 Pat Howell 27-16-(90-09-17)-0443-01-03 (Overtime Pay)

Arbitrator: Douglas E. Ray

Contract Issue: Overtime

Contract Sections: 13.07, 25.03

Topic Headings: Arbitrator's Authority, Overtime, Remedies

Department: Rehabilitation and Correction

Site/Office: Marion Correctional Institution

Position: Correction Officers

Result: Grievances sustained. The Employer is directed to make each employee whole by paying each employee for the overtime she would have worked but was not offered because she was temporarily left off the second shift master roster. The Arbitrator maintained jurisdiction for 60 days in the event that the parties are unable to agree as to the amounts of back pay due.

Reason: Despite the finding that the Employer did not act in bad faith, the overtime rights of each grievant were breached when they were temporarily left off the second shift roster. Providing overtime opportunities within the same purging period and for the same day and shift rosters as those on which overtime is missed can be consistent with the local overtime agreement so long as it is not done in a way to impose hardship. However, there is no evidence that extra opportunities within the purge period made up for the grievants' lost opportunities. Pay is a particularly appropriate remedy here for two reasons: 1) makeup overtime in future overtime purge periods would interfere with the seniority and rotation rights to overtime of others on the roster, some of whom were not even on the list during the earlier purge period; and 2) the makeup remedy is ineffective in a period when much overtime is being offered because the grievants would have been able to work overtime in any event. However, the Arbitrator cannot estimate the number of hours each grievant would have worked, and remands this to the parties to agree on a figure for each grievant. The arbitrator rejected the State's argument that

awarding back pay for missed overtime opportunities violates the Contract by going beyond the authority of the arbitrator.

492) Leo Sampson 27-26-(91-03-13)-0181-01-03 Keith Lawson 27-26-(91-03-13)-0180-01-03 (Suspension)

Arbitrator: Rhonda R. Rivera

Charges: Throwing Away First Class Mail

Contract Sections: 24.01

Topic Headings: Suspension, Just Cause, Specific v. General Charges

Department: Rehabilitation and Correction

Site/Office: Warren Correctional Institution

Position: Correction Officers

Result: Lawson's grievance is sustained. His discipline is to be removed from his record, and he is to be made whole for the 10-day suspension. Sampson's grievance is sustained in part and denied in part. The 10-day suspension is reduced to a five-day suspension, and the grievant is to be made whole for the other five days.

Reason: The Arbitrator is clearly convinced that grievant Sampson did, on at least the occasions charged, throw away what he knew or should have known to be first class mail. However, the evidence is not clear regarding grievant Lawson. Therefore, the discipline of Lawson was not for just cause. Given the lack of recent discipline, the length of grievant Sampson's service, and the lack of proof of malice, a 10-day suspension is not commensurate. However, given his apparent reckless disregard for the rules and the mail of inmates he is sworn to protect, and the seriousness of the offense, a five-day suspension is warranted.

493) Gene Christian 15-02-(92-07-22)-0004-01-09 (Removal)

Arbitrator: Nels E. Nelson

Charges: Violation of Work Rules (Removal)

Contract Sections: 2.01, 24.01

Topic Headings: Discrimination, Disparate Treatment, Failure to Follow Orders, Just Cause, Neglect of Duty, Work Rules, Policies, Procedures, Prior Discipline, Removal

Department: Bureau of Motor Vehicles

Site/Office: Highway Safety (Distribution Center) Franklin Co.

Position: Salvage Machine Operator

Result: The grievance was denied.

Reason: The grievant knowingly violated Distribution Center Rule 6(c) which prohibited leaving the salvage door open for other than loading/unloading. This violation was considered to be very serious given the street value of the confidential materials disposed of using this door, i.e., driver's license applications, validation stickers, and license plates. Eyewitness testimony established that the grievant did, in fact, leave the door open. Despite the facts that (1) the Labor Relations Coordinator participated in the investigation, (2) a coworker's testimony was conflicting, and (3) the grievant was not questioned beyond the initial interview, the investigation was full, fair and impartial.

494) Clarence Castellano 31-12-(92-03-19)-0003-01-06 (Suspension)

Arbitrator: Mollie H. Bowers

Charges: Unauthorized Break

Contract Sections: 24.01

Topic Headings: Bias by Management in Discipline, Just Cause, Past Practice, Suspension

Department: ODOT

Site/Office: District 12, Geauga County

Position: Highway Worker 2

Result: Grievance granted. ODOT ordered to grant full back pay and the suspension and all record of this discipline shall be rescinded.

Reason: The practice of leaving the work site with an ODOT vehicle for breaks was a common practice of both management and employees. This activity had never before been cause for discipline even though management was aware of the practice. Furthermore, the state's claim of damage to the ODOT truck was unfounded and unsupported because of the conflicting opinion of first, an experienced mechanic and then that of an unknown mechanic.

The employer did not have just cause for imposing a ten day suspension of the grievant. The suspension was rescinded and the grievant was awarded back pay and otherwise made whole for the period of the suspension.

**495) Karen McClendon 27-09-(92-06-17)-0091-01-03
(Removal)**

Arbitrator: Harry Graham

Charges: Unauthorized Relationship with an Inmate

Contract Sections: 24.01

Topic Headings: Removal, Just Cause, Unauthorized Relationship with an Inmate, Evidence (Phone Records)

Department: Department of Rehabilitation and Correction

Site/Office: Grafton Correctional Institution

Position: Correction Officer

Result: The grievance was denied. The grievant's removal was for just cause.

Reason: It was strangely coincidental that the second telephone line to the grievant's house was receiving collect calls from the Grafton Correctional facility. It was also strangely coincidental that the phone service was disconnected once the grievant was aware of the pending investigation. Furthermore, testimony indicated that the grievant encouraged the inmate to engage in improper conversation with another officer. The improper relationship between the grievant and the inmate placed the grievant, as a Correction Officer, in a compromising position.

**496) Charles Stanley 23-13-(92-06-10)-0617-01-04
(Removal)**

Arbitrator: Nels E. Nelson

Charges: Abuse of Patient

Contract Sections: 24.01

Topic Headings: Removal, Abuse of Patient, Credibility, Just Cause

Department: Department of Mental Health

Site/Office: Pauline Warfield Lewis Center

Position: Hospital Aide

Result: Grievance denied. The grievant's dismissal was warranted.

Reason: The state's witness was not only in a position to observe the grievant engage in patient abuse, but also the state's witness had no motive to falsify her testimony. Contrarily, the grievant had no reason to contradict the state's witness' testimony. Additionally, although not a determinative factor in evaluating the appropriateness of the imposed discipline, the grievant had taken an unauthorized break of considerable length. Patient abuse is a serious offense and is just cause for dismissal of the employee.

**497) Harold Bumgardner
31-11-(91-03-12)-0018-01-06
31-11-(91-04-03)-0021-01-06
Union Leave**

Arbitrator: Harry Graham

Contract Issue: Unpaid Leave for Union Activity

Contract Sections: 3, 31.01

Topic Headings: Past Practice, Unpaid Leave

Department: ODOT

Site/Office: Harrison County Scioto Outpost

Position: Highway Worker 2

Result: The grievant was granted leave pursuant to Article 31.01 to serve as a Union Representative.

Reason: The grievant requested an unpaid leave of absence when he was offered a Staff Representative position from the Union. The Department of Transportation denied his request.

The language of Article 31.01, read in its entirety, requires the employer to give unpaid leaves of absence to employees serving as union representative. There was evidence that the past practice between the parties had been to grant an unpaid leave in these instances.

The Agreement must be read in such a way as to give all terms full force and effect whenever possible. Since Article 3.10 grants leave to the Union president, it would be redundant to read Article 31.01 to only pertain to the Union president therefore Article 31.01 must pertain to Union representatives as well as Union officers.

**498) Hilma Slone 04-00-(90-11-16)-0035-01-13
(Erosion of Bargaining Unit Work)**

Arbitrator: Nels E. Nelson

Contract Issue: Supervisor Doing Bargaining Unit Work

Contract Sections: 1.04, 17.03, 20

Topic Headings: Bargaining Unit Erosion, Class Modernization, Remedy, Supervisor Performing Bargaining Unit Work

Department: Department of Agriculture

Site/Office: Consumer Analytical Laboratory

Position: Chemical Lab Coordinator

Result: The Department of Agriculture was ordered to cease and desist from having the bargaining unit work of chemical laboratory coordinator performed by a supervisor. The state was not required to post and fill the vacant coordinator position.

Reason: Until classification modernization (class mod), the Supervisor 1 classification was a split classification which included some Supervisor 1 duties in the bargaining unit and some duties exempt. After class mod the supervisor 1 employees performing bargaining unit work were reclassified as Chemical Lab Coordinators. The Chemical Lab Coordinator position in the meat laboratory was vacated through natural attrition. The duties of the position were absorbed by the exempt Supervisor 1 in the laboratory. This work was bargaining unit work. The violation of section 1.03 was readily apparent.

While the state was unable to fill the position due to a hiring freeze, the financial plight of the state does not relieve it of its obligation to comply with the contract, specifically section 1.03.

499) Phyllis LoRubbio 31-10-(92-05-13)-0014-01-14

Job Abolishment

Arbitrator: Rhonda Rivera

Contract Issue: Job Abolishment

Contract Sections: 18.01

Topic Headings: Layoffs, Job Abolishment, Settlement

Department: ODOT

Site/Office: Athens County Garage

Position: Administrative Assistant 3

Result: The grievant is to be reinstated as an Administrative Assistant 3 at her work location in Athens and she is to be made whole. If the employer wishes to relocate the grievant, it was instructed to renegotiate the settlement in good faith with the Union.

Reason: The Administrative Assistant 3 position was abolished for reasons of economy and efficiency. The normal work flow for the position was centered in Washington County and sending work to Athens was an obvious waste of time and resources.

The employer barely demonstrated by a preponderance of the evidence that the job abolishment was undertaken due to a reorganization for the efficient operation of the District 10 Construction Department and for reasons of economy. The Union showed by a preponderance of evidence that the abolishment was not in good faith. The Administrative Assistant 3 position was originally relocated in the Athens garage as the result of a settlement agreement. The state never attempted to renegotiate the agreement and instead engaged in a job abolishment in bad faith.

500) Clarence Castellano

31-13-(92-10-06)-0018-01-06

Removal

Arbitrator: Mollie H. Bowers

Charges: Violation Work Rules/Policies/ Shoplifting

Contract Sections: 2.01, 9.04, 24, 24.01

Topic Headings: Removal, Theft, Just Cause, Employee Assistance Program, Management Bias in Discipline Process, Mitigation, Nexus

Department: ODOT

Site/Office: Lake-Geauga County (District 12)

Position: Highway Maintenance Worker

Result: Grievance was denied.

Reason: The grievant was removed for just cause. ODOT established a nexus between the offense and the grievant's position as an ODOT employee/Union shop steward by showing that the grievant was actually on duty when he shoplifted and that the news media covered the incident. Since involvement in EAP is **voluntary**, ODOT's refusal to enter into an EAP agreement with the grievant was not fatal to its case. There was no evidence that ODOT was predisposed to remove the grievant or that the grievant was subject to disparate treatment. The removal was commensurate with the offense, especially since the grievant was previously convicted of theft, but not removed. The mitigating circumstances (i.e., kleptomania diagnosis, length of service, involvement in a rehabilitative program) did not overcome the circumstances and the severity of the offense.

**501) Rebecca S. Spicer 02-04-(88-08-05)-0039-01-14
Removal**

Arbitrator: Mitchell B. Goldberg

Charges: Neglect of Duty

Contract Sections: 24.02

Topic Headings: Back Pay, Just Cause, Neglect of Duty, Progressive Discipline, Removal

Department: Rehabilitation and Correction

Site/Office: Southeast Correctional Facility

Position: LPN

Result: Grievant should be restored to her job without an award for back pay of benefits.

Reason: The grievant violated Rule 9 (prohibiting poor judgment in carrying out an assignment) and Rule 24 (prohibiting falsification of documents) of the Revised Standards of Employee Conduct of ODRC. The grievant did not properly attend to an inmate, did not administer CPR when she should have, and falsified a report indicating that she had administered CPR. These are serious violations of Rule 9 and Rule 24 and the grievant deserves to be disciplined, but removal is not appropriate under these circumstances. This is a first offense and Section 24.02 of the contract clearly provides for progressive discipline. As such, the grievant may not be removed at this stage of the disciplinary process.

**502) Beth Waldwig 27-15-(92-08-19)-0219-01-03
Removal**

Arbitrator: Lawrence R. Loeb

Charges: Violation of Work Rules; Unauthorized Relationship with Inmate

Contract Sections: 24.01

Topic Headings: Just Cause, Removal, Unauthorized Relationship with Inmate, Work Rules

Department: Rehabilitation and Correction

Site/Office: Madison correctional Facility, London, Ohio

Position: Correction Officer

Result: Grievance denied.

Reason: The grievant was denied reinstatement to her position as a Correction Officer because she violated work rules of the department and ORC 124.34. The grievant failed to immediately report a violation of any work rule, law or regulation; gave preferential treatment to an inmate and engaged in the exchange of personal information. The grievant has a physical relationship with an inmate, was involved in an extortion scheme with the same inmate and gave her unlisted phone number to another inmate. The arbitrator found that the employer terminated the grievant for just cause.

503) William J. Smith 33-00-(92-12-07)-0450-01-05

Removal

Arbitrator: Mitchell B. Goldberg

Charges: Sexual Harassment of Female Co-worker

Contract Sections: 24.01

Topic Headings: Back Pay, Burden of Proof, Criminal Charges, dishonesty, Effect of "No Contest" Criminal Plea, Just Cause, Offset of Back Pay Award, Removal, Sexual Harassment

Department: Ohio Veterans Home

Site/Office: Sandusky

Position: Food Service Worker 1

Result: The grievance was sustained, and the grievant was reinstated to his former position with full back pay and benefits, less any interim earnings, unemployment compensation payments or other income which may have mitigated his damages.

Reason: When there is a charge of serious misconduct such as sexual harassment and sexual imposition, the employer must prove the grievant's misconduct through clear and convincing evidence. Since the investigation did not yield any further evidence, the arbitrator's decision was based upon a comparison of the charging party's complaint and the grievant's denials. The grievant's plea of no contest in a criminal proceeding was irrelevant to the disciplinary proceeding. Both testimonies were credible, therefore there was no basis to accept the charging party's allegations over the grievant's denials.

504) Rosemary Richendollar
27-08-(92-06-05)-0119-01-03 Removal

Arbitrator: Nels E. Nelson

Charges: Dishonesty; Failure to Cooperate in an Official Investigation

Contract Sections: 24.02, 24.05

Topic Headings: Back Pay, Dishonesty, Just Cause, Off-Duty Conduct, Progressive Discipline, Removal, Work Rules

Department: Rehabilitation and Correction

Site/Office: Franklin Pre-Release Center

Position: Correction Officer

Result: The grievance was sustained.

Reason: The grievant injured her shoulder, neck and back during work-related training, but went bowling that same night against the advice of the doctor. The grievant lied to the investigatory interviewer and the State doctor about her bowling activities, however the arbitrator did not find anything to support the original allegation of fraud. The violations of Rules #1 and #26 of the Standards of Employee Conduct did not warrant removal. The grievant was reinstated without loss of seniority but without back pay.

505) Nancy Cutwright/Donnie Sargent **25-12-(91-12-24)-0011-01-09**
Reemployment Rights

Arbitrator: Loeb

Contract Issue: Reemployment Rights

Contract Sections: 14.01, 17.04, 18.09

Topic Headings: Admissibility of Evidence, Arbitrator's Authority, Back Pay, bidding Rights, Discrimination, Job Abolishment, Layoffs, Postings

Department: Natural Resources

Site/Office: Chillicothe

Position: Radio Operator

Result: The grievance was granted in part and the grievant received back pay, less sums earned from other sources, and all benefits associated with the radio operator's position from the date she filed her grievance through the date the Department posted the vacancy for the radio technician's position.

Reason: The grievant had been laid off from the Department of Natural Resources. A position came open in the Department of Transportation which she should have been hired into from a re-employment list. Instead, another person was given the position. The arbitrator held that although the State may have violated Article 17 of the Contract by mistake and not by design, the State still was at fault and owed the grievant back pay and benefits.

506) Julius Ferguson 23-18-(92-10-08)-0878-01-04**

Removal

Arbitrator: Lawrence Loeb

Charges: Physical Assault

Contract Sections: 2.01, 9.04, 24.01, 25

Topic Headings: Assault, Disparate Treatment, Employee Assistance Program, Just Cause, Lax Enforcement of Work Rules, Prior Discipline, Procedural Violations, Removal

Department: Mental Health

Site/Office: Western Reserve Psychiatric Hospital

Position: Food Service Worker

Result: The grievance was denied.

Reason: Weighing the severity of the assault and the grievant's prior disciplinary history, the State proved just cause to remove the grievant. The State proved that there was no disparate treatment by showing that only those individuals without prior disciplinary history received discipline other than removal for their first offense of physical assault. Also, the State proved that other assaults were substantially less severe than the grievant's assault.

Although the State had offered EAP participation to at least 10 other employees in the past, it had never extended an offer to an employee who was disciplined as a result of a physical altercation. Further, the grievant only entered into EAP after his removal was certain. Under these circumstances, the State was not obligated to consider his EAP participation. The State's decision to withhold EAP was neither arbitrary, capricious, nor discriminatory.

The grievant received actual notice of his termination 38 days after the agency head signed the removal order. Therefore, the arbitrator concluded that even though the grievant did not receive timely notice of the agency's decision to discipline, the Contract was not violated.

507) Michael Bradford 27-21-(92-09-15)-0789-01-03

Removal

Arbitrator: Harry Graham

Charges: Trafficking in Prescription Drugs

Contract Sections: 24.01

Topic Headings: Back Pay, Credibility, Drug Trafficking, Just Cause, Offset of Back Pay Award, Removal

Department: Rehabilitation and Correction

Site/Office: Orient Correctional Institute

Position: Pharmacy Attendant

Result: The grievance was granted, resulting in reinstatement, an award of back pay and accrued seniority. Damages to be mitigated by grievant's earnings from time of removal to time of award.

Reason: The grievant was accused of giving prescription drugs to an inmate who was to deliver them to a co-worker of the grievant. Although the pills which were given to the co-worker were, in fact, prescription drugs, the State was unable to meet its burden of proving that the pills given to the inmate by the grievant were those same pills and not some other pills. Thus the grievant cannot be said with any certainty to have done the deed with which he is charged and should be reinstated.

508) Nathan Wilson 31-06-(92-08-01)-0029-01-06

Removal

Arbitrator: Rhonda Rivera

Charges: Falsification of Commercial Driver's License

Contract Sections: 9.04, 24.01

Topic Headings: Dishonesty, Employee Assistance Program, Falsification of commercial Driver's License, Just Cause, Nexus, Prior Discipline, Removal

Department: Transportation, Maintenance Department

Site/Office: Fifth Avenue Garage (Columbus, Ohio)

Position: Highway Maintenance Worker 2

Result: The grievance was denied.

Reason: Although arbitrators usually prefer that the contemplated discipline be actually imposed prior to removal, the Contract permits the State to delay imposition of discipline pending completion of the EAP program. However, since the State elected to wait until after the grievant's participation in EAP to impose discipline, no grievable event occurred until the grievant was finally terminated. Thus, the grievance was timely.

Emphasizing the grievant's poor disciplinary record, the arbitrator concluded that the grievant was unable to work peaceably with others or at the direction of his supervisors and that these personality flaws prevented him from adequately performing his job. The State proved that the grievant was verbally abusive, insubordinate and dishonest. For these reasons, the imposition of discipline was for just cause and was commensurate with the offenses.

509) Carl Eichelberger 34-20-(93-03-08)-0083-01-09

Removal

Arbitrator: Lawrence R. Loeb

Charges: Confrontational Behavior

Contract Sections: 24.01

Topic Headings: Just Cause, Removal

Department: Workers' Compensation

Site/Office: Rockside

Position: Claims Representative III

Result: The grievance was sustained. The grievant's removal was converted to a disciplinary suspension, without back pay. The grievant was reinstated to his former position and his records were revised to reflect the discipline ordered by the award.

Reason: The State did not meet its burden of showing that the removal was justified. The parties were equally at fault for the confrontations which occurred at a management meeting. The grievant exercised poor judgment by not excusing himself from a management meeting, by refusing to be quiet, by arguing with the Regional Director and by impeding the Regional Director's leaving the meeting on two occasions. However, the Regional Director exhibited poor management skills in not asking the grievant to leave the meeting and allowing the conversation to become increasingly heated. The matter further deteriorated when the Regional Director shoved the grievant. The fact that the grievant did not retaliate physically is a significant fact that mitigates against upholding his removal. However, because the grievant's misconduct was intentional and because the grievant had a previous disciplinary record, a disciplinary suspension is fully warranted based upon just cause principles. Further instances of related misconduct may justify removal.

510) Rickie Blackwell 23-10-(92-10-26)-0167-01-04

Removal

Arbitrator: Lawrence R. Loeb

Charges: 24.01

Contract Sections: Back Pay, Credibility, Criminal Charges, Document Requests, Just Cause, Patient Abuse, Removal, Work Rules

Topic Headings: Back Pay, Credibility, Criminal Charges, Document Requests, Just Cause, Patient Abuse, Removal, Work Rules

Department: Mental Health

Site/Office: Massillon Psychiatric Center

Position: Licensed Practical Nurse

Result: The grievance was sustained. The grievant was reinstated with full back pay and no loss of benefits, less any sums he earned from other employment.

Reason: The grievant was removed from his position as a Licensed Practical Nurse due to alleged violations of work rules for abusing a patient. Although the State had two

witnesses, neither witness was credible because their stories were inconsistent over time. The State had the burden of proof by clear and convincing evidence to prove that there was a causal connection between the grievant's blow and the patient's injuries. The State failed to meet its burden, and therefore the grievant was improperly removed. The grievant was reinstated and awarded back pay and benefits less any sums earned from other employment.

**511) Kelley Munnerlyn 34-04-(91-08-23)-0153-01-09
Promotion**

Arbitrator: Marvin J. Feldman

Contract Issue: Minimum Qualifications

Contract Sections: 17.06A

Topic Headings: Application for Employment, Minimum Qualifications, Promotion

Department: Workers' Compensation

Site/Office: Columbus

Position: Data Systems Coordinator

Result: Denied.

Reason: There was no contractual violation because the grievant was not qualified for the position. The grievant was unable to meet any of the three "tests" for qualification. First, he had never worked as a Programmer Specialist 1; therefore, he failed the 6 months test. Second, he had only 12 days of out-service training and roughly 30 days of formal computer (some of which was only at an elementary level of systems analysis and design). Moreover, the grievant had neither advanced college courses nor advanced training in any of the systems and design concepts necessary for the position. Thus, the grievant failed the 10 months training or 30 months computer science experience test. Third, he failed to show how his work experience qualified him for the Programmer Specialist 2 position, so he likewise failed the equivalent experience test.

Consequently, the agency determined that the grievant was deficient in the areas of systems analysis and design. The agency conceded that the course work listed on the grievant's application provided him with a good informational basis, still it persuaded that arbitrator that the grievant was incapable of performing competent systems analysis.

**512) Dian Glover 09-00-(92-12-30)-0039-01-14
Removal**

Arbitrator: Mollie Bowers

Charges: Abuse of Sick Leave, Excessive Absences

Contract Sections: 29.04

Topic Headings: Just Cause, Progressive Discipline, Sick Leave, Work Rules

Department: Development

Site/Office: International Trade Division, Riffe Center

Position: Administrative Assistant 1

Result: Grievance was denied.

Reason: Article 29 authorized the agency to take corrective and progressive disciplinary action for the unauthorized use and abuse of sick leave. Over the past three years, the grievant's attendance record grew progressively worse. There was no evidence in the record to substantiate alleged mitigating circumstances such as discriminatory action by the employer against the grievant or that her absenteeism was caused by "sick building syndrome." Therefore, since the grievant had received progressive discipline for previous attendance problems, her removal was for just cause.

513) Robert Nye 23-10-(92-12-22)-0178-01-06

Removal

Arbitrator: Rhonda Rivera

Charges: Attendance Related Infractions

Contract Sections: 24.01

Topic Headings: Just Cause, Resignation, Settlement Agreement

Department: Mental Health

Site/Office: Massillon Psychiatric Hospital

Position: Groundskeeper 1

Result: Settled at arbitration.

Reason: The employer accepted the grievant's resignation, effective August 30, 1993. The settlement between the employer and the Union included giving aid to the grievant in filing for unemployment compensation, filing for Social Security Disability or SSI, linking the grievant with a community mental health worker and seeking a sheltered workshop for the grievant. The grievant has been employed with the State since 1975.

514) James C. Eckard 31-11-(90-08-03)-0035-01-07**

Subcontracting

Arbitrator: Rhonda R. Rivera

Contract Issue: Subcontracting

Contract Sections: 1.03, 5, 12, 13.07, 14.01, 17.03, 39

Topic Headings: Bargaining Unit Erosion, Management Rights, Overtime, Subcontracting

Department: Transportation

Site/Office: District 11

Position: Project Inspector 2

Result: The grievance was sustained. The arbitrator ordered ODOT to make the Union whole by reimbursing the Union for its expenses in preparing the grievance for arbitration.

Reason: The grievant alleged that ODOT improperly contracted out project inspection work on four District 11 construction projects to non-bargaining unit consultant inspectors. In finding that ODOT acted improperly, the arbitrator determined that the vast majority of the disputed project inspection work was work “normally performed” by bargaining unit inspectors.

The arbitrator was not persuaded by the argument that ODOT did not have sufficient time and/or resources to hire and train new bargaining unit inspectors. There was also concern that, on two of the four projects, the company which designed the project was also responsible for inspecting the construction work. The most persuasive factor was that those State employees who were ultimately responsible for the decision to subcontract had never undertaken a comparison of the cost of contracting out versus performing the project inspection work in-house. This called into question the legitimacy and degree of good faith of ODOT’s stated reason for subcontracting.

Ultimately, the arbitrator concluded that the Contract required ODOT to show that use of consultant project inspectors would result in greater economy, efficiency or programmatic benefits (i.e., to consider different options such as 1000 hour transfers and/or hiring to fill existing vacancies). ODOT bore the burden of proving that its rationale was legitimate, and it failed to meet its burden of proof. As a result, the arbitrator held that the subcontracting of project inspection services was contractually inappropriate.

**515) James E. Trotter 04-00-(91-10-07)-0059-01-07
Arbitrability; Worker’s Compensation Benefits**

Arbitrator: Nels E. Nelson

Contract Issue: Timely Filing of Grievance

Contract Sections: 25.02, 25.05

Topic Headings: Arbitrability, Timely Filing of Grievance

Department: Agriculture

Site/Office:

Position: Meat Inspector

Result: Grievance denied.

Reason: The grievance was not arbitrable because it was not timely filed. When the grievant reaggavated his back injury in June 1990, he requested to use vacation instead of sick leave during the waiting period for Worker’s Compensation benefits but was denied. The grievant never filed a grievance until one year later when he discovered that he had been misinformed. The grievant promptly filed a grievance which was subsequently processed through each step of the grievance process without objection.

The grievant was or should have been aware of his grievance on or before June 1990; evidence showed that the grievant knew that other ODA employees had been permitted to use vacation instead of sick leave during the waiting period. Thus, the grievant failed to act in a timely fashion to protect his interests. The State did not waive its right to protest the timeliness of the grievance by not raising the issue until immediately prior to the arbitration hearing because it did not intentionally withhold the issue for the purpose of surprising the Union at the hearing, and the State notified the Union promptly upon discovering the defect.

516) Czerny Miller 23-18-(92-10-14)-0882-01-06

Removal

Arbitrator: Mitchell Goldberg

Charges: Failure to Comply with EAP

Contract Sections: 2.01, 9.04, 24.01

Topic Headings: Bias by Management in Discipline, Discrimination, Disparate Treatment, Employee Assistance Program, Just Cause, Progressive Discipline, Removal, Suspension

Department: Mental Health

Site/Office: Western Reserve Psychiatric Hospital

Position: Boiler Operator

Result: Grievance denied.

Reason: The State had discretion to tailor the discipline under the principles of progressive discipline and conditional discharge pursuant to the terms of the EAP agreement and given the grievant's failure to comply with the terms of the agreement there was just cause to remove the grievant.

517) Matt Turner 27-12-(92-12-15)-0047-01-03

Removal

Arbitrator: Nels Nelson

Charges: Unauthorized Relationship with an Inmate, Failure to Cooperate in an Official Investigation, Inappropriate Threats to a Co-Worker.

Contract Sections: 24.01, 24.02

Topic Headings: Failure to Cooperate in an Investigation, Just Cause, Making Threats, Progressive Discipline, Removal, Unauthorized Relationship with an Inmate

Department: Rehabilitation and Correction

Site/Office: Lima Correctional Institution

Position: Correction Officer

Result: Grievance denied. The State did not violate contract Sections 24.01, and 24.02 by removing grievant.

Reason: Grievant was found to have had an unauthorized relationship with an ex-inmate, to have failed to cooperate in an investigation by not answering questions, and to have threatened a co-worker with bodily harm if he was not left alone. These were sufficient reasons to remove the grievant without first administering less harsh progressive discipline.

**518) Randy McAtee 23-02-(92-08-12)-0191-01-09
Layoff**

Arbitrator: Lawrence Loeb

Contract Issue: Layoff

Contract Sections: 18.01

Topic Headings: Job Abolishment, Layoffs, Permanent Lack of Work, Reasons of Economy

Department: Mental Health

Site/Office: Dayton

Position: Storekeeper 2

Result: The grievance is sustained. The grievant should be restored to the Storekeeper 2 position with back pay.

Reason: The State failed to prove the abolishment was for reasons of economy and efficiency. The Ohio Supreme Court has held that savings the State may realize from not having to pay the wages and benefits to an employee whose position is abolished is not, in and of itself, sufficient to justify the abolishment for reasons of economy. In addition, in order for the State to prove a permanent lack of work the lack of work must be real and cannot be created by transferring the grievant's duties to another employee.

**519) Betty Evans 23-12-(93-05-04)-0741-01-04
Removal**

Arbitrator: Nels E. Nelson

Charges: Neglect of Duty

Contract Sections: 24.01, 24.02

Topic Headings: Just Cause, Neglect of Duty, Progressive discipline, Removal

Department: Mental Health

Site/Office: Pauline Warfield Lewis Center

Position: Custodial Worker

Result: Grievant was reinstated.

Reason: Although the grievant failed to properly complete the tasks assigned to her on the day in question and had a poor disciplinary record, the arbitrator noted that all of her

previous discipline was related to tardiness or absenteeism. Also, the grievant's evaluations for the last three years indicated that her quality and quantity of work met the Center's expectations. Essentially, the arbitrator attributed this problem to a lack of communication between the grievant and her director. The lack of communication occurred because the grievant was given a list of work tasks without an explanation, an indication of priority, or a deadline.

The arbitrator considered the grievant's long service as grounds for mitigation of the penalty. Still, he concluded that the grievant's offense and her poor record mandated a severe penalty to be determined at a later day by the arbitrator (the arbitrator retained jurisdiction until the grievant's return to work).

519A) Betty Evans 23-12-(93-05-04)-0741-01-04

Removal

Arbitrator: Nels E. Nelson

Charges: Neglect of Duty

Contract Sections: 24.01

Topic Headings: Neglect of Duty, Progressive Discipline

Department: Mental Health

Site/Office: Pauline Warfield Lewis Center

Position: Custodial Worker

Result: The grievant's termination is to be converted to a 30 day suspension.

Reason: The grievant's offense and poor record of excessive absenteeism and tardiness mandated a severe penalty. Because of her long service, the penalty is reduced from termination to a 30 day suspension.

520) Rolaunda Wells 22-10-(93-04-02)-0009-01-09

Removal

Arbitrator: Rhonda R. Rivera

Charges: Abuse of Tardiness Policy

Contract Sections: 9.04, 24.01

Topic Headings: Employee Assistance Program, Just Cause, Progressive Discipline

Department: Lottery Commission

Site/Office: Hot Line Section

Position: Public Inquiry Assistant

Result: The grievant was reinstated. The grievance was sustained, but the arbitrator retained jurisdiction to approve the EAP/Last Chance agreement.

Reason: The grievant was essentially a very honest employee with 18 years of service and a minimal disciplinary record. Because she was actively seeking treatment for her drug dependency and because her drug dependency was primarily responsible for non-compliance with the initial EAP agreement, her removal was neither commensurate nor progressive. The arbitrator concluded that it would be more just to reinstate the grievant and order her to enter into a second EAP (Last Chance) agreement.

521) Timothy Fawley 27-26-(93-01-19)-0368-01-03
Removal

Arbitrator: Lawrence Loeb

Charges: Excessive Tardiness; Failure to Follow EAP Agreement

Contract Sections: 9.04, 24.01, 24.02

Topic Headings: Employee Assistance Program, Failure to Call In, Just Cause, Progressive Discipline, Removal, Tardiness, Timely Discipline

Department: Rehabilitation and Correction

Site/Office: Warren Correctional Institute

Position: Correction Officer 2

Result: Grievance denied. Just cause existed for removal.

Reason: The grievant violated work rules pertaining to tardiness and call-in procedures. Claiming that his violations were due to his drinking, the grievant signed an EAP agreement which he subsequently breached. The arbitrator reasoned that the grievant must bear the responsibility for his actions even though he was chemically dependent.

522) Lon Brown 06-04-(92-12-14)-0022-01-04
Suspension

Arbitrator: Mollie Bowers

Charges: Violation of Work Rules; Failure to Follow EAP Agreement

Contract Sections: 2.01, 9.04, 24.05, 24.09

Topic Headings: Absenteeism, Employee Assistance Program, Just Cause, Progressive Discipline, Reasonable Accommodation, Suspension, Tardiness

Department: Civil rights Commission

Site/Office: Cleveland

Position: Civil Rights Representative (Investigator II)

Result: Grievance denied and suspension upheld.

Reason: The arbitrator reasoned that the grievant was on notice that he had to correct his behavior because the grievant had tardiness and attendance-related problems prior to the imposition of the two suspensions now in question. The grievant had been progressively disciplined to the level of a five day suspension and knew or should have

known by or before that time that his attendance problems had to be corrected or more severe discipline would result.

523) Lon Brown 06-04-(93-04-26)-0006-01-14

Removal

Arbitrator: Mollie H. Bowers

Charges: Absent Without Leave

Contract Sections: 2.01, 24.01, 31.01

Topic Headings: Absent Without Leave, Disparate Treatment, Employee Assistance Program, Just Cause, Leaves of Absence, Progressive discipline, Removal, Supervisory Hostility

Department: Civil Rights Commission

Site/Office: Cleveland

Position: Civil Rights Representative 2

Result: The grievance was denied.

Reason: Management properly removed a grievant who (1) failed to sign in for a break which he took during the first hour after reporting to work in violation of agency policy and (2) was AWOL for more than three consecutive days. First, the grievant was aware of the policy, and the grievant failed to provide a reasonable excuse for taking the unauthorized break. Second, the agency's awareness of the grievant's incarceration in no way curtailed its right to expect employees to work their scheduled hours and be regular in their attendance. The agency's knowledge of the grievant's unauthorized leave cannot be equated with the agency giving the grievant permission to be AWOL. Further, there exists no law or regulation requiring an employer to hold open an employee's position or grant him leave for the duration of his incarceration.

There was no evidence that the agency treated the grievant in a disparate manner by not allowing him to participate in a second EAP agreement. Once a grievant fails to complete his first EAP agreement, the employer's willingness to enter into any subsequent agreement is purely discretionary. Lastly, the agency complied with the mandates of the ADA which only requires the employer to "reasonably accommodate" the grievant's disability, not accommodate any request the grievant might make. Also, the ADA cannot operate to void bona fide employment criteria, such as regular attendance. In the arbitrator's view, the agency proved that it went to great lengths to accommodate the grievant and, therefore, the grievant was removed for just cause.

524) Carmen Davila 16-00-(92-12-01)-0053-01-14

Suspension

Arbitrator: Marvin Feldman
Charges: Failure to Submit a Medical Statement
Contract Sections: 2.01, 24.01
Topic Headings: Discipline
Department: Human Services
Site/Office: Columbus
Position: Nursing Home Examiner 3
Result: The grievance is denied in its entirety.

Reason: the evidence does not reveal sufficient medical information in order to allow a waiver of the travel requirements. It is management's rights to request medical information and the grievant consistently refused to supply it. The grievant's failure to provide the requested information and her subsequent failure to report to the audit site resulted in progressive discipline.

525) Wasyl Parfejewiec 34-22-(93-05-24)-0149-01-09
Removal

Arbitrator: Nels E. Nelson
Charges: Intentional Misuse of State Funds, Property, Client Records; Ethics Violation
Contract Sections: 24.01
Topic Headings: Confidential Information, Ethics Violation, Misuse of State Funds/Property, Progressive Discipline, Removal
Department: Workers' Compensation
Site/Office: Cleveland Service Center
Position: Claims Representative 3
Result: The grievance was denied.

Reason: The grievant violated the Bureau's code of ethics by making 250 copies of a chain letter, placing the copies in BWC envelopes and running them through the Bureau's postage meter. The grievant admitted intentionally using the Bureau's facilities and confidential client records for an improper purpose while being paid to perform Bureau work. Although the grievant offered to make restitution, the arbitrator felt that the offer was only motivated by the grievant's desire to avoid criminal prosecution rather than by any real feeling of remorse. The arbitrator noted the grievant's long record of service and discipline-free work record; nevertheless, he held that the grievant's misconduct in the instant case was too severe to be overcome by these factors, and the State did not violate the principle of progressive discipline.

526) Gerald Gregory 23-18-(93-05-21)-0952-01-04

Removal

Arbitrator: Mollie H. Bowers

Charges: Neglect of Duty, Excessive Tardiness

Contract Sections: Article 24.01

Topic Headings: Just Cause, Progressive Discipline, Removal, Tardiness

Department: Mental Health

Site/Office: Western Reserve Psychiatric Hospital

Position: Therapeutic Program Worker

Result: The grievance was denied.

Reason: In light of the grievant's disciplinary record, which included four attendance-related infractions, the grievant received progressive discipline and his removal was for just cause. Although it was undisputed that the grievant was given a copy of and training on the tardiness policy, the grievant's prior discipline progressed from verbal reprimand, to written reprimand to suspension according to the WRPB's progressive discipline policy, and the next step of this policy called for removal.

In his grievance, the grievant provided several reasons for and defenses for his tardiness. At the arbitration hearing the grievant introduced a new defense while, at the same time, maintaining that he had not been tardy at all. The grievant's circular arguments coupled with the fact that the grievant never once challenged or grieved any of the instances for which his pay was docked, convinced the arbitrator that the grievant was not a credible witness and that the grievant was late five times as charged.

527) Evelyn Eddie 15-03-(93-05-16)-0034-01-07

Removal

Arbitrator: Douglas Ray

Charges: Falsification of Records, Deliberate Sabotage

Contract Sections: 24.01

Topic Headings: Disparate Treatment, Just Cause, Progressive Discipline, Removal, Timeliness

Department: Highway Patrol

Site/Office: Mayfield Heights Drivers License Examination Station

Position: Drivers License Examiner 1

Result: The grievance is denied.

Reason: The grievant's actions were serious enough to constitute just cause. She admitted that she entered numerous false social security numbers into the computer each Saturday for three months. Such actions constitute falsification of records and deliberate sabotage of the new extended hours program. These actions cause substantial harm to customers who are unable to schedule appointments on Saturday.

528) Steven McGraw 27-25-(93-03-16)-0513-01-03

Removal

Arbitrator: Lawrence R. Loeb

Charges: Dishonesty, Neglect of Duty, AWOL, Falsifying Documents, Intentional Misuse of State Funds

Contract Sections: 24.01

Topic Headings: Absent Without Leave, Dishonesty, Falsification of Documents, Misuse of State of Federal Funds, Neglect of Duty, Removal

Department: Rehabilitation and Correction

Site/Office: Southern Ohio Correctional Facility

Position: Correction Officer 2

Result: The grievance was sustained in part. The removal was reduced to a 90-day suspension, and the grievant was reinstated with back pay, less any sums he earned from any other source.

Reason: The grievant was removed for allegedly submitting a falsified order to report for National Guard training. It was later proven that (1) the leave form was produced through clerical error without the commanding Officer's knowledge, (2) the Officer's signature was a forgery and (3) although the specific dates could not be verified, the grievant did perform services for the National Guard during the period of his leave. The arbitrator concluded that SOCF failed to prove its entire case. The grievant did not forge the Officer's signature of the military leave form, and the grievant's Guard Unit admitted that in the past a clerk routinely signed the Commanding Officer's name to leave forms, which were later completed and distributed as needed. Furthermore, while the Commanding Officer claimed that this practice ended long before the grievant submitted the military leave form, SOCF continued to receive similar forms from the grievant's Guard Unit for several months afterward. All of the forms bore the forged signature of the same Officer.

The arbitrator concluded that while the grievant did perform some work for the Guard Unit, he should have known that without accompanying orders, a military leave form was insufficient to place him on active duty. Thus, the arbitrator concluded that the grievant was absent from work without proper leave and that he improperly received payment for the same period of time. Still, removal was too harsh a penalty, because SOCF was unable to prove that the grievant falsified his military leave form.

529) George Mychkovsky

25-14-(93-03-15)-0003-01-13

Bumping Rights

Arbitrator: Harry Graham

Contract Issue: Bumping Rights

Contract Sections: 18.04

Topic Headings: Adjustment Period after Bumping, Bumping Rights, Layoff

Department: Natural Resources

Site/Office: Division of Water

Position: Geologist 3

Result: The grievance was sustained.

Reason: Article 18.04 of the Contract allowed employees who were laid off to bump less senior employees, when they were qualified to perform the duties. Upon further refinement of the language, this modified seniority clause became a “sufficient ability” clause, meaning that a bumping employee was not required to have more ability than the incumbent, but must have been qualified to perform the duties of the position.

The arbitrator recognized that shifts in personnel result in temporary loss of efficiency, that employees are not interchangeable, and that a learning period is unavoidable, even if not provided for in the Contract. Noting that the agreement was silent as to the length of adjustment period for movement between jobs, the arbitrator listed education, experience, and adaptability as keys for determination of bumping qualification. Based on these criteria, the arbitrator determined that the grievant’s academic and work history qualified him for the position in question. The grievant was to be offered the opportunity to bump into the disputed position of Hydrogeologist (Geologist 3) in the Division of Water.

530) Dru B. Roebuck 27-11-(92-09-16)-0185-01-03

Suspension

Arbitrator: Nels E. Nelson

Charges: Insubordination, Failure to Follow Post Order, Failure to Follow an Official Investigation.

Contract Sections: 24.01, 24.02

Topic Headings: Disparate Treatment, Failure to Cooperate in an Investigation, Failure to Follow Orders, Insubordination, Just Cause, Suspension

Department: Rehabilitation and Correction

Site/Office: Lebanon Correctional Institution

Position: Correction Officer

Result: The suspension was reduced from ten days to five days.

Reason: The arbitrator found that all charges against the grievant were legitimate. The grievant disobeyed the order of a supervisor, gave contraband to an inmate, failed to maintain a professional relationship with an inmate and lied during an official investigation.

The arbitrator emphasized that these were serious violations and was reluctant to reduce penalties imposed by an employer. He based his decision to reduce the penalty, however, on the institution’s lack of consistent enforcement of the rules which the

grievant violated, and the grievant's confession. The arbitrator also considered the grievant's suffering during the investigation and damage to his reputation.

Stating that the grievant must take some time off, so as not to convey the message that the actions were acceptable, the arbitrator held that a ten day suspension was too severe and reduced the penalty to five days.

531) Mark Seward 27-05-(92-02-14)-0200-01-05 Bert Carter 27-05-(92-02-14)-0231-01-03 Suspension

Arbitrator: Harry Graham

Charges: Inmate Abuse

Contract Sections: 24.01

Topic Headings: Back Pay, Discipline, Inmate Abuse, Overtime, Pick-a-Post, Timeliness

Department: Rehabilitation and Correction

Site/Office: Orient Correctional Reception Center

Position: Correction Officer

Result: The grievances are sustained. The suspensions are to be removed from the grievant's records. They are to be paid all back pay excluding any payments for missed overtime opportunities. In addition, all pick-a-post and seniority rights should be restored to them.

Reason: Article 24.02 ensures that discipline be administered in a timely fashion. In the circumstances of this dispute, the passage of one full year between the event and the discipline does not meet the contractual standard of initiating discipline as soon as "reasonably possible." Two investigations were conducted which concluded that no discipline was necessary. The Use of Force Committee concluded that discipline was improper. Another investigation was ordered. At some point enough is enough. The administration of discipline in this case violated Article 24.

532) Leonard (Ted) Woods 02-03-(91-09-11)-0251-01-05 Subcontracting

Arbitrator: Rhonda R. Rivera

Contract Issue: Subcontracting

Contract Section: 39

Topic Headings: Subcontracting, Displacement

Department: Transportation

Site/Office: Division of Public Works

Result: The grievance was denied.

Reason: This grievance resulted from ODOT's decision to use a private entity to perform custodial services that bargaining unit employees from the Division of Public Works used to perform. The Union received formal notice within ten days of the ODOT decision. As a result of the subcontracting, 14 bargaining unit positions were abolished. The arbitrator determined that the State bore the ultimate responsibility to notify the Union of any decision to subcontract. The State could properly delegate (with proper instruction) to an agency its duty to notify the Union. However, the arbitrator held that the State could not escape its contractual duty by delegating its duties and then denying responsibility for their proper execution. The delegator always remains ultimately responsible.

The arbitrator agreed with the State that the subcontracting was "minor." Each party advanced a logical interpretation of a Article 39. However, the Union bore the burden of disproving the State interpretation yet failed to do so. Therefore, the arbitrator accepted the State's interpretation. Because the subcontracting affecting only 5.7% of the total number of employees working at the Division of Public works, the subcontracting was considered "minor." Therefore, the Union was only entitled to "reasonable advance notice." Since neither party argued that the 66-day notice was unreasonable, the State did not violate the notice provision of Article 39.

533) Vicky Howard 15-03-(93-02-19)-0017-01-07 Lasaundra Dudley 15-03-(93-02-19)-0018-01-07 Tanya McKeever 15-03-(93-02-19)-0011-01-07 Removal

Arbitrator: Rhonda R. Rivera

Charges: Falsification of Documents

Contract Sections: 24.01, 24.02

Topic Headings: Commensurate Discipline, Disparate Treatment, Falsification of Documents, Just Cause, Progressive discipline, Removal

Department: Department of Highway Safety

Site/Office: Drivers License Examination Centers – Huber Heights and Centerville

Position: Drivers License Examiners

Result: All three grievances were denied.

Reason: The grievants were found to have falsified drivers' license examination schedules to avoid working on Saturdays, and were removed from their positions. Four other examiners were also found to have falsified their schedules, and either retired, resigned, or received one day suspensions.

The State acknowledged the varying degrees of punishment for these violation, but pointed to the employees' past work records, motives in falsification for the different sanctions.

The suspended employees had long work histories (15 and 21 years of service), non-malicious motives, and readily confessed when confronted. The grievants, however, had significantly less service time (2-1/2 to 8-1/2 years), intended to destroy this pilot

program, were criminally charged, and did not confess until it became apparent that they would be caught. The arbitrator ruled that these distinctions justified the severity of the sanctions against the grievant.

534) Sheridan Crum 34-04-(92-12-08)-0878-01-09
Suspension

Arbitrator: Rhonda R. Rivera

Charges: Violation of Work Rules; Verbal Abuse

Contract Sections: 24.01

Topic Headings: Credibility, Failure of Good Behavior, Failure to Follow Orders, Just Cause, Physical Abuse of a Co-Worker, Stacking Charges, Suspension, Verbal Abuse of a Co-Worker.

Department: Youth Services

Site/Office: Canton

Result: The grievance was denied.

Reason: There was just cause to suspend the grievant for fifteen days: twelve days for striking another employee and three days for using abusive and insulting language towards another employee. The grievant was not credible. He accepted no responsibility for his actions. His reactions were hostile and inappropriate and his actions during the arbitration itself lacked the insight to understand that his behavior is something which cannot be tolerated.

535) Dale Walker 24-14-(93-05-24)-0857-01-04
Removal

Arbitrator: Rhonda R. Rivera

Charges: Patient Abuse

Contract Sections: 24.01

Topic Headings: Just Cause, Patient Abuse, Removal

Department: Mental Retardation and Developmental Disabilities

Site/Office: Warrensville Development Center

Position: Therapeutic Program Worker

Result: The grievance was granted, and the grievant was reinstated.

Reason: The arbitrator stated that the differing versions of the events as set forth by each side were plausible, but that the key to the arbitrator's decision in this case was the unexplainable lack of bruises on the client. The lack of physical proof of injury, coupled with the client's history of aggressive behavior, left the arbitrator to evaluate the plausibility of each side's claim. The arbitrator found that the client's profile and

behavior in the vocational room made it very plausible that he was hitting and kicking the grievant as the grievant tried to take away the shoe. The arbitrator also found it plausible that the supervisor misunderstood what he saw upon entering the client's room. Finally, the plausibility of the grievant's story, coupled with his long record of successful work with violent and aggressive persons, led the arbitrator to conclude that the State did not prove just cause for removal for patient abuse.

536) Janine Banner 15-03-(93-07-21)-0059-01-07
Removal

Arbitrator: Harry Graham

Charges: Failure to Maintain Auto Insurance/Ohio Driver's License

Contract Sections: Article 24.01

Topic Headings: Failure to Maintain a Driver's License, Just Cause, Removal

Department: Highway Safety

Site/Office: Franklin County

Position: Driver's License Examiner 1

Result: The grievance was sustained in part. The grievant was reinstated, and her removal was reduced to a 30-day suspension. In addition, the arbitrator ordered the State to reimburse the grievant for lost wages and benefits resulting from the removal except for the period covering the 30-day suspension.

Reason: The arbitrator agreed with the Union that administering driving test was only one of many duties Driver's License Examiners performed on a routine basis. Likewise, the arbitrator agreed that there must be a relationship between the discipline imposed and the offense committed by the employee. The grievant had no prior disciplinary record, and there was nothing before the arbitrator to indicate that she was anything but a good employee. More importantly, her failure to maintain auto insurance and the subsequent 90-day suspension of her driver's license only affected her ability to perform some other daily tasks. While the grievant's inability to administer road test may have inconvenienced the State, it did not significantly compromise the functioning of the Driver's License Examination station to which she was assigned. As a result, the arbitrator held that her offense did not provide a sufficient basis for the discharge imposed by the State.

537) Laurie Stelts 24-09-(92-06-24)-0665-01-04
Disability Benefits

Arbitrator: Mollie Bowers

Charges: Part-time Disability Benefit Eligibility

Contract Issue: Disability Benefits

Topic Headings: Disability Benefits

Department: Mental Retardation and Developmental Disabilities

Site/Office: Columbus

Position: Part-time

Result: The grievance was denied. Part-time and fixed term regular employees cannot include vacation, sick leave, personal leave or compensatory time used during the previous year to calculate the 1500 hours necessary to be eligible for disability benefits.

Reason: The language of Article 35A.01(B) requires part-time or fixed term regular and irregular employees to work at least 1500 hours in the calendar months preceding that disability. This 1500 hours does not include the use of leave including vacation, sick leave, personal leave, or compensatory time.

538) Charles Jones

Arbitrability

Arbitrator: Mollie Bowers

Charges: Untimely filed grievance

Contract Sections: 25.02

Topic Headings: Arbitrability, Timely Filing of Grievance

Department: Youth Services

Result: The case is not arbitrable.

Reason: The arbitrator held that a steward with seven years' experience should have know "not to rely upon a receptionist to provide advice about the proper filing of a grievance." Then, the arbitrator held that the time and place of filing the step 3 grievance and that, although a change in policy regarding the location from which a grievance number is obtained has been changed, this policy change does not in any way modify the express terms of the contract. Finally, the arbitrator concluded that for at least two years before the present grievance was filed, OCB made it clear that any delay in returning an improperly filed grievance would count against the time for filing a grievance.

539) Anna Wagoner 23-08-(93-08-20)-1018-01-03

Removal

Arbitrator: Rhonda R. Rivera

Charges: Patient Abuse

Contract Sections: 24.01

Topic Headings: Discipline, Just Cause, Patient Abuse

Department: Mental Health

Site/Office: Dayton Mental Health Center

Position: Psychiatric Attendant Coordinator I

Result: The grievance was sustained. The grievant is reinstated with full back pay and benefits.

Reason: Upon hearing the evidence, the arbitrator issued a bench decision stating that there was insufficient evidence to support a charge of patient abuse.

540) Gerald Harris 24-09-(92-06-24)-0665-01-04

Removal

Arbitrator: Marvin Feldman

Charges: Gross Insubordination, Failure to Follow a Direct Order, Failure to Report to Captain's Office, Improperly Refusing to Work Mandatory Overtime

Contract Sections: 9.04, 24.01, 24.02

Topic Headings: Employee Assistance Program, Insubordination, Just Cause, Overtime, Prior Discipline, Progressive Discipline, Removal

Department: Rehabilitation and Correction

Site/Office: Orient

Result: The grievance was denied.

Reason: The arbitrator found that the grievant was discharged for just cause and in a manner consistent with progressive discipline. Even so, the arbitrator held that where an offense is extremely serious, a discharge may occur without progressive discipline, and the facts of this case would have merited the grievant's discharge in any event. The grievant's activities were so outrageous that, when compounded with the grievant's prior record, the employer was left with no alternative except to remove the grievant. The arbitrator also agreed that potentially losing transportation home was an insufficient reason to defy a direct, emergency order. The grievant was obligated to "work now and grieve later."

Furthermore, the grievant improperly refused to work mandatory overtime. The parties' Contract provides a procedure for waiving mandatory overtime where the employee can prove a medical or other legitimate reason, but the grievant refused to sign the notice. Management did not improperly deny the grievant access to the EAP and participation in a last chance agreement because the grievant only sought acceptance into the program after the events which led to his removal. Therefore, the employer rightfully refused the grievant's request.

541) Chris Hade 31-02-(92-10-27)-0022-01-06

Promotion

Arbitrator: Rhonda Rivera

Charges: Violation of 17.06 Seniority in Promotions

Contract Sections: 17.06

Topic Headings: Affirmative Action, Demonstrably Superior, Minimum Qualifications, Promotion, Seniority

Department: Transportation

Site/Office: Wood County

Position: Bridge Worker 1

Result: Grievance denied.

Reason: The State's decision to promote a junior female employee instead of a senior male employee did not violate Article 17.06 because the junior employee was demonstrably superior due to affirmative action considerations. So long as the employee meets the minimum qualifications, considerations based on affirmative action, acting alone, can justify the promotion. At such point, the burden shifts to the Union to demonstrate that the standard was improperly applied.

542) Willie Tatum 35-02-(93-02-12)-0026-01-03

Removal

Arbitrator: Marvin J. Feldman

Charges: Falsification of Documents, Insubordination, Failure to Cooperate in an Investigation, Horseplay

Contract Sections: 24.02

Topic Headings: Arbitrator's Authority, Falsification of Documents, Progressive Discipline, Right to Union Representation, Work Rules

Department: Youth Services

Site/Office: Buckeye Youth Center

Position: Youth Leader

Result: The grievance was denied.

Reason: The arbitrator first addressed the grievant's claim that he was denied Union representation. Paragraph 24.04 of the Contract entitles an employee to the presence of a union steward at an investigatory interview upon request, if he felt there were reasonable grounds to believe that the interview may be used for disciplinary action against him. However, the employee bears the burden of proving that he was denied union access. The arbitrator ruled that the grievant failed to do so here.

The employee was found to have violated three separate rules on document falsification, deceitfulness and interference with an investigation. Considering that even one of these offenses carried with it the possibility of removal, and that the grievant had receive three other recorded reprimands within the past year, the arbitrator ruled that the grievant's removal, in this case, was permissible. The arbitrator may not alter the employer's decision based on his own subjective opinion. The discipline in this case was

found to be well within that provided for by the work rules and required by the standards of progressive discipline.

**543) Kenneth Green 27-11-(93-12-16)-0235-01-03
Removal**

Arbitrator: Harry Graham

Charges: Unauthorized Relationship with Inmate

Contract Sections: Article 24

Topic Headings: Just Cause, Removal, Unauthorized Relationship with Inmate, Disparate Treatment, Credibility

Department: Department of Rehabilitation and Correction

Site/Office: Lebanon, Ohio

Position: Correction Officer

Result: The grievance was denied.

Reason: The grievant violated Rule 45 in the Standards of Employee Conduct, which makes it improper for an employee to give preferential treatment to an inmate. Testimony by the inmate was worthless due to the inconsistencies in his version of the events. The Arbitrator believed the testimony of the senior officer who observed the alleged events. This senior officer claimed to have observed a prohibited transaction between the grievant and an inmate and the Arbitrator believed that such a transaction did take place. Because this violation was so serious, the discipline imposed was not unreasonable.

**544) Ann Johnson 23-13-(93-08-27)-0741-01-04
Removal**

Arbitrator: Mollie H. Bowers

Charges: Falsification of Sign-In Sign-Out Sheet

Contract Sections: Article 24

Topic Headings: Just Cause, Removal, Absence Without Leave, Falsification of Documents, Neglect of Duty, Credibility, Employee Assistance Program

Department: Department of Mental Health

Site/Office: Pauline Warfield Lewis Center

Position: Custodial Worker

Result: The grievance was denied.

Reason: The Arbitrator found that the grievant was terminated for just cause, because the grievant did not fulfill the terms of her EAP agreement, did not attempt to make use of EAP's services appropriately, and did not report to the EAP on the date she indicated

she would. In reaching her decision, the Arbitrator also considered the grievant's past disciplinary record which showed a history of attendance-related problems.

545) Elaine Blaum 24-01-(92-10-27)-0091-01-14

Issue

Arbitrator: Nels E. Nelson

Contract Issue: Failure to award the grievant the open Accountant/Examiner 3 position or to award her an interview

Contract Sections: Article 17.06

Topic Headings: Promotion, Additional Minimum Qualifications, Proficiency in Minimum Qualifications, Remedy, Demonstrably Superior

Department: Ohio Department of Mental Retardation and Developmental Disabilities

Site/Office: Division of Administration, Office of Federal Funds

Position: Accountant/Examiner 3

Result: The grievance was denied.

Reason: The standards of Article 17 require that a bidder be "proficient" in the minimum qualification contained in the classification specification and position description. The Arbitrator found that grievant's description of her experience did not demonstrate that she met these standards because she was not "proficient" in Medicaid-related duties. Therefore, the grievance was not qualified for the position. Furthermore, the individual who was offered this position had "demonstrably superior" qualifications. In such a case as this the qualifications of the individual selected made the grievant seniority irrelevant.

546) Charles Dersher 31-02-(93-06-29)-0010-01-13

Issue

Arbitrator: Douglas E. Ray

Contract Issue: Was the grievance timely filed pursuant to Article 25.02 of the grievance procedure? Is the grievant entitled to vacation accrual when returning from worker's compensation leave?

Contract Sections: 25.02

Topic Headings: Arbitrability, Timely filing of Grievance, Contract Interpretation, Occupational Injury Leave, Workers Compensation

Department: Department of Transportation

Site/Office: District Two

Position: Bridge Lock Tender

Result: The grievance was denied.

Reason: The Arbitrator found that the grievance was timely filed. He found that it was reasonable for the grievant to believe that the problem would be corrected by the Personnel office and when it was not corrected he filed his grievance.

The Arbitrator found that the contract does not provide for vacation leave to accrue while the Grievant is on worker's compensation leave. Article 16 only deals with the accrual of seniority, and Article 28 does not mention worker's compensation leave. Articles 27 and 29 both contain language which provides for employees to accrue benefits while on worker's compensation leave. Article 28, dealing with vacations, does not provide this. The failure of the contract to provide similar entitlements for vacation time as it does in Articles 27 and 29, is evidence that no entitlement was intended.

547) Carl Wireman and Steve Barrington 23-12-(93-11-24)-0507-01-04 / 23-12-(93-11-24)-0510-01-03

Removal

Arbitrator: Mollie H. Bowers

Charges: Patient Abuse

Contract Sections: Article 24.01

Topic Headings: Removal, Just Cause, Patient Abuse, Credibility

Department: Mental Health

Site/Office: Oakwood Forensic Center

Position: Psychiatric Attendant (Carl Wireman) and Activities Therapist Specialist 2 (Steve Barrington)

Result: The grievance was sustained.

Reason: The Arbitrator concluded that the State failed to meet its burden of presenting sufficient credible evidence and testimony to prove that the grievants abused the patient and that their termination was for just cause. The Arbitrator's decision was primarily based upon the patient's hostile behavior, the physician's testimony, the question of the grievants' motive for abuse, and the patient's testimony. The physicians testified that the injuries that the patient received were consistent with the normal course of a take down. Furthermore, there did not seem to be a motive for abuse when the grievant's length of service and prior disciplinary records were examined. Lastly, the patient's testimony was not credible. Therefore, the grievants should not have been removed.

548) Roger Adkins 27-13-(93-04-23)-0643-01-03

Promotion

Arbitrator: Rhonda Rivera

Charges: Did the Employer violate Article 16 and 17 of the contract by failing to appoint the grievant to the position of Correction Supervisor 1? Did the grievant file a timely application?

Contract Sections: 16, 17

Topic Headings: Application for Promotion, Timeliness of filing a Promotional Bid, Burden of Proof, Policies, Seniority

Department: Department of Rehabilitation and Correction

Site/Office: London Correctional Facility

Position: Correction Officer

Result: The grievance was granted.

Reason: The Arbitrator believed that the grievant filed a timely application for the position posted, which was lost by the Personnel Office. The Union had satisfied its burden of proof to show that the grievant had filed a timely application, but the employer had not satisfied its burden of establishing a reasonable and fair procedure to ensure the safety and accuracy of application filings. Since the grievant had filed a timely application, the employer violated the contract by not appointing the grievant, who had the most seniority.

549) Edith Wolfe 23-10-(93-12-22)-0203-01-04

Removal

Arbitrator: Mollie H. Bowers

Charges: Was the grievant's termination for just cause?

Contract Sections: 24.09

Topic Headings: Criminal charges, Just Cause, Removal, Admissibility of Evidence, Credibility, Due Process

Department: Mental Health

Site/Office: Massillon

Position: Therapeutic Program Worker

Result: The grievance was denied.

Reason: An offense of making a bomb threat is just cause for the grievant's termination. The Arbitrator found the grievant's testimony not to be credible and that due process was accorded her. The employee's seven years of service and "average" work record were not sufficient to mitigate the penalty of removal.

550) Michael Blythe 31-09-(93-12-23)-0029-01-06

Removal

Arbitrator: Lawrence Loeb

Charges: Was the grievant's termination for just cause?

Contract Sections: 24.01, 37.08

Topic Headings: Failure to Maintain a Driver's License, Commercial Driver's License (CDL), Removal, Just Cause, Disparate Treatment

Department: Department of Transportation

Site/Office: District 9

Position: Highway Worker 2

Result: The grievance was denied.

Reason: Operating heavy equipment comprises the vast majority of the Highway Worker 2's responsibilities. The grievant could only have performed that work if he had a commercial drivers license. The grievant's failure to maintain a commercial driver's license was a prerequisite for the position and thus gave the Employer just cause to terminate him.

551) Betty L. Jarvis 31-10-(93-06-04)-0009-01-09

Issue

Arbitrator: Nels E. Nelson

Contract Issue: In the situation where the present grievance was not filed until the person who bumped the grievant was successful in her own arbitration, was this grievance, concerning the grievant's being bumped timely filed?

Contract Sections: Article 18, Article 25

Topic Headings: Bumping Rights, Displacement, Timely Filing of Grievance

Department: Ohio Department of Transportation

Site/Office: Athens County

Position: Administrative Assistant 1

Result: The grievance was sustained. The grievant was to be restored to her position as an Administrative Assistant 1 and made whole for any losses she may have suffered.

Reason: The Arbitrator concluded that the grievance was filed timely under Article 25 of the Contract, because the grievance was filed within 30 days of when she became aware of the occurrence giving rise to the grievance. The Arbitrator held that the event giving rise to the grievance was the failure of the State to return the grievant to her previous position and make her whole. The Arbitrator must, therefore, grant the grievance.

552) Leroy A. Williams 11-09-(93-08-19)-0264-01-09

Discrimination

Arbitrator: Harry Graham

Contract Issue: Did the Bureau of Employment Services discriminate against the grievant on the basis of race when it denied him authorization to attend Ohio United Way meetings?

Contract Sections: 2.01

Topic Headings: Discrimination, Administrative Leave, Disparate Treatment

Department: Bureau of Employment Services

Site/Office: Compliance division of the Toledo office

Position: Unemployment Compensation Auditor 1

Result: The grievance was denied

Reason: Nothing showing racial hostility by supervision was placed into evidence in this proceeding. In order to support a claim of racial discrimination prohibited by the Agreement there must be some evidence, in some direction, beyond the facts pointed out by the Union. That evidences must be more than showing that an African-American employee has to use his own leave accruals to attend meetings, while Caucasian employees did not need to use their own leave accruals to attend meetings.

553) Probationary Periods

17-00-(92-05-11)-0000-01-04

Issue

Arbitrator: Nels Nelson

Contract Issue: Whether District Hearing Officer 1 and 2 positions require a six month or a one year probationary period.

Contract Sections: 6.01, 36.05

Topic Headings: Back pay, Length of Probationary Period

Department: Ohio Industrial Commission

Site/Office: Ohio Industrial Commission

Position: District Hearing Officer (DHO) 1 and 2

Result: The grievance was granted and the employees were granted lost pay, vacation, and/or other benefits tied to the length of the probationary period.

Reason: The Arbitrator reasoned that the use of the capital "A" in the phrase "all Attorney classifications", of Section 6.01, indicated that the reference was to the job titles including the work "Attorney". Since DHO 1 and 2 do not include the work "Attorney", they have a 180 day probationary period. Under Contract Article 36.05, the Union must be given 45 days notice for any classification revision, which was not done in this situation. Therefore, the positions of DHO 1 and 2 could not be changed to a one year probationary period.

554) Steven Thompson 23-08-(92-08-28)-0835-01-06

Lawrence Foster 23-08-(92-08-28)-0836-01-06
James Trimbach 23-08-(92-08-28)-0837-01-06
Dennis Burton 23-08-(92-08-28)-0838-01-06
Rick Cohen 23-08-(92-08-28)-0839-01-06
David Chatman 23-08-(92-08-28)-0840-01-06
Job Abolishment

Arbitrator: Lawrence Loeb

Contract Issue: Removal, Displacement, Articles 18 and 25

Contract Sections: Articles 18 and 25

Topic Headings: Displacement, Job Abolishment, Subsequently Bumped Employees, Arbitrability

Department: State of Ohio Department of Mental Health, Offices of Support Service and Dayton Mental Health Center

Site/Office: Mental Health

Position: Maintenance Workers

Result: Grievance denied

Reason: The Union believed that the grievants who were displaced had a vested interest in insuring that the employer acted properly when it abolished the original positions of Air Quality Technician and Electrician. The Arbitrator found that the grievants were after effected employees and as such, had no authority to challenge the abolishment of these positions. In an earlier case decided by the State Personnel Board of Review, the board found that sections 123:1-41-01 of the Ohio Administrative Code, 124.321(D)(2) through (4), and 124.324(A) of the Ohio Revised Code could be used to determine whether or not employees who had been subsequently bumped had the authority to challenge job abolishments. As applied here, the Arbitrator held that the code sections used by the administrative law judge in SPBR case were identical to the ones referenced in the Contract. Therefore, in both situations employees who were subsequently bumped had no standing to challenge the authority of the original job abolishments.

555) Linda Yanushewski 33-00-(93-12-14)-0510-01-04
Removal

Arbitrator: Harry Graham

Charges: The grievant was removed for excessive absences and a zero balance in her sick leave accrual.

Contract Sections: 29.04

Topic Headings: Absenteeism, Sick Leave, Removal, Disparate Treatment

Department: Ohio Veterans Home

Site/Office: Sandusky, Ohio

Position: Hospital Aide

Result: The grievance was denied.

Reason: The grievant established a pattern of excessive absenteeism and maintained a zero sick leave balance, which was in violation of contract Article 29.04 II.D., which prohibits abuse of sick leave.

556) Kevin Redman 15-03-(93-08-25)-0068-01-07**

Removal

Arbitrator: Mollie Bowers

Charges: Was the grievant removed for just cause?

Contract Sections: 24.01

Topic Headings: Disparate Treatment, Credibility, Credibility of Witnesses, Removal, Falsification of Records

Department: Department of Highway Safety

Site/Office: New Lexington Driver Examination Station

Position: Driver's License Examiner

Result: The grievance was denied.

Reason: The Arbitrator found that the testimony of both grievant and the grievant's primary witness were not credible. The Arbitrator believed the Employer's version of the events. The Arbitrator also held that the penalty of discharge was not too severe because of the position that the grievant occupied. Finally, there was not sufficient evidence of disparate treatment presented to support a ruling in the grievant's favor.

557) Rachel M. Baney 24-02-(93-07-23)-0776-01-04

Removal

Arbitrator: Mitchell Goldberg

Charges: Was the grievant removed for just cause?

Contract Sections: 24.01

Topic Headings: Removal, Just Cause, Burden of Proof, Patient Abuse, Credibility

Department: Mental Retardation and Developmental Disabilities

Site/Office: Applecreek Development Center

Position: Therapeutic Program Worker

Result: The grievance was denied.

Reason: The burden of proof, in cases such as this, where there are allegations of serious misconduct, should be higher than proof by a preponderance of the evidence. However, this case came down to a resolution of the credibility of two opposing witnesses, the grievant and her co-worker. When the circumstantial evidence is considered with the testimony of the co-worker relating to the admission by the grievant,

there can be no reasonable conclusion other than to find in favor of the employer against the grievant.

558) James Stringer 15-03-(93-11-24)-0123-01-07

Removal

Arbitrator: Anna Smith

Charges: Whether there was just cause to remove a grievant for Failure of Good Behavior stemming from an arrest and no contest plea of attempting drug abuse.

Contract Sections: 24.01

Topic Headings: Removal, Just Cause, Discipline, Failure of Good Behavior, “No Contest” Criminal Plea, Effect of

Department: Ohio Department of Public Safety

Site/Office: Division of Highway Patrol

Position: Driver’s License Examiner 1

Result: The grievance was sustained in part and denied in part. There was no just cause to remove the grievant so he was returned to his position with full back pay, seniority and benefits. In addition, the grievant’s record was changed to reflect a written reprimand for Failure of Good Behavior.

Reason: The Arbitrator found that there was no connection between the grievant’s arrest and plea of no contest to attempted drug possession, and his removal. The fact that the grievant was willing to undergo drug test and polygraph tests supported the Union’s claims. In addition the arresting officer was not credible because of his previous conduct. Since the State didn’t introduce any additional evidence to support its claim of the grievant’s guilt for drug possession, removal was not commensurate with the violation.

559) Valerie Harris 24-14-(93-11-08)-0943-01-05

Removal

Arbitrator: Harry Graham

Charges: Whether there was just cause to remove the grievant, under a Last Chance Agreement, for being absent without leave (AWOL).

Contract Sections: 29.03

Topic Headings: Discipline, Last chance Agreement, Removal Absence Without Leave (AWOL)

Department: Department of Mental Retardation and Developmental Disabilities

Site/Office: Warrensville Developmental Center

Position: Cook 1

Result: The grievance was denied.

Reason: The Arbitrator found that the grievant violated a Last Chance Agreement by being absent without leave (AWOL). Since the terms of the Last Chance Agreement were agreed to by the grievant and the employer, discharge was not wrongful.

560) Audrey Reed 24-03-(91-12-02)-0461-01-04
Removal

Arbitrator: Anna D. Smith

Charges: Whether a grievance for discharge is arbitrable under the Collective Bargaining Agreement and if so, whether a discharge pursuant to a last chance agreement was for just cause.

Contract Sections: 25.03

Topic Headings: Just Cause, Removal, Last Chance Agreement, Arbitrability

Department: Ohio Department of Mental Retardation and Developmental Disabilities

Site/Office: Broadview Developmental Center

Position: Therapeutic Program Worker

Result: The grievance was denied.

Reason: The Arbitrator held that the action was grievable based on the terms of the last chance agreement. The grievant did not waive her rights to just cause and due process when she committed an act of patient abuse/neglect after a prior 45-day suspension. Additional evidence was provided to support claims of the grievant's guilt.

561) Joseph Skinner 27-22-(94-02-14)-0235-01-06
Removal

Arbitrator: Rhonda Rivera

Charges: Was the grievant removed for just cause?

Contract Sections: Article 24.01

Topic Headings: Removal, Just Cause, Failure to Follow Proper Procedure

Department: Rehabilitation and Correction

Site/Office: Pickaway Correctional Institute

Position: Correctional Farm Coordinator I

Result: The grievance was denied.

Reason: The behavior of the grievant was premeditated, unnecessary and cruel. The grievant was a person trained in animal husbandry who presumably knew the appropriate methods of animal control. Such cruelty directed to the very animals that the grievant was to care for, has no excuse. In a prison setting, such a propensity for violence cannot

be tolerated in a person hired to train and supervise inmates. The termination was for just cause.

562) Davina Gochenour 29-04-(93-03-23)-0167-01-14

Suspension

Arbitrator: Rhonda Rivera

Charges: Whether a twenty day suspension following prior discipline for neglect of duty was for just cause.

Contract Sections: 2, 24.01, 24.02

Topic Headings: Just Cause, Suspension, Neglect of Duty Dishonesty, Inefficiency, Insubordination, Discrimination

Department: Rehabilitation Services Commission

Site/Office: Bureau of Disability Determination

Position: Disability Claims Adjudicator II

Result: The grievance was denied in part and granted in part.

Reason: The Arbitrator held that a suspension of thirteen days was commensurate and for just cause because the grievant had been progressively disciplined in the past for similar charges.

562A) Davina Gochenour 29-04-(93-03-23)-0167-01-14

Issue

Arbitrator: Rhonda Rivera

Issue: Must the State of Ohio Rehabilitation Services Commission pay the grievant for seven days of back pay awarded her by the arbitration award of December 15, 1994, given the circumstances of her pay status during the time of her suspension?

Contract Sections: N/A

Topic Headings: Back Pay, Clarification of Arbitration Award, Disability, Suspension

Department: Rehabilitation Services Commission

Site/Office: Columbus, OH

Position: Disability Claims Adjudicator 2

Result: The Arbitrator ordered management to pay the grievant two days of back pay.

Reason: The Arbitrator found that the grievant did not lose any Disability pay because of the change in suspension dates. Furthermore, the grievant had no leave balances during this suspension period. As a result, the length of the grievant's suspension period had no effect on the grievant losing any money. The Arbitrator held, however, that if the entire reduction in suspension is nullified, management is not penalized for its procedural

misconduct which prejudiced the grievant. Therefore, the grievant is entitled to tow days back pay, not as a make whole remedy, but as a penalty to management.

563) Melda Turker 28-04-(93-01-19)-0067-01-09

Removal

Arbitrator: Rhonda R. Rivera

Charges: Violation of Employee Conduct Rule #1 – Violation of ORC 124.34 – dishonesty failure of good behavior; #10 Commission of a Felony – Theft in Office; #16 Theft; #24 Falsifying, altering, or removing any official document arising out of employment with ODRC; #3 Absenteeism.

Contract Sections: Article 24.01

Topic Headings: Removal, Just Cause, Dishonesty, Falsification of Documents, Theft

Department: Ohio Department of Rehabilitation and Correction

Site/Office: Cleveland

Position: Jail Inspector

Result: The grievance was denied.

Reason: The evidence was overwhelming that the grievant systematically and routinely falsified her travel reports. The Arbitrator found no just cause for the violation of Rules #3 and #10. However, Rule #16 gave adequate notice that theft was not permitted and Rule #26 made it clear that falsification was not permitted.

While the grievant was a long-term employee without prior discipline, the seriousness of the offense, outweighed those factors. Furthermore, the grievant's behavior was systematic and routine. Lastly, nothing the grievant said indicated that she truly appreciated what she had done nor that anything would "correct" her behavior.

564) Lois Darlene Holdcroft 15-03-(93-11-16)-0120-01-07 Issue

Arbitrator: Anna DuVal Smith

Issue: Whether the grievant was entitled to travel reimbursement for the use of a personal vehicle under the Collective Bargaining Agreement. If so, to what is the grievant entitled?

Contract Sections: Articles 13.06, 32.02

Topic Headings: Mileage Reimbursement

Department: State Highway Patrol

Site/Office: Jackson, Ohio

Position: Drivers License Examiner 2

Result: The grievance was sustained in part, denied in part.

Reason: The Arbitrator concluded that the grievant was entitled to reimbursement for miles driven in addition to the distance between the grievant's residence and the grievant's report-in location even if the grievant does not first report into her normal location.

565) Diane DiBianca 23-18-(92-11-25)-0896-01-04 23-18-(93-01-11)-0913-01-09 / 23-18-(93-01-13)-0914-01-09

Issue

Arbitrator: Mollie Bowers

Issue: Whether the Employer had shown by the required preponderance of evidence that the grievant's job abolishment was justified by economic and efficiency needs.

Contract Sections: Article 18.10

Topic Headings: Job Abolishment, Lay-off

Department: Department of Mental Health

Site/Office: Western Reserve Psychiatric Hospital

Position: Vocational Instructor 2

Result: The grievance was denied.

Reason: The Arbitrator concluded that the abolishment of the Vocational Instructor II position was not a violation of Article 18, because the Employer proved by a preponderance of the evidence that the job abolishment was a result of reorganization for the efficient operation of the Employer for the reasons of economy, or lack of work.

566) Joseph Eichhorn 15-02-(92-05-11)-0030-01-09

Removal

Arbitrator: Anna Smith

Charges: Whether a grievant was properly removed for the misappropriation of funds from his agency where no direct evidence was provided and he was later acquitted of the criminal charges.

Contract Sections: 24.01

Topic Headings: Removal, Just Cause, and Theft

Department: Ohio Department of Public Safety

Site/Office: Bureau of Motor Vehicles

Position: Public Inquiries Assistant

Result: The grievance was sustained.

Reason: The Arbitrator held that there was insufficient evidence to conclude that the grievant has misappropriated funds and that an investigation by the agency did not

reasonably lead to strong enough inference to justified the termination of the grievant's employment.

566A) Joseph Eichhorn 15-02-(92-05-11)-0030-01-09

Issue

Arbitrator: Anna DuVal Smith

Issue: What is the amount of medical expenses incurred to be reimbursed to the grievant? Should the grievant receive interest on back pay awarded?

Contract Sections: N/A

Topic Headings: Interest, Medical Benefits

Department: Ohio Department of Public Safety

Site: Bureau of Motor Vehicles

Position: Public Inquiries Assistant 1

Result: The employer is directed to reimburse the grievant \$7,058.35 for his daughter's medical expenses in addition to the \$891.02 incurred by the grievant and his wife. The Union's request for interest and attorney's fees is denied.

Reason: Although the grievant knew that the policy of accepting third-party prepayments lacked sufficient controls and gave the appearance of and created the opportunity for impropriety, the arbitrator believed that the grievant should have done something to protect himself, such as copying the documents he accepted or recording an explanation on his Sales Summary Report. From this, one might infer guilt, but one might just as easily infer trust. The controls and investigation at the Agency were simply too lax to draw a strong enough inference to justify the grievant's termination, whether for theft or for failure to follow procedures. Therefore, the arbitrator held that the grievant was not removed for just cause.

567) Linda Greene 19-00-(94-03-14)-0100-01-07

Issue

Arbitrator: Harry Graham

Charges: Was the position of Insurance Contract Analyst 3 improperly given to a junior employee?

Contract Sections: Article 17

Topic Headings: Minimum Qualification, Promotions, and Seniority

Department: Department of Insurance

Site/Office: Columbus, Ohio

Position: Insurance Investigator 2

Result: The grievance was denied.

Reason: The Arbitrator held that the grievant did not meet the minimum qualifications for the position of Insurance Contract Analyst 3 and she did not have the required product development experience. Therefore, the position was rightfully awarded to a junior employee.

**568) Joe Keyser 24-04-(94-10-20)-0635-01-04
Removal**

Arbitrator: Marvin Feldman

Charges: Was the grievant removed for just cause?

Contract Sections: Article 24.01

Topic Headings: Removal, Just Cause, and Abuse of Resident

Department: Department of Mental Health

Site/Office: Cambridge Developmental Center

Position: Therapeutic Program Worker

Result: The grievance was sustained.

Reason: The Arbitrator held that there was insufficient evidence to uphold the grievant's dismissal for client abuse due to the fact that a witness's testimony was not corroborated and the fact that the grievant's patient had been physically aggressive for most of the night.

**569) Gregory Hurst 31-02-(94-08-05)-0017-01-06
Removal**

Arbitrator: Harry Graham

Charges: Was the grievant's termination for just cause?

Contract Sections: Article 24.01

Topic Headings: Just Cause, Removal

Department: Ohio Department of Transportation

Site/Office: Northwood Garage

Position: Highway Maintenance Worker 2

Result: The grievance was sustained.

Reason: The grievance was sustained due to the fact that the grievant provided sufficient documentation to support his request for leave under the Family and Medical Leave Act of 1993.

**570) Terrence Hopkins 35-05-(93-08-23)-0018-01-03
Removal**

Arbitrator: Anna D. Smith
Charges: Insubordination
Contract Sections: Article 24.01
Topic Headings: Removal, Just Cause, Insubordination
Department: Ohio Department of Youth Services
Site/Office: Maumee Youth Center
Position: Youth Leader
Result: The grievance was denied.

Reason: The Arbitrator held that the grievant was guilty of insubordination since the grievant failed to follow an order to submit to a physical examination and failed to attend a pre-disciplinary hearing. Furthermore, the grievant had been disciplined in the past and reasonable efforts were made to try to contact the grievant, but were unsuccessful.

571) John Dodson 04-00-(94-05-10)-0025-01-07
Suspension

Arbitrator: Marvin J. Feldman
Charges: Violation of ODA Disciplinary Grid #28 Violation of Ohio Revised Code 124.34 (drunkenness, neglect of duty malfeasance, and failure of good behavior), #30(a) Neglect of Duty, #24 Misuse of State Property, #25 Other actions that could knowingly harm or potentially harm a fellow employee or member of the general public, #5(b) Insubordination, and #33 Revocation of Licensure.

Contract Sections: Article 24.01
Topic Headings: Just Cause, Progressive Discipline, Commensurate discipline, DUI, EAP, Last Chance Agreement
Department: Ohio Department of Agriculture
Site/Office: Columbus, Ohio
Position: Amusement Ride and Game Inspector 2
Result: The disciplinary action was modified. The grievant was reinstated with strict conditions.

Reason: The Arbitrator concluded that there were good and sufficient reasons to modify the disciplinary action that the employer had taken. One reason was that he grievant was an experienced, knowledgeable, and respected employee who had worked for the Ohio Department of Agriculture for 19 years. The other reason was that the grievant had excellent performance reviews. These reasons mitigated the serious nature of the grievant's offense. Therefore, the arbitrator held that the grievant be reinstated with some severe conditions attached.

572) Charles Newton 23-07-(94-09-01)-0072-01-04

Discipline

Arbitrator: Marvin Feldman

Charges: Did the Employer violate Article 24 when it issued the grievant a six-day suspension?

Contract Sections: Article 24

Topic Headings: Discipline, Progressive Discipline, Patient Abuse, Supervisor Hostility, Credibility, Credibility of Witnesses

Department: Mental Health

Site/Office: Cleveland Psychiatric Institute

Position: Therapeutic Program Worker

Result: The grievance was denied.

Reason: A six-day suspension was given to the grievant and from the grievant's history of discipline and the evidence presented, it appeared to the Arbitrator that the suspension was proper. There was good and sufficient evidence from both of the supervisors that the grievant was out of control, disruptive, abusive to the patient, and abusive to the supervisor. In addition, the Arbitrator did not find the grievant's testimony to be credible. In this particular case, there was insufficient evidence upon which to change or modify the decision of the employer.

573) **Clifford Hill, Jr. and James Wright** **24-06-(93-03-26)-0421-01-04 / 24-06-(93-03-26)-0422-01-04**

Removal

Arbitrator: Mollie Bowers

Charges: Were the grievants removed for just cause?

Contract Sections: 24.01

Topic Headings: Removal, Just Cause, Burden of Proof, Contract Interpretation, Credibility, Credibility of Witnesses, Patient Abuse, Disparate Treatment

Department: Department of Mental Retardation and Developmental Disabilities

Site/Office: Columbus Developmental Center

Position: Therapeutic Program Worker (TPW)

Result: The grievances were denied.

Reason: The resident had repeatedly and consistently named the grievants as the employees who caused the bruises that were the subject of this case. This was corroborated by the testimony of the two other residents who stated that the grievants had physical contact with the resident in question. The Arbitrator further held that the bruises in question occurred after the 3:30 a.m. incident. Therefore, the grievants were the only parties who had the opportunity to inflict the injuries. The Arbitrator

determined that the record supported a finding that the grievants were guilty of patient abuse and that their actions warranted the penalty of discharge.

574) Mark Crosbie 27-15-(93-12-29)-0309-01-03

Issue

Arbitrator: Charles P. Ipavec

Issue: Was the grievant denied a pick-a-post position in violation of the local pick-a-post agreement and the collective bargaining agreement?

Contract Sections: Article 2.02

Topic Headings: Goldstein Decision, Pick-a-Post, Work Assignment, Seniority

Department: Department of Rehabilitation and Correction

Site/Office: Madison Correctional Institution

Position: Correction Officer

Result: The grievance was sustained.

Reason: In negotiating the pick-a-post agreement, the Agency also negotiated the inclusion of an exception to the general grant of a seniority right to a award of a bid; that management reserves the right to not make an assignment for good management reasons. Because of the inclusion within the collective bargaining agreement of Section 2.02 Agreement Rights – there is a negotiated provision which guarantees to the members of the bargaining unit that the Agency will not be permitted to make arbitrary decisions.

The grievant may have had some deficiencies, but they were not exclusionary factors such that allow management to circumvent the seniority rights of an employee.

575) O'Dell Boyd 35-18-(93-12-28)-0011-01-03

Removal

Arbitrator: David M. Pincus

Charges: Was the grievant removed for just cause?

Contract Sections: 24.01

Topic Headings: Removal, Insubordination, Arbitrability, Effect of Arbitrability on Remedy

Department: Department of Youth Services

Site/Office: Circleville Youth Center

Position: Youth Leader 2

Result: The grievance was denied.

Reason: The Arbitrator held that the Employer had just cause to remove the grievant. Two elements must be present when an insubordination charge is imposed: a direct order and proof that the employee was given clear prior warning of the consequences.

He failed to comply with a clear and unambiguous direct order to report to work. The order of instruction was clear and specific enough to let the grievant know exactly what was expected. The behavior engaged in by the grievant was viewed as a gross act of insubordination justifying the propriety of summary discharge.

**576) Charles Newton 23-07-(94-09-13)-0109-01-04
Removal**

Arbitrator: Rhonda Rivera

Charges: The grievant allegedly threatened his supervisor.

Contract Sections: 13.10, 24.01

Topic Headings: Removal, Request for Leave, Commensurate Discipline, Procedural Defect

Department: Mental Health

Site/Office: Cleveland, Ohio

Position: Therapeutic Program Worker

Result: The grievance was upheld in part and denied in part. The grievant is to be returned to work, however, he will not be assigned to the same supervisor. He is to be docked for 30 days and beyond that made whole through back pay and health benefits.

Reason: The Arbitrator concluded that there was not clear and convincing evidence in this case that the grievant genuinely threatened his supervisor. Therefore, the Arbitrator determined that the removal of the grievant was not justified. However, the Arbitrator concluded that a 30 day suspension was just and commensurate with the grievant's argumentative and agitated conduct.

**577) Randall Quisenberry 27-03-(94-10-04)-0474-01-03
Removal**

Arbitrator: James Mancini

Charges: Was the removal of grievant for just cause when the grievant voluntarily participated in outpatient counseling for off-duty alcohol related disturbances.

Contract Sections: 9.04, 24.01

Topic Headings: Alcohol and Substance Abuse, Employee Assistance Program (EAP), Off-Duty Conduct, Just Cause, Removal.

Department: Department of Rehabilitation and Correction

Site/Office: Chillicothe Correctional Institution

Position: Correction Officer

Result: Grievance was sustained in part. Grievant was reinstated with full seniority and benefits on a conditional last-chance basis, but grievant was not entitled to any lost wages.

Reason: Grievant engaged in serious off-duty misconduct on three occasions in July, 1994. The grievant's misconduct violated departmental rule 41 by damaging the employer's reputation, and rule 39 by impairing his ability to carryout this duties as a Correction officer. The grievant's drunken behavior also violated rules 13, 15, and 38, all of which prohibit actions that could harm members of the public. Testimony showed that the intoxicated grievant was arrested three times and that this behavior brought discredit on the Institution. However, because the employee's misconduct was a consequence of an alcohol related problem and his recovery from alcohol abuse is assured to the point where it is unlikely that the future incidents will occur, the employer did not have just cause to discharge the grievant.

**578) Timothy Follrod 27-15-(93-09-09)-0288-01-03
Suspension**

Arbitrator: James M. Mancini

Charges: Whether the grievant was correctly given a ten day suspension for improperly leaving his security equipment unsecured.

Contract Sections: 24.01, 24.02

Topic Headings: Commensurate Discipline, Failure to Follow Proper Procedures, Just Cause, Suspension

Department: Department of Rehabilitation and Correction

Site: Madison Correctional Institution

Position: Correction Officer

Result: Grievance granted in part. Grievant's ten day disciplinary suspension was reduced to a three day suspension.

Reason: The Arbitrator found that the grievant left security equipment including keys, handcuffs and C-8 gas unattended. This act violated Rule 30 which prohibits loss of control of any instrument that could result in a breach of security and/or jeopardize others. However, the ten day suspension was not justified because the area was off limits to inmates, no serious risk of a breach of security resulted and the grievant's Rule 30 violation did not involve the kind of aggravating circumstances typically associated with a serious loss of control incident.

**579) John Gilbert 23-13-(94-11-04)-0850-01-04
Removal**

Arbitrator: Nels E. Nelson

Charges: Did the employer violate the collective bargaining agreement when it removed the grievant for patient abuse or neglect? If so, what shall the remedy be?

Contract Sections: 24.01, 24.02

Topic Headings: Agency Rules, Burden of Proof, Removal, Patient Abuse

Department: Department of Mental Health

Site: Pauline Warfield Lewis Center

Position: Therapeutic Program Worker

Result: The grievance was denied.

Reason: The grievant violated hospital policy against patient abuse and neglect when he grabbed a patient by the neck and slammed his head against a concrete block wall. During an investigation of the incident, the grievant changed his story and admitted that he lied about the incident. Testimony from co-workers and another patient was consistent and demonstrated that the grievant did not have just cause for the abusive behavior. Therefore, the Arbitrator concluded that the grievant did engage in patient abuse, and this discharge was proper.

580) Bonnie Daniels 24-14-(94-11-12)-1155-01-04

Removal

Arbitrator: David M. Pincus

Issue: Did the grievant engage in client abuse and was the grievant's removal for just cause?

Contract Sections: 24.04

Topic Headings: Just Cause, Removal, Due Process, Article 24.04, Article 25.08, Client Neglect, Failure to Follow Proper Procedures, Ambiguous Charges

Department: Department of Mental Retardation and Developmental Disabilities

Site: Warrensville Developmental Center

Position: Therapeutic Program Worker

Result: The grievance was sustained.

Reason: The Arbitrator held that management failed to provide sufficient evidence that the grievant engaged in client neglect. In addition, management's policy that residents had to be closely supervised was vague and not properly communicated. Therefore, the Arbitrator reinstated the grievant.

581) Linda Beyl 24-02-(94-11-27)-0976-01-04

Removal

Arbitrator: David M. Pincus

Charges: Physical Abuse of a Patient

Contract Sections: 24.01

Topic Headings: Removal, Patient Abuse, Credibility, Arbitrator's Authority, Ohio Revised Code Section 2903.33(B)(2)

Department: Mental Retardation and Developmental Disabilities

Site: Apple Creek Developmental Center, Apple Creek, Ohio

Position: Therapeutic Program Worker

Result: Grievance was denied. The Employer removed the grievant for physical abuse.

Reason: It was the Arbitrator's opinion that the grievant was properly removed for physical abuse. Section 24.01 of the contract limits the scope of an Arbitrator's authority when dealing with abuse cases. If the charge of abuse is properly supported, this section precludes an Arbitrator from modifying the imposed termination based on any procedural defects or any other type of potentially mitigating evidence or testimony. The arbitrator concluded that there was reliable corroborating evidence and testimony regarding the abuse charge and a causally linked injury. Furthermore, the Arbitrator concluded that the Unit Director's testimony was more credible than the grievant's testimony. In sum, the Arbitrator believed the Unit Director's version of the incident over the grievant's version.

582) Billie E. Shafer 28-02-(94-09-13)-0039-01-09

Issue

Arbitrator: Anna DuVal Smith

Charges: Untimely Grievance Filing

Contract Sections: 25.01, 43.01

Topic Headings: Arbitrability, Procedural Violations, Timeliness of Filing Grievance, Waiver

Department: Rehabilitation and Correction

Site: Adult Parole Authority, Cincinnati, Ohio

Position: Office Assistant 3

Result: Grievance was dismissed as not arbitrable on account of being untimely filed.

Reason: The Arbitrator concluded that the parties negotiated a clear and unambiguous fixed limit for the filing of discharge grievance, and they agreed such grievances would be filed with "the Agency Head or designee." The circumstances of this case were insufficient to overwhelm the very clear time limit language. Furthermore, as Arbitrator Drotning put it in the cited case, "to find for the Union on the grounds of a clerical error would be an injustice to both parties in their negotiations which resulted in the contract language..."

The Arbitrator also concluded that the Union's waiver argument was not valid, because the Department clearly raised its procedural objection at the third step meeting.

Thereafter, the Department discussed the case on its merits and that does not constitute a waiver.

583) Donald Brake 27-13-(93-10-08)-0713-01-03

Issue

Arbitrator: Harry Graham

Charges: Violation of Article 17

Contract Sections: 17.06

Topic Headings: Demonstrably Superior, Affirmative Action

Department: Rehabilitation and Correction

Site: London Correctional Institution

Position: Correction Officer

Result: Grievance was sustained. The grievant was to be awarded the position of Correction Supervisor 1 retroactive to October 17, 1993. He was to be paid all wages and benefits he would have received but for the contract violation found to have occurred in this instance.

Reason: The Arbitrator held that the phraseology of section 17.06 had been interpreted to mean that the State must demonstrate that a junior employee enjoyed a “substantial difference” in his or her favor in order for the junior employee to be promoted over a senior employee. The State bears the burden of demonstrating that the junior bidder meets this standard. The Arbitrator also held that the test outlined by Arbitrator Rivera was not satisfied. The grievant and his co-worker were not remotely similar in terms of seniority. The grievant had thirteen years of service and his co-worker carried eleven months of service. The State failed to prove its burden that the junior employee was “demonstrably superior.” The only factor favoring the junior employee was race. Affirmative action tips the scales only if the candidates are “equally proficient.”

584) William Montgomery

27-21-(94-09-26)-1085-01-03

Removal

Arbitrator: Anna DuVal Smith

Charges: Whether the grievant filed a grievance on his removal in a timely manner pursuant to Contract Article 25.

Contract Sections: 25.02

Topic Headings: Timeliness, Filing Grievance, Resignation, Arbitrability, Reliance, Article 25.02

Department: Rehabilitation and Correction

Site: Orient Correctional Institution

Position: Correctional Supervisor 1

Result: The grievance was dismissed.

Reason: The language of Contract Article 25 clearly outlines the fixed time limits associated with filing a grievance. The time limit must be upheld except in cases of waiver or unusual circumstances. The grievant was put on notice of his employment status on or about April 27, 1994, and he did not file a grievance until September 26, 1994. The grievant's detrimental reliance argument was not sufficiently supported by the record to constitute an "unusual circumstance" and is insufficient to overcome the clear language of the pertinent contract Article. The grievance, therefore was not filed in a timely manner and was not arbitrable.

585) Geraldine Winfield 27-21-(93-07-13)-0950-01-03

Removal

Arbitrator: Harry Graham

Charges: Was the grievant's removal for physical abuse of an inmate justified? If not, was removal for fighting with another employee for just cause? If not, what should the remedy be?

Contract Sections: 24

Topic Headings: Abuse of Inmate/Patient, Disparate Treatment, Suspension, Notice

Department: Rehabilitation and Correction

Site: Orient Correctional Institution

Position: Correction Officer

Result: The grievance was denied in part and sustained in part. The Grievant was restored to employment and the discharge was to be converted to a two week suspension.

Reason: The grievant was charged resulting from two incidents: physical abuse of a patient and fighting with another employee. The Arbitrator held that the grievant's conduct did not rise to the level of patient abuse, although it was inappropriate for the circumstances. In addition, there was sufficient evidence to show that the grievant was acting in self-defense when she struck the other employee.

586) Anthony C. Lawson 27-11-(94-10-04)-0504-01-03

Removal

Arbitrator: Charles F. Ipavec

Charges: Whether the grievant was rightfully removed for fighting with another employee where the grievant had no prior discipline and criminal charges were filed against him by the agency.

Contract Sections: 24, 25.07

Topic Headings: Removal, Disparate Treatment, Fighting, Discrimination, Mitigating Circumstances, Article 24

Department: Rehabilitation and Correction

Site: Warren Correctional Institution

Position: Correction Officer

Result: The grievance was sustained. Grievant to be paid for lost time at his regular hourly straight time plus all benefits which would have been accrued. Grievant is also to be returned to work.

Reason: The Arbitrator held that the conduct of the grievant gave the Agency just cause for severe discipline; but for the mitigating factors surrounding the grievant's performance evaluations the removal of the grievant would have been sustained. In addition, the Arbitrator held that the grievant could be reinstated to his position one year after the criminal charges have been resolved.

587) Darrell Hill 35-03-(94-06-08)-0024-01-04

Removal

Arbitrator: Anna DuVal Smith

Charges/Issues: Whether management had just cause for removal of grievant based on results from a criminal investigation and inconclusive trial testimony which led to the acquittal of grievant.

Contract Sections: 24

Topic Headings: Expert Witness, Investigation, Criminal, Removal, Article 24, Forgery, Burden of Proof, Misuse of Credit Card

Department: Ohio Department of Youth Services

Site: Cuyahoga Hills Boys School

Position: Activities Therapist 1

Result: The grievance was denied.

Reason: Despite the grievant's distinguished career record, removal was justified and appropriate given the alleged misconduct and conclusions reached in the investigation. First, there was no evidence that the investigation which identified the grievant as the responsible party was conducted in less than a full and fair manner. Second, the conflicting expert testimony was not the result of uncertainty, rather the conflicting testimony was attributable to the expert's misunderstanding of the defense attorney's cross-examination question. The expert's findings were uncontroverted and his conclusions were positive and well-grounded as to the grievant's alleged actions. Finally, management's decision not to mitigate its disciplinary action was justified given the severity of the grievant's alleged misconduct.

**588) Howard Marsh 34-49-(95-01-26)-0011-01-09
Removal**

Arbitrator: Mollie H. Bowers

Charges: Falsification of Documents, Unauthorized Leave

Contract Sections: 24.01, 24.02

Topic Headings: Credibility, Falsification of Documents, Just Cause, Progressive Discipline, Removal, Unauthorized Leave

Department: Ohio Bureau of Workers' Compensation

Site: Franklin County, Ohio

Position: Clerk 2

Result: The grievance concerning the discipline for the event which occurred on July 25, 1995, was partially sustained. The 25 day suspension shall be reduced to 20 days and the grievant make whole for the lost time. The grievance concerning the grievant's discharge was denied.

Reason: Regarding the first incident, the Arbitrator found that the employer failed to prove the charges that the grievant falsified an official document because the grievant's supervisor did not have any independent knowledge of the time the grievant actually left. However, the Arbitrator held that the charge of unexcused absence for 32 minutes was sustained because there was no testimony or evidence presented as to why the grievant was late from returning from lunch. Since the grievant's last discipline for a similar offense was fifteen days, the Arbitrator determined that the appropriate, progressive discipline for the unexcused absence in question was 20 days.

Regarding the second incident, the Arbitrator affirmed that charge of unexcused absence for the period between 5:40 and 5:45 p.m. based on the following facts: the grievant, by his own admission, was not at the worksite at 5:40 p.m. and there is no credible evidence that he notified anyone of his whereabouts. Furthermore, it is an uncontroverted fact that the grievant did not sign out at 5:45 p.m. Therefore, the Arbitrator sustained the charge of falsification of an official document.

**589) Charles Hightower 34-49-(94-10-14)-0261-01-09
34-49-(95-01-26)-0011-01-09
Suspension
Removal**

Arbitrator: David Pincus

Charges: Did the State properly remove the grievant for using threatening, intimidating and coercive language?

Contract Sections: 24.01, 24.02

Topic Headings: Article 24, Abuse of Inmate/Patient, Just Cause, Progressive Discipline

Department: Rehabilitation and Correction

Site: Ohio Reformatory of Women

Position: Correction Officer

Result: The grievance was denied.

Reason: the grievant violated the Standards of Employee conduct prohibiting threatening, intimidating, and coercive language towards an inmate. The grievant admitted to making the comments but argued that the proof did not support the removal. The Union also argued that the discipline was imposed without any thought of progressive discipline. The arbitrator concluded that the employer proved that the grievant violated the rule. The nature of the conduct justified the extent of the discipline.

590) Peterz Garner 35-04-(94-09-29)-0088-01-03

Removal

Arbitrator: David Pincus

Charges: Whether the grievant was properly removed for Job Abandonment.

Contract Sections: 2.02, 31.01, 44.02

Topic Headings: Discrimination, Incarceration, Job Abandonment, Just Cause, Removal, Unauthorized Leave, Articles 2.02, 31.01, 44.02

Department: Department of Youth Services

Site: Indian River School

Position: Juvenile Correction Officer

Result: The grievance was denied.

Reason: The Arbitrator concluded that there was proper and just cause to terminate the grievant based on the principle that the employer usually prevails when it discharges an incarcerated employee because of absenteeism caused by an employee's incarceration. The reason such a discharge is proper is not because of the crime the employee has committed but it is simply that through the employee's own action, he has made it impossible to fulfill his obligation to report to work.

591) Ricky L. Cotton 23-11-(94-12-15)-0177-01-04

Removal

Arbitrator: Charles F. Ipavec

Charges: Job Abandonment

Contract Sections: 24, 44.03

Topic Headings: Absence Without Leave, Discrimination, Job Abandonment, Neglect of Duty, Notice, Progressive Discipline

Department: Department of Mental Health

Site: Millcreek Psychiatric Center, Cincinnati, OH

Position: Therapeutic Program Worker

Result: The grievance was sustained to the extent that the grievant was to be paid through November 7, 1994. In all other respects the grievance was denied.

Reason: The Arbitrator concluded that there was not sufficient proof to support the Union's contention that the grievant was being discriminated against. The Union did not present any evidence of an employee who was able to post bond, after having been indicted, and was subsequently continued on Administrative Leave. Further, the Arbitrator concluded that the grievant is entitled to have been paid through November 7, 1994, the day before the grievant was ordered to report to work. Based on the fact that the investigation was complete when the indictment was returned, the Arbitrator also concluded, pursuant to Contract Article 24, that the employer had the option to terminate the administrative leave. If circumstances warranted, the grievant could have been returned to work. In this case the grievant could not return to work due to the sexual abuse allegations. Therefore, it was appropriate for the employer to terminate the grievant's Administrative Leave.

592) Leopold Osborne 24-14-(95-01-31)-1214-01-04

Removal

Arbitrator: James M. Mancini

Charges: Theft

Contract Sections: 24.01

Topic Headings: Credibility, Failure To Follow Orders, Insubordination, Polygraph Testing, Theft, Removal

Department: Mental Retardation and Developmental Disabilities

Site: Warrensville developmental Center, Highland Hills, OH

Position: Laborer

Result: The grievance was denied.

Reason: In order to resolve whether the grievant was guilty of theft the Arbitrator determined the credibility of the witnesses. The arbitrator found that the State's primary witness, the grievant's coworker, was forthright, consistent, had a good demeanor on the witness stand, and had other reliable evidence supporting his testimony. The Arbitrator also found that the witness's polygraph test results provided further supporting and corroborating evidence that he was being truthful regarding the grievant's involvement in the theft. In further support of the Arbitrator's finding that the coworker was more credible than the grievant, the Arbitrator relied upon the grievant's and his coworker's

employment records. The Arbitrator also relied upon the well settled rule that an accused employee is presumed to have an incentive for not telling the truth and that when his testimony is contradicted by that of another who has nothing to gain or lose, as did the coworker in this case, the latter is to be believed.

**593) Charles A. Bakle Jr. 31-01-(94-11-29)-0053-01-07 31-01-(94-12-14)-0056-01-07
Minimum Qualifications**

Arbitrator: Nels Nelson

Issue: Did the grievant meet the minimum qualifications of the Project Inspector 2, and if so, what shall the remedy be?

Contract Sections: 17.05, 17.06

Topic Headings: Job Requirements, Seniority, Minimum Qualifications, Article 17.06

Department: Ohio Department of Transportation

Site: Testing Laboratory

Position: Materials Controller 2

Result: The grievance was denied.

Reason: The Arbitrator determined that the grievant failed to meet any of the three ways to qualify for a Project Inspector 2 position. First, although the grievant met some of the minimum qualifications, he did not meet all of them. Second, the grievant was never classified as a Project Inspector 1. Finally, the Union failed to provide equivalent evidence of the Major Worker Characteristics listed on the classification specification for the position. Therefore, the grievance was denied.

**594) Kenneth J. Hilliard 25-12-(94-07-05)-0004-01-04
Removal**

Arbitrator: Jonathan Dworkin

Charges: Whether the employer sufficiently proved that the grievant falsified time and payroll records and, if so, whether his actions justified summary removal.

Contract Sections: 24.01

Topic Headings: Absent Without Leave, Commensurate Discipline, Dishonesty, Falsification of documents, Just Cause, Mitigation, Removal, Article 24.01

Department: Department of Natural Resources

Site: Deer Creek State Park

Position: Water Treatment Plant Aide

Result: The grievance was denied.

Reason: The Maintenance supervisor and Union steward observed the grievant falsifying his time sheets by misstating what hours he had worked, the grievant denied

the allegation and claimed that management did not advise the grievant of his alleged poor work behavior, failed to discipline him progressively and generally mistreated him. The State argued that the grievant's wrongful acts were indicative of a pattern of misconduct by the grievant, rendering the dismissal proper. The Arbitrator held that the grievant committed theft by lying on his time sheets. Although the grievant was a 20 year employee, the fact that he presented no evidence that he could adapt to the rules and behave appropriately justified the Arbitrator in not allowing his length of service to serve as a mitigating factor.

595) Tim Neely 35-05-(94-09-21)-01-03
Removal

Arbitrator: David M. Pincus

Charges: Whether management had just cause for removing grievant from his position as Juvenile Correction Officer.

Contract Sections: 24.01, 24.02

Topic Headings: Excessive Force, Assault, Just Cause, Removal, Progressive Discipline, Abuse of Resident, Patient, Article 24.01, 24.02

Department: Ohio Department of Youth Services

Site: Maumee Youth Center

Position: Juvenile Correction Officer

Result: The grievance was denied.

Reason: The grievant's actions were in direct violation of Directive B-19, Rule 23 Physical Assault and Rule 24(a), Using Excessive Force on a Youth. The grievant initiated the physical intervention in an instance not involving self-protection, protection of youth or other person, prevention of property damage, or prevention of escape. The grievant's prior disciplinary history dealing with related forms of misconduct and DYS's policies and procedures provided him adequate notice regarding the types of misconduct which could lead to discipline. Just cause, coupled with notice, gives management adequate grounds for removal.

596) Class Action 31-02-(95-11-03)-0013-01-06
Issue

Arbitrator: Nels E. Nelson

Issue: (1) Whether management violated section 13.02 and the ODOT specific section of 13.07 of the Contract when it established shifts for snow and ice removal in ODOT District 2? (2) Whether ODOT's District 2's utilization of intermittent employees

through its vision 2000 Ice & Snow Removal Policy violate Sections 1.05, 7.03, and/or Article 11 of the collective bargaining agreement.

Contract Sections: 1.05, 7.03, 11, 13.07

Topic Headings: Overtime, Avoiding Payment

Department: Ohio Department of Transportation

Site: District 2

Position: N/A

Result: The grievance was denied.

Reason: Section 13.02 was not violated since the two-shift schedule was adopted in response to management's operational needs and the Union was given the opportunity to discuss the program prior its implementation. Section 13.07 was not violated as it is within management's authority to establish a new regular schedule if the change is designed to meet operational needs. The use of intermittents is an arbitrable issue but the use of intermittents does not violate the Contract since it was determined that management had taken adequate steps to ensure their safe utilization.

597) Danielle Hartman 33-00-(95-05-03)-0602-01-04

Issue

Arbitrator: Mollie H. Bowers

Issue: Whether the grievance was arbitrable.

Contract Sections: 25.02

Topic Headings: Article 25, Procedural Defect, Failure to Attach Grievance Form to Appeal, Just Cause, and Removal

Department: Ohio Veterans Home

Site: Sandusky, Ohio

Result: The grievance was denied.

Reason: The Arbitrator held that the grievance was not arbitrable pursuant to Article 25 of the contract because it was not timely filed and there were fundamental errors made on the grievance form, which rendered the form inadequate.

598) Kenneth Marshall 02-00-(93-11-01)-0406-01-09

Issue/Removal

Arbitrator: Charles Ipavec

Charges/Issue: 1) Where an employee voluntarily accepts discipline and waives the right to pursue a remedy, can the Union independently pursue back pay or other remedy on his behalf? 2) Where an employee admits to the conduct alleged, agrees to accept a ten-day suspension, and waives the right to grieve, does the imposition of discipline

violate the express term of the collective bargaining agreement? 3) Was the grievant disciplined for just cause? If not what should the remedy be?

Contract Sections: 24.02

Topic Headings: Due Process, Just Cause, Misuse of State Property, Pre-Disciplinary Hearing, Procedural Violation, Suspension, Timeliness of Beginning Disciplinary Process, Article 24.02.

Department: Civil Rights Commission

Position: EEO Contract Compliance Officer

Result: The grievance was denied.

Reason: The grievant was disciplined for misusing a State vehicle. A subsequent criminal investigation failed to produce an indictment. The grievant admitted the misconduct and waived his right to a pre-disciplinary hearing even though the misconduct occurred nearly a year prior. The Union, believing the State had violated the contract's timeliness requirements, filed a grievance. The Arbitrator held that management had acted in a timely manner because the contract allows the disciplinary meeting to be delayed until after the disposition of criminal charges. The Arbitrator also stated that since the ultimate control of a grievance rests with the Union, the Union properly filed the grievance. Since the grievant admitted the conduct, he was disciplined the just cause.

**599) State-wide Grievance Filed on Behalf of Union 02-10-(95-10-16)-0011-01-00
Issue**

Arbitrator: Harry Graham

Issue: May an Arbitrator award back pay to an OCSEA represented bargaining unit member if that person is found to be working in a classification represented by another bargaining unit?

Contract Sections: 19.02

Topic Headings: Arbitrator's Authority, Back Pay, Contract Interpretation, Ohio Revised Code

Department: N/A

Site: N/A

Position: N/A

Result: The grievance was sustained. An Arbitrator has authority under the Contract to award back pay to a person working in a higher rated position in a bargaining unit that may be represented by a union other than OCSEA/AFSCME Local 11.

Reason: The Arbitrator pointed out the following Article 19.02 Contract language: "If the duties are determined to be those contained in a classification with a higher pay range than the employee's current classification, the Director or designee shall issue an award of monetary relief..." The Arbitrator held that this language clearly specifies that money

shall be the remedy if a person is working in a higher ranked job classification. The Contract is silent concerning the question of whether or not the remedy is applicable if the classification is represented by a bargaining unit other than OCSEA/AFSCME Local 11. If the parties had desired to exclude people who are in that circumstance, they would have agreed to do that and indicated such in the Contract. However, they did not. The Arbitrator concluded that the operative condition is the job, not the labor organization that may represent people performing the job.

**600) Marty Marcum 27-22-(95-06-06)-0269-01-03
Removal**

Arbitrator: Harry Graham

Charges: In accordance with Section 24.01 of the collective bargaining agreement, was the grievant's removal for just cause? If not, what should the remedy be?

Contract Sections: 24.01

Topic Headings: Correction Officer, Criminal Charges, Inmate Abuse, Just Cause, Removal, and Article 24.01

Department: Rehabilitation and Correction

Site: Orient Correctional Institution

Position: Correction Officer

Result: The grievance was denied.

Reason: The grievant was removed for choking and striking an inmate. The Union argued that the inmate had identified another officer as the attacker. In addition, the Union stated that because the grievant was acquitted in a criminal trial, the Arbitrator should be bound by that decision. The Arbitrator held that the criminal proceeding was not controlling for the present arbitration. In addition, because three other officers witnessed the incident, the arbitrator determined that management met the just cause standard for dismissal.

**601) Devendra Sinha 04-00-(94-04-08)-0012-01-13
Removal**

Arbitrator: Anna DuVal Smith

Charges: Was the grievant removed for just cause? If not, what should the remedy be?

Contract Sections: 24.01, 24.02

Topic Headings: AWOL, Insubordination, Disability Benefits, Mitigation, public Employees Retirement System (PERS), Removal, Timeliness of Initiating Discipline.

Department: Ohio Department of Agriculture

Position: Veterinarian Specialist

Result: The grievance was granted in part and denied in part. The grievant was removed without just cause. His record was to be amended to reflect his disability retirement and a 30-day suspension without pay. In addition a further violation of legitimate employer orders, rules, policies or procedures would subject him to removal.

Reason: The grievant had been employed as a Veterinarian Specialist for the Department of Agriculture for about 21 years. After sustaining neck and back injuries in an automobile accident, the grievant received State disability benefits. However, the grievant failed to fill out the proper leave paperwork after the State issued an AWOL notice and a written direct order. The grievant was eventually removed for failing to submit this paperwork. After this removal, but before the arbitration hearing, PERS notified the grievant that his disability retirement was approved.

602) Linda Appel 27-25-(93-11-24)-0627-01-03

Removal

Arbitrator: Nels E. Nelson

Charges: Removal from position for good management reasons based on letters of complaint from visitors to the facility about the grievant's conduct.

Contract Sections: 24.01

Topic Headings: Just Cause, Pick-a-Post, Removal

Department: Rehabilitation and Correction

Site: Southern Ohio Correctional Facilities

Position: Correction Officer

Result: The grievance was denied.

Reason: Based on Goldstein's supplemental pick-a-post decision, the State's final offer regarding the implementation of the work assignment system and subsequent negotiations between the parties, the Arbitrator concluded that the proper standard to be applied was "good management" reasons. Furthermore, the Arbitrator rejected the minutes, that 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 two 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.

603) Mark Addis 24-04-(95-08-31)-0681-01-04

Removal

Arbitrator: David M. Pincus

Charges: Client Abuse

Contract Sections: 24.01

Topic Headings: Abuse of Client, Mitigation, Physical Restraint of Patient, Removal

Department: Mental Retardation and Developmental Disabilities

Site: Cambridge Developmental Center

Position: Therapeutic Program Worker

Result: The grievance was sustained. The grievant was reinstated with full back pay and benefits less ordinary and normal deductions. His seniority was also reinstated. Any monies earned during the period that the grievant was without work from date of removal shall be deducted. If the grievant earned any unemployment compensation fund benefits during this period that too shall be deducted from his back pay award.

Reason: The Arbitrator concluded that the employer violated the Agreement when it removed the grievant for client abuse. The employer failed to provide the Arbitrator with sufficient evidence and testimony to sustain the grievant's removal. Specifically, the employer failed to prove that the grievant punched the client in the stomach. Further, this Arbitrator was inclined to believe the grievant's version over the surveyor's version based on the fact that the surveyor only observed the tail end of an appropriate intervention and she failed to see the entire episode due to her obstructed view.

604) Kim Davis 27-16-(95-07-24)-2270-01-03

Removal

Arbitrator: Jonathan Dworkin

Charges: Was the grievant removed for just cause?

Contract Sections: 24.01, 24.02, 24.05

Topic Headings: Article 24.02, Article 24.05, Article 24.01, Inmate Fraternization, Inmate Testimony, Just Cause, Progressive Discipline, Standard of Proof

Department: Rehabilitation and Correction

Site: Marion Correctional Institution

Position: Correction Officer

Result: The grievance was denied.

Reason: The Arbitrator held that the employer sufficiently proved that grievant violated Ohio Department of Rehabilitation and Correction Standards #46A (exchanging personal items with an inmate) and #46E (engaging in an unauthorized relationship with an inmate) by conducting a four-month affair with an inmate. Although the Union effectively raised reasonable doubts about the inmate's testimony and diary, the evidence amassed through an investigation conducted by the Department of Rehabilitation and Correction, the State Highway Patrol, and the Bureau of Criminal Investigation and Identification was not effectively refuted. The Arbitrator stated that the only way this

information could be disputed was by conjecture, which is inadequate to raise reasonable doubt. Therefore, the removal was held to be for just cause and was upheld.

605) Jeffrey B. Appleton 31-12-(95-10-11)-0026-01-06 Removal

Arbitrator: Marvin J. Feldman

Charges: Was the grievant removed for just cause?

Contract Sections: Articles 24.01, 24.02, 24.09, and 2.01

Topic Headings: Just Cause, Progressive discipline, Driving Under the Influence of Alcohol, Employee Assistance Program (EAP), Non-Discrimination, Article 24.01, Article 24.02, Article 24.09, and Article 2.01

Department: Department of Transportation

Site: Independence Yard, Cuyahoga County

Position: Highway Worker 2

Result: The grievance was denied.

Reason: The Arbitrator held that the grievant's violations of District Directive WR-101, item #7 (Unauthorized/misuse of State equipment), item #10 (Sales, consumption, or possession of alcoholic beverages while on Ohio Department of Transportation property), item #16 (Unauthorized absence in excess of thirty minutes), item #26 (Other actions that could harm or potentially harm the employee, another employee(s), or the general public), and item #27 (Other actions that could compromise or impair the ability of the employee to effectively carry out his/her duties) were serious enough that the grievant was not entitled to progressive discipline. The Arbitrator further maintained that the seriousness of the violations provided just cause for the grievant's removal. Although the employee can request an EAP agreement from the State, which might mitigate or delay discipline, there is no provision that requires the State to make this type of agreement in circumstances such as these. Therefore, the removal was upheld.

606) Snow Emergency 02-10-(96-01-11)-0015-01-00 and 02-10-(96-01-04)-0014-01-00 Issue

Arbitrator: Nels Nelson

Issue: Did the State violate Article 13, Section 13.15 of the collective bargaining agreement? If so, what is the proper remedy?

Contract Sections: 13.15

Topic Headings: 13.15, Emergency Pay, Snow Emergency

Department: State Wide Union Grievances

Site: Not Applicable

Position: Not Applicable

Result: The grievances were denied.

Reason: Despite the severity of the two winter storms and the declarations of level three snow emergencies by sheriffs in 55 counties, the State did not declare an emergency. The Arbitrator relied on a previous decision with the same facts rendered by Arbitrator Graham which established that the State has the sole discretion to declare an emergency. However, the Arbitrator retained jurisdiction because there may be circumstances in certain cases which warrant relief.

607) Niki Musto 23-05-(95-07-14)-0026-01-09

Removal

Arbitrator: David M. Pincus

Charges: Unauthorized Relationship w/Inmate

Contract Sections: 24

Topic Headings: Inmate Fraternization, Just Cause, Removal, Unauthorized Relationship with Inmate/Parolee or Ex-Inmate

Department: Departments of Mental Health and Rehabilitation and Correction

Site: Northwest Psychiatric Hospital Forensic Unit at Oakwood

Position: Secretary

Result: Grievance denied.

Reason: The Arbitrator found that the testimony and transcripts of two telephone conversations introduced at the hearing adequately supported the notion that “a meaningful and prolonged relationship” existed between the grievant and an inmate. The Arbitrator stated that the grievant’s version of the facts lacked credibility because there were a number of testimonial conflicts. The Arbitrator concluded that, by definition, the unauthorized relationship with an inmate is in direct contravention of the Department of Rehabilitation and Correction’ Rule #46.

608) Steven Heiss 27-03-(95-01-26)-0502-01-03

Removal

Arbitrator: James M. Mancini

Charges: Was the discharge of the grievant, based on his off-duty conduct?

Contract Sections: 24.01

Topic Headings: Removal, Just Cause, Burden of Proof, Criminal Charges, Drug Trafficking, Off-Duty Conduct

Department: Department of Rehabilitation and Correction

Site: Chillicothe Correctional Institution

Position: Correction Officer

Result: Grievance was denied.

Reason: The Arbitrator held that the employer provided clear and convincing evidence, which showed that the grievant had been involved in drug trafficking on the night in question. The Arbitrator further concluded that a nexus had been established between the misconduct and the grievant's job as a Correction Officer; therefore, just cause existed for the grievant's removal. The Arbitrator also stated that the dismissal of criminal charges by a court was not controlling in these proceedings. Under the Collective Bargaining Agreement, the Arbitrator has a duty to independently review the charges and evidence against a grievant.

609) Katrina Jackson 27-25-(95-11-15)-0992-01-03
Removal

Arbitrator: Marvin Feldman

Charges: Was the grievant removed for just cause?

Contract Sections: 24.01

Topic Headings: Absenteeism, Just Cause, Mitigation, Progressive Discipline, Removal, Spousal Abuse

Department: Department of Rehabilitation and Correction

Site: Southern Ohio Correctional Facility

Position: Correction Officer

Result: The grievance was sustained.

Reason: The Arbitrator concluded that although management had just cause to remove the grievant because of her attendance problems, the serious and continuing spousal abuse the grievant suffered was a mitigating circumstance that affected her employment. Thus, the Arbitrator reinstated the grievant without back pay and without loss of seniority contingent upon her participation in an Employee Assistance Program. The Arbitrator stated that if the grievant failed to complete an Employee Assistance Program her termination would stand.

610) Nicole Adams 34-33-(95-05-01)-0066-01-04
Removal

Arbitrator: Jonathan Dworkin

Charges: Was the grievant's removal for just cause?

Contract Sections: 24

Topic Headings: Discipline Not Evenhanded, Fighting, Just Cause, Mitigation, Removal, Threats (Making), Verbal Abuse of a Co-Worker

Department: Ohio Bureau of Workers Compensation

Site: Columbus

Position: Compensation Claims Specialist

Result: The grievance was sustained in part. The Grievant was reinstated without back pay or restoration of benefits, but with full and unbroken seniority.

Reason: The Arbitrator concluded that the Employer did not have just cause to remove the grievant. The principle of just cause cases requires an employer to attempt to salvage employees who are salvageable. An employer must consider every potentially mitigating and aggravating factor to determine salvageability. The Employer, in this case, based the grievant's removal entirely on her misconduct and the negative aspects of her work record which included several disciplines for attendance related problems. The Arbitrator considered both the negative and positive aspects of the grievant's work record and concluded that, under the circumstances, the discharge was too severe to comply with just cause. The Arbitrator held that both the grievant and the co-worker were aggressors, the grievant was not prone to violence and that the grievant acknowledged that the gun threat was wrong.

611) Craig Shivers 15-03-(95-07-26)-0074-01-07

Removal

Arbitrator: David M. Pincus

Charges: The grievant was removed for his alleged violation of Department of Public Safety Work Rule Section (A)(6), Neglect of Duty, and Dishonesty, when he called off on sick leave but continued to work for another company without management's knowledge.

Contract Sections: 24.01

Topic Headings: Removal, Just Cause, Sick Leave, Medical Verification, Work Rules, and Article 24.01.

Department: Department of Public Safety

Site: Division of State Highway Patrol

Position: Portable Load Limit Inspector

Result: Grievance was denied.

Reason: The Arbitrator held that the employer provided clear and convincing evidence, which showed that the grievant had been dishonest in his attempt to procure sick leave benefits and, as such, was in direct violation of the Department of Public Safety Work Rule Section (A)(6). The Arbitrator found that the circumstances surrounding the grievant's sudden health complications, his failure to inform the department of his license suspension, and his work schedule with a second employer, all demonstrated that the grievant engaged in a series of deceitful acts hoping to realize the sick leave benefits of his state job while receiving compensation from a different employer. The Arbitrator also stated that the grievant failed to prove that any mitigating circumstances existed

which could reasonably lead to a reduction of the discipline imposed. Therefore, the Arbitrator concluded that the state did have just cause for removing the grievant.

612) Sheridan Crum 35-04-(95-05-01)-0065-01-09

Removal

Arbitrator: Marvin Feldman

Charges: Neglect of Duty and Violation of Last Chance Agreement

Contract Sections: 24

Topic Headings: Last Chance Agreement, Neglect of Duty, Past Practice, Work Rules

Department: Department of Youth Services

Site: Indian Hills School, Massillon, Ohio

Position: Storekeeper

Result: Grievance was denied.

Reason: This Arbitrator concluded that the choice made by the grievant to complete the dietary requisition before putting away the frozen commodities was completely lacking in common sense. The Arbitrator also found that the grievant was in violation of the cited work rules and the last chance agreement. The Arbitrator based these conclusions on the fact that the grievant has a responsible position and that he acted without obtaining any advice.

613) Sandra Lippert 33-00-(95-06-08)-0612-01-09

Removal

Arbitrator: Nels Nelson

Charges: Was the termination of the grievant for just cause? If not, what shall the remedy be?

Contract Sections: 24.01, 24.02 and 24.05

Topic Headings: Removal, disparate Treatment, Just Cause, Commensurate Discipline, Progressive Discipline, Right to Union Representation, Burden of Proof, Hearsay, Article 24, "Malum in se" Offense

Department: Ohio Veterans Home

Site: Sandusky, Ohio

Position: Clerk 2

Result: The grievance was denied in part and sustained in part. The grievant was reinstated with no loss of seniority, and the removal was converted to a two-week suspension. Full back pay was awarded less a two-week disciplinary suspension and less any unemployment compensation and interim earnings.

Reason: The grievant was discharged from the home for violating a disciplinary rule that prohibited employees from accepting gifts, gratuities, loans or special favors from residents. The Arbitrator held that removal was not commensurate with the offense and did not meet the just cause standard. Given the special circumstances surrounding the loan as well as the grievant's 25 years of service and absence of any severe discipline, removal was an inappropriate penalty. Further, a two-week suspension without pay demonstrates the seriousness of the grievant's offense.

614) Karen Probst 34-28-(95-08-16)-0132-01-09

Issue/Promotion

Arbitrator: Harry Graham

Issue: Was the grievant properly prescreened out of the promotional process for the position for Claims Service Representative? If not, what shall the remedy be?

Contract Sections: 17.05(A)1

Topic Headings: Promotion, Interpretation of Contract, Minimum Qualifications, Remedies

Department: Ohio Bureau of Workers Compensation

Site: Bridgeport, Ohio

Position: Claims Service Specialist

Result: The grievance was sustained. The grievant was to be placed in the position of Claims Service Specialist retroactive to the granting of the position to the other applicant. The grievant was to be paid the difference between the grievant's straight time earnings and the earnings the grievant would have earned but for the violations of the agreement by the State.

Reason: the grievant was found to have met the minimum class qualifications for the position of Claims Service Representative based on the grievant's work experience. The Arbitrator found that the grievant did not meet the requirements of Part One of the minimum class qualifications, but the Arbitrator stated that it was not necessary for the grievant to meet the requirements of Part One. The word "or" between Parts One and Two of the minimum class qualifications means that you can qualify under either. The Arbitrator found that the grievant's work experience did meet the "or equivalent experience" requirement of Part Two of the minimum class qualifications.

615) Tanya Violand 24-07-(95-11-24)-0578-01-01

Removal

Arbitrator: Jonathan Dworkin

Charges: Assault, Physical Abuse of a Co-worker, Verbal Abuse of a Co-worker

Contract Sections: 24.02

Topic Headings: Assault, Burden of Proof, Credibility, Evidence, Evidence: Medical, Expert Witness, Grievant's Testimony, Injury, Just Cause, Physical Abuse of a Co-worker, Physician's Statement, Progressive Discipline, Removal, Threats: Making, Verbal Abuse of a Co-worker

Department: Department of Mental Retardation and Developmental Disability

Site: Gallipolis Developmental Center

Position: Food Service Worker

Result: The grievance was denied and as a result the grievant's removal was upheld.

Reason: The Arbitrator found that the grievant had assaulted and battered a co-worker on September 15, 1995. Although there were no third party witnesses to the incident, the Arbitrator stated there was no evidence that the grievant's accuser was not telling the truth. The Arbitrator said that even without considering past misconduct on the part of the grievant, the grievant's removal was justified due to the serious nature of the incident.

616) Carolyn Christian 24-14-(95-09-01)-1336-01-04 and Joyce Brown 24-14-(95-09-01)-1338-01-04

Removal

Arbitrator: David Pincus

Charges: Abuse of a Resident, Failure to Cooperate in and Investigation, Resident Neglect

Contract Sections: 24.01

Topic Headings: Abuse of Resident, Credibility of Witnesses, Discipline, Failure to Cooperate in an Investigation, Removal

Department: Department of Mental Retardation and Developmental Disabilities

Site: Warrensville Developmental Center

Position: Therapeutic Program Workers

Result: Grievance was denied.

Reason: The Arbitrator's finding that the grievants abused the residents was based upon the inconsistent statements of the grievants and the fact that the grievants were uncooperative during the investigation of the incidents. The Arbitrator found that the witness had nothing to lose as a consequence of her testimony and that the grievants had the incentive to distort the truth because their jobs were in jeopardy.

617) George Shumway 24-13-(95-01-12)-0259-01-04

Issue; Promotion

Arbitrator: Nels Nelson

Issue: Was Management required to grant an interview to the grievant for the Carpenter 2 position? Did the State violate Article Section 17.06 by awarding the Carpenter 2 position to an employee who was less senior than the grievant?

Contract Sections: 17.02(F), 17.05(A), and 17.06

Topic Headings: Lateral Transfers, Seniority, Demonstrably Superior, Disparate Treatment, Bias of Supervisor, Probationary Period, Admissibility of Evidence

Department: Department of Mental Retardation and Development Disabilities

Site: Tiffin Developmental Center

Position: Therapeutic Program Worker

Result: The grievance was denied.

Reason: The Arbitrator held that the grievant did not meet the minimum requirements for the Carpenter 2 position. Although the Union asserted that the grievant satisfied the eighteen (18) month carpentry experience requirement, the Arbitrator was not persuaded by the evidence presented. Further, the Arbitrator believed the less senior employee was demonstrably superior to the grievant. In addition, the Arbitrator believed that Management's selection of the other employee was not based on predetermination or bias. Also, the Arbitrator found that the other applicant was not barred by Article Section 17.05(A) from applying for the job vacancy since he merely made a lateral transfer and was not within the probationary period.

618) James Gilmore 15-03-(95-11-01)-0104-01-07

Removal

Arbitrator: David Pincus

Charges: Sexual Harassment

Contract Sections: 24.01, 24.02, 24.04 and 24.05

Topic Headings: Commensurate Discipline, Credibility of Witnesses, Due Process, Admissibility of Evidence, Just Cause, Procedural Violations, Progressive Discipline, Removal, Sexual Harassment, and Making Threats.

Department: Ohio Department of Public Safety, Division of the State Highway Patrol Compensation

Site: Commercial Driving Testing Team at Scioto Downs

Position: Drivers License Examiner 2

Result: The grievance was denied.

Reason: The Arbitrator found that there were no significant defects in the disciplinary procedure and rejected the Union's argument that the grievant was denied due process. The Arbitrator further held that grievant's actions did constitute sexual harassment and did create a hostile work environment. The Arbitrator used a two-part test in reaching his decisions. First, the victim's subjective perception would have to be that the work place was hostile and abusive. Second, a reasonable person would have to find that the work place was hostile and abusive. Based on the testimony of the victim and other

employees at the Commercial Driving Testing Facility, the Arbitrator held that both elements of the test had been met and ruled that a hostile work environment had been created as a result of the grievant's sexual harassment. Therefore, the grievance was denied.

619) Harold T. Wilson 34-18-(95-12-06)-0235-01-09
Removal

Arbitrator: Anna Du Val Smith

Charges: Was the grievant removed for just cause? If not, what should the remedy be?

Contract Sections: 24.05

Topic Headings: Delay, Criminal Charges, Removal, Circumstantial Evidence, Fairness of Investigation, 45-day Time Limit, Commensurate Discipline, Just Cause

Department: Ohio Bureau of Workers Compensation

Site: Akron

Position: Clerk 3

Result: The grievance was granted in part and denied in part. The removal was reduced to a suspension of thirty (30) days. The Arbitrator held that the grievant was removed without just cause. He was reinstated to his former position with full back pay, seniority and benefits, less a thirty (30) day suspension. A record of this action was placed in the grievant's personnel file.

Reason: the Arbitrator held that the grievant was removed without just cause. Since the arbitrator viewed the investigation and the discipline imposed as "tainted" with the Employer's desire to rid itself of a problematic employee, the Arbitrator held that the investigation conducted was not a full and fair investigation and the discipline imposed was extreme.

620) Sherri White 27-11-(95-06-23)-0337-01-03
Issue

Arbitrator: Anna Du Val Smith

Issue: Did the grievant resign on June 12, 1995? If not, what shall the remedy be?

Contract Sections: 24

Topic Headings: Resignation, constructive discharge, Voluntary Quit, Just Cause

Department: Department of Rehabilitation and Correction

Site: Lebanon Correctional Institution

Position: Correction Officer

Result: The grievance was sustained. The grievant was restored to her former position with full back pay, benefits, and seniority less the normal deduction and any earnings from employment she may have had in the interim.

Reason: The Arbitrator held that the State did not meet the burden of proof to demonstrate that the grievant voluntarily quit. Rather, the arbitrator held that the employer discharged the grievant without just cause in violation of Article 24. Because the grievant did not sign a written resignation and the State did not present witnesses to controvert the grievant's testimony that she was fired, the Arbitrator concluded that the grievant did not voluntarily quit.

**621) William VanLeer 35-03-(95-05-26)-0056-01-03
Removal**

Arbitrator: Anna Du Val Smith

Charges: Was the grievant terminated for just cause? If not, what shall the remedy be?

Contract Sections: 24

Topic Headings: Criminal Charges, Discipline, Disparate Treatment, Drug Testing, Just Cause, Removal

Department: Ohio Department of Youth Services

Site: Cuyahoga Hills Boys School

Position: Juvenile Correction Officer

Result: The grievance was sustained in part and denied in part. The Arbitrator held that the grievant was removed without just cause, but found him guilty of a violation Rule 21, Misuse of drugs. As a result of the violation, the grievant was given a fifteen (15) day suspension without pay. In addition, the grievant was restored to his former position with back pay, benefits and seniority, less fifteen days. The Arbitrator denied the request for overtime pay as it was too speculative.

Reason: The felony conviction of the grievant had no impact on this case. Since the charges did not exist at the time of the discipline, the Employer cannot use it as a basis for removal. Further, the cases cited by the State were factually distinguishable from the case at hand. Here, the grievant tested negative for drug use, had a good record, and was a five-year employee. In similarly situated cases cited by the Union, the discipline was less severe for offenses where the grievant possessed a large amount of drugs as well as tested positive for drug use. Therefore, the Arbitrator found that the employer removed the grievant without just cause and subjected him to disparate treatment.

**622) David Williams 27-16-(95-09-14)-2309-01-04
Removal**

Arbitrator: David Pincus

Charges: Negligence

Contract Sections: 24.01, 24.04, 24.05

Topic Headings: Credibility, Credibility of Witnesses, Just Cause, Mitigation
Negligence, Past Practice, Pre-Disciplinary Hearing, Removal Timeliness of Carrying
Out Discipline

Department: Department of Rehabilitation and Correction

Site: Marion Correctional Institution

Position: Licensed Practical Nurse

Result: The grievance was denied and the grievant's removal was upheld.

Reason: The Arbitrator found that the grievant acted with such negligence and in a way that contradicted his role of providing proper inmate care in accordance with professional nursing standards during an emergency call. The Arbitrator stated that even without considering past possible negligence on the part of the grievant, the grievant's removal was justified due to the serious nature of the incident.

623) Kevin Hall 27-11-(94-12-28)-0291-01-03

Suspension

Arbitrator: James M. Mancini

Charges: Excessive Force, Inmate Abuse

Contract Sections: 24.01, 24.02

Topic Headings: Agency Rules, Credibility, Credibility of Witnesses, Discipline
Evidence: Medical, Excessive Force, Inmate Abuse, Just Cause, Suspension, Timely
Discipline

Department: Department of Rehabilitation and Correction

Site: Lebanon correctional Institution

Position: Correction Officer

Result: The grievance was denied and as a result the grievant's ten-day suspension was upheld.

Reason: Based on the evidence, the Arbitrator found that the grievant had used excessive force against an inmate. The Arbitrator could not credit the grievant's denial that he struck the inmate because the grievant had considerable incentive for not telling the complete truth about the incident.

624) Patricia D. Jones 15-02-(95-11-07)-0075-01-09

Removal

Arbitrator: Nels E. Nelson

Charges: Falsifying, Altering or Removing Official Documents and Failure of Good Behavior

Contract Sections: 24.01, 24.02 and 24.05

Topic Headings: Removal, Just Cause, Progressive Discipline, Commensurate Discipline, Disparate Treatment and Criminal Charges.

Department: Department of Public Safety, Bureau of Motor Vehicles

Site: Columbus Licensing Center

Position: Public Information Assistant 1

Result: The grievance was denied.

Reason: Although the Arbitrator held that removing the grievant for signing her ex-husband's name on a temporary license application was inappropriate, the Arbitrator did hold that the grievant's actions in signing a friend's name on a "D Reversal" application without permission and taking an improper \$40 refund both justified the discipline imposed. Furthermore, the Arbitrator rejected the Union's disparate treatment argument based on an incident involving the department's Chief of Administrative Services, who allegedly signed an application as a vehicle owner when in fact, was only leasing the vehicle. Finally, the Arbitrator found that the Employer had a legitimate interest in deterring future incidents of this kind and, therefore, ruled that the grievant's conduct was serious enough not to warrant progressive discipline.

625) Janice Thomas 27-19-(96-04-17)-0805-01-03

Removal

Arbitrator: Mollie Bowers

Charges: Was the grievant removed for just cause? If not, what should the remedy be?

Contract Sections: 24.01, 24.02

Topic Headings: Commensurate Discipline, Disparate Treatment, Progressive Discipline, Removal, Just cause, Inmate Testimony, Department Regulations or Guidelines, Criminal Investigations, Abandonment of Work Area

Department: Ohio Department of Rehabilitation and Correction

Site: Marysville Reformatory for Women

Position: Correction Officer

Result: Grievance was sustained in part, discharge was reduced to a disciplinary suspension.

Reason: Based upon the record, there is insufficient evidence that the grievant had a personal relationship with the inmate. It reflects that the grievant had been responsible for speaking to the inmate briefly on two days, as well as calling the inmate's parents. This does not constitute evidence of a personal relationship, but concern over the inmate's well being in part, and poor judgment in accepting the phone number. Also, the

grievance's request for legal counsel was not unreasonable, considering the fact that the interview with the investigators could involve criminal charges.

626) Bruce Mendlowitz 05-00-(96-04-02)-0001-01-09

Removal

Arbitrator: James M. Mancini

Charges: Failure to perform job duties in an acceptable manner.

Contract Sections: 24.02, 24.05, 24.09

Topic Headings: Back pay, Commensurate Discipline, Departmental Regulations, Disparate Treatment, Employee Assistance Program, Just Cause, Long Service, Progressive Discipline, Removal, Timeliness, of Steps in Disciplinary Process

Department: Office of Budget and Management

Site: Columbus

Position: State Accountant Examiner

Result: The grievance was sustained in part, and the discharge was reduced to a disciplinary suspension.

Reason: The grievant had repeatedly committed errors in performing his job duties, but the extent of the grievant's overall misconduct was basically the same as that which he previously committed when he was subject to lesser disciplinary action. Moreover, management never told the grievant that the very next time he was guilty of failing to follow proper procedures and committing errors that he would be discharged.

627) Kenneth Keirns et al. 02-04-(95-06-05)-0470-01-09, 02-04-(96-02-29)-0007-01-07 and 02-04-(96-05-31)-0018-01-09

Issue

Arbitrator: Anna Du Val Smith

Issue: Whether it was proper for the Employer to flex holiday week work schedules by requiring employees to take an unpaid day in exchange for working the holiday.

Contract Sections: 13.02, 13.07, 26.05 and Article 5

Topic Headings: Arbitrability, Holiday Pay, Avoiding Payment of Overtime, Timeliness of Filing Grievance

Department: Administrative Services

Site: Ohio Data Network/Division of Computer Services

Position: Computer Operator

Result: Two grievances, 02-04-(96-02-29)-0007-01-09 and 02-04-(96-05-31)-0018-01-09, were sustained. The Employer was directed to pay overtime to the grievants whose

“regularly scheduled” days were changed to avoid overtime payment. The remaining grievance, 02-04-(95-06-05)-0470-01-09, was not arbitrable because it was untimely.

Reason: Requiring an employee to take off a regular scheduled work day when the employee worked a holiday was done to avoid overtime. The Employer’s “descheduling” scheme required employees to give up overtime wages. The posted schedules were interrupted in order to avoid overtime during the weeks in which the employees volunteered to work on a holiday. Finally, this scheme, in the absence of a mutual agreement, violated Section 13.07 since it was implemented unilaterally.

628) Inez Rice-Valentine 27-22-(96-01-10)-0302-01-03 Issue

Arbitrator: Nels Nelson

Issue: Arbitrability

Contract Sections: 25.03

Topic Headings: Arbitrability

Department: Rehabilitation and Correction

Site/Office: Pickaway Correctional Institution

Position: Secretary

Result: The Arbitrator concluded that the State and the Union agreed to combine grievance numbers 251 and 302.

Reason: The Chief Steward testified in a clear and convincing fashion that he proposed combining the two grievances and that the State agreed to do so. The testimony of the State’s Labor Relations Officer (LRO) was less credible than that of the Chief Steward, and at first the LRO did not even seem to recognize the grievances at issue.

629) Christina Boris 34-23-(96-03-20)-0056-01-09

Removal

Arbitrator: Jonathan Dworkin

Charges: Failure of Good Behavior, Discourteous and/or Rude Treatment of a Customer

Contract Sections: 24.01, 24.02

Topic Headings: Agency Rules, Credibility of Witness, Disciplinary Guidelines, Employee Assistance Program, Failure of Good Behavior, Grievant’s Testimony, Just Cause, Progressive Discipline, Psychological Stress, Removal

Department: Bureau of Workers Compensation

Site: Independence, Ohio

Position: Claims Specialist

Result: Grievance is denied; removal upheld.

Reason: Although the Arbitrator recognized that client complaints do not prove that an employee was guilty of any misconduct, the Employer’s claim that the grievant treated

clients discourteously was substantiated by an overwhelming amount of evidence, and the Arbitrator found that the Employer had just cause to issue the Removal Order.

630) James Fitch 02-00-(95-02-15)-0460-01-09

Issue

Arbitrator: Harry Graham

Issue: Report-in Location

Contract Sections: 27.02 (C), 17.09 (A)

Topic Headings: Permanent Relocation, Report-in Location, Seniority

Department: Administrative Services

Site: Columbus

Position: Delivery Worker

Result: The grievance was denied.

Reason: The Arbitrator held that the Employer did not violate the Agreement by changing the grievant's report-in location because this did not constitute a permanent relocation. The report-in location of the grievant changed but his work location did not. As a Delivery Worker, the grievant's work position is not fixed.

631) Kevin Cobb 27-11-(96-05-08)-0446-01-03

Removal

Arbitrator: James M. Mancini

Charges: Misuse of position, Violation of Work Rules

Contract Sections: 24.02

Topic Headings: Alcoholism, Correction Officer, Criminal Charges, Departmental Rules, Employee Assistance Program, Misuse of Position, Off-Duty Conduct, Progressive discipline, Removal

Department: Rehabilitation and Correction

Site: Lebanon Correctional Institution

Position: Correction Officer

Result: The grievance was denied, and as a result, the removal order was upheld.

Reason: The Employer demonstrated that the grievant's misconduct fell outside the range of acceptable behavior. His misconduct violated various departmental rules which allow for removal on the first offense. There were no mitigating factors present in the case.

632) Emma McKibben 27-24-(95-07-25)-0296-01-03

Issue

Arbitrator: Marvin Feldman

Issue: Resignation

Contract Sections: 25.01

Topic Headings: Employee Assistance Program, Harassment by Supervisor, Resignation

Department: Rehabilitation and Correction

Site: Southeastern Correctional Facilities

Position: Correction Officer

Result: The grievance was denied.

Reason: The Arbitrator did not find any evidence of coercion or duress placed upon the grievant by the Employer. The facts that there was stress in the grievant's personal life, that the grievant may have been improperly medicated, and that she was at a new facility are not reasons for the Employer to allow a rescission of the grievant's resignation.

633) Dale Shoemaker 25-12-(96-03-22)-0018-01-06

Suspension

Arbitrator: Anna Du Val Smith

Charges: Dishonesty, Drug Detection, Failure of Good Behavior

Contract Sections: 24.08

Topic Headings: Commercial Drivers License, Dishonesty, Drug Detection, Drug Testing, Failure of Good Behavior, Suspension

Department: Department of Natural Resources

Site: Hamilton County

Position: Parks Conservation Aide

Result: The grievance was granted in part and denied in part. The ten-day suspension was reduced to a two-day suspension. The grievant is to be made whole for eight days lost wages, seniority, and benefits. The Employer is also directed to expunge the drug charge from the grievant's record.

Reason: The Arbitrator found that the drug charge must be dismissed, as it is founded on a test that violated the agreement's requirement of "reasonable suspicion." The grievant, however, must be held accountable for his dishonesty and failure of good behavior.

634) Selina Miller 60-00-(95-10-27)-0112-01-09

Removal

Arbitrator: David M. Pincus

Charges: Was grievant's removal for just cause? If not, what shall the remedy be?

Contract Sections: 24.01, 24.02, 24.05

Topic Headings: Just Cause, Progressive Discipline, Burden of Proof, Removal, Due Process, Evidence: Admissibility

Department: Student Aid Commission

Site: State Grants and Scholarships Department

Position: Tax Examiner 3

Result: The grievance was sustained.

Reason: The Arbitrator found that the Employer violated work rule 4.4 by not investigating with an impartial predisposition. Instead the investigation focused on blaming the Grievant and ignoring Grievant's claim against her co-worker. Further, the Arbitrator found that the Employer did not meet the burden of proof to show that the defendant was at fault for the altercation.

635) Osiris Malik Aziz Ali

34-51-(96-04-26)-0085-01-07

Removal

Arbitrator: Nels Nelson

Charges: Was grievant's removal for failure of good behavior and neglect of duty justified? If not, what shall the remedy be?

Contract Sections: Articles 24.01, 24.02, 24.05

Topic Headings: Failure of Good Behavior, Just Cause, Neglect of Duty, Notice, Progressive Discipline, Removal, Suspension

Department: Bureau of Workers Compensation

Site: Richmond Heights Local Customer Service Office

Position: Claims Assistant

Result: The grievance was denied in part and sustained in part. The grievant was restored to employment and the discharge is to be converted to a four week suspension.

Reason: The Grievant was charged with being discourteous and neglectful towards his customers. The arbitrator held that although the evidence was sufficient to support the charges, the Employer failed to use progressive discipline.

636) Betty Williams 23-18-(96-06-18)-1349-01-04

Suspension

Arbitrator: Nels Nelson

Issue: Whether there was just cause under the progressive discipline provision to suspend the grievant for six days for alleged insubordination toward a supervisor and for alleged neglect of duty in violating the dress code policy.

Contract Sections: 24.01, 24.02

Topic Headings: Just Cause, Suspension, Disparate Treatment, Progressive Discipline, Neglect of Duty

Department: Department of Mental Health

Site: Northcoast Behavioral Healthcare System

Position: Therapeutic Program Worker

Result: Grievance denied.

Reason: The grievance for neglect of duty for violating the dress code was upheld because the State did not have a uniform method for enforcing the policy. However, the grievance for the six-day suspension for insubordination was denied because the Arbitrator thought it was an appropriate remedy under the progressive discipline provision.

637) Dennis Elliot 31-04-(96-09-14)-0050-01-06

Removal

Arbitrator: Anna DuVal Smith

Charges: Was the grievant terminated for just cause? If not, what shall the proper remedy be?

Contract Sections: 24.01, 24.03

Topic Headings: Just Cause, Removal

Department: Department of Transportation

Site: Ashtabula County Garage

Position: Highway Maintenance Worker 2

Result: Grievance denied in part and sustained in part.

Reason: The Arbitrator held that the grievant probably did expose his buttocks to co-workers and the public. The Arbitrator also found that this action warranted discipline. The Arbitrator decided, however, that removal was too severe a penalty. The Arbitrator stated that the grievant's act was disrespectful and exposed the State to liability, but was not intended to harass or insult his co-workers. The grievant's removal was reduced to a 10-day suspension.

638) Kent Cicerchi 34-22-(95-07-19)-0114-01-14

Removal

Arbitrator: David M. Pincus

Charges: Was the filing of the appeal timely to render the grievance arbitrable? Was the grievant removed for just cause?

Contract Sections: 24.01, 24.02, 25

Topic Headings: Just Cause, Disparate Treatment, Insubordination, Failure to Follow Orders, Failure of Good Behavior, Progressive discipline, Removal, Investigatory Interview, Articles 24.01, 24.02 and 25, ORC 124.34, Discourteous Treatment

Department: Bureau of Workers Compensation

Site: Laushe State Office Building, Cleveland, Ohio

Position: Attorney 2

Result: Grievance was timely filed and therefore arbitrable. The grievance for the removal was denied.

Reason: Due to the number of reasons cited by the State as to why the employee was removed, the Arbitrator determined that there was just cause. The grievant was caught on video searching through his supervisor's office after hours and without authorization. He accused an attorney and a hearing officer of having ex parte conversations, thereby jeopardizing their careers and reputations. Finally, the grievant disobeyed direct orders by not cooperating in the investigation on his misconduct; specifically, he refused to answer any questions, and he later failed to appear at an investigatory interview. These offenses were enough to remove the grievant for just cause.

639) Howard Chunnick 25-12-(94-10-03)-0008-01-06

Issue

Arbitrator: Harry Graham

Issue: Was the selected application demonstrably superior over the grievant?

Contract Sections: 17.05, 17.06

Topic Headings: Demonstrably Superior, Proficiency in Minimum Qualifications, Promotion

Department: Natural Resources

Site: Grand Lake St. Mary's

Position: Dredge Operator 1

Result: The grievance was denied, and as a result, the Employer's decision to promote an employee junior to the grievant was upheld.

Reason: The Arbitrator found that the record did not establish that the grievant possessed or was proficient in the minimum qualifications for the Dredge Operator 2 position. Therefore, it was not necessary for the Employer to show that the junior employee's qualifications were demonstrably superior to those of the grievant.

**640) Michael Coates 29-01-(96-04-26)-0035-01-09
Removal**

Arbitrator: Nels E. Nelson

Charges: Was the grievant removed for just cause?

Contract Sections: 24.01, 24.02, 24.03, 24.05

Topic Headings: Commensurate Discipline, Criminal Charges, Disparate Treatment, Drug Trafficking, Drug Possession on State Property, Just Cause, Progressive Discipline, Removal, Sign-in/Sign-Out Policy, Timely Discipline

Department: Rehabilitation Services Commission

Site: Crosswinds

Classification Storekeeper 2

Result: The Arbitrator denied the grievance, and upheld the State's removal order.

Reason: The Arbitrator found that the grievant possessed marijuana at the workplace. The Highway Patrol concluded that the grievant possessed marijuana at the workplace after receiving statements from the grievant's co-workers.

**641) Betty Williams 23-18-(96-12-30)-1402-01-04 and 23-18-(96-12-17)-1397-01-04
Removal**

Arbitrator: Anna DuVal Smith

Charges: Was the grievant terminated for just cause? If not, what shall the proper remedy be?

Contract Sections: 24.01, 24.02, 28.03

Topic Headings: Just Cause, Removal, Admissibility of Evidence, Absent Without Leave, Training Insufficient, Past Practice

Department: Department of Mental Health

Site: Northcoast Behavioral Healthcare Systems

Position: Therapeutic Program Worker

Result: Grievance was granted.

Reason: The Arbitrator held that the Employer's request for emergency leave policy was not clearly defined, nor consistently applied. As a result, grievant's out-of-pay status did not constitute just cause for removal, because the grievant was not able to accurately predict whether or not her request would be granted.

**642) Victor Block 27-25-(96-06-17)-1092-01-03
Removal**

Arbitrator: Jonathan Dworkin

Charges: Was the grievant removed for just cause where the Employer did to consider all relevant mitigating factors under Article 24?

Contract Sections: 24 .04, 24.09

Topic Headings: Sleeping on Duty, Insubordination, Removal, Mitigation, Due Process, Drug Testing, Alcohol and Substance Abuse, Last Chance Agreement

Department: Rehabilitation and Correction

Site: Southern Ohio Correctional Institution

Position: Correction Officer

Result: The arbitrator reduced the removal to a 90-day suspension with no back pay. The balance of the grievant's time off from the date of his removal is recorded as leave without pay. The grievant is to be reinstated with full, unbroken seniority. This award is conditioned on a two-year last chance agreement which includes a requirement that the grievant regularly attend AA meetings, and submit to sobriety tests within the two years as required by Management. A positive alcohol test over .04 blood alcohol level shall give the Employer the right to remove the grievant immediately, and the grievant shall not be found sleeping again on the job during the two-year period. If the grievant fails to sign the agreement, the original removal shall stand.

Reason: The Employer was at fault for not having even considered the fact that the grievant had entered into an EAP within five days of his removal. Article 24.09 does not mandate that the Employer delay the discipline, but the Employer has to at least consider it as a mitigating factor; it did not. The Arbitrator found that this is a contractually specific element of just cause, and since it was not considered, the grievant was removed without due process.

643) John Malone 27-25-(96-07-10)-1097-01-03

Removal

Arbitrator: Mollie H. Bowers

Charges: Was the termination of the grievant for just cause? If not, what shall the remedy be?

Contract Sections: 24.01

Topic Headings: Credibility of Witnesses, Just Cause, Removal

Department: Rehabilitation and Correction

Site: Southern Ohio Correctional Facility

Position: Correction Officer

Result: The grievance was granted

Reason: The Arbitrator held that just cause did not exist for the grievant's removal. The Arbitrator found that the grievant's version of the facts was more credible than that of the alleged victim. The victim's testimony contradicted his own statements, as well as the facts surrounding the incident.

644) Connie Wiley 31-08-(96-06-29)-0012-01-09
Removal

Arbitrator: Anna DuVal Smith

Charges: Was the grievant terminated for just cause? If not, what shall the proper remedy be?

Contract Sections: 24.01

Topic Headings: Job Abandonment, Just Cause, Pre-disciplinary Hearing, Removal, Sick Leave

Department: Department of Transportation

Site: District 8

Position: Engineering Clerk

Result: The grievance was granted.

Reason: The Arbitrator held that just cause did not exist for the grievant's removal. The Arbitrator found that although the grievant did not handle the situation perfectly, she did eventually provide documentation to support all of her absences. Also, the Employer ignored some clear signals that the grievant was not abandoning her job.

645) James Hess 27-04-(96-06-28)-0154-01-03
Removal

Arbitrator: Anna DuVal Smith

Charges: Was the grievant's removal for inmate abuse for just cause? If not, what shall the remedy be?

Contract Sections: 24.01

Topic Headings: Credibility of Witnesses, Inmate Abuse, Inmate Fraternalization, Inmate Testimony, Removal, Sexual Abuse

Department: Rehabilitation and Correction

Site: Ohio Reformatory for Women/Marysville

Position: Correction Officer

Result: The grievance was sustained, and all references to the grievant's unjust removal were expunged from his record. The grievant was restored to his former position with full back pay, benefits, and seniority.

Reason: The evidence did not clearly indicate the grievant's guilt. The Arbitrator found discrepancies in the testimony of one of the inmates, and the Arbitrator expressed

concern about the investigator's report, finding that the investigator had difficulty recalling facts during her testimony and that the investigator was too zealous to be impartial.

646) David Scott 27-25-(96-07-10)-1093-01-03

Removal

Arbitrator: Marvin Feldman

Charges: Violation of Departmental Regulations, Racial Slurs.

Contract Sections: 24.01, 24.02

Topic Headings: Correction Officer, Counseling, Departmental Regulations, Progressive Discipline, Racial Slurs, Removal

Department: Rehabilitation and Correction

Site: Southern Ohio Correctional Facility

Position: Correction Officer

Result: Grievance was denied, and as a result the removal order was upheld.

Reason: The Arbitrator did not find that there was any need for the Employer to use progressive discipline in this case. The Employer's zero tolerance policy for racially motivated incidents was entirely correct in this situation.

647) Joan Cain 30-08-(95-01-20)-0698-01-09

Issue

Arbitrator: David M. Pincus

Issue: Did the grievant state in her application for the position of Clerk 3, vacancy No. 457, that she possessed and was proficient in the position specific minimum qualifications contained in the position description? If so, what shall the remedy be?

Contract Sections: 17.05, 17.06

Topic Headings: Demonstrably Superior, Discrimination, Minimum Qualifications, Proficiency in Minimum Qualifications, Seniority

Department: Department of Taxation

Site: Assessment Division

Position: Clerk 2

Result: The grievance was denied.

Reason: The Arbitrator held that the grievant did not demonstrate that she met and was proficient in the position specific minimum qualifications. Mere exposure to these qualifications does not render the grievant proficient in them.

**648) Louis Blackwell 27-28-(96-11-18)-0109-01-03
Removal**

Arbitrator: Nels E. Nelson

Charges: Was the grievant terminated for just cause? If not, what shall the proper remedy be?

Contract Sections: 24.01

Topic Headings: Just Cause, Removal, Suspension

Department: Rehabilitation and Correction

Site: Oakwood Correctional Facility

Position: Psychiatric Attendant

Result: The grievance was denied.

Reason: The Arbitrator found that the grievant violated two of the Department's work rules. The Arbitrator found that the grievant was an employee of the Department at the time he violated the rules. Also, the Arbitrator held that the grievant was given a copy of the work rules so he should have known that he violated them.

**649) Carson Keiffer 24-15-(96-12-02)-0500-01-04
Removal**

Arbitrator: Anna Du Val Smith

Charges: Was the grievant removed for just cause? If not, what should the remedy be?

Contract Sections: 24.01, 24-02, 24-04 and 24.05

Topic Headings: Abuse of a Patient, Credibility of Witnesses, Criminal Charges, Excessive Force, Grievant's Testimony, Just Cause, Removal, Written Statements

Department: Department of Mental Retardation and Developmental Disabilities

Site: Youngstown Developmental Center

Position: Activity Therapy Specialist 1

Result: The Arbitrator denied the grievance, and upheld the State's removal order.

Reason: Based primarily on eyewitness testimony, the Arbitrator found that the grievant had abused a client. Pursuant to Article 24.01, "the arbitrator does not have authority to modify the termination of an employee committing such abuse."

**650) Kathy Cottrell 27-25-(96-10-16)-1159-01-03
Removal**

Arbitrator: Anna Du Val Smith

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

Contract Sections: 24.01, 24.02, 24.04

Topic Headings: Correction Officer, Investigatory Interview, Just Cause, Removal, Unauthorized Relationship with an Inmate.

Department: Rehabilitation and Correction

Site: Southern Ohio Correctional Institution

Position: Correction Officer

Result: The Arbitrator denied the grievance, thus upholding the grievant's removal.

Reason: The State removed the grievant for allegedly carrying on an unauthorized relationship with an inmate. In upholding the removal, the Arbitrator stated that a relationship such as the one revealed by the evidence constituted a perilous breach of security, and therefore, the removal was for just cause.

651) Richard Dingey 25-14-(97-01-17)-0002-01-07

Removal

Arbitrator: Anna Du Val Smith

Charges: Was the grievant terminated for just cause? If not, what shall the remedy be?

Contract Sections: 24.01, 24.02

Topic Headings: Just Cause, Removal, Supervisory Responsibility

Department: Ohio Department of Natural Resources

Site: Lansing Rescue Station

Position: Mine Inspector 2

Result: The grievance was sustained.

Reason: The alleged wrongful acts of the grievant did not constitute just cause for his removal. The grievant did not participate in many of the alleged acts but was merely a bystander. The grievant was told to perform many of the acts by his supervisors who were mainly responsible for the problems at the work site.

652) Dawn Hollie 35-18-(96-09-30)-0052-01-03

Removal

Arbitrator: Marvin J. Feldman

Charges: Was the grievant terminated for just cause? If not, what shall the remedy be?

Contract Sections: 24.01

Topic Headings: Just Cause, Removal, Credibility of Witnesses, Theft

Department: Department of Youth Services

Site: Circleville Youth Center

Position: Juvenile Correctional Officer

Result: The grievance was sustained.

Reason: The arbitrator held that there was not ample evidence to prove that the grievant used the card for personal purchases. He felt that the videotape was nondispositive due to an inability to ascertain any substantial facts from it. He also held that the testimony of Mr. Johnson was not reliable given the volatility of his responses.

Although he did feel that the charges seemed high, he held that insufficient evidence existed to support a removal. The arbitrator also took note of the fact that prosecutors did not pursue criminal charges to help support his decision for insufficient evidence.

653) Tom Kerns 31-12-(96-10-18)-0037-01-06

Removal

Arbitrator: Frank A. Keenan

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

Contract Sections: 24.01

Topic Headings: Drug Testing, Just Cause, Removal

Department: Department of Transportation

Site: Mayfield, District 12

Position: Highway Maintenance Worker 4

Result: The grievance was denied.

Reason: The alleged wrongful act of the grievant did constitute just cause for his removal. The grievant failed to take a random drug test as required by department policy as well as his last chance agreement. This failure to submit equated to a positive test.

654) Michael Majied 28-04-(96-08-28)-0099-01-09

Removal

Arbitrator: John Murphy

Charges: Insubordination, Failure to Carry Out a Work Assignment

Contract Sections: 24.01, 24.02

Topic Headings: Grievant's Testimony, Insubordination, Just Cause, Progressive Discipline, Removal

Department: Rehabilitation and Correction

Site: Cuyahoga County Adult Parole Authority

Position: Office Assistant 3

Result: The Arbitrator denied the grievance, and as a result, the discharge was upheld.

Reason: The Arbitrator found that the grievant had disobeyed a direct order on three occasions. There was no dispute that the grievant had the duty to complete copying PSIs for presentation to the court or board, and the grievant failed to do so. Although the Arbitrator was able to find evidence of insubordination, even without that evidence there was no dispute that the grievant had failed to complete his assigned duties. The Arbitrator also held that the incidents in the grievant's disciplinary record were relevant to the current charges, and therefore, the Employer had correctly implemented progressive discipline.

655) Brian Hicks 24-04-(96-11-21)-0751-01-04
Removal

Arbitrator: Nels E. Nelson

Charges: Was the grievant removed for just cause? If not, what should the remedy be?

Contract Sections: 24.01

Topic Headings: Abuse of a Patient, Credibility of Witnesses, Criminal Charges, Evidence: Medical, Grievant's Testimony, Injury, Just Cause, "No contest" Criminal Plea, Removal

Department: Mental Retardation and Developmental Disabilities

Site: Cambridge Developmental Center

Position: Therapeutic Program Worker

Result: The Arbitrator denied the grievance, and as a result he upheld the removal.

Reasons: The Arbitrator found that physical abuse did take place. A credible witness testified that she saw the grievant strike a patient in the head with a shoe. Her testimony was supported by the grievant's no contest plea to the criminal charges growing out of the incident.

656) Derrick Thrash 27-29-(96-12-19)-0253-01-03
Removal

Arbitrator: Anna DuVal Smith

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

Contract Sections: 2.02, 24.01, 24.02, 24.04

Topic Headings: Abusive Language Toward a Supervisor, Just Cause, Mitigation, Removal, Threats, Verbal Abuse of a Co-Worker

Department: Rehabilitation and Correction

Site: Montgomery Education and Pre-Release Center

Position: Correction Officer

Result: The grievance was denied.

Reasons: The Arbitrator held that there was just cause to remove the grievant. The grievant lost his temper, and he began to kick and hit furniture, shout obscenities and make threats to his co-workers and supervisor. The Arbitrator found the Employer's version of events more credible than the grievant's. The Arbitrator found that while the grievant was understandably upset about some personal problems, they were not a factor which mitigated his extreme behavior. The Arbitrator also found that there was not evidence of discrimination by the Employer against the grievant.

657) Anita Kennedy 33-00-(97-05-06)-0771-01-05

Removal

Arbitrator: David M. Pincus

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

Contract Sections: 24.01, 24.02

Topic Headings: Disparate Treatment, Estoppel, fighting, Investigation: Fairness of, Just Cause, Removal

Department: Ohio Veterans Home

Location: Dietary Department

Position: Food Service Worker

Result: The grievance was sustained.

Reason: The Arbitrator found that the Employer did not have just cause to remove the grievant. First, the Employer's investigation was incomplete and unfair. It ignored evidence which tended to suggest that the grievant was not at fault and did not cause the victim's injuries. Second, the Employer failed to establish at the hearing that the grievant was the aggressor in the altercation. Third, the Employer treated the grievant and her co-worker unequally. The co-worker was reinstated to her position prior to the completion of a full investigation.

658) Jeremy T. Fisher 24-07-(97-05-20)-0668-01-04

Removal

Arbitrator: Nels E. Nelson

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

Contract Section: 24.01

Topic Headings: Abuse of Patient, Just Cause, Removal

Department: Mental Retardation and Developmental Disabilities

Site/Office: Gallipolis Developmental Center

Position: Therapeutic Program Worker

Result: The Arbitrator denied the grievance.

Reason: The alleged wrongful act of the grievant - physically, psychological and verbally abusing a client - did constitute just cause for his removal. The grievant abused a client.

659) Tony Mustard 27-05-(97-01-13)-0432-01-03

Removal

Arbitrator: Nels. E. Nelson

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

Contract Sections: 24.01

Topic Headings: Agency Rules, Correction Officer, Credibility of Witnesses, Evidence: Medical, Grievant's Testimony, Inmate Testimony, Just Cause, Prior Discipline, Removal

Department: Rehabilitation and Correction

Site: Orient Correctional Institution

Position: Correction Officer

Result: The Arbitrator denied the grievance, and as a result the grievant's removal was upheld.

Reason: The Arbitrator concluded that the grievant over-reacted to the situation, possibly based on what he assumed had happened to the CO who placed the call for assistance, and he used excessive force. The Union correctly pointed out that an employee is authorized to use more than slight force when necessary. The fact that the grievant was responding to a fellow officer's call for assistance, however, does not mean that the grievant was authorized to use the level of force he exercised in this situation. Furthermore, the Arbitrator did not believe that the inmate was behaving as violently as the grievant described..

660) Virginia Montgomery 24-08-(970409)-0611-01-04 (Removal)

Arbitrator: David M. Pincus

Charge: Was the grievant terminated for just cause? If not, what shall the proper remedy be?

Contract Sections: 24.01, 24.02

Topic Headings: Credibility of Witnesses, Just Cause, Removal, Threats

Department: Mental Retardation and Developmental Disabilities

Site: Montgomery Developmental Center

Position: Therapeutic Program Worker

Result: The Arbitrator sustained the grievance.

Reason: The Arbitrator found that there was not just cause to remove the grievant. First, the co-workers who testified against the grievant were not credible. The first co-worker

had a strained personal relationship with the grievant. This provided her motivation for making these allegations against the grievant. The co-workers both waited quite some time after the alleged incidents before reporting them. The Arbitrator felt that if threats of this serious nature were made, they would have reported them sooner. The Arbitrator was not compelled by the Employer's argument that the grievant admitted the allegations. The grievant only admitted that she said her supervisor "needed to learn a lesson." This statement by itself does not constitute a threat.

**661) Patrick Gant 20-00-(97-06-27)-0086-01-06
Removal**

Arbitrator: Harry Graham

Charges: Was the grievant's removal for just cause? If not, what shall the remedy be?

Contract Sections: 2.01, 24.01

Topic Headings: Just Cause, Removal, Disparate Treatment

Department: State Library of Ohio

Site: Columbus

Position: Delivery Worker

Result: The Arbitrator denied the grievance.

Reason: The alleged wrongful act of the grievant did constitute just cause for his removal. The grievant lost his driver's license. Therefore, he could not perform an essential element of his position.

**662) Donna Randolph 35-18-(96-12-20)-0065-01-05
Removal**

Arbitrator: Nels E. Nelson

Charge: Was the grievant's removal for just cause? If not, what shall the remedy be?

Contract Sections: 24.01

Topic Headings: Agency Rules, Correction Employee, Credibility of Witnesses, Evidence: Medical, Grievant's Testimony, Horseplay, Inmate Testimony, Just Cause, Prior Discipline, Removal, Unauthorized Relationship with an Inmate/Youth

Department: Department of Youth Services

Site: Circleville Youth Center

Position: Food Service Worker

Result: The Arbitrator granted the grievance, and as a result, the grievant was reinstated to her position at Circleville Youth Center.

Reason: In this case the grievant had a strong incentive to deny the charges against her. The conduct with which she is charged is a violation of CYC rules and clearly a basis for removal. Furthermore, if the grievant engaged consensual sexual relations with a youth, she would have committed a third degree felony. The testimony of youth, however, was

even more suspect. First, his character did not support his credibility because he had been convicted of aggravated murder. Second, he had a strong motive to deny the grievant's version of the events for if he acknowledged forcing the grievant to have sex with him, he would have been arrested and charged with a serious crime himself. Furthermore, the Arbitrator could not reject the expert medical testimony of the grievant's psychiatrist where there was no contrary expert testimony.

**663) Byron J. Buckley 31-13-(97-01-15)-0003-01-06
Removal**

Arbitrator: Nels E. Nelson

Charges: Was the grievant terminated for just cause? If not, what shall the proper remedy be?

Contract Sections: 24.08

Topic Headings: Absenteeism, Alcohol and Substance Abuse, Employee Assistance Program, Incarceration, Just Cause, Leave Requests, Mitigation, Removal

Department: Department of Transportation

Site: Office of Traffic Engineering, Sign and Signal Section

Position: Sign Worker

Result: The Arbitrator denied the grievance.

Reason: The Arbitrator found that the grievant was responsible for his incarceration which caused his absence. Additionally, the Arbitrator rejected the claims of the Union that certain factors mitigated the grievant's behavior.

**664) Regina Harris 27-03-(97-02-18)-0690-01-03
Removal**

Arbitrator: David M. Pincus

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

Contract Sections: 24.01, 24.02

Topic Headings: Correction Officer, Progressive Discipline, Removal, Unauthorized Relationship with an Inmate

Department: Rehabilitation and Correction

Site: Ross Correctional Institution

Position: Correction Officer

Result: The Arbitrator denied the grievance, and as a result, upheld the removal.

Reason: The grievant was accused by an inmate of giving greeting cards to him and another inmate. The inmate also accused the grievant of passing items between another

inmate and another CO. The record supported the conclusion that the grievant acted as an intermediary on several occasions. The grievant played an ongoing role in aiding and abetting a clearly unauthorized relationship. The Arbitrator did not view her as a bystander who was somehow oblivious to the relationship.

665) Jon Davidson 27-20-(97-07-09)-3007-01-03
Removal

Arbitrator Phyllis E. Florman

Charges: Was grievant's removal for just cause? If not, what shall the remedy be?

Contract Sections: 24.01, 24.02, 24.05

Topic Headings: Just Cause, Removal, Use of Force

Department: Rehabilitation and Correction

Site: Mansfield Correctional Institution

Position: Correction Officer

Result: The Grievance was denied.

Reason: It was alleged that while shaking down an inmate, the grievant "grabbed and squeezed the, inmate's scrotum/testicles with such force that the inmate had to have emergency surgery. "The alleged wrongful act of the grievant did constitute just cause for his removal. The Arbitrator held that the grievant used excessive force and cause serious injury to an inmate's scrotum during a shakedown.

666) O.G. Steele 27-23-(97-03-04)-0486-01-04
Issue

Arbitrator: Phyllis E. Florman

Issue: Was the grievant's resignation voluntary? If not, what shall the proper remedy be?

Contract Sections: 24.03, 24.04, 25.01

Topic Headings: Arbitrability, Constructive Discharge, Right to Union Representation, Resignation, Voluntary Quit

Department: Rehabilitation and Correction

Site: Ross Correctional Institution

Position: Activity Therapy Specialist

Result: The grievance was denied.

Reason: The Arbitrator stated that in order to find that a resignation was not voluntary there must be evidence of coercion, duress, incapacity, or unawareness. The Arbitrator saw the proper inquiry to be whether the Employer had good cause to believe the

information it presented to the grievant. Here, the Union was unable to show that the allegations against the grievant were unfounded, and the Arbitrator held that the Employer was under no obligation to honor the grievant's request not to rescind his resignation.

667) Lois Holdcroft 15-03-(97-08-15)-0092-01-07
Removal

Arbitrator: Robert Brookins, J.D., and Ph.D.

Charges: Was the grievant terminated for just cause? If not, what shall the proper remedy be?

Contract Sections: 24.01, 24.02, 24.05

Topic Headings: Credibility of Witness, Hearsay, Insubordination, Procedural Violation Agency Rules, Disparate Treatment, Failure of Good Behavior, Just Cause

Department: Department of Public Safety

Site: Jackson

Position: Driver's License Examiner

Result: The decision to discipline was sustained, but the dismissal was reduced to a 30 calendar-day suspension.

Reason: The Employer satisfied the requirement to show just cause. The grievant's conduct constituted a failure of good behavior. Although the grievant did not directly request or directly accept the gratuitous offers, she did eat on approximately 50 occasions food provided by customers. Additionally, she accepted a Christmas dinner and Thanksgiving turkey provided by customers. Finally, the grievant, contrary to the facility supervisor's instructions, removed videotape from a VCR that had been installed along with a miniature camera by Management.

However, the decision to dismiss her constituted disparate treatment. The Employer failed to similarly discipline the employees that had authority over the grievant who had similar or more egregious conduct.

668) Raphael Turner 27-04-(97-06-25)-0195-01-03
Removal

Arbitrator: Frank Keenan

Charges: Was the grievant terminated for just cause? If not, what shall the proper remedy be?

Contract Sections: 24.01, 24.02

Topic Headings: Application for Promotion, Burden of Proof, Carelessness, Commensurate Discipline, Commercial Driver's License, Due Process, Falsification of Job Application, Intent, Just Cause, Minimum Qualification

Department: Rehabilitation and Correction

Site: Orient Correctional Institution

Position: Storekeeper 2

Result: The Arbitrator sustained the grievance in part and denied it in part.

Reason: The grievant's discharge was not for just cause. He was to be reinstated to his former position of Storekeeper 2 without loss of seniority, but without back pay. The grievant's disciplinary record shall reflect a 10-day suspension for carelessness in connection with the applications he submitted for the two positions.

669) Hugh Livesay 15-13-(97-08-15)-0091-01-07

Removal

Arbitrator: Phyllis E. Florman

Charges: Was the grievant terminated for just cause? If not, what shall the proper remedy be?

Contract Sections: 24.01, 24.02

Topic Headings: Just Cause, Removal, Disparate Treatment

Department: Department of Public Safety

Site: Jackson CDL/Salvage Facility

Position: Motor Vehicle Inspector

Result: The grievance was denied in part and sustained in part. The discharge of the grievant is reduced to a suspension for Neglect of Duty. He is to be reinstated to his position of MVI. No back pay was awarded.

Reason: The alleged wrongful act of the grievant did not constitute just cause for his removal. The grievant took bribes in the form of free food from customers, and in return, he gave them preferential treatment. However, removal was found to be disparate treatment.

670) John Kestner 23-18-(95-08-24)-1275-01-04

Suspension

Arbitrator: Robert Brookins

Charges: Was the grievant suspended for just cause? If not, what shall the proper remedy be?

Contract Sections: 24.01, 24.02

Topic Headings: Just Cause, Suspension, Credibility of Witnesses, Pre-Disciplinary Hearing

Department: Department of Mental Health

Site: Northcoast Behavioral Systems

Position: Therapeutic Program Worker

Result: The grievance was sustained in part and denied in part.

Reason: Management suspended the grievant for six days for three infractions: "Failure of good behavior," "insubordination," and "smoking in a nonsmoking area." The alleged wrongful act of the grievant did constitute just cause for his suspension. However, the Arbitrator reduced the length of the suspension because the Employer failed to meet its burden of proving two of the three charges. The grievant's statement ("you've been on my ass for a year and it is time to stop") to his supervisor constituted failure of good behavior.

**671) Charles Douglas 33-00-(97-10-22)-0815-01-04
Removal**

Arbitrator: Frank A. Keenan

Charges: Was the grievant terminated for just cause? If not, what shall the proper remedy be?

Contract Sections: 6.01, 24.01, 25.01

Topic Headings: Just Cause, Removal, Probationary Employee

Department: Ohio Veterans Home

Site: Ohio Veterans Home

Position: Hospital Aide

Result: The grievance was sustained in part and denied in part.

Reason: The alleged wrongful act of the grievant did not constitute just cause for his removal. The Arbitrator held that the grievant was improperly removed because he was not a probationary employee, and he should have been subject to the just cause standard.

**672) David Gosiewski 34-22-(97-04-15)-0088-01-09
Removal**

Arbitrator: Nels E. Nelson

Charges: Knowing and willful refusal to answer administrative questions in the face of multiple direct orders.

Contract Sections: 24.01, 24.02, 24.05, 25.02

Topic Headings: Arbitrability, Back Pay, Criminal Charges, Disparate Treatment, Due Process, Discipline Not Evenhanded, Investigatory Interview, Just Cause, Misuse of Position.

Department: Bureau of Workers Compensation

Site: Cleveland

Position: Service Claims Representative 4 (Customer Service Specialist)

Result: The grievant was reinstated, and granted back pay during the period of removal.

Reason: The grievant had been removed due to his refusal to answer questions during an administrative interview at which he had no attorney. At that time, however, he was under criminal investigation and understandably feared self-incrimination. The State's removal for the grievant's failure to answer questions at the interview lacked just cause. He had rightfully declined.

673) Karla Bobo 27-26-(97-06-04)-0784-01-03

Removal

Arbitrator: Anna DuVal Smith

Charges: Was the grievant terminated for just cause? If not, what shall the proper remedy be?

Contract Sections: 24.09

Topic Headings: Employee Assistance Program, Mitigation

Department: Rehabilitation and Correction

Site: Warren Correctional Institution

Position: Correction Officer

Result: The Arbitrator denied the grievance.

Reason: The grievant failed to follow call-off procedures. Additionally, the grievant received ten disciplines, including five reprimands and five suspensions in a thirteen-month period. The Arbitrator found the grievant's claims that her failure to call off was not her fault and that the State failed to appropriately consider the participation in an Employee Assistance Program unpersuasive. The grievant failed to present evidence that the utility company wrongfully cut off her power, which caused her alarm to fail and her rule violation. In response to the EAP claim, the Arbitrator concluded that the State need only consider participation in the EAP program as a mitigating factor, there was no requirement to abrogate disciplinary action. With this in mind the Arbitrator concluded that the grievant's failure to show improvement made the State's decision to dismiss her reasonable.

674) James Marshall 24-14-(97-10-06)-1783-01-04

Removal

Arbitrator: Nels E. Nelson

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

Contract Sections: 24.01, 24.02, 24.05

Topic Headings: Ambiguity of Work Rules, Back Pay, Discipline, Failure to Follow Proper Procedures, Just Cause, Modification of Removal for Abuse, Neglect of Client or Resident, Patient Abuse

Department: Mental Retardation and Developmental Disabilities

Site: Warrensville Developmental Center

Position: Vocational Instructor 1

Result: The grievance was granted by the Arbitrator.

Reason: The grievant had been removed for neglect of his duty to ascertain the whereabouts of an absent client. Although there was a written policy which stated his duties, the Arbitrator found that the grievant was used to a procedure contrary to the written policy. The Arbitrator also found that removal was too severe for this grievant, who was a long-term employee with a good record. The Arbitrator found that the grievant had neglected his duty, however, so the grievant did not receive back pay.

675) Heath Fox 42-00-(97-06-02)-0008-0-09

Removal

Arbitrator: John J. Murphy

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

Contract Sections: 24.01, 24.02, 24.04

Topic Headings: Right to Union Representation, Falsification of Employment History, Notice of Charges, Removal Notice

Department: State Medical Board

Site: Columbus

Position: Reproduction Equipment Operator

Result: The grievance was denied

Reason: The Arbitrator held that the grievant had falsified his work record related to his employment with the Ohio National Guard. The Arbitrator went on to determine that the nature of the grievant's work necessitated honesty. Additionally, the Arbitrator concluded that the Employer would not have employed the grievant if it had been aware of his misrepresentations. The Arbitrator rejected the argument that the Employer failed to exercise its duty to ferret out false applications, and that it was using its discovery to free itself of the grievant. 675

676) Statewide DR&C Grievance

Issue

Arbitrator: Frank A. Keenan

Issue: Arbitrability

Contract Sections: 25.02, 25.05

Topic Headings: Arbitrability, Time Limits

Department: Rehabilitation and Correction

Site: Various

Position: Various

Result: The Arbitrator found that the grievances were arbitrable.

Reason: Although the Employer had been lax in enforcing time limits for grievances advanced to Step 4, the grievances were arbitrable. Furthermore, an understanding existed between the parties that strict compliance of time limits was not necessary. The Union, however, is now on notice that the Employer will not continue this practice, and all future grievances that are not advanced in a timely manner from Step 3 to Step 4 will be deemed unarbitrable. 676

677) Ronald Jackson 27-11-(96-06-03)-0476-01-03

Removal

Arbitrator: Jonathan Dworkin

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

Contract Sections: 24.01, 24.02, 24.05, 24.09

Topic Headings: Burden of Proof, Disparate Treatment, Due Process, Employee Assistance Program, Failure to Follow Proper Procedure, Forty-Five Day Time Limit, Just Cause, Off-Duty Conduct, Remorse

Department: Rehabilitation and Correction

Site: Lebanon Correctional Institution

Position: Correction Officer

Result: The grievance was sustained in part and denied in part.

Reason: The grievant had been removed due to his suspected use of crack cocaine. The state asserted that his drug use could affect his work as a correction officer. However, he had a solid ten-year employment history with only unrelated infractions.

678) Russell Castle 27-30-(97-07-09)-0517-01-03

Removal

Arbitrator: Robert Brookins, J.D., Ph.D.

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

Contract Sections: 24.01, 24.02

Topic Headings: Credibility of Witnesses, Insubordination, Just Cause

Department: Rehabilitation and Correction

Site: North Central Correctional Institution

Position: Correction Officer

Result: The grievance was granted in part and denied in part.

Reason: The grievant is charged with sexual harassment. The grievant was accused by a co-worker of making unwanted sexual comments, making unwanted sexual advances, and brushing the co-worker's breasts. The Arbitrator held that because the Employer failed to present credible testimony to support its case, the Employer did not meet the clear and convincing evidence standard required in sexual harassment cases. Arbitrator imposes the following disciplinary measure: (1) The termination was reduced to the *maximum suspension* (without pay) that NCCI may impose pursuant to its table of penalties and the contracts; (2) except for the back pay lost during this suspension, the Grievant was to receive all back pay to which he was entitled; (3) The Grievant's seniority was to remain intact; (4) If the Grievant engaged in any misconduct prohibited by the contract or NCCI's work rules within one calendar year from the date that he returned to work, NCCI would be relieved of the arbitrator's reinstatement order and may summarily terminate the Grievant.

679) Sherrill S. Craig 34-08-(97-03-17)-0058-01-09

Removal

Arbitrator: Marvin J. Feldman

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

Contract Sections: 24.04

Topic Headings: Investigatory Interview, Just Cause, Removal, Union Representation

Department: Bureau of Workers' Compensation

Site: Dayton Customer Service Office

Position: Workers' Compensation Claims Service Specialist

Result: The grievance was sustained.

Reason: The grievant allegedly failed to report to work from disability leave. The grievant had secured a return to work date in writing from her physician. The Employer claimed that the grievant had changed the date on the written statement in order to stay off work for additional time. The Employer violated 24.04 also when management did not conduct a full investigation at the pre-disciplinary hearing. The contract clearly states that there shall be an "investigatory interview". The hearing officer clearly accepted the

Employer's evidence and failed to interview the grievant. The grievant was put at a disadvantage by the hearing officer who failed to provide a valid steward at the hearing and by failing to examine the grievant's remarks raised in her defense. Regarding the merits of the grievance. The Arbitrator held that the Employer failed to meet its burden of proof. The evidence regarding the falsification of the doctor's excuse was equipoise. The grievant was ordered back to work with full restoration of back pay and benefits.

680) Joe Yurth 14-00-(96-04-19)-0028-01-09

Issue

Arbitrator: Harry Graham

Issue: Was the grievant improperly turned down for a promotion? If so, what shall the remedy be?

Contract Sections: 17.02, 17.05

Topic Headings: Minimum Qualifications, Promotion, Seniority

Department: Department of Health

Site: Columbus

Position: Public Inquiries Assistant 1

Result: The grievance was granted by the Arbitrator.

Reason: The grievant met the minimum qualifications for the vacant position, therefore the Employer was required to award the vacancy to the applicant with the greatest seniority. Furthermore, it represented a lateral transfer for the applicant to whom the State awarded the position, while the move would be a promotion for the grievant.

681) Barbara Washington 24-06-(941205)-0532-01-04 Removal

Arbitrator: Robert Brookins

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

Contract Sections: 24.01, 24.02

Topic Headings: Progressive Discipline, Disparate Treatment, Just Cause, Neglect of Duty, Mitigation

Department: Department of Mental Retardation and Developmental Disabilities

Site: Columbus Development Center

Position: Therapeutic Program Worker

Result: Grievance denied.

Reason: The arbitrator concluded that based on the evidence presented by the Employer a reasonable inference could be made that the grievant was asleep on the job, and had, therefore, violated a work rule. Accordingly, based on the grievant's disciplinary

history, the grievant's removal was for just cause. The grievant had been disciplined three times previously, and two of those disciplines were suspensions.

The arbitrator rejected the Union's argument that the grievant had been subjected to disparate treatment. He noted that the grievant's headache was a reasonable mitigating factor similar to the circumstances of another case cited by the Union that did not result in removal. However, the arbitrator distinguished this case on the basis that this grievant had been disciplined several times.

682) Richard Parks 27-26-(97-01-17)-0762-01-03

Suspension, 10-day

Arbitrator: Harry Graham

Charges: Was the grievant suspended for just cause? If not, what shall the proper remedy be?

Contract Section: 24.04

Topic Headings: Just Cause, Suspension

Department: Department of Rehabilitation and Correction

Site: Lebanon Correction Institution

Position: Correction Officer

Result: Grievance denied.

Reason: The grievant and his warden had a confrontation. The grievant was upset that an inmate had obtained his social security number. When informed by the warden that there was nothing he could do to rectify the situation, the grievant raised his voice, used profanity and knocked papers off the warden's desk. This is a violation of Rule 12 which prohibits making obscene statements. The concerns raised by the grievant with the Deputy Warden were bona-fide; however, it did not excuse his unprofessional and insubordinate behavior towards the Deputy Warden on that date. The behavior was well beyond anything that should be accepted or tolerated by this or any other employer. At the time of these incidents, the grievant had active discipline in his file. Even discounting the failure of the grievant to provide evidence to support his leave requests, his behavior on said date was of such significance as to support the action of the Employer

683) John Kestner 23-18-(96-11-27)-1358-01-04

Suspension, 6-day

Arbitrator: Harry Graham

Charges: Was the grievant suspended for just cause? If not, what shall the remedy be?

Contract Section: 24.01

Topic Headings: Just Cause, Discipline, Suspension

Department: Department of Mental Health

Site: Northcoast Behavioral Healthcare Systems Facility

Position: Therapeutic Program Worker

Result: The grievance was sustained.

Reason: The was allegedly involved in an incident with his supervisor. He allegedly became abusive towards her. The arbitrator held that the employer failed to meet its burden of proof. The union produced two witnesses that could corroborate the grievant's testimony. The employer could only produce one witness to support its allegations. All record of this discipline was expunged from the personnel file of the Grievant. He was paid straight time pay for all hours lost as a result of this incident.

684) Workforce Development

Issue

Arbitrator: David M. Pincus

Issue: Did the State violate Article 37.02(C) when it reduced the employee's pay tables \$.05/hour to achieve the employee contribution to the Workforce Development Fund?

Contract Section: 37.02(C)

Topic Headings: Workforce Development Fund

Department: Statewide

Site: N/A

Position: N/A

Result: The State did not violate Article 37.02(C)

Reason: The Arbitrator held that the Employer interpreted the contribution in question in the proper manner. Starting with the pay period which includes July 1, 1998, the employee's contribution shall be achieved by reducing the pay tables by \$.05/hour. This method of fund contribution shall be continued in accordance with the terms negotiated by the parties.

685) Frank Davis 31-04-(97-10-10)-0020-01-07

Removal

Arbitrator: Anna DuVal Smith

Charges: Was the grievant removed for just cause for violating an EAP agreement? If not, what shall the remedy be?

Contract Section: 24.01

Topic Headings: Employee Assistance Program, Just Cause, Removal

Department: Department of Transportation

Site: Boston Heights Garage

Classification: Project Inspector 1

Result: Grievance was denied.

Reason: The alleged wrongful act of the grievant did constitute just cause for his removal. The arbitrator held that the grievant violated his Employee Assistance Program (EAP) when he did not attend his pre-disciplinary hearing to sign a last chance agreement. This was a condition of his EAP. Therefore, the grievant was absent without notification from that date forward

686) Thomas Davis 27-11-(97-02-06)-0649-01-09

Issue

Arbitrator: Robert Brookins

Issue: Resignation

Contract Sections: 2.02, 24.02, 24.03, 25.03, 44.02

Topic Headings: Arbitrability, Correction Officer, Falsification of Job Application, Resignation

Department: Department of Rehabilitation and Correction

Site: Lebanon Correctional Institution

Position: Correction Officer

Result: The arbitrator found the grievance to be arbitrable, but denied the grievance.

Reason: The grievant allegedly falsely claimed to have earned an Associate's Degree. And was charged him with falsification of his application. The grievant resigned of his own free will to avoid the prospect of severe discipline and other unpleasant prospects. The Employer had not coerced, intimidated, or discriminated against him by advising him of what was likely to occur if the grievant did not tender his resignation.

687) Carlton Castlin 34-26-(98-02-05)-0037-01-09

Removal

Arbitrator: Robert Brookins

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

Contract Sections: 24 .04, 24.02, 44.03

Topic Headings: Removal, Just Cause, Progressive Discipline, Insubordination

Department: Bureau of Workers' Compensation

Site: Operations Division

Position: Clerk 1

Result: Grievance was denied.

Reason: The grievant was removed for insubordination, failure of good behavior, and neglect of duty. The grievant failed to file the required number of claims per day. The grievant made several "loud disruptive remarks" towards his supervisor, and failed to follow a direct order. The arbitrator found that there was just cause to remove the grievant. The grievant's conduct sustained the charges of insubordination and neglect of duty.

688) Regina Carter 27-01-(97-08-20)-0094-01-09

Removal

Arbitrator: John Murphy

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

Contract Sections: 24.02, 24.05

Topic Headings: Correction Employee, Credibility, Drug Possession on State Property, Investigation (Criminal), Investigation (Initial), Just Cause, Removal, Work Rules

Department: Rehabilitation and Correction

Site: Central Office

Position: Data Entry Operator 2

Result: The grievance was denied.

Reason: The arbitrator found considerable evidence that the grievant possessed drugs on state property. The grievant failed to raise an exculpatory defense until an administrative interview took place, and the arbitrator did not believe the grievant's lawyer-like claim that, "I was not asked, and I did not offer the information."

689) Thomas Dyke 23-08-(97-11-25)-1579-01-06

Removal

Arbitrator: Nels Nelson

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

Contract Sections: 24.01, 24.02, 24.05

Topic Headings: Burden of Proof, Commensurate Discipline, Disparate Treatment, Drug Possession on State Property, Grand Jury Determination, Removal

Department: Mental Health

Site: Dayton Twin Valley Psychiatric System

Position: Carpenter 1

Result: The grievance was granted.

Reason: The Arbitrator found that the Employer had not met its burden of proof in sustaining the charge of drug possession on State property. The vehicle search did reveal

some marijuana seeds and bits of leafy material under the seat of the grievant's car, but that did not indicate that the grievant knowingly possessed marijuana on State property.

690) Jamie Stewart 31-09-(97-10-17)-0014-01-06
Scott Conley 31-09-(97-10-06)-0012-01-06
David Flannery 31-09-(98-04-08)-0005-01-17
Issue

Arbitrator: Harry Graham

Issue: Witness Duty Pay

Contract Section: 30.05

Topic Headings: Witness Duty Pay, Party to an Action

Department: Department of Transportation

Site: Jamie Stewart – Ross County

Scott Conley – Jackson County

David Flannery – Ross County

Position: Jamie Stewart – Highway Maintenance Worker 2;

Scott Conley – Highway Maintenance Worker 2;

David Flannery -- Surveyor

Result: The Arbitrator held that the grievants were to be granted witness duty leave pay under Article 30.05 of the Agreement. The hypothetical situation presented for resolution required granting of witness duty leave under Article 30.05.

Reason: First, according to the language of 30.05, the Employer doesn't have the discretion to grant or not to grant leave. Secondly, the grievants were neither plaintiffs nor defendants. By legal definition, they were not "parties" to the suit. They were witnesses. The Arbitrator also ruled on the hypothetical situation. If, upon receipt of a complaint or charge to a State administrative agency, the agency determines that probable cause exists, it then assumes the role of "party" to the action. The initial complainant no longer has that status, and must be granted witness duty leave under Article 30.05 of the agreement.

691) Charlene Franklin 23-18-(97-10-14)-1497-01-04
Removal

Arbitrator: Robert Brookins

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

Contract Sections: 9, 24.01

Topic Headings: Agency Rules, Burden of Proof, Criminal Convictions or Acquittals, Drug Possession on State Property, Employee Assistance Program, Long Service, Removal

Department: Mental Health

Site: Northcoast Behavioral Healthcare System

Position: Therapeutic Program Worker

Result: The Arbitrator sustained the grievance in part and denied it in part. The removal order was conditionally overturned, and the grievant was ordered to serve a one-month suspension.

Reason: The arbitrator took into account the grievant's eighteen years of service, and the fact that the grievant may not have knowingly been in possession of drugs on state property when a random drug search revealed several marijuana "roaches" in the grievant's automobile.

692) Charles Woodson 31-06-(97-09-17)-0038-01-06

Removal

Arbitrator: David M. Pincus

Charges: Was the grievant removed for just cause? If not, what should the remedy be?

Contract Sections: 24.01, 29.02, 29.03, 29.04

Topic Headings: Absenteeism, Apparent Authority, Duration of Sick Leave, Emergency Personal Leave, Falsification and Abuse of Sick Leave, Just Cause, Making Threats, Notice of Disciplinary Rules and/or the Consequences of Violations, Removal, Suspension, Tardiness, Theft, Timeliness of Notice to Supervisor, Unauthorized Use/Misuse of State Equipment

Department: Department of Transportation

Site: Worthington, Grove City

Position: Highway Worker 4

Result: The grievance was denied.

Reason: The grievant falsified and abused sick leave. The grievant's conversion of steel was theft. The agreement does not require the elements of theft found in the Ohio criminal statutes. The lead worker did not have apparent authority to give permission to take the steel. Directive HO-0208 prohibits employees from taking materials for personal use. The grievant's statement about hurting his supervisor was no less a threat because it was uttered to a third party. The grievant was tardy. He did not have the right to determine unilaterally that an emergency existed. He should have notified his supervisor at the beginning of the shift.

693) Scott Smith 35-06-(98-06-30)-0016-01-03 and 35-06-(98-01-12)-0001-01-04

David McLaughling 35-22-(98-06-08)-0030-01-06

Issue

Arbitrator: David M. Pincus

Issue: Whether the employer can choose applicants from civil service certification lists when dealing with internal promotions

Contract Article: 17

Topic Headings: Back Pay, Burden of Proof, Civil Service Exam, Internal Promotions, Language Dispute, Minimum Qualifications, Roll Call Pay, Seniority, Article 17

Department: Department of Youth Services

Site: Scott Smith: Mohican Youth Camp

David McLaughlin: Scioto Riverview

Position: Scott Smith: Juvenile Correction Officer

David McLaughlin: Juvenile Correction

Officer

Result: The grievances were granted.

Reason: According to Article 17, the Employer is required to rely on seniority for promotional purposes. This Award is limited to those peculiar circumstances dealing with internal promotions. In all other circumstances, the Employer is not limited in its use of civil service certification lists. The Employer violated Article 17 of the collective bargaining agreement when it failed to promote the previously specified bargaining unit members, even though they met the minimum qualifications specified. The Employer, as the proposing party of the language in dispute, has the burden of establishing the propriety of its interpretation. Here, it failed to meet its burden.

**694) Access to Documents -- Statewide Grievance
02-10-(98-08-16)-0054-01-00**

Issue

Arbitrator: Harry Graham

Issue: At what step does Article 25.08 of the Agreement entitle the Union access to "specific documents".

Contract Sections: 25.01, 25.08

Topic Headings: Agency Policies, Discovery, Intent, Ohio Administrative Code, Ohio Revised Code

Department: Statewide

Site: Statewide

Position: N/A

Result: The Arbitrator sustained the grievance.

Reason: The Employer can be expected to provide copies of relevant materials without charge to the Union in the normal course of events. In situations requiring production of voluminous amount of material, defined as requiring more than 90 minutes to produce, the Employer may charge ten cents per page for copy service. Furthermore, PUCO and RSC are subject to the provisions of Section 25.08 and this award. The arbitrator

supported the Union's position that it should receive documents at the earliest step of the grievance procedure.

695) Alfonso Underwood 27-33-(98-07-13)-0050-01-03

Removal

Arbitrator: Nels Nelson

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

Contract Sections: 24.01, 24.02, 24.05

Topic Headings: Hearsay, Just Cause, Mitigation, Progressive Discipline, Removal, Seniority

Department: Rehabilitation and Correction

Site: Trumbull Correctional Institution

Position: Correction Officer

Result: The Arbitrator denied the grievance.

Reason: The penalty specified for the violation of Rule 46(e) is removal. The Arbitrator recognized that removal is a severe penalty. Any relationship between a correction officer and a person under the supervision of the department creates a threat to the security and safety of employees and inmates, and justifies strict rules and harsh penalties. Because the employee had neither long service nor a clean disciplinary record, mitigation was not an option.

696) Personal & Sick Leave Requests (11 Grievants) 02-10-(97-08-04)-0041-01-00

Issue

Arbitrator: Harry Graham

Issue: Did the Employer violate the Agreement when it failed to approve requested personal and sick leave? (This grievance was filed because the agency failed to grant properly requested personal and sick leave due to the SEIU 1199 strike.)

Contract Sections: 27.04, 29.04, 41

Topic Headings: Personal Leave, Sick Leave, Wildcat Strike

Department: Rehabilitation and Correction

Site: Statewide

Position: Various

Result: The grievance was sustained.

Reason: The language in Article 27.04, "Notification and Approval of Use of Personal Leave," is mandatory. The Employer has no discretion concerning the granting of personal leave that has been properly requested. Article 29.04 deals with employee

misuse of sick leave, and the Employer did not show that any of the grievants misused sick leave. Finally, the Arbitrator rejected the Employer's claim that the grievants' actions constituted a wildcat strike.

**697) Joel Pall 11-09-(97-06-03)-0047-01-14
Removal**

Arbitrator: Jonathan Dworkin

Charges: Was the grievant terminated for just cause? If not, what shall the remedy be?

Contract Sections: 24.01, 24.02

Topic Headings: Burden of Proof, Double Jeopardy, Falsification of Records, Fraud, Intent, Just Cause, Mitigation, Progressive Discipline, Removal, Seniority, Theft

Department: Bureau of Employment Service

Site: Cuyahoga County OBES

Position: Field Auditor

Result: The grievance was denied.

Reason: The grievant allegedly committed fraud by systematically falsifying records and defrauding the State into paying him for time not worked. Since the Employer met the initial burden of persuasion, by means of written statements and sworn testimony, the burden then shifted to the Union.

**698) Carolyn Detty 27-16-(96-12-06)-2622-01-03
Probationary Removal**

Arbitrator: David M. Pincus

Charges: Was the grievant removed during her probationary removal? If not, what shall the remedy be?

Contract Section: 6.01

Topic Headings: Arbitrability, Policies, Probationary Period, Probationary Removal, Removal

Department: Rehabilitation and Correction

Site: Marion Correctional Institution

Position: Correction Officer

Result: The grievance was denied.

Reason: Although the removal letter stated that the effective date of the removal was to be November 7, 1996, the arbitrator found this to be harmless error. The grievant could not claim confusion that she was being terminated on November 6, 1996. The arbitrator found that the grievant's status as a probationary employee did not end until November 7; thus, employer did not need to show just cause to remove her.

699) Beulah Crabtree 27-05-(97-10-22)-0755-01-03

Removal

Arbitrator: David M. Pincus

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

Contract Sections : 24.01, 24.02, 24.05

Topic Headings:

Department: Rehabilitation and Correction

Site: Chillicothe Correctional Institution

Position: Correction Officer

Result: The grievance was denied.

Reason: The grievant was deceitful in her attempt to cover up her personal conversation with an inmate, and potentially, her personal relationship with an inmate is the kind of “action that could compromise and impair the ability of the employee to carry out her duties as a public employee” under rule 38

700) Shawn Woolum 27-30-(98-06-02)-0768-01-03

Removal

Arbitrator: Robert Brookins

Charges: Was the grievant removed for just cause? If not, what should the remedy be?

Contract Section: 24.01

Topic Headings: Contract, Constructive Discharge, Correction Employee, Department Regulations or Guidelines, Discretion of Management, Discipline, Incorporation of State or Federal Law, Resignation, Written Statements

Department: Rehabilitation and Correction

Site: North Central Correctional Institution

Position: Correction Officer

Result: The union’s grievance was denied. As a result, the grievant was not permitted to rescind her resignation..

Reasons: Ohio law requires the employer to take an affirmative action to accept an employee’s resignation, which the Warden did by signing the grievant’s resignation. The arbitrator found an employee resignation is presumed to be voluntary unless the record indicates that it is not, and here the record did not indicate that the grievant was under duress or coerced or threatened by the employer.

701) Betty Williams 23-18-980706-0040-01-04**

Removal

Arbitrator: Anna DuVal Smith

Issue: Removal, Failure of Good Behavior, Neglect of Duty, Insubordination

Contract Section: 24.02, 24.06, 24.09

Topic Headings: Aggravating Circumstances, Disciplinary Status, Disciplinary History

Department: Ohio Department of Mental Health

Site/Office: Northcoast Behavioral Healthcare System

Position: Therapeutic Program Worker

Result: Grievance denied; granted in part.

Reason: Though the Arbitrator found the grievant guilty of a number of the charges and there was just cause for removal, the Arbitrator noted that the State was eager to either change the grievant's behavior, and failing that, to get rid of her. The Arbitrator stated that Management must accept partial responsibility for the grievant's troubles and the working environment. While the Arbitrator found no just cause for removal, the grievant was removed, and an award of back pay and benefits was given to the grievant from the date of her discharge to the date of award. The date of her award would also be noted as grievant's termination date.

702) Steven Johnson 27-20-980906-3551-01-03

Removal

Arbitrator: Frank A. Keenan

Issue Standards of Employee Conduct-Rule 45A: 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.

Contract Section: 24.02

Topic Headings: Removal, Progressive Discipline, Aggravating Circumstances, Disciplinary History

Department: Ohio Department of Rehabilitation and Correction

Site/Office: Mansfield Correctional Institution, Mansfield, OH

Position: Correctional Food Service Coordinator

Result: Grievance denied.

Reason: It was found that the grievant accepted a medical file from an inmate and took the file home with him in order to assist the inmate in obtaining an attorney for a lawsuit against a state employee and the department. The Department removed the grievant for just cause.

703) Josephine Ellen Peters 25-08-980812-0002-01-14

Arbitrator: John J. Murphy

Issue Standards of Employee Conduct-Rule 45A: 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.

Contract Section: 24.02

Topic Headings: Removal, Insubordination, Neglect of Duty, Failure of Good Behavior

Department: Ohio Department of Natural Resources

Site/Office: Division of Recycling & Litter Prevention

Position: Grants Coordinator

Result: Grievance sustained; removal converted to six-month suspension

Reason: There was no record to illustrate "Neglect of Duty" as a legitimate charge against grievant for refusing to answer Department questions. Only neglect of duty allows removal as a form of discipline for the first offense. Thus, the grievant's removal was unwarranted. The grievant's refusal to answer the Department's questions clearly harmed the Department's interest, particularly after the Department's efforts to inform the grievant and her attorney of her duty to answer. It was on that basis that the grievant's removal was converted to a six-month suspension.

704) Roscoe T. Bowman 15-00-(99-02-19)-0004-01-07 Removal

Arbitrator: Frank Keenan

Issue: Was the grievant's removal for just cause?

Contract Section: 24

Topic Headings: Removal, Off-Duty Conduct, Last Chance Agreement

Department: Department Of Public Safety

Site/Office: Division Of Highway Patrol

Position: Driver's License Examiner I

Result: The grievant was reinstated without loss of seniority. The grievant's reinstatement was on a Last Chance basis and encompassed the terms of a 1996 Last Chance Agreement. The agreement was "unlimited in duration."

Reason: The 1996 Last Chance Agreement did not encompass "off-duty" drug use. The grievant's absences on the last two occasions prior to removal were a result of his drug use off-duty. Though the Arbitrator found the grievant's absenteeism record insufficient as just cause for removal, it was found that the grievant's off-duty drug abuse was subject to discipline.

705) Carlos Goad 27-20-(98-09-18)-3562-01-03 Removal

Arbitrator: Robert G. Stein

Issue: Were the grievants removed for just cause?

Rule 7: Failure to follow post orders, administrative regulations, policies, procedures or directives;

Rule 41: Use of excessive force towards any individual under the supervision of the department or a member of the general public.

Rule 22: Falsifying, altering or removing any official document;

Rule 24: Interfering with or failing to cooperate in an official investigation or inquiry.

Contract Section: Article 24

Topic Headings: Removal, Mitigating Circumstances

Department: Rehabilitation And Correction

Site/Office: Mansfield Correctional Facility

Position: Correction Officer

Result: Grievance denied.

Reason: The Arbitrator found that the evidence supported the Department's contention that the COs entered an inmate's cell with the intention of instigating a confrontation between themselves and the inmate. Therefore, the removal was upheld.

706) Robert Wuchich 27-20-(98-09-18)-3561-01-03 Removal

Arbitrator: Robert G. Stein

Issue: Were the grievants removed for just cause? If not, what should the remedy be?

Rule 22: Falsifying, altering or removing any official document;

Rule 24: Interfering with or failing to cooperate in an official investigation or inquiry.

Contract Section: Article 24

Topic Headings: Removal, Mitigating Circumstances

Department: Rehabilitation and Correction

Site/Office: Mansfield Correctional Facility

Position: Correction Officer

Result: The grievant was reinstated to his position without back pay and benefits. His seniority would not be lost as a result of the interim period, and the time the grievant served when removed was converted into a suspension. The grievant shall be returned to work within thirty days from the date of the award.

Reason: The Arbitrator found that the role played by the grievant in this incident warranted a "stiff corrective action," but it did not warrant removal.

707) Bridget Edwards 14-00-(99-01-06)-0002-01-14 Selection

Arbitrator: Harry Graham

Issue: Award of a vacant position to a junior employee;

Not granting an interview to qualified applicant.

Contract Section: 17.05

Topic Headings: Seniority, Substantially Equal Qualifications, Disciplinary History

Department: Department Of Health

Site/Office:

Position: Fiscal Specialist 1

Result: The dispute was held in abeyance pending the outcome of the grievant's live disciplines. The Arbitrator retained jurisdiction over the dispute.

Reason: The Arbitrator found that there was no evidence to show that the successful applicant was superior to the grievant in regards to the standards of qualifications, experience and education. The Arbitrator found that evaluation of an employee is part of the qualifications for a position, and it could be considered in determining which applicants to interview. It was noted that the grievant's recent disciplines were under review and it was inappropriate to allow the disciplines to carry the "great weight" that it did in DOH's consideration of the grievant for the position. The Arbitrator found that DOH violated the CBA when it concluded the grievant did not have the requisite qualifications, experience and education necessary for consideration of the position.

708) Brian Hicks 24-04-(96-11-21)-0751-01-04 Removal

Arbitrator: Anna DuVal Smith

Issue: Removal from position as a result of alleged client abuse. Was there just cause?

Contract Section: Article 24.01

Topic Headings: Removal, Client Abuse

Department: Department Of Mental Retardation and Developmental Disabilities

Site/Office: Cambridge Developmental Center

Position: Therapeutic Program Worker

Result: Grievance granted.

Reason: The grievant was charged with striking a client in the face with a shoe during an outing in which the grievant and co-worker accompanied three clients to a department store. The Arbitrator noted that the witness could have misinterpreted the situation due to her lack of knowledge of the client's mental retardation, nonverbal communication, and self-injurious behavior. The arbitrator found that there was no just cause for removal.

709) OCSEA/AFSCME LOCAL 11

26-00-(97-10-24)-0012-01-14

Proper Calculation Of Disability Leave; Lifetime Maximum; Pre-disability Leave

Arbitrator: Harry Graham

Issue: Dispute between the OCSEA and the State of Ohio regarding arbitrability of the issue of proper calculation for determining disability; Arbitrability

Contract Section: Article 35.01A

Topic Headings: Maximum Disability Leave, Calculation of Disability Leave

Result: The Arbitrator found that the merits of the controversy could not be reached. The Arbitrator found that a contractually mandated event had not occurred which would have given rise to a grievance.

Reason: In the course of negotiating the current contract, the Fact Finder stated in his report “the hours of paid disability leave benefits prior to the effective date shall be counted toward the lifetime maximum limitation.” The sentence was not included in the printed CBA. Both parties agreed to incorporate the omitted sentence. The sentence was found to be in accordance with Article 35.01A, and it was ratified by the membership. In 1997, OCSEA filed a grievance on behalf of a member protesting that the State had debited the grievant’s disability leave balance incorrectly. The State did not consider this issue to be arbitrable.

The Arbitrator found that the CBA was not applied in this matter, and he noted that in the language in Article 25.02, Grievance Steps, the words “occurrence” and “events” meant that something must have happened to trigger the grievance. The Arbitrator further found that a contractually mandated event had not transpired in this case because the grievant was not denied his benefits. He noted that the clearest path to the resolution of this controversy was to return to the Fact finder for clarity of the language used in his findings.

710) Charles E. Burns 31-08-(99-05-28)-08-01-06

Arbitrator: Anna DuVal Smith

Issue: Removal as a result of theft of State property; unauthorized use of a State vehicle.

Contract Section: Article 24

Topic Headings: Removal, Theft Of State Property

Department: Ohio Department Of Transportation

Site/Office: Region 8 Headquarters, Lebanon Oh

Position: Highway Maintenance Worker 2

Result: Grievance granted in part, denied in part.

Reason: The Arbitrator concluded that the grievant showed poor judgment in not seeking permission, and he used a State vehicle to transport the dirt without consent. She found that the grievant did not feel he did anything wrong because the value of the dirt was so inconsequential. Consequently, the Arbitrator found that the grievant was not

guilty of theft because he did not intend to deprive the State of anything of value. She then found the grievant guilty of unauthorized use of State equipment and leaving work without permission. The grievant received a 30-day suspension.

711) George Motley 06-02-(99-05-19)-0001-01-14 Removal

Arbitrator: Robert G. Stein

Issue: Removal, Arbitrability

Contract Section: Articles 24 – Discipline

Article 24.05 – Imposition of Discipline

Article 25.02 – Grievance Steps

Topic Headings: Falsification of Official Document, Neglect of Duty, and Neglect of Duty-Carelessness with the Mail, Arbitrability

Department: Ohio Civil Rights Commission

Site/Office: Dayton Region

Position: Civil Rights Investigator 2

Result: Grievance granted.

Reason: The Arbitrator noted that the Commission violated Articles 24.02 and 24.05 in its imposition of discipline. The Arbitrator also found the process of three pre-disciplinary meetings, which for all intents and purposes covered the same evidence, was adverse to the grievant's right to due process. The Arbitrator then concluded that the Commission had no good cause for holding three separate pre-disciplinary meetings. The Arbitrator found the management errors in procedure and contract violations precluded him from addressing the merits of the case.

712) Shelli A. Jackson 35-04-(98-07-10)-0194-01-03 Suspension

Arbitrator: Robert Brookins

Issue: The grievant received a fifteen-day suspension for several different kinds of misconduct involving roll call, falsification of documents, and refusal to carry out a work assignment.

Contract Section: Article 24.05

Article 24.02

Topic Headings: Falsification, Work-Rule Violation, Procedural Violation, and Insubordination

Department: Ohio Department of Youth Services

Site/Office: Indian River School

Position: Juvenile Correction Officer

Result: Grievance sustained in part, granted in part.

Reason: The Arbitrator found that the grievant's actions warranted the penalty received, and he felt the penalty was progressive. The grievant walked out of roll call prematurely on more than one occasion, including a day when she was prompt for work, but she failed to attend roll call altogether. The grievant was also counseled about filling out door logs prematurely. She received a fifteen-day suspension for several different kinds of misconducts involving roll call, falsification of documents, and refusal to carry out a work assignment.

The penalty was reduced due to the Employer's violation of procedure.

713) Alan Ward, Jr. 27-20-(98-12-21)-3687-01-03 Removal

Arbitrator: Anna DuVal Smith

Issue: Removal; Physical abuse of a Client

Contract Section: 24

Topic Headings: Removal; Physical or Verbal Abuse of a Client

Department: Ohio Department of Mental Retardation and Developmental Disabilities

Site/Office: Gallipolis Developmental Center

Position: Therapeutic Program Worker

Result: The grievance was denied.

Reason: The grievant was removed for alleged physical abuse of a client. Two incidents occurred in the area in which the grievant worked which led to the charges of abuse. One incident involved a client going AWOL, and the other incident involved the injury of a nonverbal client. The grievant stated that the client fell over chairs, but an examination showed that the injuries were not consistent with the grievant's version of what happened. The injuries were more consistent with the testimony of a witness, though the witness, also a client, told two different versions of the same incident. The Arbitrator found that the only real issue in this case was credibility. She could not find that the injuries sustained by the client were consistent with falling over chairs. Therefore, she accepted the physician's and investigator's opinions stating that the client's injuries were not caused by tripping and falling over chairs. In regards to the second version of what happened as told by the witness, she stated that the demonstration and description of the attack by the grievant and a co-worker were consistent with the injuries documented and photographed.

The Arbitrator noted while it came down to one person's word against another's, and she concluded that the grievant's story did not account for the injuries sustained. The arbitrator also found that there was a probability that the client fabricated or was taught the second false story, but she then concluded that the probability was not great enough to establish the required doubt. The Arbitrator felt compelled to find the grievant guilty of the Physical Abuse charge.

714) Marilyn Hill 23-08-(97-05-02)-1477-01-04 Layoff & Bumping

Arbitrator: Anna DuVal Smith

Issue: Did management violate Articles 18.03 (Implementation of Layoff Procedure/Paper Layoff) and/or 18.04 (Bumping in the Same Office, Institution or County)?

Contract Section: Articles 18.03 And 18.04

Topic Headings: Layoff/Paper, Layoff Procedure, Bumping

Department: Ohio Department Of Health

Site/Office: Dayton Campus Of Twin Valley Psychiatric Systems

Position: Therapeutic Program Worker

Result: The grievance was denied. Management did not violate Articles 18.03 and 18.04.

Reason: The grievant filed this grievance because she did not receive her first choice during a paper layoff. The Arbitrator found a problem because the Department did not make minor adjustments within a regular TPW's position description; instead, the position's duties as a whole were established as a reasonable accommodation to an individual's disability. The arbitrator determined that had the Department reclassified the position at issue to Personal Services Worker prior to the paper layoff, the grievant would not have been entitled to the duties because the position would have been out of her classification. The Arbitrator found that the Department's mistake was in its failure to reclassify the position prior to the layoff and either reclassify DeMaris or post the vacancy. The Arbitrator also found that when an employee moves into a new position, s/he assumes the duties of the position, not necessarily the duties being performed by the person s/he bumped.

The stipulated questions raised in this grievance were specific to Article 18. The Arbitrator noted that her authority was constrained by the issues stipulated to by the parties in this grievance; therefore, she could only consider Articles 18.03 and 18.04. She stated that while the award answered the questions submitted, it could not resolve the underlying issue.

715) Ronald Clifford, Jr. 27-21-(98-10-27)-1638-01-03 Suspension, 10 day

Arbitrator: David M. Pincus

Issue: 10-day Suspension for violations of the Standards of Employee Conduct:

Rule 8 – failure to carry out a work assignment or the exercise of poor judgment in carrying out an assignment.

Rule 22 – Falsifying, altering or removing any official document.

Rule 41 – Use of excessive force toward any individual under the supervision of DR/C or a member of the general public.

Contract Section: Articles 24.01, 24.02, 24.04 and 24.05

Topic Headings: Failure To Carry Out Work Assignment, Falsifying Official Document, and Excessive Force, Procedural Defects

Department: Ohio Department of Rehabilitation and Correction

Site/Office: Orient Correctional Institution

Position: Correction Officer

Result: The grievance was sustained in part and denied in part. The initial 10-day suspension was reduced to a 4-day suspension. The grievant received back-pay for six (6) days, as well as, other benefits and seniority lost as a consequence of the Employer's improper actions.

Reason: During a strip search of an inmate, an altercation occurred in which the grievant allegedly used a defensive move resulting in both the grievant and the inmate to fall to the floor. The Arbitrator found that though the Employer had just cause to discipline the grievant; that the penalty imposed was excessive because it was not supported by the evidence. Notice, proof and procedural defects were cited by the Arbitrator as the basis for the modification of the grievant's suspension from ten (10) days to four days. He determined that the record did support the falsification charge. The Arbitrator noted that an omission of an important fact or circumstance during an investigation was a "bold and blatant attempt to falsify." Therefore, the Arbitrator found that the Employer had just cause to suspend the grievant for the falsification charge, but not for the other charges. Upon review of the grievant's disciplinary history, he determined that some form of serious discipline was warranted. However, the Arbitrator determined that the Employer's mistakes in procedure and related due process affected the award in this case.

716) Luwanna Perry 19-00-(99-03-01)-0081-01-14 Suspension

Arbitrator: John J. Murphy

Issue: Grievant received a ten-day suspension for alleged threats at the workplace and not following a direct order.

Contract Section: Article 24

Topic Headings: Workplace Violence, Insubordination

Department: Ohio Department Of Insurance

Site/Office: Managed Care Division

Position: Clerk

Result: The ten-day suspension of the grievant lacked just cause. The Arbitrator ordered the suspension expunged from the grievant's personnel record. He ordered back pay and all benefits to be restored to the grievant.

Reason: The Arbitrator found that the State failed to recognize the grievant's right to notice of charges in both the disciplinary investigation and in the disciplinary process following the investigation. He noted that on January 21, 1999, the State possessed

written allegations of threats made by the grievant. The Arbitrator stated that while there may have been nexus between the January 13 incident and the January 21 reports of threats by the grievant, “the State took actions to lull the grievant and the Union into ignorance about the potentiality of discipline of the grievant for incidents after January 13.” He found that the State failed to demonstrate fairness to the grievant during the investigation. The Arbitrator determined that the elements in this case supported the “nullification of the discipline of the grievant at least on the charge of workplace violence.”

717) Hazel Fields 24-07-(98-10-29)-0792-01-04 Removal

Arbitrator: John J. Murphy

Issue: Did management violate Article 24 of the contract when they removed the grievant for Failure to Act/Client Neglect?

Contract Section: Article 24

Topic Headings: Removal, Failure to Act/Neglect

Department: MRDD

Site/Office: Gallipolis Development Center

Position: TPW

Result: Removal was converted to an oral reprimand with “appropriate notation in the Grievant’s employee file for the first offense of the commission of ‘Poor Judgment’ – a ‘Minor Offense.’ It was also ordered that she be made whole less interim earnings. Lost wages were not to include overtime

Reason: The Arbitrator found that the grievant exercised poor judgment in dropping visual contact of the resident on two occasions in a short span of time. He also found this offense to be minor under the Center’s disciplinary policy. The grievant had no prior disciplinary history and it was determined that this was the grievant’s first offense which required an oral or written reprimand with a notation placed in the grievant’s personnel file indicating a first offense.

718) Tawn Smith 27-20-(98-12-21)-3687-01-03 Removal

Arbitrator: Anna DuVal Smith

Issue: Removal; Violations of Rule 7 (Failure To Follow Post Orders), Rule 45b (Giving Preferential Treatment To An Inmate),

Rule 30a (Conveyance, Etc. Of Drugs)

Rule 30c (Conveyance, Etc. of other contraband).

Contract Section: 24

Topic Headings: Failure to Follow Post Orders, Fraternalization with an Inmate, Conveyance of Drugs, and Conveyance of Contraband

Department: Ohio Department of Rehabilitation and Correction

Site/Office: Mansfield Correctional Institution (ManCI)

Position: Correction Officer

Result: The grievance was denied.

Reason: The Arbitrator found that though most of the grievant's disciplinary history consists of attendance violations, the last suspension occurred because the grievant was arrested, used his car trouble as an excuse for his absence from work and did not report the arrest. The Arbitrator noted that if the grievant had been honest when he reported for duty, there was a possibility that he would have been disciplined for being AWOL but not for the other charges. The Arbitrator stated that evidence that the grievant transported the marijuana seed into the institution was circumstantial and weak. However, the fact that the grievant was arrested for marijuana created suspicion that the grievant may have had knowledge regarding how the seed got into his briefcase. The Arbitrator was convinced that the grievant received a haircut from an inmate. She could find no reasonable explanation why the grievant woke up the inmate and took him up into the restroom to stack cleaning supplies at 2:00 or 2:30 in the morning. The Arbitrator found the grievant guilty of the charge of "dealing with an inmate," as well as, the contraband charges. She stated the two violations taken separately would justify a major suspension and that the two violations committed on two separate occasions do not constitute "stacking the charges."

719) Bart Brown 27-32-(99-02-18)-0178-01-03 Removal

Arbitrator: Robert G. Stein

Issue: Was the grievant removed for his refusal to cooperate with an investigation?

Contract Section: 24.02

Topic Headings: Removal; Garrity Warning

Department: Ohio Department of Rehabilitation and Correction (DR&C)

Site/Office: Nobel Correctional Institution (Noble)

Position: Correction Officer (CO)

Result: The grievance was sustained. The grievant was reinstated. Any and all references to the termination were removed from his personnel file. The grievant received all back pay, roll-call pay, benefits from the date of his removal.

Reason: The Arbitrator found that the State acted unreasonably when it did not offer a Garrity warning to the grievant, and when it barred the grievant from answering questions after promising to hear his testimony on the same day. If the Employer states that what is said in a meeting will not lead to criminal charges, then the employee no longer has the

right to silence. This is known as the "**Garrity Warning.**" An employee or the steward should insist that the Garrity Warning be provided in writing so that the employee has documentation that it was provided. The Arbitrator also found that the grievant had good reason to believe he was a suspect in a criminal investigation, particularly when he was told he was a suspect by the FBI agents and Ohio Highway Patrol officers who visited him. It was determined by the Arbitrator that there was no evidence to suggest that the grievant's refusal to answer the Committee's questions was intended to protect anyone but the grievant himself. The Arbitrator found no just cause for the grievant's termination.

720) Elroy James 27-02-(98-11-06)-0566-01-03 Removal

Arbitrator: Anna DuVal Smith

Issue: Correction Officer removed from his position for allegedly giving crack cocaine to an inmate.

Contract Section: Article 24.04

Topic Headings: Removal, Cocaine Possession

Department: Ohio Department of Rehabilitation and Correction

Site/Office: Allen Correctional Institution

Position: Correction Officer

Result: The grievance was sustained. The grievant was reinstated and his record was expunged. It was ordered that the grievant receive back pay, seniority and benefits less normal deductions interim pay.

Reason: The Arbitrator found that the charge of giving cocaine to an inmate was unproven. She stated that the only evidence presented by the State was circumstantial or hearsay. She found that the evidence did not convincingly prove that the grievant carried drugs into the institution.

721) Samuel Carter 27-21(99-02-05)1695-01-03 Removal

Arbitrator: John J. Murphy

Issue: Aggravating Circumstances; Disciplinary History; Disciplinary Status; Standards of Employee Conduct

Rule #12: Making obscene gestures or statements or false or abusive statements toward or concerning another employee, supervisor, or member of the general public.

Rule #19: Striking, fighting, or otherwise engaging in a physical altercation with another employee or member of the general public.

Contract Section: 24.02

Topic Headings: Aggravating Circumstances, Disciplinary History, Disciplinary Status

Department: Ohio Department of Rehabilitation and Correction

Site/Office: Orient Correction Institution of Ohio, Orient Ohio

Position: Correction Sergeant Counselor

Result: Grievance denied.

Reason: It was found that grievant verbally abused a co-worker, and he physically abused a supervising officer, striking her twice on the arm. These actions were in violation of Rules #12 and #19, and warranted removal.

722) Anita Kennedy 33-00-19-(99-12-20)-1012-01-04 Removal

Arbitrator: Robert G. Stein

Issue: The grievant was removed for omitting information regarding her criminal history on her application for employment with a State agency.

Contract Section: Articles 2.02, 24.01, 24.02, 24.04 and 24.05

Topic Headings: Falsification of a Public Document

Department: Ohio Veterans Home

Site/Office: Sandusky, Oh

Position: Hospital Aide

Result: Grievance Denied.

Reason: The Arbitrator stated that an employer has the right to expect an employee to be honest. He determined that in light of the evidence presented, it was undeniable that the grievant falsified her employment application and misled the Employer with the submission of a public record that did not include her criminal history. The Arbitrator found that when the grievant was asked whether she had ever been convicted of a felony she lied and when asked to submit a police record to supplement her application, she presented a police record from the county where the Employer is located. The Arbitrator stated that the grievant was very aware that the record she obtained would show no criminal convictions in that county. The Arbitrator found that these actions undermined her credibility.

723) Classon Martini 24-06-(99-08-09)-0631-01-04 Removal

Arbitrator: Robert G. Stein

Issue: Was the grievant's removal for sexual harassment for just cause?

Contract Section: Article 24

Topic Headings: Removal, Sexual Harassment

Department: Ohio Department of Mental Retardation and Developmental Disabilities

Site/Office: Columbus Developmental Center

Position: Therapeutic Program Worker

Result: The grievance was denied.

Reason: The Arbitrator noted that the grievant ceased his advances towards Ms. Martin after she rejected him. The Arbitrator also noted that if this were an isolated incident distinguished by inappropriate playfulness that the grievant recognized was improper and for which he sincerely apologized, this situation would have been seen in a different

light. However, the evidence presented did not indicate that this was an isolated incident. The Employer presented evidence to support its position that the grievant had a long-term problem of improper encounters with female co-workers.

724) CiviGenics27-01-(00-02-28)-0141-01-14 (#1)

27-01-(00-03-23)-0148-01-14 (#2)

Arbitrator: Nels E. Nelson

Issue: Training of Contract Employees by Bargaining Unit Members; Exposure of Bargaining Unit Member to life-threatening or hazardous conditions.

Contract Section: 11, 39.01, 44

Topic Headings: Training Of Contract Employees

Department: Department Of Rehabilitation And Correction

Site/Office: North Coast Correctional Treatment Facility

Lake Erie Correctional Institution

Position: Correction Officer

Result: (#1) DR&C was ordered to cease and desist using bargaining unit members to provide unarmed training to employees of CiviGenics.

Reason: The Arbitrator found that the first sentence in Article 39.01 was clear; that it banned the use of bargaining unit employees in training contractor's employees.

The Arbitrator determined that the unarmed self-defense training went well beyond "policies," "procedures," and "operations." The Arbitrator noted that the session totaled 32 hours of instruction. Also, the Arbitrator determined that while the bargaining unit employees themselves would not be replaced, they were required to train individuals for positions that would otherwise be filled by bargaining unit members.

Finally, the Arbitrator noted that the evidence showed that DRC knew that bargaining unit employees could not be used to provide unarmed self-defense training for the contractor's new employees. Thus, DRC violated Article 39.01 when it required bargaining unit employees to provide the 32-hour training to the contractor's employees.

725) Augustus Deeble 35-05-(01-28-99)-0228-01-03 Fifteen-day Suspension

Arbitrator: Robert Brookins

Issue: The grievant, a Juvenile Correction Officer, received a 15-day suspension as a result of allegations of disobeying a direct order and abusive language.

Contract Section: Article 24

Topic Headings: Insubordination, Abusive Language

Department: Ohio Department Of Youth Services

Site/Office: Maumee Youth Center

Position: Juvenile Correction Officer

Result: The grievance was granted in part, denied in part.

Reason: The Arbitrator held that the grievant's relying on his violence training was a significant factor in his refusal to return to his supervisor's office. He further held that the supervisor's actions – standing within the grievant's physical space, raising his voice and pointing his finger in the grievant's face – played a role in the grievant's actions in the cafeteria. The Arbitrator found no evidence to indicate that the grievant used abusive language toward his supervisor or co-workers. Though the Arbitrator found that the grievant was at fault in this incident, he found the fifteen-day suspension unreasonable. The Grievant's 15-day suspension was reduced to a 10-day suspension. The Employer was to make the grievant whole for the 5-day difference between the two suspensions. No seniority was lost. It was strongly advised to the grievant that he exercise an even greater effort to keep his temper and emotions under control.

726) Tracy L. Cross 15-00-(99-07-06)-0072-01-09 Removal

Arbitrator: Robert G. Stein

Issue: Grievant was removed for habitual tardiness and being dishonest in his excuse for sick leave.

Contract Section: 24

Topic Headings: Removal, Tardiness

Department: Ohio State Highway Patrol

Site/Office: Columbus

Position: Patrol Radio Operator

Result: Grievance denied

Reason: The Arbitrator found that the grievant's actions were an attempt to avoid being considered late for work. An investigation of the grievant's excuse for his absence on the day in question revealed that the grievant was not home due to illness, but at a youth group meeting at his church. The Employer determined that the grievant violated two departmental rules and he was removed from his position. In the relatively short period of time he was employed by the State, he had established himself as unreliable. The Employer provided the grievant with the opportunity to correct his behavior of frequent tardiness through EAP, which proved to be unsuccessful. The Arbitrator stated that the grievant's deceptive behavior and apparent lack of responsibility toward his job made matters worse in this situation. The Arbitrator determined that the Employer had just cause to terminate the grievant's employment.

727) Randall P. Dues 04-00-(99-07-30)-0012-01-13 Removal

Arbitrator: Robert Brookins

Issue: Removal – Was the grievant’s removal for just cause?

Contract Section: 24

Topic Headings: Falsification of Documents, Dishonesty, Theft of Time, and Unauthorized Absence from Work

Department: Ohio Department of Agriculture

Site/Office: Dairy Division

Position: Sanitarian Program Administrator I

Result: Grievance denied.

Reason: The Arbitrator found that the grievant intentionally falsified and misrepresented the material facts; therefore, he committed theft by stealing time from ODA. This action established the grievant’s dishonesty and the fact that he had unauthorized absences due his early departures from work as well as poor performance of his assigned duties.

728) Augustus Deeble 35-05-990709-0252-01-03 Removal

Arbitrator: Anna DuVal Smith

Issue: Grievant was absent from work without leave or proper documentation explaining his absence.

Contract Section: Articles 27, 28, and 30

Topic Headings: Removal, AWOL, Failure to Provide Documentation of Absence, Unauthorized Absence of Two or Fewer Days

Department: Department Of Youth Services

Site/Office: Maumee Youth Center

Position: Juvenile Correction Officer

Result: Grievance sustained.

Reason: The Arbitrator found the Employer’s refusal to grant emergency vacation leave unreasonable. She noted that the grievant gave ample notice, and the Employer did not indicate that there were any staffing concerns on either the day shift or the grievant’s shift. The Arbitrator concluded that the grievant’s application of the term “emergency” to his circumstances was reasonable because the Employer did not clearly communicate what constituted an emergency. The Arbitrator found that no discipline was warranted because the grievant should not have been placed in an AWOL status; therefore, his termination was without just cause.

729) Jeffrey Grissom 31-08-(00-03-31)-0006-01-06 Removal

Arbitrator: Robert G. Stein

Issue: Removal – Violation of:

Work Rule #6 – Fighting/striking with a fellow employee or non-employee on State time or State property. Threatening a superior, fellow employee, or non-employee; and

Work Rule #7 – Unauthorized absence for three or more consecutive days.

Contract Section: Article 24

Topic Headings: Threatening a Supervisor, Fighting; Unauthorized Absence for three or more consecutive days

Department: Ohio Department of Transportation (ODOT)

Site/Office: Hamilton County Garage

Position: Highway Maintenance Worker 1

Result: Grievance denied.

Reason: The Arbitrator found that when an employee made a serious threat of bodily harm against a supervisor and then threatened and physically assaulted a co-worker and Union representative, his employer could not reasonably tolerate his actions. The Arbitrator determined that even if the co-worker contributed to the argument, it did not justify the grievant's actions. The Arbitrator found that based on the testimony and evidence presented, the grievant posed a serious threat to his superiors and his co-workers. He also found that given his determination of the first charge, the second charge pertaining to Work Rule #7 required no analysis.

730) Damon A. Minter 02-00-(99-11-04)-0086-01-14 Fifteen-Day Suspension

Arbitrator: Robert Brookins

Issue: 1) Whether the Employer committed harmful procedural error.

2) Whether the employee was disciplined for just cause.

Contract Section: 24.02, 24.05

Topic Headings: Neglect of Duty, Failure to Complete Assignment

Department: Department of Administrative Services

Site/Office: State Of Ohio Computer Center

Position: Computer Operator 3

Result: The Employer was ordered to reduce the 15-day suspension to a 10-day suspension without pay and to make the grievant whole for the five-day difference. The grievant's seniority was to remain undiminished by the 10-day suspension.

Reason: The Arbitrator noted that the Union seemed to be equating the pre-disciplinary hearing with either the implementation of "disciplinary action" or with "disciplinary action" in the theoretical sense. The Arbitrator determined that neither assertion was correct and that the date of the pre-disciplinary hearing was not the proper point at which to determine when discipline should be implemented. He also determined that the 15-day suspension was the disciplinary action and that it was actually imposed when the grievant began serving the suspension. Because of this determination the Arbitrator

stated that 164 days (rather than 145 days) elapsed from the date of the last alleged misconduct to the when the “disciplinary action was imposed.

731) Maurice Smith 27-19-(99-08-27)-1778-01-03

Arbitrator: Nels E. Nelson

Issue: Was the grievant’s removal for just cause? If not, what shall the remedy be?

Contract Section: Article 24

Topic Headings: Removal, Possession of an Illegal Drug on State Property

Department: Department of Rehabilitation and Correction

Site/Office: Ohio Reformatory For Women

Position: Correction Officer

Result: Grievance granted. The grievant was to be given the opportunity to complete a substance abuse program certified by the Ohio Department of Alcohol and Drug Addiction Services. Once completed, he was to be returned to work with back pay less appropriate deductions and excluding pay for time required to complete the treatment program. The grievant was to be placed on a last chance agreement for three years and could be tested for drug use at the discretion of his employer. He could be removed should he test positive.

Reason: The Arbitrator found that the rule against the conveyance or possession of alcohol or drugs was reasonable. However, the Arbitrator did not believe that the grievant was guilty of conveying marijuana onto State property or possession of marijuana on State property, as considered by the rule. The amount of marijuana found in the vehicle simply reflected prior use. The Arbitrator found this determination to be consistent with the two decisions cited by the Union. Although the Arbitrator did not find that the grievant was guilty of conveyance or possession of marijuana on the date in question, it was clear to her that he had used marijuana. The Arbitrator noted the seriousness of the grievant’s use of marijuana, but found that it fell under Appendix M of the Contract. The Arbitrator stated that pursuant to Appendix M, no disciplinary action could be taken against an employee who successfully completed the treatment program. The arbitrator decided to adopt the Union’s remedy request. The grievant was to complete a substance abuse program certified by the Ohio Department of Alcohol and Drug Addiction Services. Upon successful completion of the program he was to be returned to work with back pay less appropriate deductions, excluding pay for the time requires to complete the program. The grievant was to be placed on a Last Chance agreement for three years and tested at management’s discretion for drug use. If a test was positive, he was to be removed.

**732) Stanley Williams 35-08-99-10-22)-0015-01-03
Probationary Removal**

Arbitrator: John J. Murphy

Issue: Was grievant a probationary employee under Article 6; was this grievance properly before the Arbitrator.

Contract Section: 6 & 25

Topic Headings: Probation; Arbitrability

Department: Department Of Youth Services

Site/Office: Circleville Youth Center

Position: Interim Cook 1

Result: Grievance denied.

Reason: The Arbitrator determined that the grievant was on an initial probationary period at TICO and based his findings on the evidence that included the grievant's signature on a Supplemental Employment Agreement that made reference to his initial employment. The personnel officer and food manager interviewed the grievant and testified that the 180-day probationary period was discussed.

733) Paul Tillett 27-18-(99-12-17)-0097-01-09 Removal

Arbitrator: Anna DuVal Smith

Issue: Just cause for removal of grievant for Failure to Carry Out Work Assignment, Exercise of Poor Judgment in Carrying Out Work Assignment, and Failing to Cooperate with Investigation.

Contract Section: 24.01, 24.04 and 25.08

Topic Headings: Removal, Failure to Carry Out Work Assignment, Exercise of Poor Judgment and Failing to Cooperate with Investigation

Department: Ohio Department of Rehabilitation and Correction

Site/Office: Ohio Penal Industries

Position: Penal Workshop Specialist

Result: The grievance was sustained in part and denied in part. The grievant's removal was converted to a 45-day suspension. He was reinstated to his PWS position with restored lost wages, benefits and seniority, less 45 days and any interim pay. The request for overtime and interest was denied.

Reason: The record showed that an inmate received improper privileges while working on an ODOT tank removal project, including receiving visits and food from his family and conjugal visits from his girlfriend. The inmate escaped by walking away from the institution. It was determined that the escape would not have occurred had any of the officers, including the grievant, prevented the visits to the job sites, reported the attempts to visit the inmate and/or reprimanded the inmate. The Arbitrator found that OPI was also at fault in this matter by turning a deaf ear to reports of insecure practices in pursuit

of profit. Thus, she found that OPI shared responsibility in this matter. She found that the grievant's removal was unwarranted and converted it to a 60-day suspension. It was her determination that it was necessary to impress upon the grievant that he has to be individually responsible and that his job is at stake should he consider about ignoring such a situation again.

The Arbitrator also found that the State failed to provide relevant documents in a timely fashion in disregard of the Collective Bargaining Agreement. The Arbitrator stated that she lacked the authority to discipline management for its action; however, she reduced the grievant's 60-day suspension by fifteen (15) days.

**734) Marie A. DuBose 34-03-991115-111-01-09
Removal**

Arbitrator: Robert Brookins

Issue: Whether the Grievant was terminated for just cause, and, if not what shall the remedy be?

Contract Section: Articles 31, 24

Topic Headings: Removal, Job Abandonment

Department: Ohio Bureau of Workers Compensation

Site/Office: Canton

Position: Claims Service Specialist

Result: The grievance is sustained in part and denied in part. The removal was reduced to a one-month suspension. The grievant received full back pay minus any earnings received during the period she was removed. The grievant's seniority and benefits were to remain as if her termination never occurred.

Reason: The Arbitrator holds that the Grievant failed to make proper contact with BWC for four consecutive days in violation of BWC's Work Rules. "Contact" is made only when the employer actually receives the communication or has reason to be aware of its existence – constructive notification. Grievant did not properly contact BWC on October 14, 15 and 19, 1999, and the letter from Grievant to BWC was not a proper contact until October 20, 1999, the date of the postmark. Contact from a third party did not constitute proper contact because the employer grants employees' requests for leaves of absences through third parties only where the request is based on emergency sick leave. Proper contact is a precondition for considering the propriety of any reasons for a leave of absence. The State argued against the Union's presentation of an earlier dispute as evidence to support its position of disparate treatment, because that grievance was the subject of a settlement agreement containing language stating that the agreement would not be introduced, or referred to, or utilized in any subsequent arbitrations, hearings or litigation. The Union stressed that only the facts which led to the dispute – and are separate from the settlement agreement - were being offered into evidence. The

arbitrator determined that the facts of the previous case offered as evidence are entirely severable from the settlement agreement and admitting that evidence into the arbitral record is highly unlikely to threaten the integrity of the settlement agreement itself or to chill the parties' enthusiasm for settling future grievances. The Arbitrator found that the grievant and the grievant in the previous case are similarly situated as to the type of demonstrated misconduct in both cases as well as any other relevant circumstances surrounding their misconduct, the Grievant was disciplined more severely than the previous grievant, and that disciplinary disparity is so incongruous with any relevant difference between these two cases as to be unreasonable, arbitrary, or capricious.

**735) Shawn Rogan/Michael McKee
27-32-(99-02-19)-0176-01-03 Removal**

Arbitrator: Robert G. Stein

Issue: Correction Officer Rogan was removed for alleged violations of Rules 7, 8, 42 and 43 of the Department of Correction.

Correction Officer McKee was removed for alleged violations of Departmental Rules 7, 8 and 42 of the Department of Correction.

Contract Section: Article 24

Topic Headings: Removal, Excessive Use Of Force

Department: Rehabilitation and Correction

Site/Office: Noble Correctional Institution

Position: Correction Officers

Result: The grievances were sustained in part. Officer Rogan and Officer McKee were to be reinstated following an appropriate period of refresher training required by the Department of Correction. Their terminations were converted to ten (10) day suspensions for violating Rule 7. All other violations were ordered removed from their personnel records. The Arbitrator ordered all back pay (including roll call pay) and benefits, less the ten (10) suspension days, and any W-2 income or unemployment compensation received during the interim period. Payment was ordered to be made within two (2) full pay periods following the date the grievants submitted proof of interim income.

Reason: While the Arbitrator found that the Union successfully defended most of the allegations against the grievants, he found that the incident would never have occurred if the grievants had not used poor judgment in moving inmate White, particularly when he initially resisted. The Arbitrator also found that the Employer did not provide sufficient evidence to show motive on the part of the grievants. There was no evidence to indicate that the grievants disliked or had a problem with inmate White prior to this incident.

736) Felicia Perkins 27-15 (99-11-30) 738-01-03 Removal

Arbitrator: Robert Brookins

Issue: Whether the Grievant was terminated for just cause, and if not, what shall the remedy be?

Contract Section: Article 24

Topic Headings: Discharge, Unauthorized Relationships, and Accepting Money

Department: Department of Rehabilitation and Correction

Site/Office: Madison Correctional Institution (MCI)

Position: Correction Officer

Result: The grievance was denied.

Reason: The Arbitrator found that the Employer failed to prove that the Grievant refused to cooperate in (or was insubordinate during) the investigative interview. This holding is based on the statement of Mr. Ashbridge that Grievant allegedly said: "She didn't have time to answer these questions and she was going to leave the interview." Challenging this statement by Mr. Ashbridge is the recollection of Grievant's OCSEA representative, Mr. James P. Hogan. According to Mr. Hogan, the Grievant told Mr. Ashbridge to "Quit pussyfooting around and ask what you want. I have to attend class today." The Arbitrator found that, although the Grievant's alleged statement has an uncooperative tinge, it simply does not clearly cross the threshold that separates the grudgingly cooperative from the plainly uncooperative. The record does not establish a sexual relationship between Grievant and any inmate. Nor is there credible evidence to establish that Inmate Stokes was twice out-of-place in Grievant's area. The evidence offered to support these allegations is either hearsay or double hearsay. However, there is credible circumstantial evidence that Grievant and Inmate Stokes were acquaintances with a personal relationship that Rule 46(b) contemplates and prohibits. Substantial inconsistencies in the testimonies of Grievant and Inmate Askew regarding the \$260.00 Money Order and the newspaper clipping led the Arbitrator to find that Grievant and Inmate Askew had a business/personal relationship in violation of Rule 46(b). MCI failed to prove that Grievant had culpable knowledge but the Grievant should have known or reasonably suspected that the Money Order was tainted. Although that is not the same as actual culpable knowledge, it is more than MCI can or should be asked to reasonably tolerate in its Correction Officers.

737) Paul Dowler/Geraldine Winfield
27-04 (97-03-21) 187-01-03 &
27-04 (99-08-04) 381-01-03 Removal

Arbitrator: Anna DuVal Smith

Issue: Were the grievants removed from their posts and/or denied their bids at Ohio State University Hospital in violation of the Collective Bargaining Agreement? If so, what shall the remedy be?

Contract Section: Articles 2, 13, 16, 24, and 44 of the Collective Bargaining Agreement

Topic Headings: Removal, Seniority, and Contract Interpretation

Department: Ohio Department of Rehabilitation and Correction

Site/Office: Correction Medical Center in Columbus, Ohio

Position: Correction Officer

Result: The grievances are denied in their entirety.

Reason: Although the Arbitrator declined to interpret the ODRC/OSU Contract, there is language that could be read to permit problem resolution by ODRC independently when presented with an OSU request that a CO be removed from a post. The Union did not agree that OSU would exercise "good management judgment" regarding post assignments, but rather that ODRC could do so. Being unable to agree with OSU on a solution other than reassignment, ODRC then has to decide whether it has "good management reason" to reassign. The Arbitrator is unable to find the due process right to a pre-deprivation meeting with management in the 1994 Agreement. The fact that "consultation" language did not appear until the 1997 parameters implies that the parties knew "good management reasons" did not demand pre-reassignment and pre-bid-denial conferences. Capt. Smith, the investigating officer for CO Dowler's grievance, concluded that the incident did not warrant CO Dowler's restriction from OSU. However, Warden Francis, after consulting with OSU, came to the conclusion that CO Dowler's behavior was disruptive to patient care, and therefore did not act arbitrarily in the actions against CO Dowler. The warden deferred to OSU despite the conclusion of the captain, but that does not flaw his decision. Nowhere in the record did the Arbitrator find evidence that management failed to consult CO Winfield and the Union at the time of her bid, only that she was not informed in 1996 of the reason for being restricted. However, the warden had conversations with her regarding the issue, and CO Winfield had enough knowledge at the time of her bid to speak to the issues that kept her from the assignment she wanted. As with CO Dowler, Warden Francis relied on the hospital's statement of cause, not simply some bald statement that CO Winfield was unacceptable, and this cause is sufficient to establish "good management reason."

738) Delvin Murray 31-09-(03-09-00)-09-01-13

Removal

Arbitrator: Robert Brookins

Issue: Was there just cause for the removal of the Grievant? If not what shall the remedy be?

Contract Section: Articles 2, 24

Topic Headings: Discharge, Unauthorized Use of Computer, Theft

Department: Ohio Department of Transportation

Site/Office: District 9 Branch in Chillicothe, Ohio

Position: Environmental Specialist I

Result: The Grievant is to be reinstated without back pay to the position of Environmental Specialist I that he held before his dismissal.

Reason: The Grievant has been found to have violated the "Proctor Directive" by downloading material that is "offensive" and that has the potential for embarrassing ODOT. It is undeniable that Grievant visited certain Internet websites that were blocked

by the Employer whatever their content, and the issue then becomes how often Grievant visited those sites. However, due to the credibility problems with Mr. Long's report and documentary evidence it can only be determined that the Grievant accumulated an indeterminate number of "hits." The Arbitrator found that the Grievant's activities, which more resemble "loafing," could not be described as theft due to the social stigma of the charge and fairness to the Grievant. The Arbitrator lacks sufficient evidence to sustain the Union's charge of disparate treatment.

739) Christini Howard 31-03-(99-07-30)-0017-01-14 Removal

Arbitrator: Robert G. Stein

Issue: Was the Grievant removed for just cause? If not, what shall the remedy be?

Contract Section: Article 24

Topic Headings: Insubordination, Unauthorized / misuse of State Equipment

Department: Ohio Department of Transportation

Site/Office: Fairlawn, Ohio

Position: EEO Construction Coordinator

Result: The grievance is denied.

Reason: During working hours, when the Grievant contacted contractors to solicit funds, she used her position, and more importantly the power of ODOT, to influence contractors to give money to the women's conference. It's one thing to be careless, or to assume particularly when management is lax, that it is okay to occasionally use your work computer for personal reasons, however, when there is evidence of unbridled use of ODOT equipment for non-ODOT activity, the Employer has a right to curtail such activity. What is more disturbing about this matter is the cover-up that was attempted by the Grievant, because the evidence is clear and convincing that Grievant attempted to destroy evidence that was part of an investigation. Grievant left the Employer with little choice but to find her to be insubordinate, due to her refusal to turn over the laptop after repeated verbal requests as well as a written request.

740) Deon Carter 27-29 (000405) 493-01-093

Arbitrator: Robert G. Stein

Issue: Was the Grievant removed for just cause? If not, what shall the remedy be?

Contract Section: Article 24

Topic Headings: Removal, Dealing With Inmates

Department: Ohio Department of Rehabilitation and Correction

Site/Office: Montgomery Education and Pre-Release Center (MEPRC)

Position: Storekeeper 2

Result: The grievance is denied.

Reason: Although much of the evidence in this case is circumstantial, the finding of existence of inmate food items that were improperly in an area controlled by the Grievant, is sufficient in this case to establish guilt. The Union suggests that the marked food items could have been “planted” by management in order to get rid of the Grievant. The Union presented no evidence or testimony that undermined the veracity of Investigator Ford or Deputy Warden Abraham’s statements or which supported an allegation that management intentionally planted evidence to “frame the Grievant.” The chain of circumstances that occurred on March 10th leads the arbitrator to conclude, after close reasoning of the facts, that the Grievant is guilty of receiving items of value from inmates. On the other hand, the Grievant’s testimony appeared to be evasive and lacked credibility. Even his witnesses could not substantiate his argument that the pop he took out of the institution was his own and that he often brought large quantities of pop into the institution on prior occasions. The totality of the evidence in this matter coupled with the Grievant’s relatively short work history and his penchant for frequently disobeying rules is important in this case, and in this particular case it overcomes the Employer’s inexplicable conduct in issuing non-progressive levels of discipline. Nevertheless, the issuance of 12 disciplinary actions in 3 years time speaks volumes about the Grievant’s inability to learn from his mistakes, regardless of what form the discipline takes. When this current infraction is viewed in context of the history of infractions, then the Arbitrator finds that the Employer was justified in removing the Grievant from his position as opposed to issuing a less severe form of corrective action.

741) Morgan McBroom 27-21-19990802-1786-01-03 Removal

Arbitrator: Anna Duval Smith

Issue: Was the Grievant, Morgan McBroom, removed for just cause? If not, what shall the remedy be?

Contract Section: Article 24

Topic Headings: Removal, Possession of Drugs

Department: Ohio Department of Rehabilitation & Correction

Site/Office: Orient Correctional Institution

Position: Correction Officer

Result: The grievance is sustained in part, denied in part.

Reason: The State is correct in that they have correctly followed procedure in this case, and that knowledge is not an element of Rule 30a. Then this case does not turn on the Grievant’s guilt, for it is clear that his car, while parked on State property, did contain an illegal drug in the form of at least four viable marijuana seeds. Instead, it turns on the reasonableness of the rule and its associated penalty as applied in this case. The Arbitrator does not believe that it is reasonable for the ODRC to remove a Correction

officer whose only offense (on top of a minor discipline record) was that his car's ashtray contained a few viable marijuana seeds when it was parked in a correctional institution's parking lot. Unless the State can convincingly show the correction officer was, himself, a user (thereby placing himself at risk of inmate blackmail), that he had an amount that intent to distribute could be inferred, brought drugs into areas where inmates could have access, or knowingly conveyed, or the State can show other means by which the institution's security was threatened, the violation is only a technical one. No such evidence was presented in this case. At most, the Grievant was irresponsible in the loan of his vehicle that resulted in illegal drugs being brought onto the grounds of a correctional institution. This error constitutes a violation of Rule 38, for which he will receive discipline to impress upon him that he is ultimately responsible for the contents of his own vehicle. In light of his prior record and commensurate with the discipline grid, this will be a five-day suspension.

742) John Noble 27-32-19990622-0205-01-03 Removal

Arbitrator: Robert G. Stein

Issue: Was the Grievant, John Noble, terminated for just cause? If not, what shall the remedy be?

Contract Section: Article 24

Topic Headings: Removal, Racial Discrimination, And Abusive Language

Department: Ohio Department of Rehabilitation and Correction

Site/Office: Noble Correctional Institution

Position: Correction Officer

Result: The grievance is denied.

Reason: The Grievant denied much of what the Employer claimed to be true, but offered little in the way of a plausible explanation for why so many different employees and inmates found him to demonstrate prejudicial attitudes toward African-American employees and inmates. The Employer demonstrated clearly and convincingly that the Grievant was abusive and acted in a discriminatory manner toward CO Jeffreys and to the African-American inmates he supervised. CO Jeffrey's testimony appeared to be sincere and devoid of any motive other than to tell the truth. Absent any evidence of a personal grudge or a revenge motive, her testimony must be given considerable weight. The Arbitrator found Grievant's denial of the comments "you people" and "porch monkey" to be less than credible particularly in contrast to the testimony of CO Jeffreys and Inspector Burris. The Arbitrator found that Grievant was provided all relevant documents for the pre-disciplinary hearing, and the claim of procedural error carries with it the burden of an affirmative defense. In this case, the Union was unable to meet its burden. The substantial evidence of inappropriate conduct makes the Employer's case for discharge.

743) Michael Smith 31-01-00-03-09-0008-01-06 Removal

Arbitrator: Anna DuVal Smith

Issue: Was the Grievant removed for just cause? If not, what shall the remedy be?

Contract Section: Articles 24, 31

Topic Headings: Removal, Sick Leave

Department: Ohio Department of Transportation

Site/Office: Hardin Garage

Position: Highway Maintenance Worker 2

Result: The grievance is granted.

Reason: ODOT had a policy governing the treatment of workers who fail to maintain required driver's licenses and/or insurability because of off-the-job conduct, which stated, in part: "An employee may elect to use personal leave to cover periods of a suspended license with no occupational driving privileges or any possible incarceration. He or she may also use compensatory time or vacation unless there is an operational reason to deny it. An employee may not use sick leave to cover this period and leave without pay is not to be authorized. An employee without the necessary leave to cover his/her absence is in violation of ODOT Directive A-601, items 23 – Unauthorized absence in excess of thirty (30) minutes, or 24 – Unauthorized absence for three (3) or more consecutive days." The problem with the policy is that if, in addition to being without a license, the employee is also legitimately ill, the employer's refusal to grant sick leave denies the employee a contractual right. If the employer does not take disciplinary action against healthy employees when their absence is covered by some form of approved leave, it may not take disciplinary action against legitimately ill employees for the same offense when their absence should be covered by approved sick or extended illness leave. Doing so would impermissibly discriminate against ill employees exercising their contractual rights. The Employer ignored the Grievant's legitimate illness when it came to its attention, it denied the Grievant contractual rights to approved medical leave and thus removed him without just cause.

744) Richard A. Parks 27-26-99-06-03-0970-01-03 Removal

Arbitrator: John J. Murphy

Issues: Whether the removal of the Grievant was for just cause; and if not, what should the remedy be?

Whether the Union failed to appeal the Removal Grievance to mediation and arbitration with the consequence that this grievance should be deemed withdrawn under Section 25.05 of the contract?

Whether the State violated its duty under Section 25.08 of the contract to produce documents requested by the Union? If so, what should the remedy be?

Contract Sections: Articles 24 (Discipline), and 25 (Grievance Procedure)

Topic Headings: Arbitrability, Failure to Produce Requested Documents, Abusive Language, Removal

Department: Ohio Department of Rehabilitation and Correction

Site/Office: Warren Correctional Institution

Position: Correction Officer

Result: The grievance is denied.

Reason: The Grievant's statements were abusive by their threatening manner and tone to a fellow CO. Grievant was the only aggressor, and his actions had a negative impact on other staff and created the potential for a security problem from the inmates who witnessed the incident. Second, both parties were mutually mistaken by assuming that the removal case had been appealed to mediation. The mediation file contained an Appeal and Preparation Sheet that contained an "X" next to the box titled mediation, and the file included a Step 3 response by the State to the Removal Grievance issued by the State's Step 3 Hearing Officer. The record creates the strong inference that both parties assumed that the Removal Grievance was appealed to mediation. Third, the request to produce documents was resolved by an interim order shaped by the Arbitrator with the recommendations and clarifications supplied by the parties. The parties also announced their decision to adopt the interim order as an agreement by the parties. In addition, the severity of Grievant's past and present actions prevent him from claiming a violation of progressive discipline, and the facts of the case do not support the Grievant's claims of disparate treatment, violations of the Grievant's due process rights, or racial discrimination in removal.

745) Jerome Harris 27-17-(05-30-98)-0820-01-03 Removal

Arbitrator: Robert Brookins

Issue: Whether the removal was for just cause, and if not what should the remedy be?

Contract Section: Article 24

Topic Headings: Discharge, Unauthorized Relationships, and Exchange of Greeting Cards

Department: Ohio Department of Rehabilitation and Correction

Site/Office: Ohio Northeast Pre-Release Center

Position: Correction Officer

Result: The grievance is sustained in part and denied in part. The arbitrator held that a one-year suspension adequately served the goal of progressive discipline in this case. The grievant was reinstated with full seniority and all related benefits. Back pay was to be reduced by the amount of earnings he received in alternative employment from the removal date to the date of reinstatement.

Reason: Without independent corroborative evidence, the Employer's infrequent observations of Ms. Betances being out of place in the Grievant's work area do not demonstrate a relationship between the Grievant and Ms. Betances. On the other hand,

the greeting cards have some probative capacity, because they establish a basis for inferring a relationship between Ms. Betances and the Grievant. The language in the cards themselves is sufficiently emotional and personal to support an inference that the person who sent them more likely than not had a personal friendship with Ms. Betances. The cards are insufficient to establish an inferential sexual relationship. Nor has the Employer formally accused the Grievant of engaging in a sexual relationship with Ms. Betances, but whoever sent these cards hardly views himself as a mere casual acquaintance or friend. The OBCI report supports the inference that Grievant more likely than not sent the cards to Betances, and Grievant fails to adequately rebut this inference with his far-fetched, highly unsatisfactory explanation of how his fingerprints got on the cards along with the backdrop of persistent suspicions and allegations about the Grievant and Ms. Betances. The disagreement over whether Rule 46a contemplates “attempted exchange” within the meaning of “exchange” is one of interpretation and commonsense. Given the physical proximity of Rules 46a and 46b, and the language in 46b, it is more reasonable to view the attempt to exchange and the actual exchange as inextricably linked to the same unauthorized relationship, and therefore, Grievant’s attempt to exchange greeting cards with Ms. Betances is prohibited by Rule 46a in the same manner of an actual exchange.

746) Garland Turner 27-05-(99-12-13)-0693-01-03 Removal

Arbitrator: Robert Brookins

Issue: Whether the Employer violated the terms of the Settlement Agreement by terminating the Grievant, and whether the Grievant was terminated for just cause?

Contract Section: Article 24

Topic Headings: Discharge, Inattention to Duty, Poor Judgment

Department: Ohio Department of Rehabilitation and Correction

Site/Office: Corrections Reception Center

Position: Correction Officer

Result: The grievance is denied in its entirety.

Reason: Ultimately, the Arbitrator agreed with the Employer that the mere fact that Ms. Belt was able to walk up to the perimeter vehicle unnoticed establishes that the Grievant was impermissibly inattentive. Although the Employer erred in prematurely introducing the Last Chance Agreement, nothing in the record suggests that the Agreement influenced the Employer’s decision to find the Grievant guilty of violating the Rules as charged. The Grievant is indeed a victim of disparate treatment. However, during the penalty phase of the decision, the issue of disparate treatment – and hence the second Last Chance Agreement – drops out of the analysis because the record does not show that, in the penalty phase of the decision-making process, the Grievant and Mr. Steward are similarly situated. The Grievant’s tenure can by no means begin to offset the aggravative weight of his disciplinary record and his mixed performance record. The magnitude of imbalance between mitigative and aggravative factors preclude even the possibility of holding that the Employer acted in an unreasonable, arbitrary, or capricious manner in deciding to terminate the Grievant.

747) Allan Svendsen 27-21-(04-21-00)-1972-01-04
Removal

Arbitrator: Robert G. Stein

Issue: Was the Grievant, Allan Svendsen, terminated for just cause? If not, what should be the remedy?

Contract Section: Article 24

Topic Headings: Removal, Tardiness, And Falsifying Official Documents

Department: Ohio Department of Rehabilitation and Correction

Site/Office: Orient Correctional Institute/Frazier Healthcare Center

Position: Paramedic

Result: The grievance is denied in part and sustained in part. The grievant's removal was converted to a time served suspension. The grievant was to be reinstated to his former position and shift without back pay or benefits, and his seniority would be bridged.

Reason: First, the Arbitrator finds the Employer's argument that the Grievant was late on December 4th to be more persuasive than the Grievant's version of the facts, because the odds that both the Grievant and LPN Brown would experience a computer error on the same date, when there was no evidence that other employees had the same problem during this shift, appears to be remote. Second, CO Gleadell, who was in charge of the key room on December 4th, firmly and confidently testified that his clock is precisely timed with that of the punch clock and is at the most just a few seconds different. Even assuming the line in front of CO Gleadell was very short; the Grievant would have had to get his key prior to the alarm setting on CO Gleadell's clock. If the Grievant attempted to punch in at 9:58, 9:59, or at 10 pm, it appears implausible that he had enough time to line up and get his keys prior to the triggering of CO Gleadell's alarm clock. Third, the Grievant signed in at FHC at 10 pm, which undermines his credibility, because FHC is a five or six minute walk from the time clock area, and does not even take into account the time it takes to get the keys. However, the Employer's case is not without its failings, because the Union convincingly presented expert testimony to contradict the assertion that Grievant forged the signature of RN Trende. Furthermore, RN Trende testified that she signed the missed punch form for the Grievant. The Employer was unable to prove that RN Trende's name on the missed punch form was written by anyone but herself.

748) Marcus Peacock 35-07-(00-07-21)-0050-01-03
Removal

Arbitrator: John J. Murphy

Issue: Removal, Excessive Force

Contract Section: Article 24

Topic Headings: Removal, Excessive Force

Department: Department of Youth Services
Site/Office: Scioto Juvenile Correctional Facility
Position: Juvenile Correction Officer

Result: Grievance granted in part, denied in part.

Reason: The Arbitrator found that the injury to the youth was totally unrelated to his touching the youth; therefore, one of the factors that led to the grievant's removal was not present when the grievant's removal was based only on the touching and turning of the youth. The grievant's action warranted discipline, but not removal. The removal was converted to suspension for time served without pay.

749) George Diaz 27-02-(00-08-08)-0696-01-03
Removal

Arbitrator: Anna DuVal Smith

Issue: Was the grievant removed for just cause? Whether handcuffing an inmate to a bed constitutes physical abuse.

Contract Section: Article 24

Topic Headings: Removal, Physical Restraint of a Patient, and Failure to Cooperate in Investigation

Department: Rehabilitation and Correction

Site/Office: Allen Correctional Institution

Position: Correction Officer

Result: Grievance was granted in part, denied in part.

Reason: The Arbitrator determined that while the grievant was not guilty of physical abuse, handcuffing the inmate to a bed did constitute an inappropriate use of force in this case. She found that the grievant's conduct warranted discipline, but removal was too severe. The removal was converted to a five-day suspension.

750) Andrea Dickerson 27-14-5-23-00-1062-01-03
Removal

Arbitrator: Nels E. Nelson

Issue: Was there just cause for the grievant's removal?

Violation of Rule 46(a) - having an unauthorized relationship with an inmate.

Contract Section: 24

Topic Headings: Removal, Unauthorized Relationship With An Inmate

Department: Department of Rehabilitation and Correction

Site/Office: Lorain Correctional Institution

Position: Correction Officer

Result: The grievant was returned to work without back pay but with no loss of seniority.

Reason: It was determined that the grievant violated Rule 46(a), however, the Arbitrator found that the grievant's misconduct was limited to exchanging personal information with the inmate and failing to report the correspondence she received from him. The Arbitrator found that the proper remedy in this instance was reinstatement without back pay which resulted in a suspension for approximately one year. The Arbitrator pointed out that the significant loss of pay indicated the seriousness of any violation of Rule 46 and was further warranted by the grievant's dishonesty which prolonged the ultimate remedy.

751) Green 24-02-(09-20-99)-1655-01-04 Removal

ARBITRATOR: Robert G. Stein

ISSUE: Did management have just cause to remove TPW from his position for physical abuse?

CONTRACT SECTION: Article 24

TOPIC HEADINGS: Removal, Physical Abuse

DEPARTMENT: Department of Mental Retardation and Developmental Disabilities

SITE/OFFICE: Apple Creek

POSITION: Therapeutic Program Worker

RESULT: The grievance was sustained. The grievant was reinstated to his former position and shift and was to be made whole for all lost pay, benefits, and seniority. All record of the grievant's discharge was to be removed from his personnel file. In order to remove any undue suspicion regarding the grievant, it was ordered that he be placed in an assignment where the resident did not reside.

REASON: The Arbitrator determined that the circumstantial evidence presented by the Employer lacked sufficient probative value to meet a "just cause" burden. He noted that there were no witnesses who could testify that the grievant was upset. He also noted that the resident was self-abusive and had a history of displaying the abuse in specific patterns. The injuries suggested the resident had been in a scuffle, but the grievant's physical appearance did not indicate that he had been in the kind of altercation that would cause the injuries present on the resident's body.

752) CARTER 14-50-(00-09-08)-0032-01-09 Removal

ARBITRATOR: Robert Stein

ISSUE: Was the grievant removed for just cause?

CONTRACT SECTION: Article 24

TOPIC HEADINGS: Absent Without Leave; Insubordination

DEPARTMENT: Health

SITE/OFFICE: Bureau of Vital Statistics

POSITION: Account Clerk 1

RESULT: The grievance was denied in part and sustained in part. The grievant was reinstated without pay or benefits, but his seniority was not to be interrupted. His termination was converted to a time served suspension for being absent without leave and insubordinate. The arbitrator noted that this award was an opportunity to remain employed, but that the grievant faced discharge if he did not change his conduct.

REASON: The arbitrator found that the grievant was wrong to think he could take off work the rest of the day following a two-hour examination. The employer presented credible evidence that on the day preceding the examination the grievant was told he was to return to work following his examination. The arbitrator found that the grievant was insubordinate when he refused to tender a leave form after receiving a direct order from his supervisor to do so. The grievant should have obeyed the directive and grieved it afterwards. The arbitrator noted the grievant's prior disciplines regarding violations of attendance rules, stating that the grievant seemed unaffected by the prior disciplines. However, the arbitrator concluded that termination was excessive in this case.

753) ROGERS 04-00-(00-02-21)-12-01-07 Removal

ARBITRATOR: John J. Murphy

ISSUE: Was the grievant removed for just cause?

CONTRACT SECTION: Article 24

TOPIC HEADINGS: Actions that could knowingly cause harm to employee, coworker, or member of the public; Neglect of Duty; Poor Performance

DEPARTMENT: Agriculture, Division of Meat Inspection

SITE/OFFICE: Southern Ohio – Fifteen Counties

POSITION: Meat Inspector

RESULT: The grievance was denied.

REASON: The grievant was charged with failing to tag and immediately slaughter a suspect/downed animal. He failed to note that a chicken processing plant did not properly perform fecal checks; thus it was not in compliance. He also failed to conduct an adequate inspection and neglect to note unsanitary conditions at a processing plant. The arbitrator concluded that the factual transactions amounted to neglect by the grievant of his duties as a meat inspector, endangering the public (Rule 30) and potentially harming the public (Rule 25).

The Arbitrator found that the grievant could not demonstrate that he did not receive sufficient notice of the potential for disciplinary action for the three actions for which he was discharged.

754) Shock 24-13-(00-07-11)-0627-01-04 Removal

ARBITRATOR: Anna DuVal Smith

ISSUE: Was grievant removed for just cause?

CONTRACT SECTION: Article 24

TOPIC HEADINGS: Removal; Abuse of Resident

DEPARTMENT: Mental Retardation and Developmental Disabilities

SITE/OFFICE: Tiffin Developmental Center

POSITION: Therapeutic Program Worker

RESULT: The grievance was denied.

REASON: The grievant was charged with alleged abuse of a resident. The grievant argued that the resident had become attached to her, was self-abusive and tended to act out in an attempt to get the grievant's attention. The grievant contended that management was aware of the problem and failed to address it. The arbitrator found that there was a formal program in place to handle the resident's aggressive behavior. The arbitrator noted that even if management had been less responsive to the problem, it is a part of the duties of the caregivers to handle difficult residents without abusing them. The arbitrator concluded that on the date in question the grievant was unable to do that; therefore, she was removed for just cause.

755) Francois 24-15-(00-05-25)-0608-01-0 4 Removal

ARBITRATOR: John Murphy

ISSUE: Was grievant removed for just cause?

CONTRACT SECTION: Article 24

TOPIC HEADINGS: Removal; Resident Abuse

DEPARTMENT: Mental Retardation and Developmental Disabilities

SITE/OFFICE: Youngstown Developmental Center

POSITION: Therapeutic Program Worker

RESULT: Grievance was granted. Grievant was reinstated to her former position within 10 calendar days from the date of the decision. The grievant is to be whole with restoration of her seniority, contract rights, and wages from the date of her discharge to

the date of her reinstatement, minus other earnings and receipts from governmental support systems.

REASON: The employer did not meet its burden of proof that what occurred in this instance could be characterized as physical abuse. The arbitrator found that there were elements of the evidence presented which supported the grievant's testimony of what transpired.

**756) Church , et al. 27-31-(00-01-03)-0266-01-03-T
27-31-(00-01-030-0266-01-03 Removal**

ARBITRATOR: Robert Brookins

ISSUE: Were the grievants removed for just cause?

CONTRACT SECTION: Article 5; ORC 124.27; OAC 123:1-11-02

TOPIC HEADINGS: Removal; Residency Requirement

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Belmont Correctional Institution

POSITION: Correction Officers

RESULT: The grievances were sustained. The grievants were reinstated with full back pay from the date of their wrongful terminations to the date that the employer implemented the arbitrator's decision. The employer was entitled to reduce back pay by any earnings received during the period the grievant's were terminated.

REASON: The employer erroneously interpreted Section 124.27 of the Ohio Revised Code which states that "employees in the classified service shall be or become forthwith a resident of the State." The employer added restrictions to the term "resident" – primary and permanent. Those restrictions made the term resident synonymous with domicile. The arbitrator noted that while a person could have only a single domicile, he/she could have many residences. The arbitrator found that the number and types of contacts with Ohio that the grievants had (family living in Ohio, established residency in Ohio) satisfied the term of residency under 124.27. The grievants were discharged without just cause.

757) McCament 24-09-(00-06-14)-1879-01-04 Removal

ARBITRATOR: Harry Graham

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Removal; Abuse of Resident

DEPARTMENT: Mental Retardation and Developmental Disabilities

SITE/OFFICE: Mount Vernon Developmental Center

POSITION: Therapeutic Program Worker

RESULT: The grievance was sustained. The grievant was reinstated. She received back pay and benefits she would have received if she had not been terminated, minus any interim payments. Her seniority was restored.

REASON: The grievant was accused of client abuse. The arbitrator found that the lack of evidence, including numerous blank pages in a transcript of an interview of the State's witness by a police officer, did not support the employer's position in this instance.

758) Randall 27-12-(00-08-24)-1176-01-09 Removal

ARBITRATOR: Robert G. Stein

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Removal; Unauthorized Relationship

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Lima Correctional Institution

POSITION: Library Assistant 2

RESULT: The grievance was denied

REASON: The grievant was charged with having an unauthorized relationship with an inmate. Handwritten notes to the inmate were analyzed and determined to be from the grievant. The arbitrator found that the employer met its burden of proof and based its findings on both direct and circumstantial evidence.

759) Gast 27-20-(00-06-26)-4546-01-03 Removal

ARBITRATOR: John J. Murphy

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Use of excessive force; Physical abuse of inmate; Threatening/Intimidating/ Coercing/Abusive language towards inmate

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Mansfield Correctional Institution

POSITION: Correctional Officer

RESULT: The grievance was denied.

REASON: The arbitrator determined that the grievant physically abused an inmate in a mental health residential unit. He was accused of using abusive and intimidating language towards the inmate in addition to stomping the inmate. The evidence presented and the testimonies of the witnesses supported management's position and removal was warranted.

760) Isla 31-04-(04-05-99)-0019-01-06 Promotion

ARBITRATOR: Robert G. Stein

ISSUE: Did the employer violate Article 17 when it failed to promote the grievant?

CONTRACT SECTION: 17

TOPIC HEADINGS: Minimum Qualifications; Proficiency testing

DEPARTMENT: Transportation

SITE/OFFICE: District 4 – Stark County

POSITION: Highway Maintenance Worker 2

RESULT: The grievance was denied.

REASON: The arbitrator found that the grievant was not proficient in minimum qualifications of heavy equipment operation. It was determined that the employer acted reasonably and did not violate the agreement in concluding that the grievant did not meet the minimum qualifications for the Highway Maintenance Worker 3 position. However, the arbitrator noted that using a proficiency test to assess relative skill and ability was not permitted by the agreement and that the portion of the employer's evidence which included the results of the test was inappropriate.

761) Blackshear 33-00-(0-08-10)-1096-01-04 Removal

ARBITRATOR: John J. Murphy

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Sexual Harassment; Investigation of Charges

DEPARTMENT: Ohio Veterans Home

SITE/OFFICE:

POSITION: Nurse Aide

RESULT: The grievant was reinstated to his position with seniority and benefits restored. He was made whole for the period of time between his removal date and his reinstatement date.

REASON: The charges of sexual harassment and offensive touching of co-workers were not proven by the employer. The arbitrator determined that the investigation of the charges by the employer was neither fair nor complete. It was clear that there was one

witness to the two incidents, which resulted in the charges was available, however, management did not interview this witness. Therefore, the statements and evidence presented were unsubstantiated. The arbitrator determined that the offensive touching occurred before the grievant was notified that the touching was unwelcome and that the touching that occurred was consistent with the usual behavior between the grievant and the complaining co-worker.

762) Gasior 04-00-(00-10-30)-0017-01-07 Removal

ARBITRATOR: Anna DuVal Smith

ISSUE: Was the grievant removed for just cause?

CONTRACT SECTION: 24

TOPIC HEADINGS: Removal; Failure to Perform Tasks

DEPARTMENT: Agriculture

SITE/OFFICE:

POSITION: Meat Inspector

RESULT: The grievance was granted in part, denied in part. The grievant was reinstated. She was awarded seniority, benefits and back pay minus any interim earnings she received. The removal was converted to a 10-day suspension without pay. The award was conditional upon the grievant completing retraining within a reasonable period of time.

REASON: The grievant was removed for allegedly allowing meat to enter the food chain without inspection and for allowing product to be shipped without inspection of its label. The arbitrator noted that the grievant's problems coincided with transition to a new program. Records indicate that the grievant did not effectively adapt to the new system. The arbitrator noted that discipline is used to correct a problem and must be progressive. The record indicated that this instance was the grievant's third performance-related violation and according to the discipline grid, called for a suspension. The arbitrator stated that a long term employee like the grievant deserved another chance. However, returning the grievant to her job without training would be futile.

763) Mummey 27-32-(00-03-10)-0245-01-03 Ohio National Guard Time

ARBITRATOR: Harry Graham

ISSUE: Ohio National Guard Time

CONTRACT SECTION: Articles 16, 28.01, 36.07 and 44.02

TOPIC HEADINGS: State service time, Ohio National Guard

DEPARTMENT: Department of Rehabilitation and Correction

SITE/OFFICE:

POSITION: Correction Officer

RESULT: Grievance Sustained

REASON: A full time employee who was a member of the Ohio National Guard serving on duty one weekend per month and two weeks out of every year is entitled to one year prior service credit for each year of service for the purpose of computing the amount of his vacation leave pursuant to RC121.161, OAG 81-066. The Arbitrator found that the evidence presented and practice supported the Union's position in this matter. State service credit is to be based on the initial date of enlistment in the National Guard. The Office of Collective Bargaining was to promptly notify all State agencies of the decision. The award was limited to the five grievants and applied to National Guard time only.

764) **Steele 34-26-(99-02-19)-0012-01-09**

Bereavement

ARBITRATOR: Harry Graham

ISSUE: Did the grievant's relative fulfill the requirement for bereavement leave pursuant to Article 30.03 of the Collective Bargaining Agreement?

CONTRACT SECTION: 30

TOPIC HEADINGS: Bereavement Leave

DEPARTMENT: Bureau of Workers' Compensation

SITE/OFFICE: William Green Building

POSITION: Workers' Compensation Claims Specialist

RESULT: The grievance was sustained. The grievant received three days bereavement leave. Vacation time used by the grievant to attend the funeral of her husband's aunt was returned to her account.

REASON: The arbitrator noted that this matter was in many ways identical to arbitration no. 11-05(89-11-22)0052-01-09, Arbitrator John Drotning in which a grievant's stepfather acted as a parent for the grievant. In this matter, the grievant's husband's biological mother was deceased. His aunt performed all aspects of motherhood for him, becoming his *defacto* mother. When the grievant married her husband, his aunt became her *defacto* mother-in-law. The deceased aunt fulfilled tests established in the Collective Bargaining Agreement: 1) she was the grievant's mother-in-law and 2) she stood in the place of a parent.

765) **Mathews 27-21-(00-11-09)-2105-01-03 Removal**

ARBITRATOR: John J. Murphy

ISSUE: Was the grievant removed for just cause?

CONTRACT SECTION: 24

TOPIC HEADINGS: Absenteeism; Failure to Follow Call-in Procedure; AWOL; Misuse of Sick Leave; Pre-disciplinary Hearing/Meeting

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Orient Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was granted.

REASON: The arbitrator determined that the charges of failing to notify a supervisor of an absence or follow call-in procedure and misuse of sick leave were without merit. He found that the charge of AWOL did have merit.

The issue of what constitutes a pre-disciplinary hearing/meeting arose in this arbitration. A hearing was held, but the hearing officer did not issue a report. She later testified that a report was not issued because no hearing occurred. Instead of the hearing officer issuing a report, management dropped two of the charges, changed on and set up another pre-disciplinary hearing. The arbitrator referred to Section 24.04 of the Contract, which requires a pre-disciplinary conference but never refers to that conference as a hearing. It is called a meeting and the term is used five or more times in the section. One sentence states what is to occur at the meeting: "The Union and/or employee shall be given the opportunity to ask question, comment, refute, or rebut." The Union was able to prove that a pre-disciplinary "meeting" did indeed take place because the Union called witnesses and questioned them at the meeting. The arbitrator determined management's tactic to be in violation of the contract. He concluded that the prejudicial process contaminated the charge for which the arbitrator found the grievant guilty to the point that no discipline was warranted.

766) **2-10-(98-08-18)-0051-01-00**

2-10-(98-08-18)-0052-01-00

2-10-(98-08-18)-0053-01-00

Classifications & Pay Ranges

ARBITRATOR: Robert G. Stein

ISSUE: Did the Department of Administrative Services properly apply the point factor system to determine the pay range of the Highway Maintenance Worker 2 and 3 classifications pursuant to 36.05(A) of The Collective Bargaining Agreement?

CONTRACT SECTION: 36.05

TOPIC HEADINGS: Pay Ranges

DEPARTMENT: Transportation

SITE/OFFICE:

POSITION: Highway Maintenance Worker 2 and 3

RESULT: The grievances were denied.

REASON: The arbitrator did not find sufficient evidence to conclude that DAS arbitrarily evaluated the Highway Maintenance Worker 2 and 3 positions. He found that DAS considered all relevant fact and properly applied its standards of measurement to those facts and that the pay ranges assigned to the positions were proper.

767) Pick-A-Post

ARBITRATOR: Harry Graham

ISSUE: Did management attempt to undermine Appendix N, section D of the Collective Bargaining Agreement in changing Pick-A-Post arrangements?

CONTRACT SECTION: Appendix N, Section D

TOPIC HEADINGS: Pick-A-Post; Reorganization

DEPARTMENT: Youth Services

SITE/OFFICE: Circleville

POSITION: Juvenile Correction Officer

RESULT: The grievance was denied.

REASON: One-page decision. The arbitrator concluded that the employer was not abolishing Pick-A-Post, but made a necessary reorganization. The arbitrator ruled that no further change in Pick-A-Post could be made at the Circleville facility for the remaining the current contract was in effect.

768) Wendling 27-20-01-03-07)-5042-01-03 Removal

ARBITRATOR: Anna DuVal Smith

ISSUE: Was the grievant removed for just cause?

CONTRACT SECTION: Article 24

TOPIC HEADINGS: Removal; Purposeful or Inappropriate Use of State-issued Weapon

DEPARTMENT: Youth Services

SITE/OFFICE: Mansfield Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was denied.

REASON: The grievant was charged with using his mace against a member of the public during a “road rage” incident and leaving the victim, temporarily blind, on the side of the highway. The arbitrator found that the grievant’s alibi was offered too late to be credible and his witnesses were not credible. The arbitrator determined that although the incident occurred while the grievant was off duty, the discipline issued by the employer was justified because of the use of a state-issued weapon and the fact that the act was committed while the grievant was in uniform.

769) Jackson 35-04-(99-01-22)-0285-01-03 Roll Call Pay

ARBITRATOR: Robert G. Stein

ISSUE: Should roll call pay be included in back pay awards?

CONTRACT SECTION: 24

TOPIC HEADINGS: Back pay awards; Roll call pay

DEPARTMENT: Youth Services

SITE/OFFICE: Indian River Juvenile Correction Institution

POSITION: Juvenile Correction Officer

RESULT: The grievance was sustained. The arbitrator stated that “unless otherwise agreed to by the parties, roll call pay shall be included in any back pay award or settlement of an employee’s discipline or discharge.

REASON: The arbitrator determined that it was not reasonable to deny an employee roll call pay when the employee’s removal has been found to be without just cause. Roll call pay is for attending a mandatory meeting and is identical to other work which requires a meeting with management.

770) Burley 07-00-(00-08-01)-0271-01-07 5-Day Suspension

ARBITRATOR: Robert Stein

ISSUE: Was the grievant’s 5 day suspension issued for just cause

CONTRACT SECTION: Article 24

TOPIC HEADINGS: Insubordination; Tardiness; AWOL; Denial of Union Representation

DEPARTMENT: Commerce

SITE/OFFICE: Division of Real Estate and Professional Licensing

POSITION: Investigator

RESULT: The grievance was sustained in part. The charges of AWOL and Insubordination were removed from the grievant’s record. The tardiness charge remained.

The 5-day suspension was reduced to a 2-day suspension. The grievant received 3 days back pay minus normal deductions and was made whole for all lost seniority and benefits.

REASON: The evidence clearly established that the grievant was 25 minutes late for work. The arbitrator noted that management's policy did not support its position that an employee could be both tardy without mitigating circumstances and AWOL for the same period of 30 minutes or less.

The arbitrator found that management violated §24.04 when it denied the grievant representation at a meeting regarding his timesheet. Management had already spoken to the Union regarding this matter, but at a subsequent meeting the next day denied representation. The employer prevented the grievant from choosing wisely when he was given a direct order to correct his timesheet within 55 minutes.

771) **29-04-(00-04-07)-0432-01-14**
29-04-(00-01-18)-0427-01-14
Consent Award

ARBITRATOR: Nels E. Nelson

ISSUE:

CONTRACT SECTION:

TOPIC HEADINGS: Mentoring/Tutorial Program

DEPARTMENT: Rehabilitation Services Commission

SITE/OFFICE:

POSITION:

RESULT: Consent Award - The parties agreed to create a Mentoring/Tutorial Program to improve test scores. The parties agreed that the tests would be content valid. Employees involved in the grievance were compensated and additional grievances were withdrawn. Prior to testing, both parties would agree upon scoring and administration of the test.

772) **Glen 23-18-(01-01-16)-0010-01-09 Removal**

ARBITRATOR: Nels E. Nelson

ISSUE: Was the grievant removed for just cause?

CONTRACT SECTION: 24

TOPIC HEADINGS: Failure of Good Behavior

DEPARTMENT: Mental Health

SITE/OFFICE: Northcoast Behavioral Center – South Campus

POSITION: Secretary

RESULT: The grievance was denied.

REASON: The grievant made threatening comments to her supervisor in a DOH office. Comments made to members of the center's police department and the Highway Patrol Trooper, in addition to the grievant's insubordination supported the state's decision to remove the grievant.

773) Bailey 27-34-(00-11-27)-0172-01-03 Removal

ARBITRATOR: Anna DuVal Smith

ISSUE: Was the grievant removed for just cause?

CONTRACT SECTION: 24

TOPIC HEADINGS: Unauthorized Relationship with an Inmate

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Richland Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was denied.

REASON: The grievant was accused of having an unauthorized relationship with an inmate and of writing checks to the inmate. The arbitrator stated that the grievant's testimony and statements were inconsistent and did not match the facts. While he accepted the premise that some of the witnesses had motivation to lie, the arbitrator noted that neither the order of events which occurred nor the documents nor the testimonies supported the grievant's conspiracy theory. The arbitrator found that the evidence and testimonies presented made a convincing case that the grievant was involved with the inmate which threatened security at the institution.

774) Gerstel 24-09-(00-06-14)-1877-01-04 Removal

ARBITRATOR: Anna DuVal Smith

ISSUE: Was the grievant's removal for just cause?

CONTRACT SECTION: 24

TOPIC HEADINGS: Unapproved Behavior Intervention/Inconsiderate Treatment

DEPARTMENT: Mental Retardation and Developmental Disabilities

SITE/OFFICE: Mt. Vernon Developmental Center

POSITION: Therapeutic Program Worker

RESULT: The grievant was returned to work as a Custodian with no back pay and her record reflected no break in seniority and service credit. The grievant's removal was converted to a 2-day suspension and she was indefinitely returned to a position that was not in direct contact with residents. The grievant retained bidding rights to non-direct care positions. Her pay was redlined at the TPW rate until her Custodian pay rate caught up to the redlined rate. Vacation and personal time would accrue only for those hours during the time the grievant was removed.

REASON: The arbitrator's award was issued as a one-page decision. There was no rationale stated for the conversion of the grievant's removal.

775) Gerstel 24-09-(00-06-14)-1878-01-04 Removal

ARBITRATOR: Anna DuVal Smith

ISSUE: Was the grievant's removal for just cause?

CONTRACT SECTION: 24

TOPIC HEADINGS: Unapproved Behavior Intervention/Inconsiderate Treatment

DEPARTMENT: Mental Retardation and Developmental Disabilities

SITE/OFFICE: Mt. Vernon Developmental Center

POSITION: Therapeutic Program Worker

RESULT: The grievant was returned to work as a Custodian with no back pay and her record reflected no break in seniority and service credit. The grievant's removal was converted to a 2-day suspension and she was indefinitely returned to a position that was not in direct contact with residents. The grievant retained bidding rights to non-direct care positions. Her pay was redlined at the TPW rate until her Custodian pay rate caught up to the redlined rate. Vacation and personal time would accrue only for those hours during the time the grievant was removed.

REASON: The arbitrator's award was issued as a one-page decision. There was no rationale stated for the conversion of the grievant's removal.

776) James 15-00-(01-01-19)-0008-01-07 Removal

ARBITRATOR: Nels E. Nelson

ISSUE: Was the grievant removed for just cause?

CONTRACT SECTION: 24

TOPIC HEADINGS: Failure of Good Behavior; Removal

DEPARTMENT: Public Safety – State Highway Patrol

SITE/OFFICE: Great Northern Shopping Center

POSITION: Driver's License Examiner

RESULT: The grievant was reinstated to his position without back pay. He was required to complete a sexual harassment program selected by his employer.

REASON: Though the arbitrator found that the grievant had made inappropriate comments to both co-workers and customers who visited the center, he could not sustain the removal. The grievant was not aware that his conduct was not welcome. The female co-workers who filed the charges never told the grievant that his behavior upset them. The employer failed to provide the proper sexual harassment training pursuant to a settlement agreement following a one-day suspension he received for previous misconduct. The arbitrator could not award back pay because the grievant's record indicated that he had previously been disciplined three times for inappropriate comments to female customers. The arbitrator noted that after completion of sexual harassment training, the grievant would be fully responsible for the consequences incurred as a result of any further sexually harassing comments made to co-workers or customers.

777) Morgan 07-00-(98-12-21)-0109-01-14 Issue

ARBITRATOR: Harry Graham

ISSUE: Did the employer violate the Memorandum of Understanding regarding the grievant's work performance?

CONTRACT SECTION: 22.03

TOPIC HEADINGS: MOU; Job Performance

DEPARTMENT: Commerce

SITE/OFFICE: Division of Financial Institutions

POSITION: Finance Institution Examiner 2

RESULT: The grievance was denied.

REASON: The grievant's work performance became unsatisfactory to his employer and all parties concerned agreed upon a demotion from an FIE 4 to an FIE 2. An MOU was reached that created a plan to monitor the grievant's performance and also spelled out the consequences of failing to satisfy his employer. The arbitrator noted that the MOU stated that if the grievant did not satisfactorily complete the plan he would remain in the FIE 2 classification. The grievant's work was monitored very closely during the plan by his field supervisor and other supervisory personnel. The grievant met expectations on four out of seven items required on his performance review. The arbitrator found that the review included comments from several supervisors and co-workers and that he could find no malice for the grievant in the comments. The arbitrator concluded that the

grievant did not satisfy the terms of the MOU and that the employer did not violate the MOU by failing to promote him.

778) Massey 27-14-(00-12-18)-1209-01-03 Removal

ARBITRATOR: Robert G. Stein

ISSUE: Was the grievant removed for just cause?

CONTRACT SECTION: 24

TOPIC HEADINGS: Physical abuse of an Inmate; Removal

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Lorain Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was denied.

REASON: The grievant was removed for allegedly striking an inmate while he was handcuffed and in custody of another CO. The arbitrator found that the testimony of the inmate coupled with the testimony of a fellow CO to be credible. He concluded that the grievant's testimony was not supported and implausible.

779) Bates 27-14-(0-12-18)-1210-01-03

ARBITRATOR: Dwight A. Washington

ISSUE: Was the grievant removed for just cause?

CONTRACT SECTION: 24.01; 24.04

TOPIC HEADINGS: Preferential Treatment of Inmate; Physical Abuse of Inmate; Removal

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Correctional Reception Center

POSITION: Correction Officer

RESULT: The grievance was denied.

REASON: The grievant was accused of allowing/encouraging inmates to physically abuse other inmates who were sex offenders. The arbitrator found that the grievant's testimony was not credible when weighed against the testimony of co-workers and inmates. The Union argued that the lack of an investigatory report tainted the investigation. The arbitrator concluded that despite the lack of the report, the investigation was fair fundamentally and direct testimony and circumstantial evidence

proved that the grievant had knowledge of the allegations against. The arbitrator found that the grievant was removed for just cause.

780) Palmer 23-07-(01-03-26) Removal

ARBITRATOR: Anna DuVal Smith

ISSUE: Was the grievant removed for just cause?

CONTRACT SECTION: 24

TOPIC HEADINGS: Removal; Failure of Good Behavior; Workplace Violence

DEPARTMENT: Mental Health

SITE/OFFICE: Northcoast Behavioral Healthcare System, North Campus

POSITION: Maintenance Repair Worker 2

RESULT: The grievance was denied.

REASON: The grievant was accused of striking his supervisor, causing injury to his eye. The arbitrator found the supervisor's version of what happened to be credible over the grievant's testimony. The arbitrator noted that the grievant showed no remorse, did not admit to what he did not commit to changing his behavior. The arbitrator stated that without the commitment to amend his behavior, the grievant could not be returned to the workplace.

781) Rich 02-10-(01-04-10)-0073-01-00

ARBITRATOR: David M. Pincus

ISSUE: Union-proposed pay range increase

CONTRACT SECTION: 36.05

TOPIC HEADINGS: Pay range increase

DEPARTMENT: Civil Rights Commission

SITE/OFFICE: Columbus Office

POSITION: Civil Rights Investigator

RESULT: The record did not support that the Union's proposed pay range increase for Civil Rights Investigator/s. The Union was unable to convince the arbitrator that the six-point differential was supported by the testimony and evidence at the hearing. The Union did not convince the arbitrator that the Alternative Dispute Resolution Classification point factoring was a legitimate comparable in considering this matter. The arbitrator issued guidelines for computing salaries for new assignments.

782) Miller 62-00(00-08-07)-0004-01-09 Suspension

ARBITRATOR: Dwight A. Washington

ISSUE: Was the grievant suspended for just cause?

CONTRACT SECTION: 24; ORC 124.34

TOPIC HEADINGS: Failure of Good Behavior; Intimidating/Threatening Behavior
Towards Co-Worker/Supervisor

DEPARTMENT: Board of Regents

SITE/OFFICE: Main Office - Columbus

POSITION: Customer Service Assistant

RESULT: Suspension was reduced from 45 days to 22 days.

REASON: The grievant was suspended for several alleged charges stemming from a verbal altercation with her supervisor and a co-worker. The arbitrator found that the grievant's actions were intimidating but not threatening. He noted that the grievant's actions were related to her behavior and not her performance. He was convinced that if her misconduct continued it would eventually result in removal and that reduction of the suspension should not be construed as condoning the grievant's behavior. The arbitrator concluded that the use of more charges than required and the failure to prove the most serious offense – threatening a superior or co-worker – required a reduction of the suspension.

783) Miller 28-07-(00-05-15)-0037-01-14 Removal

ARBITRATOR: Robert G. Stein

ISSUE: Was the grievant removed for just cause?

CONTRACT SECTION: 24; ORC 124.34

TOPIC HEADINGS: Dishonesty; Malfeasance; Failure of Good Behavior; Actions that could compromise or impair the ability of employee to carry out duties.

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Parole Board

POSITION: Hearing Officer

RESULT: Sustained in part. The grievant was reinstated. His seniority was restored and his personnel file was cleared except for the violation of: Actions which could compromise or impair the employee's ability to carry out his duties. His removal was reduced to a 10-day suspension. The grievant was ordered not to have any personal contact or business relationships with individuals known to be criminals the remainder of

his tenure with DR&C. If he is contacted by such an individual he was ordered to inform his superiors. Failure to do so would result in further discipline.

REASON: The grievant was charged with conducting a pay-for-parole scheme, which resulted in at least two inmates inappropriately placed on parole. The arbitrator determined that this matter was based on circumstantial evidence that had not been corroborated by the investigation. The employer's case was inconclusive. The arbitrator found one exception to his findings. The grievant raised suspicion of his activities by the volume of phone calls made to him by one of the inmates during an 18-month period. This suspicion compromised the grievant ability to perform his duties as a hearing officer.

784) Rolletta 17-00-(01-02-08)-0002-01-14 Service Credit

ARBITRATOR: John J. Murphy

ISSUE: Did the employer violate Articles 28, 36 and 44 of the CBA when it denied the grievant's request to add service time from Franklin County Public Defender's Office (FCPDO) to her service time with Ohio?

CONTRACT SECTION: 28, 36, and 44

TOPIC HEADINGS: Service Credit

DEPARTMENT: Industrial Commission

SITE/OFFICE: William Green Building - Columbus

POSITION: Hearing Officer

RESULT: The grievance was granted. Service credit for the grievant's tenure with FCPDO should be awarded for the purpose of longevity and vacation accrual. The service credit was ordered effective ten days prior to the filing of the grievance.

REASON: Prior to her employment with the Industrial Commission (IC) in 1986, the grievant was employed at FCPDO. She requested service credit for her tenure at FCPDO. The IC denied the request because the FCPDO did not make contributions to PERS for its employees. The arbitrator found that the FCPDO was established as a result of the Public Defender's Act of 1976. The majority decision in *Mallory v. Public Employees Retirement Bd.*, 82 St. 3d 235 (1998) noted that the FCPDO was created pursuant to the Public Defender Act and that its public duties were performed under the auspices of the sovereign rights of Franklin County. The arbitrator's determination was based on the court's analysis *Mallory*. The grievant, however, did not file a grievance in this matter until 2001; therefore, service credit awarded as of ten days prior to the grievance filing date, pursuant to the Contract.

785) Williams 27-01-(01-03-21)-0194-06-01 Five-day Suspension

ARBITRATOR: Anna DuVal Smith

ISSUE: Was the grievant's five-day suspension for just cause?

CONTRACT SECTION: 24

TOPIC HEADINGS: Falsification of an Official Document

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Bureau of Equal Employment

POSITION: EEO Investigator

RESULT: The grievance was denied.

REASON: The grievant was employed as an investigator in the Bureau of Equal Employment Opportunity (EEO) of the Ohio Department of Rehabilitation and Correction (DR&C). She was also the chapter president of the Union. She received a five-day suspension for removing investigative reports from co-workers' offices, altering them and submitting the documents as her own work. The motive for her actions was to demonstrate disparate treatment between the grievant and fellow EEO Investigators regarding evaluation of her work. The arbitrator stated that the significance of the grievant's error is that she is an investigator and the value of her work was dependent upon her integrity. That integrity was compromised by her actions. The arbitrator was sympathetic to the grievant's motivation, but found that the grievant erred in her method of self-protection. The action she took brought damage to her employer. Therefore, the arbitrator determined that the five-day suspension was within the guidelines for a first offense.

786) Hosang-Black 15-00-(99-07-15)-0076-01-09 Removal

ARBITRATOR: Robert G. Stein

ISSUE: Was the grievant removed for just cause?

CONTRACT SECTION: 24

TOPIC HEADINGS: Failure of Good Behavior; Witness Testimony; Admissibility of Evidence

DEPARTMENT: Public Safety

SITE/OFFICE:

POSITION: Driver's License Examiner 1

RESULT: The grievance was sustained. The record of her discharge was to be removed from her personnel file and she was to return to work within two pay periods following the date of the award. The grievant was to be made whole for all seniority, back pay and

benefits, minus any unemployment payments or W-2 income earned while she was discharged.

REASON: The employer alleged that the grievant provided an invalid commercial driver's license (CDL) to an individual for the payment of \$200. The Arbitrator found the testimony of the individual who received the invalid CDL was evasive, inconsistent, and unconvincing. He also found that the witness's testimony does not prove the grievant was the person who approached him in the nightclub; however, the witness did not exonerate the grievant. The grievant's former supervisor testified that the tests were graded by machine and the Employer could not prove that the grievant had the ability to tamper with the scores. The supervisor also testified that the employee seals were often not sufficiently secured.

The Arbitrator concluded that when discipline is imposed, the reasoning used to make the judgment is to be based upon the evidence known at the time of the discharge. The Arbitrator found that the parties intended the obligation of an arbitrator was to judge the merits of the discharge at the time it took place and on the specific charges alleged at the time. He noted that the evidence presented, specifically, the deposition of the State's witness was flawed because the witness refused to sign the transcript of his deposition.

Following review of all the evidence the Arbitrator concluded that there was no doubt that the grievant has regularly been associated with individuals who have been involved in criminal activities creating an air of suspicion around her. However, the Arbitrator found that the appearance of impropriety did not support the conclusion arrived at by the Employer.

**787) Paige 27-27 (05-16-01) 2159-01-06 Removal
Johnson 27-27 (04-12-01) 2149-01-06 Removal**

ARBITRATOR: David M. Pincus

ISSUE: Were the grievants removed for just cause?

CONTRACT SECTION: 24

TOPIC HEADINGS: Removal; Just Cause; Purposeful or Careless Act

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Trumbull Correctional Institute

POSITION: Johnson- Penal Workshop Supervisor Paige- Penal Workshop Specialist

RESULT: Grievant Johnson was terminated for just cause. Grievant Paige was not terminated for just cause, as she was not similarly situated as grievant Johnson. Grievant Paige is to be reinstated to her former position with all back pay, less interim earnings, and seniority.

REASON: Grievant Johnson was a Penal Workshop Supervisor and Grievant Paige was a Penal Workshop Specialist, both at the Trumbull Correctional Institute. Both supervised

the Ohio Penal Industries (OPI) division where inmates dismantled donated personal computers, upgraded and fixed them before sending them to schools and other locations. Johnson served as the “group leader” which involved supervising Paige’s activities. A finding of pornographic material in an inmate’s cell that was determined to have come from OPI led to a search of the OPI area on December 19, 2000. Numerous security violations were found in OPI as the result of the search including telephone splitters, cellular phones and 3.5 floppy disks in unauthorized areas, keys lying in unsecured areas, hidden laptop computers with charged battery packs, inmates legal papers and personal letters, unauthorized tools, among many others including a finding that several personal phone calls were made daily on the phone without authorization. The arbitrator found that while the Employer failed to substantiate all of the proposed rule violations, the cumulative effect of the security breaches allowed by Grievant Johnson was so egregious to the safety, health, and security of the institution that her removal was justified. The arbitrator found Rule 5(b), which is the purposeful or careless act resulting in damage, loss or misuse of property of the state was violated due to the illegal computer, fax, and printer use and allowing of such activity, even if only negligent was a dischargeable offense. The arbitrator found many other rule violations including Rule #7 for failure to properly inventory equipment and tools, and Rule #28 for the grievant’s failure to control the keys thereby jeopardizing the security of others. The arbitrator further found that Grievant Paige’s removal was not justified in that she was not similarly situated as Grievant Johnson. Grievant Paige was on probationary status at the time of the search and had spent a limited time in the area since she had been on sick leave. Grievant Paige was trained and under the direct supervision of Grievant Johnson, and therefore the arbitrator found that any shortcoming in Grievant Paige’s performance was directly attributable to Grievant Johnson’s interventions.

788) Gooden 23-18-(01-08-07)-0106-01-05 Removal

ARBITRATOR: Robert G. Stein

ISSUE: Was the grievant removed for just cause?

CONTRACT SECTION: 24

TOPIC HEADINGS: Removal; Patient Abuse

DEPARTMENT: Mental Health

SITE/OFFICE: Northcoast Behavioral Mental Health Center

POSITION: Custodial Worker

RESULT: The grievance was denied.

REASON: The grievant was charged with entering the room of a mental patient and striking him in the eye. The grievant stated that any injury the patient suffered was not

the result of an intentional act by him. It was determined that the employer provided the only plausible explanation of what occurred. The arbitrator based this determination of the facts that the grievant failed to report the incident until the next day and that the patient's testimony was consistent with the statement he made during the investigation seven months earlier. The arbitrator found the grievant's intervention in the incident suspicious considering the fact that the grievant's duties were custodial in nature and did not include patient care responsibilities.

789) Holko 17-00-(99-09-10)-0020-01-14

ARBITRATOR: Harry Graham

ISSUE: Did the employer erroneously pass over the grievant for a less senior applicant?

CONTRACT SECTION: 16

TOPIC HEADINGS: Selection; Seniority; Resignation; Arbitrability

DEPARTMENT: Industrial Commission

SITE/OFFICE: William Green Building

POSITION: District Hearing Officer

RESULT: The grievance was denied.

REASON: The arbitrator determined that the Union could challenge the seniority of the successful applicant. He found that the Contract does not prohibit the challenge of seniority dates. He further stated that the employer cannot assume the position that an error should be preserved in the personnel records of employees if the error can be proved and that such a position would be "irrational and replete with potential for ratifying errors, to the possible detriment of employees."

The arbitrator found this matter to be full of errors, particularly the poor record keeping of the State. He envisioned serious consequences affecting the lives of employees and their families through the State's inability to keep accurate records. The arbitrator stated that DAS believed the successful applicant had resigned, and that this was demonstrated by the fact that DAS sent the applicant a check for his leave balances along with a letter and form confirming his resignation. However, the arbitrator noted that the burden of proof rested on the shoulders of the Union and that the burden was not met. The arbitrator based his decision on the facts that (1) when the successful applicant received the leave balance check, he returned it, (2) when he was asked if he resigned from his DAS position, he stated that he didn't, and (3) his leave balances were transferred to OIC. The arbitrator found that the successful applicant did not resign and that his seniority credits should continue without reduction or break upon his transfer from DAS to OIC.

790) Williams 27-01-(01-09-14)-0216-01-14 Removal

ARBITRATOR: Robert Brookins

ISSUE: Was the grievant removed for just cause?

CONTRACT SECTION: Article 24

TOPIC HEADINGS: Removal, Failure to Carry Out Work Assignment, Past Practice, Non-Discrimination, Discipline History

DEPARTMENT: Rehabilitation and Correction, Equal Employment Opportunity Bureau

SITE/OFFICE: Central Office

POSITION: EEO Investigator

RESULT: **The grievance was denied in part and granted in part. The grievant was given a last chance agreement without back pay from the time of her removal to the time that DR&C complied with the award. Seniority was to remain intact.** PLEASE

NOTE: After the award was issued, the parties contacted the arbitrator for clarity on the Last Chance Agreement (LCA), etc. The arbitrator stated that the LCA was meant to last for one (1) year, and it was tied to the one rule violation found by the arbitrator.

REASON: The Arbitrator found that the grievant did not exercise poor judgment in informing the grievant of her findings, or that the department changed those findings. The Arbitrator, however, stated that the grievant's act of telling the complainant to "not let it go" crossed the line from information to encouragement. This act constituted poor judgment. Although the Arbitrator found that the grievant engaged in misconduct and some form of discipline was warranted, removal was not appropriate in this case. He stated that removal was unreasonable, but only slightly so.

791) Madison 35-17-(01-05-10)-0011-01-03 Removal

ARBITRATOR: Frank A. Keenan

ISSUE: Was the grievant removed for just cause?

CONTRACT SECTION: 5-Management Rights; 24-Discipline; 29-Sick Leave; 31-Leave of Absence; 34-Service Connected Injury/Illness

TOPIC HEADINGS: Removal; Neglect of Duty; Failure to Report for Scheduled Duty; Job Abandonment

DEPARTMENT: Youth Services

SITE/OFFICE: Riverview Youth Center

POSITION: Juvenile Correction Center

RESULT: The grievance was denied.

REASON: The grievant was removed for excessive absenteeism. The arbitrator stated that the grievant's absenteeism was extraordinary as was management's failure to discipline the grievant concerning her repetitive absenteeism. The arbitrator found that the fact that the grievant used all of her paid leave and failed to apply for leave without pay, shielded management from the consequences of its laxness. It was determined that through Article 5, management has clear authority to remove the grievant for just cause even though her absenteeism was not due to misconduct if it was excessive. The arbitrator found that the grievant's numerous absences coupled with the fact that she did not file for workers' compensation until after termination, and never applied for unpaid leave, supported management's decision to remove her.

792) Hart 15-00-(01-09-17)-0123-01-07 Removal

ARBITRATOR: Anna DuVal Smith

ISSUE: Removal

CONTRACT SECTION: 24

TOPIC HEADINGS: Removal, Failure of Good Behavior, Dishonesty, Pre-determination of Discipline

DEPARTMENT: Public Safety, Division of Highway Patrol

SITE/OFFICE: Driver Testing Station on East 55th St, Cleveland, OH

POSITION: Driver's License Examiner 1

RESULT: Granted in part, grant in part.

REASON: The Arbitrator found that the evidence presented clearly proved that the grievant had abused his position and that removal was justified. However, because the Patrol violated Article 24.05 in its decision to terminate the grievant before the pre-disciplinary hearing, the grievant's removal date was changed to the date on which written closings were received and the record of the hearing was closed. The grievant was awarded back pay and benefits for the period from his premature removal date up to the new removal date.

793) Goldman 35-23-(01-01-01)-0014-01-03 Removal

ARBITRATOR: Dwight A. Washington

ISSUE: Was the grievant removed for just cause?

CONTRACT SECTION: 24; ORC 124.34

TOPIC HEADINGS: Sexual Harassment of Co-worker

DEPARTMENT: Youth Services

SITE/OFFICE: Riverview Juvenile Correctional Institution

POSITION: Juvenile Correction Officer

RESULT: The grievance was denied.

REASON: The grievant was charged with inappropriate contact with a co-worker. The arbitrator found no evidence to suggest that the grievant's removal was arbitrary or inconsistent. The grievant admitted that he was previously warned not to touch his co-worker but he did it anyway. The arbitrator upheld the removal based upon that violation alone and did not address any other charges.

794) Sweeney 27-14-(01-07-18)-1349-01-02 Removal

ARBITRATOR: Dwight Washington

ISSUE: Was the grievant removed for just cause?

CONTRACT SECTION: 24

TOPIC HEADINGS: EAP, Medical/psychological Examination

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Lorain Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was granted. The grievant was reinstated and received back pay, benefits and all applicable seniority rights. The grievant was ordered to enter an EAP within thirty (30) days of the award.

REASON: The grievant was scheduled for a medical and psychological examination. The examination was discussed and the EAP forms were completed at the meeting. The evidence also suggested that some animosity existed between the grievant and management would have welcomed an opportunity to properly remove the grievant. The arbitrator found the preponderance of the evidence supported the grievant's position. However, the arbitrator stated that the grievant was not totally blameless and under different circumstances, some form of discipline would have been warranted. He found that neither party presented information regarding the effect of the first EAP the grievant completed. The grievant was reinstated on the condition that he enroll in and complete an EAP. The arbitrator ordered that any additional or different forms needed for the program be executed.

795) Cross Shift

ARBITRATOR: John J. Murphy

ISSUE: To what extent can Management use cross-shift relief, if any? Should the grievance be sustained, the arbitrator should retain jurisdiction for the purpose of ascertaining the remedy.

CONTRACT SECTION: Article 43.01; Appendix P

TOPIC HEADINGS: Cross-shift

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Various Institutions

POSITION: Correction Officers

RESULT: Relief officers must be utilized first on their assigned shift, but then they can be assigned to posts on other shifts subject only to the two limitations set forth set forth in the second and third numbered paragraphs of the document.

REASON: The portions of the document entitled "Addendum to Pick-A-Post Parameters" dated October 30, 2000 that deal with relief are clear and unambiguous. There was no contract rule of interpretation that requires any general right granted in a contract to a party be accompanied by a list of specific situations in which the right may be exercised. The first preference for utilization of relief officers is a post on their assigned shift, but it is only a preference, which clearly opens relief officers to assignment to posts on shifts other than their assigned shift. The arbitrator found that relief officers must be utilized first on their assigned shift, but then can be assigned to posts on other shifts subject only to the two limitations set forth in the second and third paragraph of the document.

796) 14-00-(00-06-29)-0021-01-09 Portal-to-Portal

ARBITRATOR: Harry Graham

ISSUE: Did the employer violate Article 13.06 of the Collective Bargaining Agreement by failing to designate the report-in location as the employees' homes for the employees named in this grievance and for other employees who are similarly situated?

CONTRACT SECTION: 13.06

TOPIC HEADINGS: Portal-to-Portal

DEPARTMENT: Health

SITE/OFFICE:

POSITION: Blood Alcohol Inspectors

RESULT: The grievance was denied.

REASON: The arbitrator stated that the terms of the CBA must govern when practice is in conflict with the terms of the Agreement. He concurred with Arbitrator Drotning's opinion from a similar case (OCB Case No. 240) – presented by the employer – that in order for an individual's home to be designated as the report in location, the employee would have to conduct a substantial part of his/her tasks at home. The determination of

the amount of work performed at home must be on a case-by-case basis. The arbitrator concluded that the employer made that determination carefully and in good faith in this case. All of the grievants have assigned office space and by their own admission spend from 20% to 76% of their work hours in the office. The grievants did not perform a substantial part of their tasks at home.

797) Braithwaite 07-00-(01-02-09)-0306-01-14 Removal

ARBITRATOR: John J. Murphy

ISSUE: Removal

CONTRACT SECTION: Article 24

TOPIC HEADINGS: Neglect of Duty, Insubordination, Unauthorized Removal of Documents, Misuse of Confidential Materials

DEPARTMENT: Department of Commerce

SITE/OFFICE: Division of Securities - Enforcement Section

POSITION: Attorney

RESULT: The grievance was granted. The grievant was reinstated and made whole for the period of time from her removal to her reinstatement. All references to her removal were ordered expunged from her personnel records. The grievant's personnel records will include a written warning for the grievant's neglect of duty in failing to prepare subpoenas in a timely manner.

REASON: The arbitrator found that there were no Division rules – written or oral – instructing the grievant in her selection of documents to share with the SEC, under the access agreement the Division had with the SEC. The record failed to prove that the communication from the AG's office was a communication between attorney and client. It was noted that the telephone calls between the prosecutor's office and the grievant were initiated by the prosecutor's office as a result of a complaint by a citizen. The grievant had a duty to cooperate with an official investigation. The arbitrator found that the grievant did fail to prepare subpoenas in a timely manner and the grievant offered several reasons for the neglect. The arbitrator noted that the employer had a disciplinary grid which established sanctions for the first four offenses. Therefore, the arbitrator converted the removal to a written warning to be placed in the grievant's personnel records.

798) Tomblin 27-13-(01-10-24)-2087-01-09 Removal

ARBITRATOR: Dwight A. Washington

ISSUE: Was the grievant removed for just cause?

CONTRACT SECTION: 24

TOPIC HEADINGS: Insubordination; Failure to Cooperate with an Investigation;
Unauthorized Relationship with an Inmate

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: London Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was denied.

REASON: The grievant, a Correction Officer, was observed in the company of a particular inmate on several occasions, including an incident in which another correction officer witnessed the inmate rubbing the grievant's back. The arbitrator concluded that sufficient evidence existed to support the employer's position. The inmate's statement and the CO's statement corroborated each other and were credible. The arbitrator noted that testimony from two Union witnesses who observed the grievant's behavior and viewed the grievant's conduct as inappropriate enhanced that credibility. The arbitrator determined that the employer provided conclusive and substantial evidence that the grievant had unauthorized contact with the inmate. The employer provided evidence that the grievant emailed the inmate's mother and indicated that she wanted the inmate's mother to call her. The fact that the grievant failed to comply with the direct orders to provide her son's cell phone number – pivotal in determining whether or not phone calls occurred using that particular phone – indicated to the arbitrator that the grievant did not want to disclose the number. There were no mitigating factors in this case. The grievant was aware of the risks and the consequences of her actions. She continued her actions anyway. The arbitrator found removal was for just cause.

799) Morgan 07-00-(99-11-24)-0193-01-14 10-day Suspension

ARBITRATOR: Anna DuVal Smith

ISSUE: Was the discipline for just cause? If not, what shall the remedy be?

CONTRACT SECTION: 24.01, 24.02, 24.04 and 25.08

TOPIC HEADINGS: Neglect, Poor Judgment, Insubordination and Denial of Access to Documents

DEPARTMENT: Commerce

SITE/OFFICE: Division of Financial Institutions

POSITION: Financial Institution Examiner 3

RESULT: The grievance was granted in part, denied in part. Discipline for neglect of duty and poor judgment is without just cause. There was just cause for discipline for a first offense of insubordination, which warranted a three-day suspension without pay

instead of the ten-day suspension he received. The grievant's record was to be adjusted accordingly and he was to be paid seven days back pay and made whole.

REASON: Management used a written reprimand to shape the level of discipline in violation of Article 24.06. The grievant's action should have been treated as a first offense who was on notice, not as a second offense. Management's denial of access to documents hindered the Union in its investigation. Pursuant to Article 25.08, management has an obligation to provide documents available to assist the Union in meeting its burden of proof. If management requested the release of redacted documents for inspection by the Union under the umbrella of privilege, it was unreasonable of it to refuse the same request by the Union for the documents need for its case. The arbitrator concluded that the documents in question would have buttressed the Union's position that other examiners were copying, but were not disciplined for their actions and while they others may be guilty of neglect or poor judgment, they were not guilty of insubordination since they were not under orders not to copy. Therefore, the charges of neglect and poor judgment were not justified.

The grievant was under orders not to copy and it was determined that he clearly disregarded the order; therefore, discipline for insubordination was justified.

800) Diehl 27-28-(01-08-20)-0899-01-03 Removal

ARBITRATOR: David M. Pincus

ISSUE: Did the grievant engage in conduct resulting in abuse of a patient or another in the care/custody of the State of Ohio? Was the grievant removed for just cause?

CONTRACT SECTION: 24.01; 24.02

TOPIC HEADINGS: Removal; Physical Abuse of Inmate

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Oakwood Correctional Institution

POSITION: Psychiatric Attendant

RESULT: The grievance was denied.

REASON: The grievant was removed for physical abuse of an inmate. The arbitrator concluded that the grievant committed the act based on testimony and injuries suffered by the inmate. The nurse who examined the inmate noted the several injuries which included superficial cuts, minor swelling and minimal bleeding. The arbitrator viewed most of these injuries as a direct result of the grievant's misconduct. Evidence included a telephone conversation with another CO in which the grievant discussed damage he done to and inmate. Based on the totality of circumstantial evidence, the arbitrator found that the grievant physically abused the inmate.

801) Carleton 27-14-(02-03-15)-1581-01-03 Removal

ARBITRATOR: Anna DuVal Smith

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

CONTRACT SECTION: Article 24

TOPIC HEADINGS: Removal

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: LORCI

POSITION: Correction Officer

RESULT: Bench Decision – The grievant was returned to his former position. His termination was to be removed from his personnel record. The time since his removal was to be converted to Administrative Leave without pay. The grievant was ordered into a Last Chance Agreement for two years for violations of Rule 40 – *Any act that could bring discredit to the employer.*

REASON:. The grievant was not removed for just cause.

802) Godfrey 27-33-(99-08-02)-0233-01-03 Disciplinary Actions

ARBITRATOR: John J. Murphy

ISSUE:

CONTRACT SECTION: 24.06

TOPIC HEADINGS: Personnel Records; Disciplinary Actions

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Ohio State Penitentiary

POSITION: Correction Officer

RESULT: The grievance was granted. DAS may not place disciplinary actions, other than removals, into personnel files, effective 7/2/02. Removals can only be removed as a result of an arbitration award or settlement agreement.

REASON: The arbitrator found that the phrase “records of other disciplinary action” as stated in Article 24.06 includes notice of discipline and the accompanying personnel actions. DAS was ordered to develop and implement a system for removing disciplinary records within three years for all bargaining unit members. The Union may request updates. All disciplinary records for the grievant that were outside the schedule established in 24.06 or any settlement were to be removed.

803) Hayes 28-03-(01-11-20)-0141-01-12 Removal

ARBITRATOR: Dwight A. Washington

ISSUE: Was the grievant removed for just cause?

CONTRACT SECTION: 24

TOPIC HEADINGS: Unauthorized Relationship with Inmate; Preferential Treatment to Inmate; Removing Official Document; Actions That Could Harm Co-Workers

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Adult Parole Authority

POSITION: Word Processing Specialist 2

RESULT: The grievance was denied.

REASON: The arbitrator found that the grievant failed to inform her employer of a past casual relationship with an inmate. The grievant had a duty to notify her employer of this information. In this instance, the grievant had ongoing contact with the inmate as a Word Processing Specialist 2 responsible for telephone and office contact with the inmate. The arbitrator also found that the grievant sent confidential official documents to the inmate without approval. He noted that the fact that the mail was intercepted does not negate the severity of the grievant's actions. Her actions potentially placed the parole officer in charge of the inmate's case at risk for retaliation by the inmate.

804) Locy 23-18-(02-03-12)-0035-01-04 Removal

ARBITRATOR: Nels E. Nelson

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Removal; Proper Restraint of Resident; Abuse of Resident

DEPARTMENT: Mental Health

SITE/OFFICE: Northcoast Behavioral Healthcare System - Northfield Campus

POSITION: Licensed Practical Nurse

RESULT: The grievant was reinstated to his former position with full back pay and benefits minus interim earnings.

REASON: The grievant was charged with using a hammerlock to restrain an aggressive and violent resident. During the struggle with the resident, both individuals fell and the resident was injured. The arbitrator did not view the grievant's actions as improper. The arbitrator noted that the hold used by the grievant seemed no worse than any of the holds included in the facility's training manual. He concluded that the injuries were not caused by the hold but by the fall to the floor and that the fall would have occurred regardless of the hold used to restrain the resident. The arbitrator rejected the notion that the use of a hold that was not facility-approved or included in the training of employees is abusive.

He noted that there are situations in which the employees must react quickly to control an individual or situation, or to protect themselves. The arbitrator found no just cause for removal of the grievant.

805) Hibbler 34-05(02-02-22)0023-01-09 Removal

ARBITRATOR: Anna DuVal Smith

ISSUE: 1) Was the grievance properly before the arbitrator? 2) Was the grievant removed for just cause?

CONTRACT SECTION: 24; 25

TOPIC HEADINGS: Arbitrability; Failure of Good Behavior; Proper Appeal of Grievance

DEPARTMENT: Bureau of Workers' Compensation

SITE/OFFICE: Cleveland Lausche Service Center

POSITION: Workers' Compensation Claims Representative

RESULT: The grievance was denied.

REASON: The arbitrator found that the grievance was not filed properly – it was not filed on the proper form nor filed within 14 days of notification pursuant to the Collective Bargaining Agreement. The arbitrator stated that if the grievance had been properly filed, it would have been denied on its merits. The grievant was charged with using derogatory and obscene language towards a security guard. Two witnesses, both of who were Ohio State Patrol Troopers, corroborated the guard's testimony. Though the incident did not occur when the grievant was on duty, it did occur in the public area of the State building where the grievant's office was located and where State employees, as well as the public were present. The employer did not consider the grievant's 22 years of service and the arbitrator noted that there was no obligation to do so because the grievant had signed a Last Chance Agreement from a previous disciplinary action which had been negotiated and agreed to by both parties.

**806) Patton 25-12-(01-04-23)-0009-01-09
10 day Suspension**

ARBITRATOR: Dwight A. Washington

ISSUE: Was the grievant disciplined for just cause?

CONTRACT SECTION: 24

TOPIC HEADINGS: Independent Medical Examination (IME); Insubordination; Failure to Follow Direct Order

DEPARTMENT: Natural Resources

SITE/OFFICE: Cleveland Lakefront State Park

POSITION: Radio Operator

RESULT: The grievance was denied

REASON: The grievant was charged with insubordination and willful disobedience of a direct order – to release medical information. The grievant was given several opportunities to comply with the order and refused on each occasion. The arbitrator determined that no evidence presented suggested any distinction or difference between OCSEA employees and other employees regarding IME's within ODNR. The arbitrator noted that the grievant was aware that his employer could discipline him for failure to release medical results. The grievant's conduct was insubordinate and he failed to follow clear directives. The hearing officer decided that due to the grievant's work history and length of service, and his willingness to see other examiners, a 10-day suspension, as opposed to removal was warranted. The arbitrator elected not to substitute his judgment in this matter.

807) Jenkins 24-14-(01-04-10)2339-01-04 5-day Suspension

ARBITRATOR: Anna Duval Smith

ISSUE: Was the grievant's suspension for just cause? Was the grievance properly before the arbitrator? Was the suspension timely?

CONTRACT SECTION: 24; 25.02

TOPIC HEADINGS: Arbitrability; Timeliness of Suspension; Fairness of Investigation; Substantial Evidence; Sexual Harassment

DEPARTMENT: Mental Retardation and Developmental Disabilities

SITE/OFFICE: Warrensville Developmental Center

POSITION: Therapeutic Program Worker

RESULT: The grievance was granted.

REASON: The grievant was charged with sexual harassment of a co-worker. The record indicated that no action taken during investigation was sufficient to modify or vacate the suspension, however some of the statements the investigator collected could not be relied upon because they were hearsay or rebutted by the witness. The arbitrator noted that the matter came down to the testimony of one person against another and there was no substantial evidence to sustain the charge. The arbitrator determined that the matter was properly before her because it was appealed within ninety days of the Step 3 response. The arbitrator noted that the fact that it was appealed before the mediation meeting did not invalidate the appeal.

808) Kevin Clark 31-09-(01-12-04)-0020-01-13 Removal

ARBITRATOR: Robert G. Stein

ISSUE: Was the grievant's removal for just cause?

CONTRACT SECTION: 24

TOPIC HEADINGS: Interfering with Official Investigation; Fighting with Co-worker; Possession of Weapon on State Property While on Duty; Working Under the Influence of Drugs

DEPARTMENT: Transportation

SITE/OFFICE: District 9

POSITION: Transportation Technical Specialist

RESULT: The grievance was sustained in part. The grievant's removal was converted to a time-served suspension for interfering with an official investigation and "possession of a weapon on state property while on duty or in a state vehicle". He was reinstated with no back pay or benefits. All of his seniority was restored. His return to his position was conditioned upon:

1. A general return to work physical.
2. A drug screen.
3. An independent medical examination by a physician selected by the employer and who is qualified in pain management and substance abuse. A report generated by this examination would indicate whether the grievant could safely return to work and would include a follow-up treatment plan. The examination was to be paid for by the employer and to be conducted no later than 30 days from the date of the award.

REASON: The arbitrator found that the grievant lied about having a handgun in his truck on State property. The State did not prove that the grievant threatened a fellow employee. The arbitrator stated that it was reasonable to assume that the grievant was either prescribed too many medications or abusing his prescriptions. The arbitrator determined that the grievant's use of prescription medications played a major role in his abnormal behavior. The grievant's seniority and good work record were mitigating factors in this case and his removal was converted.

809) Burley 07-00(00-10-30)-0280-01-07 10-day Suspension

ARBITRATOR: Frank A. Keenan

ISSUE: Did the employer suspend the grievant for just cause?

CONTRACT SECTION: 2, 5, 13, 24, 25, 44

TOPIC HEADINGS: AWOL; Work Rules; Poor Judgment; Failure of Good Behavior; Tardiness

DEPARTMENT: Commerce

SITE/OFFICE: Division of Real Estate and Professional Licensing

POSITION: Investigator

RESULT: The grievance was sustained in part and denied in part. The grievant was to be regarded as properly disciplined by way of a disciplinary suspension of 8 work days duration for unexcused tardiness, exercising poor judgment and insubordination. The charges of AWOL and Failure of Good Behavior was removed from the grievant's record. The grievant was made whole for the 2 days additional suspension he served and his record reflects an 8-day suspension, not a 10-day suspension.

REASON: The grievant was charged with various alleged violations including unexcused tardiness, AWOL, and Failure of Good Behavior for not following the directions of a superior when he was told to take a midday lunch break before going to his next appointment. He chose not to take the break and to proceed to his next appointment. The arbitrator found that the initial determination by the employer that the AWOL and Failure of Good Behavior charges were "serious" was correct. However, these charges were ultimately found to have been improperly leveled against the grievant. The unexcused tardiness allegation was considered diminished in severity by the fact that some of the tardiness charges were simply in error, others were withdrawn and one was improper. The arbitrator found that the employer gave proper weight to the insubordination charge and that the remaining tardiness charge was recidivist in nature. He found that the charge of Exercising Poor Judgment was proper in this instance because the offense followed specific counseling regarding how to handle his lunch break. This charge was concededly less serious than insubordination and the 10-day suspension was reduced to an 8-day suspension.

810) Edwards14-53-(00-11-09)-0047-01-14 (15-day suspension)

ARBITRATOR: David M. Pincus

ISSUE: Was the grievant suspended for just cause? If not, what shall the remedy be?

CONTRACT SECTION: 24

TOPIC HEADINGS: Neglect of Duty

DEPARTMENT: Department of Health

SITE/OFFICE: Office of Financial Affairs; Grants Administration

POSITION: Fiscal Specialist 1

RESULT: The grievance was sustained. The grievant was made whole for all lost back pay and benefits. The suspension was removed from her disciplinary record.

REASON: The grievant was charged with failing to initiate payments, which resulted in negative cash flows in projects, and making an inappropriate payment. She was also charged with failing to reconcile documents and failing to file documents in a timely

manner. She received a fifteen-day suspension. The arbitrator stated that a lack of specificity makes it virtually impossible for the Union to establish a defense strategy. He concluded that the circumstances surrounding the charges against the grievant clouded the State's proof of misconduct. The alleged errors occurred when the existing system was being automated. The employer also relied on the grievant's prior disciplinary history. The arbitrator determined that the Union proved its unequal treatment claim and that a proper and impartial investigation that should have been conducted did not take place.

811) Pennington 27-30-(02-03-21)-1412-01-03 Removal

ARBITRATOR: Dwight A. Washington

ISSUE: Was the grievant removed for just cause?

CONTRACT SECTION: 24

TOPIC HEADINGS: Removal; Failure to Follow Post Orders; Interfering with, Failing to Cooperate in, or Lying in an Investigation

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: North Central Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was granted. The grievant was reinstated and received back pay and benefits with all seniority rights.

REASON: The grievant was charged with violating institution policy by opening the cell door of the segregation unit prior to the inmates being restrained in handcuffs. Another CO struggled with, and was accused of injury, one of the inmates. The grievant was evasive in the interview with the investigator regarding what actually occurred during the incident. The arbitrator determined that the grievant was a relief officer who rotated among several posts. There was no evidence that the grievant received training regarding specific procedures for the segregation unit. The arbitrator found the grievant's testimony credible. He concurred with the Union that not all of the evidence was considered in this matter. Although the grievant had only twenty months of service, the fact that she had no prior disciplines was also a mitigating factor.

812) Woodland 27-08-(02-04-17)-0635-01-03 Recall Rights

ARBITRATOR: Harry Graham

ISSUE: Do Correction Officers have recall rights back to their parent institution per Article 18?

CONTRACT SECTION: 18

TOPIC HEADINGS: Recall Rights

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Orient Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was denied.

REASON: The Orient Correctional Institution was closed. Orient employees exercised their bumping rights per the Collective Bargaining Agreement (CBA). A letter was sent to those individuals who were bumped indicating that they had recall rights in the “same, similar or related classification series” with their facility or “within the recall jurisdiction.” The Union interpreted the letter to mean recall rights to the institution. The State did not agree. The arbitrator found that the language of Section 18.11 of the CBA supported the State’s position. Recall rights are within the recall jurisdiction and are not specific to the institution. The arbitrator determined that the letter was wrong and that “an erroneous letter from the head of an institution cannot alter the terms of the CBA.

813) 16-11-(01-06-01)0058 Temporary Working Level Pay

ARBITRATOR: Harry Graham

ISSUE: Did the employer violate Article 7, Section 7.10 – Temporary Working Level Pay Supplements?

CONTRACT SECTION: Article 7

TOPIC HEADINGS: Temporary Working Level Pay Supplements; Arbitrability

DEPARTMENT: Jobs and Family Services

SITE/OFFICE:

POSITION:

RESULT: The grievance was sustained. The employer was to immediately cease and desist from working bargaining Unit members in exempt positions for more than 120 days without securing the mutual agreement called for in Section 7.10 of the Agreement.

REASON: The arbitrator determined that the grievance was arbitrable. Article 7.10 refers to a time limit for TWL positions – 120 days. That time limit must be interpreted. The arbitrator was not persuaded by the State’s interpretation of the Agreement. He determined 120 days for a TWL meant 120 days. The language in the Agreement is clear and unambiguous. To allow the State to keep individuals in positions outside the bargaining unit for more than 120 days would negate the 120-day limitation.

814) Butler 27-35-(01-08-03)-0050-01-03 Removal

ARBITRATOR: Dwight A. Washington

ISSUE: Was the grievant removed for just cause? Did the grievant violate his Last Chance Agreement?

CONTRACT SECTION: 24

TOPIC HEADINGS: Random Drug Testing; Last Chance Agreement; Insubordination; Failure to Follow Direct Order

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Toledo Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was granted in part. The grievant's removal for violating his Last Chance Agreement was denied. The grievant was suspended for insubordination and reinstated with no back pay or economic benefits. The grievant was entitled to service and/or institutional seniority rights in the Collective Bargaining Agreement. As a condition of reinstatement, the grievant was ordered to enroll in an EAP anger management program within 30 days of this decision.

REASON: The grievant was involved in a verbal altercation with the Deputy Warden of Operations regarding failure to follow a direct order from the Warden. At the time of the incident the grievant was on a Last Chance Agreement (LCA), which included 6 random drug tests within the year following entrance into the LCA. As a result of his behavior during the argument, the grievant was ordered to submit to a drug test. He refused and was removed. The arbitrator noted that the grievant's discipline record demonstrated a pattern of poor conduct over a short period of time regarding his inability to follow orders or interact with management appropriately. Further misconduct would surely result in removal. The arbitrator found that the employer failed to establish reasonable suspicion to order a drug test. The grievant's failure to obey the Warden's direct order gave just cause to impose discipline, but flaws in procedure on the part of the employer were noted by the arbitrator for his decision to convert the removal to a suspension. The arbitrator determined that "the overall state of the evidence requires reinstatement, but no back pay or any economic benefit to the grievant is awarded."

815) Colliton 34-13-(02-02-06)-0010-01-09 Removal

ARBITRATOR: Anna DuVal Smith

ISSUE: Was the grievant removed for just cause?

CONTRACT SECTION: 24

TOPIC HEADINGS: Removal; Last Chance Agreement; Physician's Verification for Sick Leave

DEPARTMENT: Bureau of Workers' Compensation

SITE/OFFICE: Logan Service Center

POSITION: Compensation Claims Specialist 4

RESULT: The grievance was denied.

REASON: The grievant was on a Last Chance Agreement (LCA) when she called off sick. She was advised to present a physician's verification. The grievant continuously stated she would obtain one, but failed to do so. She was charged with insubordination and an attendance violation and subsequently removed. The arbitrator found that the grievant failed to present the verification within a 3-day limit per the LCA and that the note she eventually produced gave no evidence of a legitimate use of sick leave. The arbitrator noted that the grievant demonstrated through the interview that she understood the consequence of not producing verification and if she had a problem with the directive she should have applied the "obey now, grieve later" principle.

816) Williams 07-00-(01-12-14) – 0361-01-04 Arbitrability of Grievance

ARBITRATOR: John J. Murphy

ISSUE: Do the facts of this case display a grievance involving criminal charges of on duty actions of the Grievant, thereby avoiding the strict timeline for the scheduling of the arbitration of this discharge grievance?

CONTRACT SECTION: 25.02

TOPIC HEADINGS: Grievance Steps; Discharge Grievances

DEPARTMENT: The Ohio State Highway Patrol

SITE/OFFICE: Not Stated

POSITION: Not Stated

RESULT: The arbitrator found that the facts of the case did not display a grievance involving criminal charges of on duty actions of the grievant. The arbitrator directed the parties to proceed without undue delay to the arbitration of the grievance.

REASON: The Ohio State Highway Patrol began a criminal investigation in August 2001 of the activities of the grievant, including those while the grievant was on duty as an employee of the Department. The grievant was subsequently discharged on December 12, 2001. The union filed a grievance challenging the discharge. The union requested the arbitration proceed under Section 25.02 of the contract with the state of Ohio. Delays have resulted based on the belief criminal charges were going to be filed against the grievant. No charges were filed, yet the Department refused to schedule the arbitration. Under Section 25.02, a strict timeline is set out for the processing of Discharge Grievances unless the grievance involves criminal charges of on duty actions of the employee, grievants who are unable to attend due to a disability, or grievances that involve an unfair labor practice charge, in which the strict time limits may be exceeded.

The Department was found to have the burden of proof showing that the exception to the strict timeline of scheduling the discharge grievance is present on the facts. The Department argued that the criminal investigation was included as a criminal charge within the language of Section 25.02. The arbitrator found that the criminal investigation did not fall within the criminal charges exception. The arbitrator cited Section 24.04 in which criminal investigation and criminal charges were plainly distinguished. The arbitrator also stated that criminal investigation did not meet the definition of criminal charge as given by the Department.

817) Reed 31-03-(99-06-16)-0015-01-07 Bargaining Unit Work

ARBITRATOR: Harry Graham

ISSUE: Did Management perform bargaining Unit work in violation of the Contract by conducting safety training?

CONTRACT SECTION: 1.05

TOPIC HEADINGS: Bargaining Unit Work

DEPARTMENT: Transportation

SITE/OFFICE: District 3 – Ashland, OH

POSITION: Safety and Health Inspector

RESULT: The grievance was denied.

REASON: A supervisor rather than the Safety and Health Inspector conducted a safety training to a group involved in an Adopt-A-Highway program. The District had a practice in which bargaining unit members conducted the training. The arbitrator found that the practice did not guarantee the work to the bargaining unit in perpetuity when the duty was not included in the classification specification.

818) Sollitto 27-20 (010601) 5153-01-03 Settlement Agreement/Removal

ARBITRATOR: Dwight A. Washington

ISSUE: Did the employer violate the settlement agreement by refusing to credit the grievant with institutional seniority as proscribed in the settlement agreement? Was the settlement agreement violated when it was amended without the grievant consenting?

CONTRACT SECTION: 16.01, 43.03, and 25.03

TOPIC HEADINGS: Institutional Seniority; Settlement Agreement; Grievance Procedure; Removal; Mid-Term Contractual Changes

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Mansfield Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was denied. The grievant shall only receive institutional seniority credits at Ohio State Penitentiary consistent with Art. §16.01(B). The amending of the settlement agreement by OCSEA and OCB disallowing the carrying over of institutional seniority from MANCI to OCP was proper.

REASON: The grievant was removed from MANCI as a CO and transferred to OSP. A settlement agreement was entered into by the parties on December 4, 2001 granting the transfer to OSP but also allowing for the grievant to carry his institutional seniority with him to OSP under paragraph 5 of the settlement agreement. The OCSEA then intervened declaring the settlement agreement violated Art. §16.01(B)- Institutional Seniority of the CBA. Subsequently, OCSEA with OCB's consent amended the settlement agreement to remove paragraph 5 (the transferring of institutional seniority). The arbitrator found that the failure to transfer the institutional seniority as proscribed in the settlement agreement did not violate the rights of the grievant since settlement agreements can only work within the confines of the CBA, in which this particular agreement did not. No other provisions in the CBA allowed such a settlement agreement by the parties to work outside of the provisions provided by the CBA. The arbitrator further found that the settlement agreement did not need to be executed by the grievant unless a waiver of individual right's was at issue, which was not at issue in this case. Therefore, the amending of the settlement agreement without the grievant consenting was valid.

819) Paige 27-27 (05-16-01) 2159-01-06 Removal

Johnson 27-27 (04-12-01) 2149-01-06 Removal

ARBITRATOR: David M. Pincus

ISSUE: Were the grievants removed for just cause?

CONTRACT SECTION: 24

TOPIC HEADINGS: Removal; Just Cause; Purposeful or Careless Act

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Trumbull Correctional Institute

POSITION: Johnson- Penal Workshop Supervisor

Paige- Penal Workshop Specialist

RESULT: Grievant Johnson was terminated for just cause. Grievant Paige was not terminated for just cause, as she was not similarly situated as grievant Johnson. Grievant Paige is to be reinstated to her former position with all back pay, less interim earnings, and seniority.

REASON: Grievant Johnson was a Penal Workshop Supervisor and Grievant Paige was a Penal Workshop Specialist, both at the Trumbull Correctional Institute. Both supervised the Ohio Penal Industries (OPI) division where inmates dismantled donated

personal computers, upgraded and fixed them before sending them to schools and other locations. Johnson served as the “group leader” which involved supervising Paige’s activities. A finding of pornographic material in an inmate’s cell that was determined to have come from OPI led to a search of the OPI area on December 19, 2000. Numerous security violations were found in OPI as the result of the search including telephone splitters, cellular phones and 3.5 floppy disks in unauthorized areas, keys lying in unsecured areas, hidden laptop computers with charged battery packs, inmates legal papers and personal letters, unauthorized tools, among many others including a finding that several personal phone calls were made daily on the phone without authorization. The arbitrator found that while the Employer failed to substantiate all of the proposed rule violations, the cumulative effect of the security breaches allowed by Grievant Johnson was so egregious to the safety, health, and security of the institution that her removal was justified. The arbitrator found Rule 5(b), which is the purposeful or careless act resulting in damage, loss or misuse of property of the state was violated due to the illegal computer, fax, and printer use and allowing of such activity, even if only negligent was a dischargeable offense. The arbitrator found many other rule violations including Rule #7 for failure to properly inventory equipment and tools, and Rule #28 for the grievant’s failure to control the keys thereby jeopardizing the security of others. The arbitrator further found that Grievant Paige’s removal was not justified in that she was not similarly situated as Grievant Johnson. Grievant Paige was on probationary status at the time of the search and had spent a limited time in the area since she had been on sick leave. Grievant Paige was trained and under the direct supervision of Grievant Johnson, and therefore the arbitrator found that any shortcoming in Grievant Paige’s performance was directly attributable to Grievant Johnson’s interventions.

820) Dickens 87-05-20020807-0989-01-03 Removal

ARBITRATOR: Dr. David M. Pincus

ISSUE: Was the grievant removed for just cause, if not, what shall the remedy be?

CONTRACT SECTION: 24.01, 24.02

TOPIC HEADINGS: Removal, Discipline

DEPARTMENT: Department of Rehabilitation and Correction

SITE/OFFICE: Corrections Reception Center

POSITION: Correction Officer

RESULT: The grievant was terminated for just cause.

REASON: The arbitrator found that, while on his watch, the grievant witnessed an inmate being assaulted by another Correction officer. The grievant cooperated in a conspiracy with other officers to cover up the incident. By doing so, the grievant failed to follow appropriate post orders and policies, falsified his report of the incident, interfered with the assault investigation, and failed to report of the work rule regarding the appropriate and humane treatment of an inmate. The arbitrator found that all of this conduct by the grievant violated Work Rules 7, 22, 24, and 25. The arbitrator further

found that the grievant violated the work rule on responsiveness in that the grievant failed to remain fully alert and attentive at all times while on duty and to properly respond to any incident. The arbitrator concluded that all of these work rule violations, when taken together, along with the aggravated circumstances of the brutal assault of an inmate on the grievants watch justify the termination of the grievant.

821) Savage 27-12-020326-1642-01-03-T Removal

ARBITRATOR: Anna DuVal Smith

ISSUE: Was the grievance timely filed and therefore arbitrable? If so, was the Grievant removed from employment as Correction Officer for just cause? If not, what shall the remedy be? **CONTRACT SECTION:** 25.02

TOPIC HEADINGS: Timeliness; Grievance Procedure

DEPARTMENT: Ohio Department of Rehabilitation and Correction

SITE/OFFICE: Lima Correctional Institution

POSITION: Correction Officer

RESULT: The grievance is untimely and therefore not arbitrable.

REASON: The grievant was terminated as a Correction Officer at the Lima Correctional Institution. Under Article 25.02 of the Contract, a grievance involving a layoff or discipline shall be initiated at Step three (3) of the grievance procedure within fourteen days of notification of such action. The grievance was filed twenty-four days after the Union was notified of the removal. The arbitrator found that the Contract language was clear and that discharge grievances must be filed with the Agency Head or designee within fourteen days of notification. While OCB had a new address and there were new players for both the Union and institution involved with this grievance, these factors do not make the enforcement of the fourteen-day time limit unreasonable. The arbitrator found that even though the Department overlooked procedural flaws in other grievances, enforcing such standards on this grievant is not unjust. The arbitrator stated that the parties themselves have the power to settle or not settle and to waive or not waive timeliness as they see fit. In this instance, the Department is enforcing the timeliness requirement. Since the grievance is not arbitrable, the merits cannot be addressed.

822) Johnson 27-19 (02-04-16) 2874-01-04 Removal

ARBITRATOR: Robert G. Stein

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Failure to carry out work assignment; Exercise of poor judgment; Actions that could harm or potentially harm the employer/employee, fellow employees or general public

DEPARTMENT: Ohio Department of Rehabilitation and Correction

SITE/OFFICE: Ohio Reformatory for Women

POSITION: Licensed Practical Nurse

RESULT: Sustained in part: Grievant was reinstated to his LPN position with full seniority and one-half his back pay and benefits. The remainder of the time shall be considered a time served suspension for violation of Rules 8 and 36. The magnitude of the suspension is based upon the number of employees affected and the Grievant's demeanor during the hearing. In addition, the grievant shall attend training or at a minimum be retrained in the protocols and techniques of TB testing with an RN, prior to being assigned this task in the future. The Employer shall determine the most appropriate course of action. If retrained by an RN, his training shall be documented in writing. In addition, the first time the Grievant performs TB testing he shall be supervised and evaluated by a qualified RN in order to make sure he performs the testing in accordance with proper procedures.

REASON: The arbitrator found that while 15 of 16 employees the grievant conducted TB tests on became ill, the employer did not meet its burden in establishing that the grievant's actions were the proximate cause of the employees resulting sickness. The employer did not prove that the grievant injected the employees with a substance other than TB/PPD serum or that the serum was out of date or the incorrect dosage was used. Furthermore, while evidence tends to show the grievant injected the employees too deeply, it is unknown what effect on the employees such an error would have. The arbitrator also stated that other medical professionals have made medication injection errors that entailed injecting inmates with the wrong solution in the past and they were not terminated for such a mistake. Ultimately, the grievant's discipline-free record and nine years of service as well as there being no established TB testing protocol at the facility prior to the incident convinced the arbitrator to return the grievant to his position with stipulations.

823) Speakman 27-25-(02-04-16)-2050-01-03 Removal

ARBITRATOR: David M. Pincus

ISSUE: Did the employer remove the grievant for just cause?

CONTRACT SECTION: 24

TOPIC HEADINGS: An act that constitutes a threat to the security of the facility, staff, inmates or general public.

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Southern Ohio Correctional Facility

POSITION: Correction Officer

RESULT: The grievance was denied.

REASON: The grievant discussed the facility's new alarm system with two inmates. His comments were a threat to the security of the facility, staff and inmates. The arbitrator found that this type of offense does not require the application of progressive discipline and it was the most egregious type of security breach going far beyond exercising poor judgment. The arbitrator noted that the grievant's short service time was an aggravating factor in support of removal.

824) Donovan 23-06-(02-05-02)-0010-01-03 Removal

ARBITRATOR: Dwight Washington

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Willful disobedience of a direct order by a supervisor;
Insubordination

DEPARTMENT: Mental Health

SITE/OFFICE: Twin Valley Behavioral Health – Columbus Campus - Medical Records Dept.

POSITION: Health Information Tech. 1

RESULT: The grievant was granted, contingent upon: grievant's reinstatement within seven days of the award into a CO and/or MIT position pursuant to the Collective Bargaining Agreement and his seniority entitlement; the grievant must enter a Last Chance Agreement within seven days of the award and successfully complete the program under EAP guidelines; successful completion of the program would void the removal, however the five day fine would remain on record; the grievant was to receive no back pay or economic benefits. Failure to satisfy any of the conditions of the reinstatement would result in removal.

REASON: The grievant was a Health Information Tech. 1 (HIT1) at the time he received a direct order to box, label and log loose items in the admitting area. He did not follow the direct order. Two days later he was reclassified to a Correction Officer. The action which resulted in the grievant's removal took place during the time the grievant was an HIT1. He received the order via email and when confronted by his superiors, stated that he had performed the task when in fact, he hadn't. He was then verbally ordered to complete the task. Five days later, the task was performed by a co-worker who replaced the grievant when he was reclassified. The arbitrator determined that the grievant understood the orders he received and refused to obey them. Evidence showed that he understood the directives but disobeyed them anyway. The arbitrator found that the

grievant's conduct warranted discipline but not removal. The grievant's twenty-one years of service were mitigating factors in the arbitrator's decision to conditionally return the grievant to work. Although the grievant's work history was tarnished by a prior discipline, after reviewing the grievant's record in its entirety, the evidence supported reinstatement under certain conditions.

825) Smith 27-32-(02-05-30)-0663-01-03 Removal

ARBITRATOR: Anna DuVal Smith

ISSUE: Was the grievant removed for just cause?

CONTRACT SECTION: 24

TOPIC HEADINGS: Removal; Unauthorized actions that could harm an inmate; Failure to Follow Post Orders; Actions that could compromise the ability of an employee to carry out his/her duties; Interfering with an investigation.

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Pickaway Correction Institution

POSITION: Correction Officer

RESULT: The grievance was granted in part and denied in part. The grievant was reinstated to a CO position without back pay or benefits. He may not work in an honor camp until he has shown his employer that such an assignment would not threaten the security of the institution.

REASON: The grievant was charged with, and admitted to, playing cards with inmates and leaving his area unsupervised for a period of time. A surveillance camera was unplugged during his shift and an inmate received a tattoo while the camera was off. The grievant did not report the tattooing incident. The arbitrator gave the grievant the benefit of the doubt in considering his explanation for while the camera was off. He was unaware that there was a camera and pulled the plug so the inmate could use the outlet for a power source for the tattoo gun. The arbitrator found that the grievant was guilty of helping inmates engage in prohibited behavior but was not guilty of interfering with an investigation. The State argued that it had no choice but to remove the grievant because his actions made him untrustworthy and an unfit CO; however, it left him on the job for two months following the discovery of his actions. He also had not received a performance evaluation since 1999. The arbitrator determined that the grievant was guilty of actions warranting discipline, but those actions did not fatally compromise his ability to perform his duties as a CO. In light of his service record, years of service and remorse, he was entitled to learn from his mistakes.

826) McIlwain 27-35-020422-0098-01-03 Removal

ARBITRATOR: Anna DuVal Smith

ISSUE: Was the grievant terminated for just cause? If not, what is the remedy?

CONTRACT SECTION: Rule 24

TOPIC HEADINGS: Credibility of Witnesses

DEPARTMENT: Ohio Department of Rehabilitation and Correction

SITE/OFFICE: Toledo Correctional Institution

POSITION: Correction Officer

RESULT: The arbitrator denied the grievance and found that without any mitigating circumstances, there was no reason to reduce the penalty.

REASON: On February 27, 2002, the grievant was working second shift at the Toledo Correctional Institution in the segregation unit control center. Due to the ensuing events, she was removed from her position as Correction Officer. The institution has a policy prohibiting two unsecured inmates being placed together in the same recreation cage. Despite this policy, that evening two officers placed two unsecured segregation inmates together in a recreation cage for the purpose of allowing them to settle their differences. Officer Cole Tipton entered the cage as the second inmate was being uncuffed, but he turned to walk away in order not to see what happened. As he exited he claimed that he saw Officers Mong and McCoy (the grievant) overlooking the cage at the control booth. None of the officers reported the incident, but management became aware of it the following morning and an investigation ensued. In his interview and written statement, Officer Mong stated that both he and the grievant were in the control booth at the time of the incident. During the arbitration, his testimony was consistent with this statement, and on cross he stated that he was "fairly sure" the grievant saw the incident but he didn't see her eyes because she was wearing dark prescription glasses. Officer Tipton also gave a statement during the investigation. He claimed that as he exited the cage he looked up and saw the grievant and Officer Mong in the control booth. However, his testimony during arbitration was contrary to this statement. He stated that he saw only Officer Mong in the control booth and the grievant was in the lighted stairwell. On cross-examination he again stated that he saw both officers in the control booth, and on redirect, he claimed that Mong was standing there alone. The arbitrator ruled that this case turns on the credibility of the witnesses. She was convinced by Mong's testimony because it was consistent with what he had stated before, and she found that he had nothing to gain by placing the grievant where she was not. On the other hand, she found that Tipton's testimony was worthless. As evidenced from his first interview, he is willing to lie to protect himself and others. With respect to the dark glasses, the arbitrator stated that if the Union is arguing that they prove Mong could not see where the grievant was looking, it is admitted that the grievant was there to see the incident. But, the grievant did not claim that she was there, but did not see what had happened. For the

foregoing reasons, the arbitrator found that the grievant was guilty, and since there were no mitigating circumstances, the penalty was upheld.

827) Tipton 27-35-020422-0099-01-03 Removal

ARBITRATOR: Anna DuVal Smith

ISSUE: Was the grievant terminated for just cause? If not, what is the remedy?

CONTRACT SECTION: Rule 24

TOPIC HEADINGS: Lying, Mitigating Circumstances

DEPARTMENT: Ohio Department of Rehabilitation and Correction

SITE/OFFICE: Toledo Correctional Institution

POSITION: Correction Officer

RESULT: Grievance denied.

REASON: On February 27, 2002, the grievant was working second shift at the Toledo Correctional Institution in the segregation unit control center. Due to the ensuing events, he was removed from his position as Correction Officer. The institution has a policy prohibiting two unsecured inmates being placed together in the same recreation cage. Despite this policy, that evening two officers placed two unsecured segregation inmates together in a recreation cage for the purpose of allowing them to settle their differences. The grievant entered the cage as the second inmate was being uncuffed, but he turned to walk away in order not to see what happened. As he exited he claimed that he saw Officers Mong and McCoy overlooking the cage at the control booth. None of the officers reported the incident, but management became aware of it the following morning and an investigation ensued. When he was first interviewed later that day, the grievant denied having any knowledge of what had transpired. However, ten days later, he gave a written statement and interview admitting to what he had observed. The grievant was later terminated from his position. The Union argued that the punishment was not appropriate for the offense. Officer Mong committed the same offense but he received only five days suspension thought he saw the fight and the grievant did not. In addition, the grievant fully cooperated in the investigation after his first interview. The arbitrator ruled, however, that the grievant cannot be compared to Office Mong because he was not in the position to intervene. Additionally, the fact that the grievant eventually did tell the truth is not enough by itself to mitigate the penalty. She concluded that both offenses, failing to intervene while knowing officers were putting inmates and staff in harm's way and then lying about it, are individually and collectively terminable acts. Despite the fact that the grievant did not have an active role in the incident, his inaction threatened security and the safety of the inmates as well.

828) Fehrenbacher 35-03-010829-0132-01-03 15-day Suspension

ARBITRATOR: Dwight Washington

ISSUE: Was the grievant disciplined for just cause? If not, what shall the remedy be?

CONTRACT SECTION: 24

TOPIC HEADINGS: Neglect of Duty; Insubordination; Failure to Report as Scheduled

DEPARTMENT: Youth Services

SITE/OFFICE: Cuyahoga Hills Correction

POSITION: Juvenile Correction Officer

RESULT: The grievance was denied.

REASON: At the conclusion of his Transitional Work Program, the grievant provided a required return to work slip from his physician which stated he could return to work with no restrictions; however, the doctor also stated the grievant should work the day shift and no mandatory overtime. The grievant was advised that if he could not return to *full duty* he should other benefits, i.e. workers compensation. The grievant was ordered to work overtime which he refused on three separate days. He was subsequently late for roll call. His normal post was taken by a co-worker. When he arrived he was offered another post; he refused the post and left the facility. The arbitrator concluded that all JCOs, including the grievant, understood that mandatory overtime was a requirement. Evidence and witness statements proved that the grievant left the facility upon being informed that he could not work his regular post. The arbitrator noted that if the behavior displayed by the grievant continued, he would surely be terminated.

829) Motley 06-02-020906-0001-01-14 10-Day Suspension

ARBITRATOR: Robert Brookins

ISSUE: Was the grievant's 10-day suspension for just cause? If not, what shall the remedy be?

CONTRACT SECTION: 24

TOPIC HEADINGS: Insubordination; Falsification of Request for Leave Forms

DEPARTMENT: Civil Rights Commission

SITE/OFFICE: Dayton Office

POSITION: Civil Rights Investigator 1

RESULT: The grievance was denied.

REASON: The grievant requested leave on various dates to go to medical and dentist appointments. Investigation by the employer revealed that the grievant had no appointments on the dates stated on the leave forms. The grievant was ordered to provide a statement from his physician and dentist regarding the appointments. The arbitrator

found that a preponderance of the evidence supported the employer's allegations that the grievant was insubordinate and that he falsified official documents. He noted that the grievant had an active discipline at the time of his suspension and that employers routinely remove individuals who engage in either misconduct. The grievant engaged in both. Although the grievant had 22 years of state service, it did not outweigh the mitigating factors in this instance.

830) Welch 27-28-(020805)1389-01-03 Removal

ARBITRATOR: Anna DuVal Smith

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Loss of control of instrument that could result in breach of security/cause harm to self or others

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Oakwood Correctional Institution

POSITION: Food Service Coordinator

RESULT: Grievance denied.

REASON: The grievant lost his keys at the institution and did not report the loss for five hours. The arbitrator determined that he used poor judgment and was inattentive when he left his keys unattended. The keys could have been used as a weapon against personnel or other inmates. A violation of the alleged charge as a second offense permitted removal as a discipline. The grievant had disciplines from reprimands to fines prior to this violation. The arbitrator found that management did not abuse its discretion in removing the grievant from his position.

**831) Sines 17-00(020319)-12-01-14 Stand-By Pay
Cashin 17-00(020319)-11-01-14 Stand-By Pay**

ARBITRATOR: Anna DuVal Smith

ISSUE: Were the grievants entitled to stand-by pay in accordance with Article 13.12? If so, what shall the remedy be?

CONTRACT SECTION: 13.14

TOPIC HEADINGS: Stand-by Pay

DEPARTMENT: Ohio Industrial Commission

SITE/OFFICE: William Green Building

POSITION: Sines – Network Administrator 3

Cashin – Network Services Technician 3

RESULT: Grievance was denied.

REASON: The arbitrator determined that there was never a requirement of readiness conveyed to the grievants. This was supported by the fact that in at least thirteen years, the employer had never disciplined anyone for failing to respond. They were not required to stay at a specific location or within close proximity to work tools. The arbitrator noted that although the grievants did alter their lifestyles somewhat to accommodate their employer's needs, they were largely free to live their lives as they chose.

832) Fairman 27-35-(02715)-01414-01-03

ARBITRATOR: Dwight Washington

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Threatening, intimidating or coercing another employee; striking a co-worker

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Toledo Correctional Institution

POSITION: Correction Officer

RESULT: Grievance denied.

REASON: The grievant and a former girlfriend were both employed at ToCI. The relationship did not end amicably. During and following roll call the two co-workers had a verbal confrontation. The grievant allegedly struck the former girlfriend in the presence of witnesses. The arbitrator found that the conduct of both individuals was deplorable and neither had convinced him that either was the victim in this situation. He determined that the "...the discipline conduct was demonstrated by the grievant not Pedro. The quid pro quo being, that is Pedro had engaged in similar conduct the result would have been similar in my viewpoint". The arbitrator found no mitigation to lessen the discipline.

833) Mayfield 07-00-020614-0379-01-07 Removal

ARBITRATOR: Anna DuVal Smith

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Competency

DEPARTMENT: Commerce

SITE/OFFICE: Division of Industrial Compliance

POSITION: Elevator Inspector

RESULT: Grievance denied.

REASON: The grievant was an Elevator Inspector who was subsequently promoted to Elevator Inspector as a result of a settlement even though management had reservations regarding the grievant's ability to perform his duties. He had two active disciplines – a written reprimand for carelessness after leaving a state credit card as a gas station which he did not promptly report, and a second written reprimand for carelessness when his state vehicle was destroyed by flooding. The arbitrator found that this was not a discipline case. It was a competency case in which the correction for inadequate performance is reassignment, training or separation. The grievant was a short-term employee who never met the employer's expectations in the performance of his duties. The only classification lower than the one he was in was Elevator Inspector Trainee. The arbitrator stated that the employer could not be expected to keep an employee in perpetual training when that employee "shows little or no evidence of ever achieving at least a minimum level of competency ". The employer produced substantial evidence that the grievant was unable to perform his job safely and made reasonable efforts to help the grievant reach that a satisfactory level of competency. The arbitrator determined that the employer's assessment was reasonable. Removal was not excessive because there were no reasonable alternatives.

834) Williams 07-00-(01-12-14)-0361-01-04 Removal

ARBITRATOR: Dwight A. Washington

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Neglect of Duty; Insubordination; Theft of State Property;

AWOL; Interfering with or Failure to Cooperate in an Official Investigation; Timeliness

DEPARTMENT: Commerce

SITE/OFFICE: Division of Securities

POSITION: Paralegal

RESULT: The grievance was granted. The grievant was reinstated within 7 calendar days of the issuance of this decision. The grievant was awarded nine (9) months back pay, less, one-half of her interim earnings.

REASON: The grievant was charged with the use of a State gasoline card for a personal vehicle, misuse of a parking pass, personal telephone calls, being insubordinate and AWOL. Once removed, the Union sought to schedule this matter for arbitration citing Article 25.02 of the Contract regarding the timeline for arbitration of discharge grievances. The employer refused to schedule an arbitration in this matter because a criminal investigation was pending. The Union filed an action in state court and it was

agreed by both parties that an arbitrator would hear the dispute. Arbitrator John Murphy found that there must be a formal criminal action pending against the employee in order to defer the sixty (60) day deadline for discharge grievances to be heard. A criminal investigation was not sufficient reason for delaying arbitration.

The grievance was scheduled for arbitration. The arbitrator found that due to the employer's misinterpretation of the Contract language, the employer violated Article 25.02. The grievance was granted due to procedural defect and not on substantive charges. The arbitrator stated that an "unfortunate consequence, is this award will be viewed as a win by the Grievant and it should not. The overall conduct of the Grievant is not addressed, herein, but serious concerns were evident in the evidence presented by the employer and if continued unabated the end result will include future disciplinary action(s) by the employer."

835) Miles 14-23-000828-0029-01-13 ADA

ARBITRATOR: John Murphy

ISSUE: Did management violate Article 2.01 of the Collective Bargaining Agreement? If so, what shall the remedy be?

CONTRACT SECTION: 2.01

TOPIC HEADINGS: Reasonable Accommodation

DEPARTMENT: Health

SITE/OFFICE: Ocasek Building - Akron

POSITION: Sanitarian Program Specialist 1

RESULT: The grievance was denied.

REASON: The arbitrator determined that it was not necessary to examine the merits of the grievance under the ADA of 1990. The language in Article 2.01 stated: "*The arbitrator shall have no power to add to, subtract from or modify any terms of this Agreement, nor shall he/she impose on either party a limitation or obligation not specifically required by the expressed language of this Agreement*". (Emphasis added) The arbitrator stated that he must find duties specifically required in the expressed language of the Contract. The arbitrator noted second paragraph of Article 2.01 states the employer "may" undertake reasonable accommodation pursuant to the ADA of 1990. The term "may" indicates that the employer had "the power to" or "the privilege to" provide the accommodations but was not mandated to do so

836) Gordon 27-20-(02-09-24)-5646-01-03 Removal

ARBITRATOR: Dwight Washington

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Unauthorized Relationship with an Inmate; Lying During an Official Investigation

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Mansfield Correction Institution (ManCI)

POSITION: Correction Officer

RESULT: The grievance was denied.

REASON: The grievant was charged with an unauthorized relationship with an inmate. She denied having a relationship with the inmate and continued up to and throughout the relationship Telephone records (home and cell), transcripts of a control call between the grievant and an inmate, the investigator's interview and the testimony of the investigator at arbitration convinced the arbitrator that the grievant was removed for just cause. The arbitrator noted that the grievant continued her denial of the employer's allegations throughout the arbitration and provided no credible evidence to support her position. The arbitrator also found no disparate treatment in the employer's decision.

837) West 27-32-(020717)-0572-01-03 Removal

ARBITRATOR: Robert G. Stein

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Interfering in, failing to cooperate in or lying in an official investigation; Excessive Force

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Noble Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was denied.

REASON: The grievant was assigned to the dining hall to check for contraband. He found a coat stored by an inmate in an improper area. He dragged the coat across the floor and threw it to the floor. The inmate approached the grievant about the way in which the grievant treated his clothing and a confrontation ensued. During the confrontation, the inmate was handcuffed and the grievant shoved the inmate into a wall. The grievant failed to include that action in his report. The arbitrator found that the witnesses – other CO's and the inmate – were more credible than the grievant. The arbitrator noted that the grievant's action "was not of an egregious nature" and one its own would not support removal; however, lying about what transpired during the incident was very serious and coupled with the excessive force warranted the grievant's removal.

838) Thompson 24-04-(02-06-07)-0932-01-04 Removal

ARBITRATOR: Robert G. Stein

ISSUE: Did the grievant violate his Last Chance Agreement resulting in his removal? If not. What shall the remedy be?

CONTRACT SECTION: 24

TOPIC HEADINGS: Last Chance Agreement (LCA); Alcoholism; Random Drug/Alcohol Testing

DEPARTMENT: MR/DD

SITE/OFFICE: Cambridge Developmental Center

POSITION: Custodial Worker

RESULT: The grievant was denied.

REASON: The grievant reported for work under the influence of alcohol. He signed a Last Chance Agreement (LCA) which held his removal in abeyance pending his participation in, and completion of, an EAP program. Random drug/alcohol testing was a component of the LCA. He was told to report for a random test. He failed to comply and was removed. The arbitrator found that the employer's failure to notify the chapter president of a change in the LCA was a violation of good faith but did not negate the grievant's obligation to adhere to the agreement. The grievant had ample opportunity to confer with his union representative prior to signing the agreement and without specific reason for the necessity to speak to his representative prior to the test, the grievant's procedural arguments did not justify his refusal to submit to the test. The grievant had the option to "obey now and grieve later" and he did not elect to do so. The arbitrator also determined that the affirmative decision of the commission which reviewed his unemployment compensation application had no bearing in this matter because different criteria was applied in making that decision.

839) 27-12-030328-1790-01-03 Lima Closing

ARBITRATOR: Nels Nelson

ISSUE: Did the State violate Articles 11, 18 and 44? If so, what shall the remedy be?

CONTRACT SECTION: 11, 18, 44

TOPIC HEADINGS: Facility Closure

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Lima Correctional Facility

RESULT: Grievance denied.

REASON: Despite the testimony and evidence presented by the Union concerning health and safety issues, the arbitrator found that he could not stop the closure of LCI. First,

while there was no doubt that prisons are a difficult and dangerous workplace, it did not appear that the “relatively small increase in crowding increases the threat to health and safety”. Second, there were actions that could be taken to improve the effects of crowding. The arbitrator stated the Union must work together to resolve the issues.

840) Williams 27-23-020415-1044-01-03 Removal

ARBITRATOR: Robert Stein

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

CONTRACT SECTION: 24, 25

TOPIC HEADINGS: Excessive force; Falsifying an Official Document; Physical Abuse of an Inmate

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Ross Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was untimely appealed to Step 3 of the grievance process and therefore by operation of Article 25.05 is considered withdrawn. The arbitrator is without jurisdiction to render a decision on the merits of this matter.

REASON: The employer raised the issue of timeliness at arbitration. The arbitrator found that management’s acceptance of the grievance form at Step 2 did not relieve the grievant from timely filing his grievance at Step 3 in accordance with specific language of the Collective Bargaining Agreement. “It is reasonable to assume that the Grievant and the current Local Union President (then steward) were well aware of the filing procedures for discipline and were even reminded of the procedures by the language of the grievance form.

841) Noggle 02-02-(02-11-22)-0078-01-14 Removal

ARBITRATOR: Robert Brookins

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Failure of Good Behavior; Unauthorized Viewing of Confidential Co-worker Emails

DEPARTMENT: Administrative Services

SITE/OFFICE: Computer Services Division

POSITION: Network Administrator 3

RESULT: The grievant was denied in its entirety.

REASON: The grievant was removed from her position for unauthorized viewing of emails of co-workers and superiors. The arbitrator found that there are various types of conduct which warrant removal on the first offense; the fatal element in this case is that the grievant could no longer be trusted by her employer. The arbitrator stated that the misconduct and the subsequent dishonesty regarding her actions destroyed the employer-employee relationship. The arbitrator noted he lacked the authority to order the employer to transfer the grievant to a less sensitive position, particularly in light of layoffs, bumping and transfers.

842) Stringer 35-03-021001-0066-01-03 Removal

ARBITRATOR: Dwight Washington

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Misuse of Sick Leave; Misappropriate/Misuse of Funds;
Falsification of Documents

DEPARTMENT: Youth Services

SITE/OFFICE: Cuyahoga Hill Juvenile Correctional Institution

POSITION: Juvenile Correction Officer

RESULT: The grievance was granted subject to the following: 1) the grievant was paid his remaining OIL benefits not previously received due to his injuries; total OIL benefits not to exceed 960 hours; 2) reinstatement within fourteen days of award with back pay, benefits - seniority subject to medical proof of fitness; 3) if grievant is unable to return to work due to his medical condition, he should seek remedy through BWC.

REASON: The grievant sustained two injuries at work both in an attempt to restrain youths who refused to follow directives. The grievant followed the application process. No evidence was submitted to establish that the grievant submitted false data.

843) Rivers 27-09-021223-0959-01-03 Removal

ARBITRATOR: Robert Stein

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Interfering with Official Investigation; Unauthorized Relationship with Inmate

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Grafton Correctional Institution

POSITION: Correction Officer

RESULT: Grievance was denied.

REASON: The grievant was charged with corresponding with an inmate and being dishonest about the relationship when interviewed. The arbitrator found that inconsistencies in the grievant's two interviews raised questions about his trustworthiness. Although the arbitrator noted that the grievant appeared to be a compassionate person, his judgment and suitability as a Correction Officer was very doubtful.

844) Denial of Leave 02-10-(03-05-28)-0087-01-01

ARBITRATOR: Harry Graham

ISSUE: Did the State violate Section 3.10 of the Collective Bargaining Agreement? If so, what shall the remedy be?

CONTRACT SECTION: 3.10

TOPIC HEADINGS: Denial of Leave; Union Business

DEPARTMENT: Administrative Services/Mental Health

SITE/OFFICE: Gallipolis Developmental Center

POSITION: Various – Electrician, Therapeutic Program Worker, Training Officer.

RESULT: The grievance was sustained. The state may limit Union requests for leave for up to two people per the same office, institution or division within a county. Should the Union seek a rationale for denial of Union leave it must be provided. Such rationale must meet the standard of reasonableness. It must take "account of shifts, classifications and work areas." Should the Union find the explanation of leave denial wanting it may grieve.

REASON: Concerned that an excessive number of employees were receiving time off duty for Union business, the State informed the Union that it would release no more than two (2) employees per institution pursuant to the language in Article 3.10 of the Collective Bargaining Agreement. Said language was modified during the 2002-2003 negotiations limiting releases to two (2) from the same office, institution or division in the same county. An annotated version included the language: "Reasonable standard shall apply to all leave requests," and read in part: "Leave request shall take into account shifts, classifications and work areas." The Agreement, along with the annotations, was accepted by both the membership and the State. Subsequently, the Union requested leave for five (5) members from the Gallipolis Developmental Center to attend an Assembly meeting. The State requested a reduction to two (2) members. The Union refused and the State then denied release to all of the individuals requesting leave. The arbitrator determined that the Agreement clearly states that the employer is to apply a standard of reasonableness in acting upon requests for union leave and must take into account those individuals working on different shifts and in different classifications. The State did not

show hardship when an employee was on Union leave. The arbitrator noted that the State must be mindful of the Contract when denying Union leave and provide an explanation for the denial when one is requested by the Union. If the explanation is not satisfactory to the Union, the issue may be grieved.

845) Grier 23-18-(02-09-25)-0142-01-04 Five-day Fine

ARBITRATOR: Anna DuVal Smith

ISSUE: Was the grievant disciplined for just cause? If not, what shall the remedy be?

CONTRACT SECTION: 24

TOPIC HEADINGS: Fraternization with a former patient; Inappropriate socialization.

DEPARTMENT: Mental Health

SITE/OFFICE: Northfield Campus of Northcoast Behavioral Healthcare

POSITION: Therapeutic Program Worker

RESULT: The grievance was denied.

REASON: The grievant allowed a former patient to come to her home, spend the night, and sleep in her bed without the knowledge or approval/disapproval of her employer. The grievant admitted that she had done this and felt she did nothing wrong. She received a five (5) day fine. The grievant's signature is on a training report acknowledging that she was trained on department policy regarding such behavior. The Arbitrator believed that while the grievant had sincere compassion for the former patient, she should have known better than to violate department policy. "The grievant committed an act for which discipline was warranted." The grievant was a long-term employee and this fact was considered by her employer in its decision to impose the fine. The arbitrator considered reducing the fine to a two-day fine, but since the grievant insisted that she had done nothing wrong, the arbitrator was not persuaded that a reduction was warranted in this case.

846) Wolfe 27-16-021112-3680-01-03 Removal

ARBITRATOR: Anna DuVal Smith

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Job Abandonment; Removal

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Marion Correctional Institution

POSITION: Maintenance Repair Worker 3

RESULT: The grievance was granted. The grievant was reinstated to his former position. The State could require proof of his fitness for duty within a reasonable period of time. No back pay was awarded since the grievant was not in active pay status or fit to work at the time of his removal. The time since his removal was to be designated approved unpaid extended illness leave. The grievant was made whole for lost seniority and benefits to include reimbursement for medical expenses incurred because of the loss of insurance while removed.

REASON: The grievant, a Maintenance Repair Worker 3, was charged with job abandonment (three or more consecutive work days without proper notice). The arbitrator stated that this case was about system failure caused by failed communications, complicated by the nature of the grievant's illness (depression), lack of a telephone and a lack of information about the procedure for mental health claims. Though management had a right to expect the grievant to either return to work or provide documentation to support his request for additional leave, the arbitrator questioned the employer's failure to make a greater effort to contact the grievant upon receipt of information regarding the nature of the grievant's illness and the fact that he did not have a telephone. The grievant should have monitored his leave status more closely and should have sought assistance from personnel or the Union; however, the arbitrator found that, "An employee who suffers from an addiction or mental illness that impairs his ability to conduct his behavior acts involuntarily and is thus not responsible for his misconduct that, but for the impairment, would not have occurred." The arbitrator determined that the Union met its burden to establish the grievant's condition, its relevance to his behavior, and the likelihood of rehabilitation.

847) Kirk 15-00(03-04-23)0061-01-14 Removal

ARBITRATOR: Robert Brookins

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Dishonesty; Failure of Good Behavior

DEPARTMENT: Public Safety

SITE/OFFICE: Division of Highway Patrol

POSITION: Accountant Examiner 3

RESULT: The grievance was denied.

REASON: The grievant was responsible for making corrections to employees' payroll records. The employer had a verbal work rule, which stated that employees were not permitted to make changes in their own accounts. The grievant was charged with deleting sixteen hours of leave usage from her balance. Computer records showed that the grievant's user ID was used to make the deletions. At the time, the grievant was at

her computer and logged on under her own ID and password. The arbitrator found the circumstantial evidence to be very strong against the grievant. The computer records, inconsistent statements, in addition to the grievant's suspicious inquiry regarding whether a co-worker's ID would be the last to update the grievant's account, discredit the grievant. The arbitrator concluded that the grievant more likely than not deleted the leave usages from her balance.

The arbitrator stated, "When an employee who occupies such a position of trust engages in misconduct that is so strongly linked to the core of her duties, the bond of trust and confidence is permanently ruptured." He opined that no measure of progressive discipline would likely renew the employer's trust in the grievant.

848) McIlwain 23-07-030226-0004-01-04 Removal 23-18-020524-0072-01-04

ARBITRATOR: Robert G. Stein

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Tardiness; Insubordination; Failure of Good Behavior; Dishonesty; Non-compliance

DEPARTMENT: Mental Health

SITE/OFFICE: Northcoast Behavioral Center

POSITION: Therapeutic Program Worker

RESULT: The grievance was denied. However, the charge regarding clocking-in for a co-worker was removed from her record.

REASON: The grievant was charged with violating several rules/regulations, mainly acts of insubordination. Instead of removal, the employer, the Union and the grievant to hold the discipline in abeyance pending completion of an EAP. The grievant was also moved to a new area with a new supervisor. The evidence showed that the grievant failed to comply with the agreement by not maintaining contact with EAP. The arbitrator found the grievant's "flat refusal to follow reasonable and proper directives and her blatant defiance of her supervisor's authority...inexcusable." The arbitrator noted that the minor violations alone were not serious but in totality with the continued pattern of insubordination they took on greater significance. He did not find sufficient evidence that the grievant clocked-in" for another employee.

849) Pritchard 28-07-030128-0055-01-14 Removal

ARBITRATOR: Robert Brookins

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Unauthorized Use, Release or Misuse of Information; Interfering with, Failing to Cooperate in, or Lying in an Official Investigation of Inquiry; Compromising Ability for Employee to Effectively Perform Duties

DEPARTMENT: Ohio Adult Parole Authority

SITE/OFFICE: Chillicothe Regional APA

POSITION: Training Officer

RESULT: The grievance was sustained in part and denied in part.

REASON: The grievant was a Training Officer with seventeen years of service with the State of Ohio, with an impeccable work record, no disciplines and several letters of commendation. He received information that a Parole Officer (PO) was driving on a suspended driver's license from the PO's partner (and friend of the grievant). This information originated via telephone to the PO's partner from a Municipal Court Clerk/Police Officer. The PO's partner did not wish to become involved and asked the grievant to relay the information to the proper people. When he took this information to the PO's supervisor, he was *advised* to obtain and present proof of this allegation. The grievant contacted the Municipal Court Clerk/Police Officer who provided a LEADS printout to him. The grievant erased the key number from the printout in an attempt to protect the identity of the Officer. The employer contended that the grievant's conduct involved unauthorized use, release or misuse of information, that he interfered with an official investigation and that his actions could prohibit a public employee from performing his/her duties. The Union argued that the PO's supervisor's advice to obtain proof of the allegation was an implicit authorization to do just that. The arbitrator determined that the employer did not establish proof of all of the alleged violations leveled against the grievant. The one violation established by the employer – erasing the key number – was *de minimis*. The grievant is a seventeen-year employee with no active disciplines and an exemplary work record. The arbitrator noted that the grievant's conduct complied with Rule 25 of the "Performance-based Standards Track" and the provisions of the Whistleblower Statute, "thereby advancing the explicit and desirable goals of the Adult Parole Authority and the State of Ohio." The Whistleblower Statute specifically prohibits the removal or suspension of an employee who complies with the requirements of the statute. The arbitrator also found that the grievant was a victim of disparate treatment when comparing the serious violation of the Parole Officer and the minimal measure of discipline imposed upon him. The arbitrator concluded that the grievant's removal "was unreasonable, arbitrary, and capricious and not for just cause."

850) James 15-00-030610-0080-01-09 Removal

ARBITRATOR: Robert Brookins

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Failure of Good Behavior

DEPARTMENT: Public Safety

SITE/OFFICE: Great Western Driver's Examination Station

POSITION: Drivers License Examiner 1

RESULT: Grievance denied.

REASON: The grievant was removed from his position for making sexual comments and other types of nonverbal sexual conduct towards a Deputy Registrar who worked in the same building, thus, creating a hostile work environment. The arbitrator found that the evidence and testimony presented by the employer was clear and convincing that the grievant's conduct was unwelcome, offensive and adversely effected the victim's job performance, ultimately becoming a major factor in "constructively discharging her". The two aggravating factors which weighed the most against the grievant were the serious nature of his misconduct and his resistance to rehabilitation despite that fact that he had received sexual harassment training as the result of an earlier violation.

851) Watts 24-08-020806-0869-01-04 Removal

ARBITRATOR: Robert G. Stein

ISSUE: Was the grievant discharged for just cause? If not, what shall the remedy be?

CONTRACT SECTION: 24

TOPIC HEADINGS: Removal, Physical Abuse, Verbal Abuse

DEPARTMENT: Ohio Department of Mental Retardation and Developmental Disabilities

SITE/OFFICE: North Coast Behavior Center

POSITION: Therapeutic Program Worker

RESULT: Grievance is denied

REASON: Grievant was removed for violating agency policy against physically and or verbally abusing a resident. Although there was not enough proof of physical abuse, there was sufficient evidence of verbal abuse to sustain the charge and the subsequent removal. If there is a solid "web of evidence" that eliminates all other plausible explanations, a circumstantial case can be sufficient to meet a "clear and convincing" evidentiary standard required in physical and verbal abuse cases, but to also exercise extreme caution in such cases. The arbitrator found that given the combination of strong circumstantial evidence and witness credibility (a crucial factor in this case), these supported the employer's position to sustain the charge of verbal abuse against the grievant. There was insufficient evidence of physical abuse; eyewitness testimony could only depict grievant's demeanor as aggravated, that he made abusive remarks, and directed intimidating behavior at the resident--enough evidence to amount to verbal abuse

as defined by the center's policy. Grievant's inconsistent, varied and generally unconvincing testimony undermined his credibility. The arbitrator found that at a minimum, the grievant struck something, possibly with a paddle, at least three times causing loud noise, sufficiently intimidating the resident who was known by grievant to be intimidated by these acts, that grievant lost his temper with the resident and verbally abused him in accordance with the definition of verbal abuse contained in the Department's policy.

852) Jones 23-18-(030604)-0052-01-04 Removal

ARBITRATOR: Robert Stein

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Abuse of a Resident/Patient

DEPARTMENT: Mental Health

SITE/OFFICE: Northcoast Behavior Healthcare – Northfield Campus

POSITION: Therapeutic Program Worker

RESULT: The grievance was sustained in part, denied in part. The grievant was reinstated and her seniority restored. Her removal was reduced to a 2 day suspension. The removal for abuse was deleted from her record and her charges were changed to Neglect of Duty. She received back pay and benefits, minus the 2 days. It was also ordered that she be retrained on the proper use of Crisis Techniques.

REASON: The grievant was charged with failing to utilize the proper techniques to diffuse a physical attack against her by a patient. The patient was a much larger person than the grievant and was known to be aggressive. She allegedly punched the patient several times in an attempt to get him to release her hair. The arbitrator determined that while it was clear the grievant placed herself in a position to be a target of the patient and her judgment was very suspect, a lapse in common sense, the failure to flee and the improper use of hair release did not equal abuse of a patient. The arbitrator noted that there was no evidence that the patient sustained any physical injuries. The arbitrator found that "...it is not reasonable to fire an employee for employing immediate and reasonable defensive measures that come to the fore to avoid serious injury".

853) Norman 23-07-011210-0027-01-09 Discrimination

ARBITRATOR: Nels E. Nelson

ISSUE: Did management violate Article 2 and if so, what should the remedy be?

CONTRACT SECTION: Article 2

TOPIC HEADINGS: Disparate Treatment, Discrimination (In General)

DEPARTMENT: Department of Mental Health

SITE/ OFFICE: Northcoast Behavioral Healthcare

POSITION: Office Assistant III

RESULT: The arbitrator denied the grievance. He rejected the Union's contention that the state discriminated against the grievant in violation of Article 2 of the collective bargaining agreement.

REASON: Due to cuts in the budget at the Department of Mental Health, Northcoast Behavioral Healthcare had to eliminate several positions. The grievant's position was one of them. She was employed as an Office Assistant III and sought a newly created position as a Health Information Technician I. This position required applicants to type 50 words per minute with 95% accuracy. The grievant failed the test. However, another employee bid off an Office Assistant III job and the Union insisted that management contact the grievant about this position. Management declined, stating that it was considering changing the opening to a Health Information Technician I position, and the grievant was subsequently laid off. When management decided to retain the Office Assistant III position, it sent the grievant two recall notices by certified mail. The notices indicated that the job required an applicant to type 50 words per minute with 95% accuracy. The notices were returned as undeliverable or unclaimed and another employee filled the position. The arbitrator denied the Union's contention that the state had discriminated against the grievant in violation of Article 2 of the collective bargaining agreement. First, he found that there was no disparate treatment. He distinguished the grievant's case from another case involving a telephone operator position. The arbitrator pointed out that in the present case management was unsure whether the opening would be posted as an Office Assistant III job or Health Information Technician I job and by the time a final decision was made, the grievant was already laid off. In the earlier case, there was no question that the job would be posted as an opening for a telephone operator and management had sufficient time to offer the job to the employee before the scheduled layoff. Secondly, the arbitrator rejected the argument that the 50 word per minute typing requirement was added to keep the grievant from filling the position. He stated that the state had the right to be sure that whoever filled the position had the necessary typing skills. Moreover, the Vice President of Human Resources testified that he would not have required the grievant to take a typing test if she had voiced her concerns about the requirement. The arbitrator also noted that the state would not have sent two certified letters to the grievant at two different addresses if it did not want to recall the grievant. Finally, the arbitrator ruled that the union did not present any credible motive that the state discriminated against the grievant. Despite the fact that the grievant was a party to a lawsuit against the department, it had occurred nine years prior to her layoff, and there was no evidence that the other employees who were party to the suit were subject to punishment.

854) Burley 07-00(00-12-15)0301-01-07 (10-day Suspension)

ARBITRATOR: John J. Murphy

ISSUE: Was there just cause to discipline the grievant? If not, what shall the remedy be?

CONTRACT SECTION: 2,5, 24, 25, 44

TOPIC HEADINGS: Neglect of Duty, Insubordination, Exercising Poor Judgment; Failure of Good Behavior; Working Excess Hours Without Authorization

DEPARTMENT: Commerce

SITE/OFFICE: Division of Real Estate and Professional Licensing

POSITION: Investigator

RESULT: The grievance was denied.

REASON: The grievant was given a 10-day suspension for various alleged violations including *Neglect of Duty, Insubordination, Exercising Poor Judgment, Failure of Good Behavior* and *Working Excess Hours Without Authorization*. The Union argued that the same person conducted the third step proceeding, the pre-disciplinary meeting, another third step meeting and also prepared the notice of the pre-disciplinary meeting notice. In essence, the grievant's "Accuser, Judge and Employer Representative." The arbitrator determined that there was no conflict and that the contract does not require that different individuals preside over the various steps in the process. He noted that the pre-disciplinary meeting was not an adjudicatory hearing, stating that it is described in Article 24.04 as a meeting.

The arbitrator found that five examination reports were not submitted by the grievant. The supervisor was "extraordinarily patient with the grievant" and gave him several reminders to submit the examination reports. The grievant clearly understood he was to submit the reports. The grievant's failure to submit the reports was a failure to perform a fundamental part of his job. The Employer failed to make its case with regards to the grievant's time sheets. The employer did not show just cause to discipline the grievant for working excess hours without authorization. Though the time sheet was not clear, it was obvious that the grievant was not claiming hours beyond his scheduled hours. The arbitrator determined that there was no just cause for Working in Excess Poor Judgment, Failure of Good Behavior and Exercising Poor Judgment; however, he found just cause for Insubordination and Neglect of Duty.

The arbitrator found the 10-day suspension reasonable. The decision by the employer to suspend the grievant for 10 days in this case was based in part on an act of insubordination that occurred approximately one month prior to the charges in this matter.

855) Spires 34-23(030402)0017-01-09

ARBITRATOR: John J. Murphy

ISSUE: Was the grievant suspended for just cause? If not, what shall the remedy be?

CONTRACT SECTION: 24

TOPIC HEADINGS: Insubordination; Failure of Good Behavior

DEPARTMENT: Bureau of Workers Compensation

SITE/OFFICE: Division of Safety and Hygiene

POSITION: Safety Consultant

RESULT: The 10-day suspension was reduced to a 3-day suspension without pay. The grievant was to be made whole. In light of the analysis in this opinion, the Bureau's direct order to the grievant was not declared null and void.

REASON: The grievant was charged with providing Mine Safety and Health Administration compliance training as an independent contractor for compensation. He stated that he had been providing the training since the late 1980's and saw nothing wrong with it. The supervisor gave the grievant a direct order to discontinue providing the training. Following the direct order, the grievant notified management that he would be providing the training and that the Division did not provide the compliance training. Management stated that providing the training was a conflict of interest. The BWC Code of Ethics prohibits employees from engaging in outside employment that results in "conflict or apparent conflict with the employee's official duties and responsibilities." The arbitrator concluded that outside employment and matters of his employer need not be direct and a relationship is recognized if outside employment relates "in any way to workers compensation matters." The arbitrator noted that the Bureau considered providing the training at one time but chose not to due to a lack of funds. That consideration clearly established the training as a BWC matter. The grievant's supervisor at the time encouraged him to provide the training because the Bureau did not provide the training. While it was confirmed by both parties that the grievant did not provide the training as a BWC employee, the grievant could have been assigned the task by his supervisor. "It is important that the public understand that the employees of the Bureau act only in the interest of the people uninfluenced by any consideration of self-interest, except those inherent in the proper performance of their duties." The 10-day suspension was within the scope of the violation, however, the employer, through the grievant's supervisor, contributed to the grievant's conduct. While the supervisor's encouragement did not constitute permission from the employer, it was sufficient evidence to show that BWC must share responsibility for the grievant's conduct.

856) Burks 27-11-030508-1374-01-03

ARBITRATOR: Anna DuVal Smith

ISSUE: Was the grievant discharged for just cause? If not, what is the remedy?

CONTRACT SECTION: 24.01

TOPIC HEADINGS: removal; physical abuse of inmate; use of polygraph testing; failing to cooperate in an investigation

DEPARTMENT: Ohio Department of Rehabilitation and Correction

SITE/OFFICE: Lebanon Correctional Institute

POSITION: Correction Officer

RESULT: Grievance denied

REASON: The burden of proof for the employer where a correction officer is charged with misconduct of a criminal nature is clear and convincing of which the arbitrator must be pretty certain the grievant is guilty. The use of polygraph testing will be given weight to their results when they corroborate direct evidence of innocence. The grievant's guilty plea in court and the use of the polygraph test results were not persuasive enough to deny the grievance, but other evidence did support the charge that grievant physically abused an inmate. The arbitrator sites to the following evidence of grievant's guilt: (1)the grievant's disappearance with the inmate for a length of time, although the parties disputed the approximate length, while en-route to the captain's office, did provide enough time for the abuse to take place; (2)the grievant could not explain the procedure he took in transporting the inmate with two other correction officers and his description of what happened between himself and the inmate was unreliable; (3)the grievant was untruthful in his testimony about what happened at the polygraph examination because evidence did not support his contention that the questions were too personal, that the examiner was not professional and that he was not told he could quit without admitting guilt.

857) Earnest 25-18(03-05-15)0031-01-03

ARBITRATOR: John J. Murphy

ISSUE: Was the grievant improperly denied reinstatement from disability separation in accordance with Article 35? If so, what shall the remedy be?

CONTRACT SECTION: 25.01, 25.02, 35.01, 44.02

TOPIC HEADINGS: Disability Separation; Arbitrability

DEPARTMENT: Youth Services

SITE/OFFICE: Centerville Juvenile Correctional Facility

POSITION: Juvenile Correction Officer

RESULT: The grievance was granted. The grievant was made whole from the date of the denial of his reinstatement to the date facility chooses between reinstatement and requiring the grievant to submit to a medical examination under OAC 123:1-33-04.

REASON: The grievant was injured at work and qualified for workers' compensation. His disability separation date went back to his injury date and he was notified that he had three years from that date to request reinstatement. Three years to the day following his disability separation, the grievant notified his employer that he wished to return to work. He faxed a note from his physician to the administrator of personnel stating that he could return to work with no restrictions. Ten days following grievant's notification, the administrator notified the grievant that his request must be in writing. The employer removed the grievant from his position on the grounds that the request for reinstatement was not timely. The arbitrator found that the employer's request ten days beyond the deadline constituted a "waiver by implication" of the employer's right to require a written request under OAC 123:1-33-04. "Since the facility impliedly represented it would not stand on its right to a timely request for reinstatement, and since that representation induced action on behalf of the grievant, the facility is estopped from now asserting its right to a timely written request for reinstatement." The arbitrator concluded that the employer failed to comply with OAC 123:1-33-04. The arbitrator determined that the issue in this matter was a grievance under Article 25.01(A) between the Union and the employer. Since it had not been settled by the grievance process it was arbitrable under Article 25.02 and because under ORC 4117.10(A) if an agreement allows for a binding and final arbitration of grievances, the arbitrator did not have the authority to accept the decision of the Board of Review which ruled in favor of the employer.

858) Asadullah 24-08-030523-0893-01-04 Removal

ARBITRATOR: Dr. David M. Pincus

ISSUE: Did the employer have just cause to remove the grievant? If not, what shall the remedy be?

CONTRACT SECTION: Article 25.03 and 25.04

TOPIC HEADINGS: Client Abuse: Misappropriation/ Exploitation

DEPARTMENT: Department of Mental Retardation and Developmental Disabilities

SITE/ OFFICE: Montgomery Developmental Center

POSITION: Therapeutic Program Worker

RESULT: The arbitrator found that the employer had just cause to remove the grievant, and he denied the grievance.

REASON: The grievant was employed as a Therapeutic Program Worker and she periodically escorted clients on shopping field trips. Each client had a personal fund of approximately \$75 to spend on clothing or other items. The grievant, as the designated personal shopper, was responsible for these funds. She was required to document the spent funds, return any unused portion, and submit receipts for every item purchased. On March 5, 2003, a manager at Target alerted the center about the grievant's possible fraudulent behavior and an investigation was undertaken. It found that the grievant had returned previously purchased items, received cash disbursements, but never returned the funds to the center nor re-shopped for replacement items. There were seven shopping trips in question with unaccounted for resident funds totaling \$797.96. As a result, the center removed the grievant from her position for Misappropriation/ Exploitation and Failure to Follow Policy. The Union argued that the employer did not have just cause for this removal, but the arbitrator ruled to the contrary. He found that the Target manager offered credible testimony about the grievant's unusual shopping habits. She had a pattern of returning the most expensive items bought on the shopping trips, receiving a cash refund, and after a short period of time, returning and re-shopping. On the other hand, the grievant's testimony was inconsistent and unbelievable. Receipts for the repurchased items were not submitted to the facility and the grievant offered conflicting statements concerning her management of the receipts. In addition, there was no conclusive evidence of any clearly identifiable re-shopped for clothing purchases nor was there evidence of any receipts. As a result, the arbitrator stated that no other reasonable conclusion was possible; the grievant had stolen the funds for her own personal use.

859) Hoppes 04-00 (03-08-05)-0005-01-07 Removal

ARBITRATOR: Dwight A. Washington, Esq.

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

CONTRACT SECTION: 24.01

TOPIC HEADINGS: Neglect of Duty, Burden of Proof

DEPARTMENT: Ohio Department of Agriculture (ODA)

SITE/ OFFICE: Statewide

POSITION: Meat inspector

RESULT: The arbitrator granted the grievance.

REASON: The grievant was employed as a meat inspector with the Ohio Department of Agriculture. ODA is responsible for monitoring the various meat-processing plants in Ohio and has a zero-tolerance policy for fecal matter on any inspected carcasses due to the possibility of e-coli 151 contaminations. On February 12, 2003 the grievant was the inspector in charge at Plant #18 (Wilson's), and his supervisor observed fecal slurry on the front shank of a beef carcass. The grievant's stamp of approval also appeared on the front of the shank. It was called to his attention, and he admitted that he inspected the

beef as it came off the line, observed it being washed, re-inspected after the wash and stamped the beef prior to it being placed in the cooler. The grievant stated that he had inspected the beef with no fecal matter being present. Subsequently, he was charged with violating ODA disciplinary grid 30(A)- Neglect of Duty. The arbitrator recognized that the burden of proving wrongdoing rests with the employer who must prove that the grievant neglected his duty to inspect the meat after it was removed from the floor or after being placed in the cooler. The arbitrator found that the employer failed to meet its burden. He concluded that the fecal matter could have come from an employee's contaminated apron while being transferred to the cooler, from an apron while in the cooler, or from the grievant's negligent inspection. The evidence is inconclusive and it fails to demonstrate that the grievant neglected his duty.

860) Class Action 27-01-(030728)-0248-01-06 Pick-A-Post

ARBITRATOR: David Pincus

ISSUE: Did the Employer violate Appendix Q of the parties' collective bargaining agreement when it temporarily altered the Local Pick-A-Post Agreement? If so, what shall the remedy be?

CONTRACT SECTION: 5; Appendix Q

TOPIC HEADINGS:

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE:

POSITION: Correction Officer

RESULT: The grievance was denied.

REASON: The arbitrator found that the employer did not violate Appendix Q-Correction Officer Pick-A-Post. The employer was able to demonstrate through evidence and testimony that a series of unforeseen circumstances existed generated by the desired closing of the Lima Correctional Institution. As a Consequence, these circumstances provided a valid contractual basis for the changes in the Pick-A-Post agreements. He noted that a determination regarding the propriety of Appendix Q, B Pick-A-Post need not be reached

861) Brown 31-08-(03-06-13)-0021-01-07 Removal

ARBITRATOR: Robert G. Stein

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

CONTRACT SECTION: Articles 24 & 29

TOPIC HEADINGS: FMLA; Interfering with and/or failing to cooperate in an Official Investigation; Dishonesty

DEPARTMENT: Transportation

SITE/OFFICE: District 8

POSITION: Survey Technician II

RESULT: The grievance was sustained in part. The grievant was returned to work no later than 2 pay periods from the award date. He received back pay less 3 work days and his seniority was restored. The termination was removed from his record and replaced with a 3-day suspension for interfering with an official investigation.

REASON: The grievant was charged with engaging in his outside job, scalping baseball tickets, while on FMLA to care for sick parents. The arbitrator found that the employer failed to prove that the grievant did not provide assistance to his parents while on leave. However, it was clear that the grievant engaged in his supplemental employment while on leave. There was no evidence the parties agreed that FMLA was subject to the same contractual conditions as under Article 29.04 regarding unauthorized use of sick leave or abuse of sick leave. There are no provisions in FMLA restricting an employee's use of the leave to medical treatment. Though the arbitrator found that the grievant was initially untruthful, his dishonesty did not warrant removal, based on his 16 years of service and satisfactory performance evaluations. The arbitrator noted that if ODOT had a policy regarding non-work which met the test of § 825.312(h) of the FMLA, the decision would have been different.

862) Pope 35-03-20030902-0053-01-05 Removal

ARBITRATOR: Nels E. Nelson

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Tardiness, Absent Without Leave, Last Chance Agreement, Disparate Treatment

DEPARTMENT: Cuyahoga Hills Juvenile Correctional Facility

SITE/ OFFICE: Department of Youth Services

POSITION: Cook 1

RESULT: The arbitrator found that the Department of Youth Services had just cause to remove the grievant due to his tardiness and poor work record.

REASON: Grievant was terminated from his position as Cook 1 at the Department of Youth Services for reporting to work 22 minutes late on June 15, 2003 and one minute late on June 16, 2003. In addition, the grievant was arrested at the facility for failing to pay a fine for a traffic offense. The arbitrator found that since the grievant was late on two consecutive days and admitted to his prior problems of tardiness, the department was justified in its discipline despite the severity. The Union argued that the grievant was

treated differently than other employees, however, the arbitrator ruled that there was no disparate treatment because the grievant had been warned that he needed to have his warrant cancelled, while the other employees had not had a similar forewarning. Furthermore, the arbitrator found that despite the fact that the grievant was ordered to clock out before he was arrested, it is still possible for him to be absent without leave. In this case, the superintendent was simply trying to eliminate the disruption that might result from an employee being arrested at the facility. In addition, the arbitrator denied the Union's contention that the grievant's arrest could not be considered because it was not addressed in his removal letter. The grievant was not terminated for his unpaid traffic ticket but for his unauthorized leave that resulted from his arrest. The arbitrator also found that the state was not required to offer a last chance agreement to an employee because nothing in the collective bargaining agreement required it. Finally, the arbitrator did consider seniority as a mitigating factor, but found that the grievant had only three years of seniority during which time his service with the department was poor.

863) Morgan 34-34-020211-0014-01-09 Promotion

ARBITRATOR: Robert G. Stein

ISSUE: Was the grievant properly denied his promotion? If not, what shall the remedy be?

CONTRACT SECTION: 17

TOPIC HEADINGS: Minimum Qualifications, Promotion, Falsification of Job Application

DEPARTMENT: Ohio Bureau of Worker's Compensation

SITE/OFFICE: Information Technology Division

POSITION: Telecommunications Systems Analyst 3

RESULT: The arbitrator granted the grievance. When fashioning the award, the arbitrator considered the fact that the dispute had been ongoing for two years, and he realized that declaring the successful applicant and the grievant unqualified would be disruptive to the employer's operation, unfair to other employees, and unreasonable. Therefore, he ordered the employer to promote the grievant to the Information Technology Consultant 2 position, provide him with greater seniority than the successful applicant, and provide back pay and benefits.

REASON: The grievant was employed for over 19 years in the Information and Technology Division of the Ohio Bureau of Worker's Compensation as a Telecommunications Systems Analyst 3. He, along with five other employees, applied for a promotion to the position entitled Information Technology Consultant 2. Another applicant was awarded the position despite the fact that the grievant had more seniority and had a bachelor's degree that was pertinent to the position. The successful applicant did not meet the minimum qualifications for the job and lied on his application when he

stated that he possessed an undergraduate core curriculum in computer science and an undergraduate degree in math. The employer argued that the grievant also falsified his application by stating that he had a degree in Electrical Engineering when in fact he had a degree in Electronic Engineering. The arbitrator found however, that despite the fact the grievant did falsify his application, he did not falsify his core curriculum. The successful applicant's claim that he possessed a bachelor's degree and completed core course work in computers and technology represented a more serious misrepresentation of fact than that of the grievant's. In addition, the arbitrator recognized that management has wide discretion in managing its workforce and selecting employees for promotion. However, "the Employer is governed by the rule of reasonableness and the exercise of its management rights must be done in the absence of arbitrary, capricious, or unreasonable discretion." The arbitrator found that the Employer's decision to promote the successful applicant to a position for which he did not meet the minimum requirements was arbitrary.

864) Rozycki 16-11-030325-0032-01-09 Issue

ARBITRATOR: John Murphy

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

CONTRACT SECTION: Appendix Q

TOPIC HEADINGS: Contract Interpretation

DEPARTMENT: Jobs and Family Services

RESULT: The grievance was denied.

REASON: This grievance rested on whether the employer properly applied the section to the work scheduling of one type of established term appointments – the type entitled "established term regular appointment" (ETA). The concept of term appointments in Appendix came about via an MOU which settled a previous statewide grievance challenging the employer's extensive use of non-bargaining unit employees to supplement the bargaining unit workforce. It was stipulated that the MOU would expire with the contract that was it was under. The arbitrator concluded that the employer was obligated during the peak periods to work ETAs in accordance with the standard set forth in the MOU. However, the work standard did not obligate the employer to work all ETAs for 40 hours per week without exception during the peak periods. The work standard was a contractually mandated norm for the employer during these peak periods. The arbitrator stated that he record showed that the employer met the standard during the declared peak period. At a management meeting, the individual who declared the peak period stated that the ETAs would normally be scheduled for 40 hours. A manager testified at arbitration that he was told he should attempt to work the ETAs 40 hours per

week, and that he should make every effort to schedule the ETAs on a 40-hour per week basis.

865) Antoine 23-18-030808-0070-01-04 Removal

ARBITRATOR: Dwight A. Washington, Esq.

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

CONTRACT SECTION: Article 24

TOPIC HEADINGS: Threats, Mitigating Circumstances,

DEPARTMENT: Department of Mental Health

SITE/ OFFICE: Northcoast Behavioral Healthcare System (NBH)

POSITION: Therapeutic Program Worker

RESULT: The grievance is granted in part and denied in part. The arbitrator found that the grievant was not removed for just cause and he reinstated her with seniority rights. However, he allowed the five day fine to remain as part of the grievant's discipline record and refused to award back pay.

REASON: The grievant was notified that she would be removed from her position as a Therapeutic Program Worker as a result of her threatening comments to the charge nurse on duty as well as several instances of tardiness and attendance violations. However, prior to the imposition of the removal, the grievant and NBH entered into an agreement that would hold the removal in abeyance for 180 days if she successfully completed the EAP program and remained free from other policy violations during that period. On January 3, 2003, the grievant called off sick without sufficient sick leave balance. She successfully completed the EAP program on May 2, 2003 but was later notified that as a result of the January 3rd AWOL violation, she had failed to remain free from policy violations. Therefore, her removal held in abeyance was reactivated. The arbitrator ruled that to support a claim for violation of the Workplace Violence Prevention Policy, the employer must demonstrate that a specific threat occurred and the grievant had the power to carry it out. Also, the victim must have feared or had reason to fear for her safety. Here, the arbitrator found that the evidence was insufficient to support a finding or inference that a specific threat occurred. In addition, there was no evidence to suggest that the grievant had the power to direct clients and/or others to physically harm or cause property damage to the victim. Finally, after reviewing the victim's own written statement and testimony, the arbitrator concluded that the victim did not perceive the grievant's conduct as a threat. Therefore, the arbitrator ruled that the employer failed to meet its burden of proof with respect to this incident. With regard to the EAP violation on January 3rd, the arbitrator found that there were several mitigating circumstances that did not justify removal of the grievant- the fact that the grievant was employed for 24

years with NBH coupled with the fact that NBH originally sought to decrease the punishment for the confrontational incident and the attendance violations to a five day fine subject to successful completion of the EAP program. The arbitrator concluded that since the employer failed to meet its burden of proof regarding the workplace violence incident, reinstatement of the grievant is appropriate. However, he found that since the grievant received a written reprimand on a prior occasion for similar violent behavior, NBH's zero tolerance policy for workplace violence, and the grievant's violent conduct in the present action, the grievant will not receive back pay and the five day fine shall remain as part of the grievant's discipline record.

866) Bonner 27-03-031205-1274-01-03 Removal

ARBITRATOR: Harry Graham

ISSUE: Did the employer have just cause to discharge the grievant? If not, what shall the remedy be?

CONTRACT SECTION: Article 24

TOPIC HEADINGS: Just Cause, Mitigating Circumstances,

DEPARTMENT: Department of Rehabilitation and Correction

SITE/ OFFICE: Chillicothe Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was sustained in part and denied in part. The grievant was reinstated to his position with no back pay and a suspension was retained on his personnel record.

REASON: The grievant had 16 years of services as a Correction Officer at Chillicothe Correctional Institution. A confidential informant revealed that; the grievant had supplied narcotics, particularly heroin and cocaine, to a few of the inmates; he had supplied tubes of Superglue as well as food and candy to several of the inmates; and he had remained in contact with one of the inmates (Plowman) after the latter's release from the institution. The employer conducted an investigation into the matter and found that the grievant and Plowman had been friends during Plowman's stay at the institution, they had several telephone conversations with each other after Plowman release, and in an interview the grievant admitted to having contact with Plowman and other ex-inmates. Consequently, the employer discharged the grievant. The Union argued that the employer did not satisfy Arbitrator Daughtery's seven tests of just cause and therefore the discharge should be overturned. The arbitrator rejected this argument and refused to apply Daughtery's seven tests. In reference to the tests he stated, "Their mechanical application demeans the arbitration process." He also rejected the grievant's contention that he did not know that the institution's policies prohibited telephone contact with

inmates after their release. He reasoned that the grievant had 16 years of experience and had many hours of training. Therefore, he could not have been ignorant to the institution's policies. Finally, the arbitrator acknowledged that the offenses committed by the grievant were serious breaches of the code of conduct prescribed for Correction Officers, however; he found that the penalty was too harsh. He took into account the grievant's 16 years of service with only one prior written reprimand, and his selection as Officer of the Year on a prior occasion. The arbitrator concluded that the grievant's offense was serious, but a lesser punishment is appropriate in this case.

867) Salters 35-03-030910-0056-01-03 Removal

ARBITRATOR: Dwight Washington

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Verbal /written abuse of co-workers; Threatening behavior towards co-workers

DEPARTMENT: Youth Services

SITE/OFFICE: Cuyahoga Hills Juvenile Correctional Facility

POSITION: School Secretary

RESULT: Grievance was denied.

REASON: The grievant involved in a verbal and physical confrontation with a co-worker. The testimony presented by the employer's witnesses was found credible by the arbitrator. The arbitrator noted that no evidence or facts were presented to indicate that the co-worker made any physical gestures towards the grievant. The arbitrator stated that the grievant's confrontational behavior during the incident and her continued aggressive behavior towards co-workers convinced him that the employer met its burden of proof. He also noted that the employer had shown a previous measure of restraint in its unsuccessful attempt to correct the grievant's behavior. The arbitrator stated that a long-term employee could not seek protection if he/she was continually abusive towards co-workers or management.

868) Masterson 27-05-031010-1141-01-03

ARBITRATOR: Dwight Washington

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Interfering with, failing to cooperate in an official investigation

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Correction Reception Center

POSITION: Sergeant/Counselor

RESULT: Grievance was denied.

REASON: The grievant was charged with an unauthorized relationship with an inmate. The employer presented evidence that the grievant refused to cooperate in the official investigation when she refused to come to a pre-disciplinary meeting stating that her doctor advised her not to go to the institution. The arbitrator found that the grievant's refusal was under the guise of medical protection. The grievant's disability application failed to provide the mitigating factor to overturn her removal. The arbitrator determined that because of the grievant's reluctance to participate at any stage of the investigation, based on the evidence presented; the employer met its burden of proof.

869) Article 36.05

ARBITRATOR: David Pincus

CONTRACT SECTION: 36.05

OPINON/AWARD: There was limited bargaining history surrounding the disputed portion of Article 36/05. It was clear to the arbitrator that the Union was able to get a guarantee, agreed to by the employer, that a point factoring analysis and/or a market wage study could result in an increase to an existing assigned pay range, but could never result in a decrease in the assigned pay range. A reduction in an existing pay range does not take place when the employer overrides a point factor analysis with a market wage study and retains the existing assigned pay range. The parties never negotiated a specific exception to the general understanding previously articulated. In fact, the language in Article 36.05 contemplates the adjustments made by the employer. "Just because the employer has the right to apply the previously articulated procedure does not mean that it had done so properly in any particular instance."

870) Green 24-14-030930-2714-01-04 Removal

ARBITRATOR: Anna DuVal Smith

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Resident Abuse; Substantial Evidence

DEPARTMENT: MRDD

SITE/OFFICE: Warrensville Developmental Center

POSITION: Therapeutic Program Worker

RESULT: The grievance was granted. The grievant was reinstated to his former position and made whole. He was granted full back pay and benefits including, but not necessarily limited to healthcare benefits and reimbursements, PERS contribution, leave balances and union dues. Because the record establishes that the grievant regularly worked both mandated and voluntary overtime, he was also granted overtime to be calculated on the average of overtime hours he worked in the year preceding his unjust dismissal. The department deducted any earnings the grievant earned in the interim.

REASON: The grievant was a Therapeutic Program Worker who worked part-time for MRDD and part-time for a county-level supported-living provider. The grievant was criminally charged with resident abuse at the county facility and terminated without an administrative hearing. The investigator reported the allegations to the state facility which, in turn, placed the grievant on administrative leave and subsequently removed him. The county's investigator did not speak to the grievant about the violations, nor did the grievant have the opportunity to face his accusers or present his position until his trial. Neither a jury nor the hearing officer who heard the grievant's unemployment compensation appeal found sufficient evidence to warrant termination. The Union presented testimony at arbitration that the definition for "substantiated" in regards to evidence did not exist in the Ohio Revised Code, or in the Medicaid regulations. It was the Union's position that the arbitrator must use the ordinary definition of "substantiated", as well definitions included in other jurisdictions to determine the meaning of the word. It further noted that in the absence of a definitive substantial evidence, the State relied on one investigator's declaration that the grievant was guilty of the allegations. The arbitrator found that the allegations of physical abuse were not substantiated that the grievant was removed without just cause.

871) George 27-03-020807-1108-01-03 Discrimination; Health/Safety

ARBITRATOR: Anna DuVal Smith

ISSUE: Did the employer violate the Collective Bargaining Agreement in refusing to provide work for the grievant while she was pregnant? If so, what shall the remedy be?

CONTRACT SECTION: 2, 11 and 25

TOPIC HEADINGS: Discrimination; Health and Safety

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Chillicothe Correctional Institution

POSITION: Correction Officer

RESULT: Grievance was denied.

REASON: The grievant was a visitation/utility officer on second shift at the facility. She became pregnant and present her employer with a physician's statement stating so and indicating her due date. He also advised her not to lift more than ten to fifteen pounds for the duration of her pregnancy. She was told by her employer she would not be allowed to work due to her lifting restrictions. The Union could not agree to her displacing other officers in violation of the Pick-A-Post Agreement and the warden could not agree to splitting her job between the visiting hall and the entrance building because the possibility of having to use force against an inmate or visitor would not be in compliance with her weigh-lifting limitations. She was told to apply disability. The arbitrator found that the employer made a good faith effort to accommodate the grievant's restrictions. A "good faith" effort is all that is required by the contract. The parties met and both rejected the proposals submitted. Arbitrator noted that he grievant also submitted her charges to the Ohio Civil Rights Commission and the U.S. EEOC. OCRC took jurisdiction and found that that employer's actions were not due the grievant's pregnancy, but to her restrictions. The arbitrator concurred, stating that the grievant received her answer to Title VII issue from OCRC.

872) Davis 34-27-030909-0061-01-09 Removal

ARBITRATOR: Anna DuVal Smith

ISSUE: Was the grievant removed for just cause? If not, What shall the remedy be?

CONTRACT SECTION: 24

TOPIC HEADINGS: Failure of Good Behavior; Improper Call-off

DEPARTMENT: Bureau of Workers' Compensation

SITE/OFFICE: William Green Building

POSITION: Customer Service Representative

RESULT: The grievant was not removed for just cause. He was reinstated to his former position and the discipline was reduced to 1) Verbal reprimand for *Improper Call-off* and 2) 10-day suspension for *Neglect of Duty* – violation of BWC email or Internet policies, *Failure of Good Behavior* – Making false, abusive, inflammatory or obscene statements and Discourteous and/or rude treatment of a manager. The grievant was granted full back and benefits less what he would have earned while on suspension. The Bureau could deduct any earnings the grievant had in the interim on account of his dismissal.

REASON: The arbitrator found that the grievant displayed contempt rather than compassion for a co-worker, had a insubordinate attitude towards management, used foul language and apparently resented being corrected and reprimanded. However, the arbitrator found no evidence of this behavior being a plan to intentionally harm; it was

rather a private bad joke. The arbitrator agreed that the employer could prohibit expressions of hostility in the workplace, even when they are merely bad jokes and take corrective action. The arbitrator also agreed that the grievant cannot be allowed to continue as he is. For this reason, the charge of Menacing/threatening/harassing behavior was removed from his record and replaced with the charge noted in the award.

873) Fender 27-33-030919-1079-01-09 Removal

ARBITRATOR: David Pincus

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

CONTRACT SECTION: 24, 29 & 31

TOPIC HEADINGS: Failure to provide documentation for absence; Job Abandonment; Absent without proper authorization

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Ohio State Penitentiary

POSITION: Account Clerk

RESULT: Grievance was denied.

REASON: The grievant went on approved disability leave. She exhausted her available leave balances and was placed on Physician's Verification. The grievant was sent a set of disability forms, but failed to submit the documents or contact the personnel office. The arbitrator found that the grievant's actions, or inactions, aggravated rather than mitigated the situation. It is reasonable to expect an employee experiencing an extended absence to know that he/she must call his/her supervisor. The grievant made no attempt to contact her employer. The employer made several efforts to contact the grievant regarding her absence and the necessity to contact personnel. Nothing in the record indicates the employer did not have the grievant's telephone number or correct address; nor was there any indication that the grievant had moved or changed her number. The arbitrator stated he had to assume the grievant blatantly disregarded the employer's efforts. He found it ironic that had the grievant notified her employer, she could have filed her disability application in a timely manner.

874) Mock 27-23-031217-1250-01-03 Removal

ARBITRATOR: Dwight Washington

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Compromising ability of an employee to carry out duties; failure of good behavior/immoral conduct

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Ross Correctional Camp

POSITION: Correctional Officer

RESULT: Grievance denied.

REASON: The grievant was a visiting room shakedown officer responsible for checking for drugs and contraband. While of-duty, he was arrested and charged with the possession cocaine and tampering with evidence. In lieu of a conviction, the grievant was sentenced to three (3) years probation. Other CO's, as well as inmates testified that they were aware of the grievant's arrest and subsequent removal and the circumstances surrounding them. The arbitrator determined there was a substantial relationship between his off-duty misconduct and his job as a CO. The arbitrator noted that the "grievant had a duty to enforce the law and the very subject matter of his off-duty misconduct was identical to his job duties."

875) Glass 27-09-031125-1025-01-03 Removal

ARBITRATOR: Dwight Washington

ISSUE: Was the grievant removed got just cause? If not, what shall the remedy be?

CONTRACT SECTION: 24

TOPIC HEADINGS: Unauthorized Relationship With an Inmate

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Grafton Correctional Institution

POSITION: Correction Officer

RESULT: Grievance was denied.

REASON: The grievant admitted to giving his cell phone number to an inmate; engaged in a phone conversation with the inmate; and failed to report contact with a parolee. The grievant admitted he was aware of DR&C policies and work rules regarding unauthorized relationships with inmates and parolees. The arbitrator noted that the DR&C mandates a safe and efficient rehabilitation/corrections system for inmates, requiring even-handed treatment, and insists on the absence of any preferential treatment of inmates by COs. Without expressed permission, unauthorized relationships between a CO and an inmate cannot exist.

876) Rainey 24-07-090203-0969-01-04 Removal

ARBITRATOR: Robert Brookins

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Client/Resident Abuse

DEPARTMENT: Mental Retardation and Developmental Disabilities

SITE/OFFICE: Gallipolis Developmental Center

POSITION: Therapeutic Program Worker

RESULT: Grievance was denied.

REASON: The grievant was charged with using her fist to strike or punch a client on her upper arm approximately three times. The arbitrator found the testimony of the witness to be more credible than that of grievant. He found that the testimony and evidence regarding grievant's actions supported the agency's position that the grievant physically abused a client, which is against agency policy. The arbitrator noted that Article 24.01 prohibited him from modifying or otherwise changing the agency's discipline once client abuse has been established.

877) Payne 35-20-120400-0053-01-03 Leave of Absence/Timeliness of Agency's Response

ARBITRATOR: Robert Brookins

ISSUE: Did the employer violate Article 28 of the contract? If so, what shall the remedy be?

CONTRACT SECTION: 28

TOPIC HEADINGS: Leave of Absence/Timeliness of Agency's Response

DEPARTMENT: Youth Services

SITE/OFFICE: Ohio River Valley Juvenile Correctional Facility

POSITION: Juvenile Correction Officer

RESULT: Grievance was denied.

REASON: The arbitrator held that the forty-eight hour rule is a more practical and reasonable means to implementing the "promptness requirement" in the fifth paragraph of Article 28.03. The portion of the grievance challenging the ninety-minute rule is moot because the agency unilaterally discontinued that rule. The agency's imposition of the forty-eight hour rule does not violate the contract.

878) Rhodes 27-05-(031010)-1143-01-03 Removal

ARBITRATOR: Dwight A. Washington

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Physician Verification; Absence w/o Authorization

DEPARTMENT: DR&C

SITE/OFFICE: Corrections Reception Center, Orient OH

POSITION: Corrections Officer – Special Duty Officer

RESULT: The grievance was granted in part, denied in part. The grievant was reinstated within fourteen days of the award with no back pay or economic benefit. The grievant was entitled to her service and/or institutional seniority rights.

REASON: The grievant had been disciplined on three (3) prior occasions for absenteeism. She was charged with an unauthorized absence and misuse of FMLA leave. The arbitrator noted that the grievant's prior disciplines and stated that a fourth violation may occur to justify removal, but the facts in this instance did not convince the arbitrator that the employer met its burden of proof of just cause. After receiving her assignment, the grievant informed her supervisor that she was sick, that her sickness was due to a medical condition recognized under FMLA and she wanted to go home. Her supervisor granted her request, but ordered her to provide a physician's verification when she came back to work. The employer over-stepped its bounds when the grievant's supervisor demanded a physician's verification upon the grievant's return to work. The arbitrator determined that "if an employee is FMLA certified and calls off stating FMLA, then no physician statement for that absence can be required." He found no difference between an employee using a telephone outside the institution and calling off while at the institution.

879) Holt 35-18-040329-0025-01-03 Removal

ARBITRATOR: Dwight Washington

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Excessive Use of Force against a Youth

DEPARTMENT: Youth Services

SITE/OFFICE: Circleville Juvenile Correctional Facility

POSITION: Juvenile Correction Officer

RESULT: The grievance was denied.

REASON: The grievant was charged with striking a youth with an open hand in the presence of other youths. The arbitrator stated that the grievant did not present himself well in arbitration and displayed no regret for his actions. The arbitrator did not find the

grievant's testimony credible. Evidence presented indicated that the grievant initiated the confrontation with the youth when he grabbed the youth's shirt. After intervention by two co-workers, the grievant struck the youth in the face. Although the grievant had recent favorable performance evaluations, the employer pointed out that the grievant had been suspended for various reasons eleven times in twenty-six years. The arbitrator found no mitigating factors to overrule the actions taken by employer in this case.

880) Pope 24-07(040122)1001-01-04 Removal

ARBITRATOR: Robert Brookins

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Poor Judgment; Neglect; Failure to Follow Policy

AGENCY: Mental Retardation and Developmental Disabilities

SITE/OFFICE: Gallipolis Developmental Center

POSITION: Therapeutic Program Worker

RESULT: Grievance was denied.

REASON: The grievant, a TPW with 12 ½ years of service, no active disciplines and satisfactory evaluations was removed from his position for leaving a client alone in a restroom. The client was under an "arms length", "one-on-one supervision" order. The client was discovered on the restroom floor by the grievant who did not report the incident. The arbitrator stated that the employer's definition of client neglect was two-fold. First, there must be a failure to act. Second, the failure to act must result in, or cause "potential or actual harm." The arbitrator found that the grievant failed to act when he allowed the client to enter the restroom alone; however, there was no evidence to establish "causal link" to the client's injuries. The arbitrator determined that the grievant's neglect exposed the client to potential harm and that his act of neglect was more than simply poor judgment. The arbitrator found that the mitigating and aggravating circumstances did not outweigh the severity of the violations allegedly committed by the grievant.

881) Smith 24-06(031118)0794-01-04 Removal

ARBITRATOR: Nels Nelson

ISSUE: Was the grievant removed for just cause? If not, what should the remedy be?

CONTRACT SECTION: 24

TOPIC HEADINGS: Bad Conduct; Abusive Language
AGENCY: Mental Retardation and Developmental Disabilities
SITE/OFFICE: Columbus Developmental Center
POSITION: Therapeutic Program Worker
RESULT: The grievance was denied.

RATIONALE: The grievant had four active disciplines in her records – a two-day suspension (falsifying reports), a five-day suspension (inefficiency and making false statements, a written reprimand (AWOL) and an oral reprimand (failure to follow policy). The grievant accumulated four disciplines, including two suspensions, during approximately five years of service. The disciplines did not change her behavior. She was removed from her position for the use of vulgar and abusive language in two separate incidents occurring one week apart. The arbitrator found that “the state did not have to continue to employ a person who repeatedly violates the standards of employee conduct.”

882) Ratliff 33-00-031203-1474-01-04 Removal

ARBITRATOR: Anna DuVal Smith

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Failure to Act on or Report Patient Neglect

DEPARTMENT: Ohio Veterans Home

POSITION: Licensed Practical Nurse

RESULT: Grievance was denied.

REASON: The grievant was charged with failing to act as required by the resident’s “full code” status. She did not administer CPR; she also did not intervene when the RN present failed to do so. The arbitrator stated that a licensed practical nurse accepting and maintaining employment in the profession has to be presumed to be informed on the duties and responsibilities of her profession. The grievant’s 2½ years of service was no excuse for failing to clarify with the RN that the resident was full code and then take the necessary steps if the RN was non-responsive. The arbitrator noted that aside from the facts of the case, since her termination, the grievant had held other employment as an LPN and the Ohio Board of Nursing had not – by the time of arbitration – pulled her license. Removal was not unreasonable.

883) Lawson 27-20-(04-02-03)-6312-01-03 Removal

ARBITRATOR: Robert Brookins

ISSUE: Was the grievant removed for just cause? If not, what should the remedy be?

CONTRACT SECTION: 24

TOPIC HEADINGS: FMLA; Job Abandonment

AGENCY: Rehabilitation and Corrections

SITE/OFFICE: Mansfield Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was denied.

REASON: The grievant was removed from his position for being absent without proper authorization and job abandonment. The grievant had two active disciplines at the time of his removal – a one-day fine and a two-day fine. Both fines were for absence without proper authorization. At the time of removal, the grievant had no sick, vacation or personal time available. After exhausting his FMLA leave, the grievant was advised to return to work, which he failed to do. The arbitrator concluded that the grievant at least implied that he was abandoning his job by not giving proper notification. The arbitrator noted, "...one could reasonably conclude that the Grievant made either a conscious or an unconscious decision to focus on health related problems and to place his job on the "back burner"." The arbitrator found that the grievant was in almost continual AWOL status without providing proper notification and the employer provided testimony that it encountered undue hardship due to the grievant's absences. The arbitrator was sympathetic to the grievant's situation with a sick parent, however, it was noted that he showed little concern for his job. The employer's decision to remove the grievant was neither arbitrary nor capricious.

884) Starcher 27-16-031020-3778-01-03 Issue

ARBITRATOR: Robert Stein

ISSUE: Did management violate the Collective Bargaining Agreement when it did not create a temporary Correctional Officer position to escort, protect and guide outside contractors at the Powerhouse? If so, what shall the remedy be?

CONTRACT SECTION: 2.02, 13.07 and MCI Pick-A-Post

TOPIC HEADINGS: Temporary CO; Contractors

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Marion Correctional Institution

POSITION: Correction Officer

RESULT: Grievance was denied

REASON: The Union asserted that the employer failed to create a temporary CO position to escort contractors outside the perimeter of the facility. The employer contended that it was a past practice to escort contractors within the perimeter of the facility only. The arbitrator found that the employer did not violate the contract or the PAP agreement when it decided not to create a temporary post. The arbitrator's ruling was based on: 1) the work was completely performed outside of the perimeter of the facility and 2) it was performed during a period when there were no inmates present in the area of the contractors.

885) Bettah 27-04-040311-1075-01-05 Removal

ARBITRATOR: Anna Duval Smith

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Unauthorized Relationship

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Corrections Medical Center

POSITION: Food Service Coordinator

RESULT: Grievance was denied.

REASON: The grievant was charged with an unauthorized relationship with an inmate. The former inmate, who was not under the supervision of the State at the time of the arbitration, did not attend the hearing and could not be located. The arbitrator listened to six selected taped telephone calls and determined that the voice she heard was that of the grievant; and, that she did in deed have a personal relationship with the former inmate. The arbitrator found that the affidavits presented by the grievant did not place the grievant somewhere else at the time of the calls. The grievant only presented denials and testimony of her family members. The arbitrator determined that in light of what she heard herself, there was insufficient evidence to overturn the removal.

886) Yeh 02-01-040512-0011-01-14 Removal

ARBITRATOR: David Pincus

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Failure of Good Behavior

DEPARTMENT: Administrative Services

SITE/OFFICE: Administrative Support Division

POSITION: Network Administrator I

RESULT: The grievance was sustained. The grievant was reinstated with full back pay, contractual benefits and seniority. The grievant's back pay was offset by any pay accrued during the interim period. The arbitrator did not authorize the payment of any missed overtime.

REASON: The grievant accused by her employer of deleting records from the database in an effort to outperform a co-worker. The employer never presented testimony or evidence to prove this theory. The grievant testified that customer feedback regarding her performance was important. There was a problem in system in obtaining that feedback. The arbitrator stated in his decision that the grievant credibly explained her situation and what she did to explore the problem. Nothing in the record discredited the feedback problem experienced by the grievant. The arbitrator concluded that the grievant's attempt to clarify the matter appeared plausible, although somewhat unusual.

887) Boger 33-00-20040324-1507-01-05 Appeal

ARBITRATOR: John J. Murphy

ISSUE: Is the Ohio Veterans Home in violation of Section 28.03 of the collective Bargaining Agreement as it relates to promptness?

CONTRACT SECTIONS:

Article 13.01, 13.02, 28.03

Agency Specific Agreement for Ohio Veterans Home Scheduling reads as follows:

Current scheduling practices (i.e., every other weekend off, restricted use of vacation on weekends, and scheduling of intermittent employees) will remain in effect unless operational needs prohibit their continuation.

TOPIC HEADINGS: Standard Work Week, Work Schedules, Vacations, Agency Specific Agreements

DEPARTMENT:

SITE/OFFICE: Ohio Veterans Home

POSITION: N/A

RESULT: Grievance denied

REASON: The problem in this case centered upon ad-hoc requests for vacation leave that seek the leave on dates for which the employer has not yet developed the four-week work schedule (i.e. request for one day of vacation eight months later that was held by the employer until the employer had established the work schedule for the four-week period covered) In a previous decision, Arbitrator Brookins held that the bargaining contract does allow the Employer to hold requests for vacation leave until the schedule for the four-week period covered by the leave is established.

In Arbitrator Murphy's opinion, he stated that the test on the applicability of the Brookins' decision to this case is not whether this arbitrator agrees with the analysis in the Brookins' Opinion nor whether this arbitrator would have rendered a similar decision had the issue in this case been presented as an original question to this arbitrator. It could not be said that the Brookins' analysis was egregiously erroneous and substantively without merit. The Brookins' analysis was based upon construction of the language in the fifth paragraph of Article 28.03 in the context of preceding paragraphs. It was based upon traditional rules of construction of contracts. The Brookins' Award should stand until the parties choose to change it in bargaining a future contract.

888) Harden 04-02-04 0019-01-14 Suspension

ARBITRATOR: Dwight A. Washington, Esq.

ISSUE: Was the Grievant disciplined for just cause? If not, what shall the remedy be?

CONTRACT SECTIONS: Article 24.01,

TOPIC HEADINGS: Just Cause, Progressive Discipline, Agency Policies, Standards of Employee Conduct, Sexual Harassment

DEPARTMENT: Department of Agriculture

SITE/OFFICE: NA

POSITION: Facilities Maintenance Specialist 3

RESULT: Grievance granted in part, and denied in part

REASON: ODA's utilization of the sexual harassment policy was improperly applied regarding the December 4th incident. On that day, according to the Grievant's co-worker, the grievant was insubordinate, gave her angry looks, and made loud sounds. The evidence, however, only revealed that the grievant was in the victim's work area because he was assigned to be there, and he made eye contact along with two loud sighs. The discipline issued for the December 4th incident was not issued for just cause, so the ten (10) day suspension that the grievant received for the incident should not stand.

The discipline that the grievant received for the November 25, and November 26, incidents was not arbitrary or inconsistent, so the twenty (20) day suspension should stand. On those days, the grievant made multiple comments to the victim and touched her shoulders. Therefore, the Grievant's suspension was reduced from thirty (30) to twenty (20) days.

889) Breeckner 15-00-(02-08-16)-0121001-14 Issue

ARBITRATOR: David M. Pincus

ISSUE: Did the Ohio Department of Public Safety violate the Collective Bargaining Agreement when it did not credit the Grievant vacation leave and personal leave accruals for the entire period of his military leave?

CONTRACT SECTIONS:

Articles 27.01, 27.02, 28.01, 28.02, 29.02, 31.01

TOPIC HEADINGS: Military Leave, Personal Leave, Vacations, Sick Leave, Leaves of Absence, Leave Accrual, and ORC 5923.05

DEPARTMENT: Ohio Department of Public Safety

SITE/OFFICE: Public Safety

POSITION: Internal Auditor 2

RESULT: Grievance denied

REASON: The employer neither violated Section 31.01 of the Collective bargaining Agreement nor relevant sections of the Ohio Revised Code when it failed to allow the accrual of vacation and personal leave while the Grievant was on a leave of absence and on active duty in the military. Vacation leave accruals as specified in Section 28.01 required active pay status which the grievant did not possess. Similarly, personal leave accruals only arise when as employee is on a paid leave of absence, and Section 31.01(E) defines military leave as unpaid leave with a proviso. The Revised Code also fails to articulate the type of benefit sought by the Union. A reading of R.C. 5923.05 surfaces the Legislature's intent to ensure that an employee on military leave not suffer a loss of pay; however, leave accruals are never specified in this statute.

890) Spivey 27-17-(04/06/16)-1441-01-03 Removal

ARBITRATOR: Robert Brookins

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

CONTRACT SECTION: 24.01 and 24.02

TOPIC HEADINGS: Inappropriate Conduct with an Inmate

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Northeast Pre-release Center

POSITION: Correction Officer

RESULT: Granted in part; denied in part. The grievant's removal was reduced to a sixty-day (60-day) suspension. He was reinstated with full back pay and with no loss of seniority. Back pay was to be reduced by the interim income he could have earned with due diligence. Additionally, back pay was reduced by any earnings he received between the date of removal and the date of reinstatement.

REASON: The grievant was a ten-year employee with DR&C and had no active disciplines on his record. An inmate informed the agency that the grievant had a sexual relationship with an inmate while working overtime on a unit to which he was not regularly assigned. Following an investigation, which included review of video tape of the grievant entering and exiting a laundry room with an inmate during a formal head count, management determined that the grievant failed to obtain authorization before he released an inmate from her cell during a formal count. He placed himself in a compromising position by being in a dark room with an inmate for ten minutes. He was removed from his position. The grievant argued that he was unaware of the requirement for authorization to release inmates to wash their soiled sheets after an accident; the video was not a true indicator of what happened and exaggerated the darkness of the room; and, his presence in the laundry room with the inmate did not compromise his ability to perform his duties.

The arbitrator determined that based on the evidence the grievant violated agency rules of conduct, however, aggravating and mitigating factors in this instance do not warrant removal. The arbitrator found the removal to be “unreasonable, arbitrary, and capricious”. The arbitrator based his decision on the grievant’s ten years of service, his spotless disciplinary record and presumed satisfactory evaluations. Additionally, he maintained a respectable status in his community. More importantly, the arbitrator found that the agency failed to give the grievant adequate notice and access to policy regarding inmate movement during counts. The arbitrator stated, “Even though the grievant must have understood the *broad, commonsensical guidelines* about inmate movement during counts, it is unfair to hold him *fully* accountable for *specific* provisions in rules where the Agency has not shown that he either knew of the rules or had reasonable access to them.”

891) Novosielski 27-09-(07-07-04)-1072-01-03 Removal

ARBITRATOR: David M. Pincus

ISSUE: Did the Grievant’s actions against the inmate constitute a violation of Rule 43 of the standards of conduct abuse of an inmate/patient under the supervision of the Department? If not, was the Grievant removed for just cause and if not, what shall the remedy be?

CONTRACT SECTIONS:

Article 24.01, 24.02, 24.05

TOPIC HEADINGS: Just Cause, Removal, Progressive Discipline, Agency Policies, Standards of Employee Conduct, Inmate Abuse

DEPARTMENT: Ohio Department of Rehabilitation and Corrections

SITE/OFFICE: Grafton Correctional Institution

POSITION: Correction Officer

RESULT: Grievance denied

REASON: It is the Arbitrator's opinion based on the evidence presented that the Grievant abused the Inmate, and thus, the removal decision was properly imposed. The arbitrator found that the Grievant abused "a patient or another in the care of custody of the State of Ohio," and, therefore, in accordance with Article 24.01, the Arbitrator "does not have the authority to modify the termination of an employee committing such abuse." Once an abuse finding is declared, all other related charges, whether well-founded or justified, are rendered moot for consideration purposes.

892) Allen 24-08-(04-03-15)-0922-01-04 Removal

ARBITRATOR: Harry Graham

ISSUE: Did the Grievant commit an act of abuse? If not, what shall the remedy be?

CONTRACT SECTION: Article 24.01

TOPIC HEADINGS: Just Cause, Removal, Departmental Policies, Patient Abuse

DEPARTMENT: Department of Mental Retardation and Developmental Disabilities

SITE/OFFICE: Montgomery Developmental Center

POSITION: Therapeutic Program Worker

RESULT: The grievance is sustained.

REASON: It is the Arbitrator's opinion based on the evidence presented that the State cannot prove that the Grievant acted as the Employer claimed. It could not be concluded with any degree of confidence that the abuse reference in Section 24.01 of the Agreement occurred. There was no rational basis for preferring the testimony of the sole witness over the Grievance testimony. The arbitrator concluded that in such situations the case of the Employer must fail.

893) King 27-04-20040511-1084-01-03 Removal

ARBITRATOR: David M. Pincus

ISSUE: Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT SECTIONS:

Article 24.01, 24.02, 24.05

TOPIC HEADINGS: Just Cause, Removal, Progressive Discipline, Agency Policies, Standards of Employee Conduct, Rule 46B, Unauthorized Personal Relationships

DEPARTMENT: Ohio Department of Rehabilitation and Corrections

SITE/OFFICE: Corrections Medical Center

POSITION: Correction Officer

RESULT: Grievance denied

REASON: It is the 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 Arbitrator also noted that evidence discovered post-discharge is admissible as long as it does not deal with subsequently discovered grounds for removal. Furthermore, the Arbitrator concluded that Article 25.08 was not violated in this circumstance because the Union's information request did not meet the specificity requirement contained in the provision. Finally, the Union failed to plead and prove its disparate treatment claim since it did not raise the issue at Third Stage or Mediation Stage.

894) Gilmore 27-17-6-16-04-1441-01-03 Removal

ARBITRATOR: Robert Brookins

ISSUE: Was the grievant removed for Just Cause? If not, what shall the remedy be?

CONTRACT SECTIONS:

Article 24.01, 24.02

TOPIC HEADINGS: Just Cause, Removal, Progressive Discipline, Agency Policies, Abuse

DEPARTMENT: Ohio Department of Mental Retardation and Developmental Disabilities

SITE/OFFICE: Gallipolis Developmental Center

POSITION: Therapeutic Program Worker

RESULT: Grievance sustained

REASON: The Agency failed to produce even a preponderance of evidence (more likely than not) that the Grievant abused the Client. The Agency produced virtually no circumstantial evidence to support its charge in this dispute, so its case rested entirely on witness testimony and investigatory statements. The outcome of this case, therefore, rested entirely on two witnesses. Neither of the witnesses ultimately proved to be credible.

895) Hodge 24-14-20030609-2637-01-04 Removal

ARBITRATOR: David Pincus

ISSUE: Did the grievant abuse a resident at the Warrensville Developmental Center? If not, what shall the remedy be?

CONTRACT SECTIONS:

Article 24.01, 24.02, 24.05

TOPIC HEADINGS: Just Cause, Removal, Progressive Discipline, Agency Policies, Standards of Employee Conduct, Abuse

DEPARTMENT: Department of Mental Retardation and Developmental Disabilities

SITE/OFFICE: Warrensville Developmental Center

POSITION: Therapeutic Program Worker

RESULT: Grievance sustained

REASON: The employer failed to support the Grievant's removal for abuse. Nothing in the record provides significant proof that the Grievant was guilty as charged. Improperly supported allegations, regardless of the employer's well-intentioned purpose, require a ruling in the Grievant's favor. Mere innuendo, without proper support in the form of consistent and valid evidence and testimony, will lead to similar findings in the future. This finding was fashioned primarily by the overwhelmingly consistent testimony provided by the Grievant and her co-workers.

896) Trimble 24-14-(08/10/04)2900-01-04 Removal

ARBITRATOR: Robert Brookins

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Patient Abuse

DEPARTMENT: Mental Retardation and Developmental Disabilities

SITE/OFFICE: Warrensville Developmental Center

POSITION: Therapeutic Program Worker

RESULT: Grievance was sustained.

REASON: The grievant was escorting a resident to the dining room at her facility. The resident was known to grab individuals by the shirt and throat, falling to the floor with the individual in tow. The grievant was suddenly grabbed by the patient who pulled the grievant to the floor and began choking her. There was no one in the area to assist her. The grievant used a training maneuver (knuckle pressure) to loosen the patient's grip. The action failed. The grievant who was losing her ability to breathe tapped the resident on the side of his face to get him to release her. As the episode was ending and the resident was releasing his grip on the grievant, an M.R. Professional came upon the situation. The grievant was accused of abusing the resident. Management contended that the grievant abused the resident and there is never justification for "slapping" a resident in the face. The agency representative went so far as to state at arbitration that staff are

expected to die or suffer serious injury rather than use unauthorized force against residents. The arbitrator noted that “neither regulation, nor contractual provision requires the Grievant to suffer death or serious bodily injury rather than to use unauthorized force, as a last resort, to repel the Customer’s life threatening attack.”.

The arbitrator found that the grievant faced a life-threatening situation and only after the unsuccessful attempt to use an authorized technique to free herself, was forced to strike the resident.

897) Moore 27-34-0310-0053-01-03 Pregnancy Hazards

ARBITRATOR: Harry Graham

ISSUE: Was Article 11.11 violated when the employer did not accommodate the grievant? If so, what shall the remedy be?

CONTRACT SECTION: 11

TOPIC HEADINGS: Concern for Pregnancy Hazards

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Richland Correctional Institution

POSITION: Correction Officer

RESULT: Grievance was sustained.

REASON: The grievant notified her employer that she was pregnant and applied for accommodation to continue working. Subsequent statements from her physician stated that due to complications the grievant could not lift more than 20 pounds, was unable to run $\frac{3}{4}$ miles and could not break up fights. Her application for accommodation was denied. She applied for and received disability benefits. The Union presented evidence at arbitration that two other COs at Richland had been accommodated by the employer during pregnancy. The employer could not explain why they received accommodations and the grievant did not. The arbitrator stated, “If the employer can demonstrate it made the requisite ‘good faith effort to provide alternative, comparable work and equal pay to a pregnant employee upon a doctor’s recommendation’ (Sec. 11.11) it will have satisfied its obligation under the Agreement. As the record does not demonstrate that occurred in this instance the grievance must be sustained.”

898) Taylor 33-00-040907-1551-01-04 Removal

ARBITRATOR: Harry Graham

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Verbal Abuse; Poor Behavior/Inconsiderate Treatment; Poor Judgment; Violence in the Workplace

DEPARTMENT: Ohio Veterans Home

POSITION: Nurse's Aide

RESULT: Grievance sustained in part and denied in part. The grievant was reinstated; however, no back pay was awarded from the date of his discharge to the date of reinstatement. The parties were ordered to meet and draft a Last Chance Agreement to be in effect for two years. The grievant's reinstatement was contingent upon him signing the agreement.

REASON: The grievant had several disciplines in his personnel record related to attendance. The grievant's removal was the result of a confrontation with a resident. The confrontation ended with the grievant swinging a frame from a shirt hamper and damaging a ceiling tile. The arbitrator stated such behavior violated the employer's work rules and that the grievant had been trained in those rules. However, the Union presented evidence that another employee at the facility had compiled a record of several incidents of workplace violence. He remained employed at the facility. The arbitrator noted an element of disparate treatment and overturned the removal.

899) Collins 16-11-04-03-08-0025-01-14 Removal

ARBITRATOR: Dwight A. Washington, Esq.

ISSUE: Was the Grievant disciplined for just cause? If not, what shall the remedy be?

CONTRACT SECTIONS: Article 24.01

TOPIC HEADINGS: Just Cause, Progressive Discipline, Agency Policies, Standards of Employee Conduct

DEPARTMENT: Job and Family Services

SITE/OFFICE: Bureau of State Hearings, Office of Legal Services

POSITION: Human Services Hearing Officer 2

RESULT: Grievance denied

REASON: The employer bears the burden of proof to demonstrate that Collins' removal from his position for violation of ODJFS Rule F2 was for just cause in compliance with CBA Article 24. Rule F2 prohibits false, abusive, inflammatory, or obscene statements or gestures by any employee of ODJFS. Additionally, the discipline must be commensurate with the offense and not solely for punishment; it must be for "just cause"; it must follow the principles of progressive discipline; and it must not be disparate in nature.

Here, the Union cited *McDaniel v. Princeton City Schools Board of Education* (45 Fed. Appx. 354; 2002 U.S. App. LEXIS 16713), but the Arbitrator found that the Union's reliance on *McDaniel* was misplaced. In contrast to *McDaniel*, the reasons for Collins' removal remains the same, and no new additional charges were added stating that Collins did not have an opportunity to present *full* evidence surrounding the event. Only the charge classification was altered. Also unlike *McDaniel*, Collins had an opportunity to respond to all of the conduct that brought him to the pre-disciplinary hearing. Furthermore, the arbitrator held that the Union's procedural argument still does not successfully show a violation of Collins' procedural rights based on *Cleveland Brd. Of Educ. v. Loudermill*, 470 U.S. 532, 547-48 (1985).

The Arbitrator found that the employer did not act arbitrarily or capriciously because the Grievant's one email was inflammatory and borderline abusive, and his other "aggressive" emails occurred on the employer's nickel as well. The language in Article 24.02 does not require nor is it intended for absolute adherence. The principles of aggressive discipline allow for leeway.

Finally, under proper circumstances Collins would be entitled to mitigation; however, the facts of this case warrant no mitigation. Collins engaged in repeated offenses and made no effort to modify his behavior in response to progressive discipline, with understanding that his 'active' discipline would have a grave impact on future violations. The Union could not argue that Collins as a long-term employee had a good work record without any active discipline. Furthermore, as a long-term employee, Collins was clearly aware that his position required public trust and confidence.

900) Good 27-04-020701-0860-01-09 Recall Rights

ARBITRATOR: Anna DuVal Smith

ISSUE: Did management violate Article 18? If so, what shall the remedy be?

CONTRACT SECTION: Article 18

TOPIC HEADINGS: Layoff; Recall Rights

DEPARTMENT: Rehabilitation and Correction

SITE/OFFICE: Ross Correctional Institution

POSITION: LPN

RESULT: Grievance granted. The grievant was awarded \$5,392.80 in expenses necessary and reasonable to maintain her employment while improperly off the full-time recall list.

REASON: The grievant was laid off from her full-time position at Ross Correctional. Although she was eligible to bump into Lebanon Correctional, which is in the same geographic jurisdiction, the grievant chose to go to a facility closer to her home. She was

also offered a part-time position at a developmental center, which she declined with the understanding that her refusal would remove her from the part-time recall list. She was also removed from the full-time recall list in error and without her knowledge. The grievant became aware of the error when she was not recalled to a full-time LPN position at Ross. A less senior individual was appointed to the position. The grievant remained at the facility she bumped into for approximately 2 and one-half years, at which time she was recalled back to Ross. This grievance was appealed in the attempt to recover the additional expense of a longer commute to and from work (84-mile round trip, at 30¢/mile x 214 trips). The arbitrator determined that the employer improperly removed the grievant from the full-time recall list; thus, violating Article 18, and that the grievant should be compensated for the expense of maintaining her employment.

901) Littlejohn 16-11-041118-0095-01-09 Removal

ARBITRATOR: Dwight Washington

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Falsification of Documents

DEPARTMENT: Jobs and Family Services

SITE/OFFICE: Portsmouth One-Stop Office

POSITION: Customer Service Disabled Veterans Outreach

RESULT: Grievance was denied.

REASON: The grievant was charged with submitting a false expense report. The arbitrator found the evidence overwhelming convincing that he was removed for just cause. The grievant was unable to present any evidence to support his position. He admitted that he did not attend a scheduled meeting as he had indicated on his expense report. The arbitrator stated that the grievant's account of what occurred on his alleged trip included premises he could not support with any evidence. The arbitrator found that the grievant submitted false expense reports. The disciplinary grid for the agency included removal as a penalty for this violation for a first offense. Although the grievant was a decorated veteran of the USAF and a good employee, the arbitrator noted that he made a series of mistakes which justify his removal.

902) Estep 31-04-011405-0001-01-07 Removal

ARBITRATOR: Dwight Washington

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

CONTRACT SECTION: 24

TOPIC HEADINGS: Falsifying an Official Document; Dishonesty

DEPARTMENT: Transportation

SITE/OFFICE: District 9

POSITION: Project Specialist II

RESULT: Grievance was denied.

REASON: The grievant was charged with allegedly submitting false documents about his work history to an outside certification institute, forging an ODOT employee's initials on the paperwork. These actions resulted in an award of certification by the outside institute to the grievant which he used in an effort to obtain a promotion. The arbitrator found that the grievant was less than honest with co-workers who were assisting him in obtaining certification. It was problematic for the arbitrator that the grievant rejected responsibility for his actions which led to the removal. The arbitrator noted that the record contained a series of events that were not minor and covered an extensive period of time. Those actions outweighed length of service as a mitigating factor. The arbitrator also noted that the grievant had a fiduciary position as a PS II and his conduct demonstrated dishonesty and a manipulative approach for personal gain that warrants removal.

903) Joe Demarco 35-03-(030902)-0053-01-05

ARBITRATOR: Nels Nelson

ISSUE: Did the State erode the bargaining unit by not filling a position and transferring the duties to the supervisor and other bargaining unit employees in violation of Article 1.05?

CONTRACT SECTION: 1.05

TOPIC HEADINGS: Demotion; Abolishment; Bargaining Unit Work; Timeliness

AGENCY: Rehabilitation and Correction

SITE: Ohio State Penitentiary

POSITION: Correction Officer

RESULT: The grievance was denied on the basis that it was untimely.

REASON: The grievant bid on a Storekeeper 1 position. He won the bid but was never placed in the position. The arbitrator found that the State's failure to place the grievant into the position was immediately apparent. "If the union believed that the work was being done by others in violation of the collective bargaining agreement, it would have been obvious at that time and it could not wait two and one-half years to file a grievance." The arbitrator found the grievance to be filed in an untimely manner and did not rule on its merits.

904) Marie Thornhill 16-11-(040408)-0041-01-09

ARBITRATOR: Harry Graham

ISSUE: Did the employer have just cause to suspend the grievant for ten (10) days? If not, what shall the remedy be?

CONTRACT SECTION: 24.01, 24.02

TOPIC HEADINGS: Job Performance; Suspension; Progressive Discipline

AGENCY: Jobs and Family Services

SITE: Cleveland Office

POSITION: Customer Service Representative

RESULT: The grievance was denied.

REASON: During her brief employment with the State of Ohio, the grievant accumulated a number of disciplines: an oral reprimand, a written reprimand, a three-day suspension and a five-day suspension. Violations included misplaced files, incomplete claims and claims which were processed improperly. The employer had been aware of the grievant's poor work performance for some time and the various disciplines were its attempts to correct the problem. The arbitrator found that the progressive disciplines which increased in severity did nothing to correct the grievant's performance. The employer could not have reasonable confidence that the grievant's work would reach an acceptable level. The discipline imposed was justified.

905) Ronnie Board 27-14-(041230)-2385-01-03

ARBITRATOR: Anna DuVal Smith

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

CONTRACT SECTION: 24.01

TOPIC HEADINGS: Removal; Off-duty Conduct; Immoral Conduct; Discredit to Employer

AGENCY: Rehabilitation and Correction

SITE: Lorain Correctional Institution

POSITION: Correction Officer

RESULT: Grievance was denied.

REASON: The grievant was charged with engaging in a sex act on school grounds in the grievant's vehicle with a known female prostitute and drug user during school hours. The incident was reported in the local newspaper. The arbitrator found that evidence presented supported the allegations. The grievant compromised his position as a CO, brought discredit to his employer and engaged in immoral conduct when he solicited sex for money, brought the prostitute/drug offender to school grounds, engaged in a sex act and then used

his position with the agency to defend himself. The arbitrator stated that the grievant's "lack of candor and lack of remorse shows him not to be taking responsibility for his own mistake or making a commitment to better safeguard his employer's reputation and mission".

906) Jada Mullins 62-00-(011110)-0011-01-09

ARBITRATOR: Anna DuVal Smith

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

CONTRACT SECTION: 24.01, 24.02

TOPIC HEADINGS: Attendance; Tardiness; Failure of Good Behavior

AGENCY: Board of Regents

SITE: Columbus

POSITION: Secretary

RESULT: Grievance denied

REASON: The grievant was charged with a pattern of tardiness on multiple occasions after a 30-day suspension for similar offenses. The arbitrator found that the employer made every effort to assist the grievant in correcting her attendance issues. Management changed the grievant's supervisor, changed her starting time repeatedly, allowed her to receive donated leave and allowed her to bring her children to work on at least two occasions. The arbitrator was particularly disturbed that the grievant returned to her old pattern of tardiness within days of returning to work from a 30-day suspension. The grievant was unable to correct an obvious problem, even in the face of losing her position. She took no responsibility for her actions and did not admit that her employer had the right to expect her to come to work on time. The arbitrator doubted that another suspension of any length would correct the problem.

907) William Isaman 35-07-(050208)-0005-01-03

ARBITRATOR: Brookins

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

CONTRACT SECTION: 24.01, 24.02, 24.05

TOPIC HEADINGS: Threatening/Intimidating Language; Use of Excessive force

AGENCY: Youth Services

SITE/OFFICE: Scioto Juvenile Correctional Facility

POSITION: Juvenile Correction Officer

RESULT: The grievance was sustained in part and denied in part. The grievant was reinstated without back pay. The grievant's seniority was not to be diminished by the

award. From the date of the grievant's effective removal to the date of his reinstatement, the grievant was not entitled to any seniority related benefits such as overtime to which he otherwise would have been entitled , but for his removal.

REASON: The grievant was charged with allegedly using profanity, being disrespectful to a superior and using excessive force in his attempt to break up a fight between two youths. The arbitrator held that the agency established that the grievant used the "F" word in referring to how he would handle any further improper physical contact by a youth. It was determined that the grievant was disrespectful towards his superior. The arbitrator found that the employer did not provide sufficient evidence to support the excessive force charge.

Because the employer proved that the grievant had committed two of the charges leveled against him, the arbitrator found that some measure of discipline was warranted. The aggravating factors in this case were the grievant's decision to use threatening, abusive language instead of allowing his Youth Behavior Incident Report to go through the process and his decision to insult his superior. He also continued to deny that he used profanity. The arbitrator noted that his decision were unfortunate because as a JCO, he had the responsibility to be a role model for the Youth at the facility.

The mitigating factors included the grievant's thirteen years of satisfactory state service and the fact that there were no active disciplines on his record.

908) Wade Davis 27-14-(041001)-2342-01-03

ARBITRATOR: Robert Stein

ISSUE: Was the grievant's removal for just cause? If not, what shall the remedy be?

CONTRACT SECTION: 24.01

TOPIC HEADINGS: Inmate Abuse; Removal; Excessive Force

AGENCY: Rehabilitation and Correction

SITE: Lorain Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was denied.

REASON: The arbitrator found insufficient evidence to overturn the removal. The weight of the evidence established that the grievant used excessive force when he grabbed and pushed an inmate, absent any credible evidence that the inmate touched or physically threatened him. The grievant went beyond grabbing and subduing the inmate when he began to repeatedly strike the inmate in the head. His seemingly boastful attitude following the incident further supported the employer's decision to remove the grievant from his position

909) William Gaspers 35-20-(041220)-0069-01-14

ARBITRATOR: Robert Brookins

ISSUE: Was the grievant removed for just cause? If not, what should the remedy be?

CONTRACT SECTIONS: 24.01, 24.02, 24.05

TOPIC HEADINGS: Unauthorized possession of a weapon; possession of a weapon on state property

AGENCY: Youth Services

SITE/OFFICE: Ohio River Valley Youth Center

POSITION: Training Officer

RESULT: The grievance was sustained in part and denied in part.

REASON: The grievant was charged with allegedly carrying an unlicensed, concealed weapon in his travel bag. He was required to conduct training classes and it was necessary to stay at a hotel close to the training facility overnight. He discovered the weapon in his travel bag, which he had placed in the bag for a previous camping trip. An incident with a sick coworker caused him to forget the weapon, which he placed in the hotel night stand upon discovery that he had the weapon with him. The next guest to stay in the room found the weapon, turned it in to the front desk, and the Agency was called.

Additionally, an issue of nepotism was raised because the grievant's wife was Superintendent of the Agency. The Arbitrator found that the evidence in the record did not prove that the spouse's presence as Superintendent somehow *caused* the Agency's penalty decision to be unreasonable, arbitrary, and capricious or an abuse of discretion. The Arbitrator determined that management established that the grievant committed the violation and that some measure of discipline was warranted.

The aggravating factors in this case were: 1) the grievant brought a deadly weapon onto state property. This was a 4th level, and very serious violation; 2) the grievant knew or should have known that the weapon was in his travel bag; 3) The grievant was the Agency's only Training Officer and should have exercised due care to comply with all of the Agency's rules and policies.

The mitigating factors included the grievant's fifteen years of satisfactory and sometimes exemplary state service. The grievant also had no active disciplines on his record.

The grievant was reinstated under a two-year Last Chance Agreement in which he agreed not to convey any kind of weapon, firearm, ammunition or dangerous ordnance onto any state property. Violation of the agreement would result in termination. He received no back pay and his seniority remained unaffected by the arbitrator's decision.

910) Stanley Lane 35-07-(050208)-0005-01-03

ARBITRATOR: Robert Brookins

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

CONTRACT SECTION: 24.01, 24.02, 24.05

TOPIC HEADINGS: Off-Duty Misconduct: Threats/Intimidation; Obscene Language

AGENCY: Rehabilitation and Correction

SITE: London Correctional Institution

POSITION: Correction Officer

RESULT: Grievance denied.

REASON: The grievant was discovered eating food that he had not purchased, in a supermarket. When he was approached by security and told he would have to pay for the food, the grievant refused to do so, using obscene language to emphasize his point. He threatened the store's security officer stating that he would take the officer's weapon. He also attempted to use his State ID to intimidate the security officer, store manager and police officers who were summoned. The arbitrator found that the grievant violated the employer's Standards of Employee Conduct and failed to display exemplary behavior in the store. The obscene language used was undignified and humiliating to the store employees, law enforcement and to the general public. The aggravating factors in this grievance were the obscene language and his threatening or intimidating behavior. The grievant also involved his employer and its reputation when he presented his State ID in hope of receiving favoritism during the incident. Mitigating factors were the grievant's twenty years of state service. The arbitrator found that the aggravating factors outweigh mitigating factors in this instance, and the removal was for just cause.

911) Edwin Bradshaw 27-11-(053007)-1571-01-06

ARBITRATOR: Dwight Washington

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

CONTRACT SECTION: 24.01

TOPIC HEADINGS: Threatening/Intimidating Co-Workers; Work Place Violence

AGENCY: Rehabilitation and Correction

SITE: Lebanon Correctional Institution

POSITION: Farm Coordinator

RESULT: The grievance was denied.

REASON: The grievant allegedly made threatening statements to his supervisor and co-workers. He did not refute the testimony of the witnesses regarding his actions or statements. The grievant argued that a medical condition (diabetes) was the primary cause for his outbursts. However, he never indicated to anyone that he was sick. The employer stated that the grievant's act of praying for harm to come to others was a deliberate act and not the conduct of an ill man. The Union argued that progressive discipline was not used; however, the arbitrator cited an arbitration decision which stated,

“The principles of progressive discipline allow for leeway. In following them, an employer is not obligated to issue a verbal reprimand for a first offense of murder, mayhem, or sabotage.” (*Walker v. OBES*, #G87-998, Dworkin, 4-21-99, p. 21, Decision #123) While the grievant did not physically harm supervisors or co-workers, his threats certainly should have been and were taken very seriously. To that end, DR&C did not act arbitrarily or capriciously in determining that removal was appropriate based upon the conduct of the Grievant.

912) Phillip Taylor 27-23-(040819)-1291-01-03

ARBITRATOR: David M. Pincus

ISSUE: Did the successful applicant meet the minimum qualifications for the position? Did the Employer violate Section 17.05 when it did not select the grievant for the position of Training Officer? If so, what shall the remedy be?

CONTRACT SECTION: 17.05

TOPIC HEADINGS: Minimum Qualifications

AGENCY: Rehabilitation and Correction

SITE: Ross Correctional Institution

POSITION: Training Officer C

RESULT: The grievance was denied.

REASON: The employer did not violate Article 17.05 when it did not select the grievant for a training officer position. The successful applicant was found to be more qualified, based upon documentation submitted with his application. The successful applicant, also, had more seniority. The grievant did not provide materials sufficient to prove that he and the successful applicant were substantially equal.

913) Robert Edmonds 27-19-(041213)-3816-01-03

ARBITRATOR: Robert Brookins

ISSUE: Was the grievant removed for just cause? If not, what should the remedy be?

CONTRACT SECTIONS: 24.01, 24.02, 24.04, 24.05, 25.08

TOPIC HEADINGS: Sexual Misconduct, Interfering with Official Investigation

AGENCY: Rehabilitation and Correction

SITE: Ohio Reformatory for Women

POSITION: Correction Officer

RESULT: Grievance was denied in its entirety.

REASON: The grievant was charged with sexual misconduct with inmates and lying during the investigation of the charge. The arbitrator found that the employer substantiated the charges and the removal should stand. The arbitrator cited the

grievant's "gross abuse of his position as a Correction Officer and the sexual nature of his exploitative conduct" as "nothing short of unprincipled, heinous, and wholly intolerable".

914) Samuel Howell 27-23-(050310)-1317-01-03

ARBITRATOR: Harry Graham

ISSUE: Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT SECTION: 24.01, 24.04, 25.05

TOPIC HEADINGS: Failure to follow procedure; Failure to report contraband

AGENCY: Rehabilitation and Correction

SITE/OFFICE: Ross Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was sustained in part, denied in part.

REASON: The grievant was charged with failure to make a physical head count of inmates at the facility after three previous counts had resulted in different figures. Following that incident, the grievant found two metal shanks, which he documented and secured. Prior to finding the shanks, the grievant found 16 pieces of metal hidden in a ceiling. He disposed of them in a secured receptacle which was not accessible to inmates. He did not report finding the metal.

The Union argued that a procedural flaw occurred in this matter in that a second pre-disciplinary hearing was held and a second charge was leveled against the grievant, leading to his removal. The arbitrator found no procedural error. He found the Employer reconvened the pre-disciplinary hearing and that was not prohibited by the contract. He stated that if that were a procedural error, it was minimal at best and a decision could be reached on the merits of the case alone.

The grievant was an experienced Correction Officer and well-versed in the detection of contraband which was evidenced by his numerous commendations. The arbitrator found that he grievant made a judgment when he found the metal blanks and placed them in a secured receptacle. Although the grievant's decision may have been erroneous, the arbitrator noted that there are no precise definitions for "hot trash" versus contraband. In his decision, the arbitrator stated, "As ambiguity exists concerning the treatment of contraband found by Officers, discharge for disposing of the metal blanks rather than reporting them is inappropriate."

The grievant's removal was reduced to a written warning for failure to report contraband. All references to his discharge were to be stricken from his personnel record. Back was made at straight time minus any interim earnings.

915) Charles Wilson 35-04-(041122)-0143-03-01

ARBITRATOR: Robert G. Stein

ISSUE: Did the Department of Youth Services discharge the grievant for just cause? If not, what shall the remedy be?

CONTRACT SECTION: 5, 24.01, 24.02, 25.03

TOPIC HEADINGS: Excessive Force; Failure to Follow Policies and Procedures

AGENCY: Youth Services

SITE: Indian River Juvenile Correctional Facility

POSITION: Juvenile Correction Officer

RESULT: The grievance was granted in part and denied in part. The removal was reduced to a fifteen (15) day suspension. The Grievant's record will only reflect the charge of Failure to Follow Policies and Procedures. The grievant was awarded back pay minus the fifteen days; his seniority and all other benefits were restored

REASON: The grievant was charged with physically striking a youth inmate. The arbitrator found that although the youth was not seriously hurt, he could have been badly injured. The Grievant had options which could have been used in an effort to avoid confrontation. Discipline short of removal was warranted. The award issued by the arbitrator was meant to correct the Grievant's behavior and to emphasize "discretion is often the better part of valor when it comes to handling dangerous and difficult juvenile inmates."

916) Yolanda Russell 27-19-(050228)-4914-01-03

ARBITRATOR: Anna DuVal Smith

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

CONTRACT SECTION: 24.01, 24.02, 24.05

TOPIC HEADINGS: Neglect of duty; Interfering with, failing to cooperate in, or lying in an official investigation

AGENCY: Rehabilitation and Correction

SITE: Ohio Reformatory for Women

POSITION: Correction Officer

RESULT: The grievant was reinstated to her former position with seniority but without back pay and other benefits. Her request for medical expenses was also denied. Her record was also adjusted to reflect an unpaid disciplinary suspension.

REASON: The grievant was charged with failing to stop a physical altercation between two inmates. She also allegedly stopped a co-worker from intervening. The arbitrator found that the employer substantiated the charges. It was noted that the employer's delay in its investigation and report could have been detrimental not only to the employer's case,

but also to the Grievant's; however, the Union did not claim undue harm was done to the Grievant. Therefore, the issue of timeliness had little bearing upon the decision. The delay was seen as a technical error. The arbitrator found that the grievant made a mistake in judgment and should be given the opportunity to learn from her mistake. Removal was too harsh.

917) Herman Whitter 02-10-(050502)-0010-01-03; Robert Robinson 33-00-(050824)-9003-01-04; Lois Sunderland-Hammond 10-01-(050818)-0022-01-04; Patricia Foist 24-13-(050926)-1178-0104 Doug Mosier & Angela Medina 27-20-(050921)-6843-01-03; Chad Theil 27-15-(050817)-1204-01-03; A. Sarven 27-15-(050817)-1205-01-03; Toya James-Harris 27-15-(050817)-1206-01-03; Janel Gonzales 27-15-(050817)-1207-01 03; Clifford Dunnagan 27-15-(050817)-1208-01-03; Keith Brobst 27-15-(050817)-1209-01-03; Julian Alexander 27-15-(050817)-1210-01-03; Joshua Smith 27-15-(050817)-1211-01-03; John Brayshaw 27-15-(050817)-1212-01-03; Nathan Varnar 27-15-(050817)-1213-01-03; Andrew Turner 27-15-(050817)-1214-01-03; Gary Jewell 27-15-(050817)-1215-01-03; Ryan Britton 27-15-(050817)-1216-01-03; Perry Vasalee 27-15-(050817)-1217-01-03; Christopher Driscoll 27-15-(050817)-1218-01-03; Brian Hinkley 27-15-(050817)-1219-01-03; Amy Webb 27-15-(050817)-1220-01-03; Adassa Scott 29-04-(050801)-0771-01-14; Keith Goudy et al. 29-04-(050801)-0769-01-14; Keith Goudy 29-04-(050801)-0770-01-14

ARBITRATOR: Harry Graham

ISSUE: Did the State properly enforce Article 36.03 regarding non-probationary step movement pay. If not, what shall the remedy be?

CONTRACT SECTION: 36.03

TOPIC HEADINGS: Non-probationary Step Movement Pay

AGENCY: Department of Education, Department of Mental Retardation and Developmental Disabilities, Rehabilitation Services Commission

RESULT: The non-probationary step movement pay in Article 36.03 shall be strictly enforced. Any employees who did not properly receive a pay increase due to management's error shall have such errors rectified.

REASON: Examples of the kind of employees who did not properly receive a pay increase included: a) employees absent on disability who did not have their anniversary date reset correctly, and b) employees who did not receive a step increase including the pay period including July 1, 2005, which commenced on June 26, 2005. The Union was responsible for informing the State, no later than 90 calendar days from Dec. 20, 2005, of any such situated employees.

918) Evelyn L. Janish 17-00-(030825)-0015-01-09; Debra K. Grier 23-07-(030924)-0027-01-04; James R. Meyer 23-18-(030925)-0077-01-06; John A. Wolfe 23-18-(030924)-0078-01-06; Robert Ellis 24-14-(030924)-2713-01-04; Arnold Frye 27-17-(030909)-1392-01-03; Daniel D. Sablack 27-14-(030827)-2021-01-03; John P. Sammon 30-03-(030825)-1279-01-04; Robert J. Means 34-16-(030909)-0060-01-09

ARBITRATOR: David Pincus

ISSUE: Power Outage Class Action

CONTRACT SECTION: 13

TOPIC HEADINGS: Emergency Leave; Report Pay

RESULT. The Arbitrator held that certain employees should receive their full day's pay or have their leave balances restored. The Union was to provide the Employer with a list of employees who met the criteria the Arbitrator set forth.

REASON. This arbitration concerned a series of grievances filed regarding the Power Outage that occurred on or around August 14 and 15, 2003. At the hearing, the Arbitrator review a recent award issued by Arbitrator Susan Grody Ruben for a similar case involving SEIU/District 1199 employees. The Arbitrator agreed with the essence of Arbitrator Ruben's award. The Arbitrator held that the August 14-15 blackout was reasonably foreseeable to facilities which provide back-up generators. The Arbitrator held that state employees in the Greater Cleveland Area who fell within the following circumstances should receive their full day's pay or have their leave balances restored:

1. State employees who reported to work and were sent home by the Employer;
2. State employees who reported to work and were denied access to the premises by authorities; or
3. State employees who were instructed by an Employer's representative not to report to work.

The Union was given 90 days from the date of the award to provide the Employer with a list of employees who fell within these circumstances. The Employer then had 60 days from the receipt of the list to verify the information. The Arbitrator retained jurisdiction.

919) Randolph/Foston 27-22-(040225)-0892-01-03

ARBITRATOR: Anna Duval Smith

ISSUE: Removal; Arbitrability

CONTRACT SECTION: 25.01, 25.02

TOPIC HEADINGS: Timeliness; Settlement Agreement

AGENCY: Rehabilitation and Correction

SITE: Pickaway Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was denied. The Arbitrator held that the grievance was arbitrable and that the Employer did not violate the terms of a Settlement Agreement pertaining to a previous grievance filed by the Grievant.

REASON: The grievant was removed from his CO position in May 2003. The grievant filed a grievance. The grievant was reinstated as a result of a Settlement Agreement. While this grievance was pending, the Grievant filed an unemployment claim, and a determination was issued that the removal was not for just cause. The Employer appealed this decision. Another hearing was conducted, and when the hearing officer inquired as to the status of the grievant's discharge grievance, the Employer submitted the Settlement Agreement. The hearing officer reversed the redetermination, finding the grievant was on a disciplinary layoff for misconduct in connection with his work. No appeal was filed to request a review, so ODJFS sought repayment from the grievant. It was not until after the deadline had past for appeal and ODJFS sought repayment, that the grievant appealed the determination of overpayment of benefits. A hearing was held regarding the order of repayment, where a discussion ensued regarding whether the grievant had appealed the determination that he was ineligible for benefits, since a final determination of ineligibility was necessary for a determination of amounts overpaid. The grievant's attorney requested a copy of the redetermination decision. This was followed by a fax of the grievant's appeal of the redetermination, which was undated. The appeal disputes that the grievant was on disciplinary lay-off while receiving benefits, asserts that his Employer's references to the Settlement Agreement were improper, and asks that the determination that he received overpayment of unemployment benefits be overturned.

The Arbitrator denied the grievance. The Arbitrator framed this grievance as three separate issues. First, was the grievance substantively arbitrable? The Arbitrator held that the collective bargaining agreement (CBA) contemplates arbitral interpretation and enforcement of settlement agreements; thus, the grievance is substantively arbitrable. Settlement agreements are a product of Article 25. Second, was the grievance timely filed? The Arbitrator held the CBA contains specific timelines for filing grievances, but in this case there are a number of ambiguities. Further, the Employer failed to make the procedural objection until arbitration; therefore, the Employer is deemed to have waived the contractual requirement of timeliness. The third issue is whether the Employer violated the terms of the Settlement Agreement when it gave it to the unemployment compensation hearing officer. The Arbitrator held that the Employer violated the terms of the Agreement, but it was a harmless error. The Agreement was only used to frame the issue and did not affect the substance of the decision. The Arbitrator also held that because the Agreement makes no reference to the unemployment claim and it expresses the parties' desire to reach "a full and final settlement of all matters and causes of action arising out of the claim set forth above," it effectively draws a line between what is contained in the Settlement Agreement and what is not. The presumption is that since the unemployment appeal is not mentioned, there was no agreement one way or the other.

920) Rickey Stoner 34-23-(040506)-0027-01-09

ARBITRATOR: Robert Stein

ISSUE: Did the Employer violated Article 17 and/or 18 of the Collective Bargaining Agreement? If so, what shall the remedy be?

CONTRACT SECTION: 17 & 18

TOPIC HEADINGS: Fall Back Rights

AGENCY: Bureau of Workers' Compensation

SITE: Training Center

POSITION: Training Officer

RESULT: The grievance was denied.

REASON: The issue in this grievance is whether the employer has the right to place an exempt employee back into the bargaining unit once he/she has moved outside of the bargaining unit. A training officer applied for and was awarded an exempt position of Training Center Manager. As a result of restructuring, her position was eliminated. The employer allowed the individual to return to her previous bargaining unit position (training officer). The union contended that the individual should have been placed in a pool of applicants for selection. The arbitrator found that the contract is silent on the issue of fall back rights and therefore the Ohio Revised Code § 4121.121(B) (2) applies. The employer's actions were consistent with ORC § 4121.121(B) (2). The employer placed the individual into a vacant position in the same classification held prior to being awarded the manager's position. Article 18 had no bearing on this grievance. Due to the absence of specific contractual language, the issue of fall back rights is controlled by ORC § 4121.121(B)(2).

921) Gary Hall 27-20-(050512)-6731-01-04

ARBITRATOR: Dwight Washington

ISSUE: Was the grievant's removal in violation of a Last Chance Agreement? If not, was the grievant removed for just cause? If not, what should the remedy be?

CONTRACT SECTION: 24.01

TOPIC HEADINGS: Last Chance Agreement;

AGENCY: Rehabilitation and Correction

SITE: Mansfield Correctional Facility

POSITION: Correctional Food Service Coordinator

RESULT: The grievance was denied.

REASON: The grievant had numerous disciplines in his record, including a removal. The disciplines centered on attendance issues. The removal was converted into a Last Chance Agreement (LCA) which specified that if the LCA was violated the grievant would be removed. Approximately three and one half months following the execution of the LCA, the grievant was fifty-two minutes tardy for work. He was subsequently removed. The arbitrator found that the LCA was negotiated in good faith and prohibited conduct which included tardiness. There was no evidence presented to indicate that an effort was made to nullify the LCA. There were no mitigating factors to conclude that the grievant's removal was not proper.

922) Kenneth Feagin 27-20-(050523)-6742-01-03

ARBITRATOR: John J. Murphy

ISSUE: Was the grievant's removal for just cause? If not, what shall the remedy be?

CONTRACT SECTION: 24.01

TOPIC HEADINGS: Nexus; Failure to Follow post orders; Threatening or abusive language toward an inmate

AGENCY: Rehabilitation and Correction

SITE: Mansfield Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was denied.

REASON: The grievant was charged with failing to provide a nexus form to his employer regarding the incarceration of his brother. He was also charged with threatening an inmate with bodily harm. The employer failed to prove that the grievant did not inform it of his relationship with an individual under the supervision of the State of Ohio. However, the employer provided substantial proof that the grievant threatened an inmate. The grievant had been a contract employee and then an interim employee. The grievant had only been a fulltime correction officer for seven months prior to the incident. There were no mitigating factors to warrant reducing the removal to a lesser discipline.

923) Jeffrey Whitaker 27-20-(050819)-6819-01-03

ARBITRATOR: David Pincus

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

CONTRACT SECTION: 24.01, 24.02

TOPIC HEADINGS: Failure to follow post orders; Interfering with, failing to cooperate in; or lying in an official investigation; Committing an act that threatens the security of a facility and/or staff

AGENCY: Rehabilitation and Correction

SITE: Mansfield Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was denied.

REASON: An inmate was dead in his cell of an apparent suicide. The grievant was charged with failing to perform cell checks. The arbitrator found that the condition of the body and the filthy condition of the cell indicate that if the grievant had made the two rounds per hour as required, the inmate's suicide attempt would have been discovered much earlier. The grievant was a "short-term" employee with a prior discipline for inattention to duty. The arbitrator found no mitigating factors to warrant reducing the removal to a lesser discipline.

924) Chantana Kung 19-00-(050404)-0175-01-14

ARBITRATOR: Harry Graham

ISSUE: Was the grievant's removal for just cause? If not, what should the remedy be?

CONTRACT SECTIONS: 24.01, 24.02

TOPIC HEADINGS: Removal; Failure of good behavior; unauthorized use of state time / property / resources for personal use .

AGENCY: Department of Insurance

POSITION: Information Techn. Consultant 1

RESULT: The grievance was sustained.

REASON: The grievant was charged with accessing employee email accounts without authorization. He was removed for failure of good behavior; unauthorized use of state time / property / resources for personal use . The Union argued that a procedural flaw occurred in this matter in that the disciplinary action was untimely. In its implementation of discipline, management relied upon a report that took 1³/₄ years to complete. It was not reasonable to expect the grievant to remember events over such a long period of time. The Union noted that there was a distinction between accessing an email account and actually viewing the emails. Accessing the accounts did not violate the grievant's network privileges. The employer could not prove that the grievant did indeed view the contents of the accounts. The grievant had a good work record prior to the discipline. The employer did not implement progressive discipline in this instance.

The arbitrator rejected the Union's timeliness objection, stating that the employer moved in a timely manner once it was satisfied that the grievant had violated policy. The arbitrator noted that the employer allowed ample time for the Union to conduct a proper investigation.

The arbitrator found that management could prove that the grievant logged on to several accounts, but could not prove that he actually read the contents. Management could not prove that the grievant used state resources for personal use or gain. The arbitrator noted that a co-worker had also accessed email accounts that were not his, but he had not been disciplined. The arbitrator stated, "If it is a serious offense to log on to accounts other than one's own the question arises as to why one employee was discharged and the other was neither discharged nor disciplined."

The grievance was sustained. The grievant was reinstated. He received back pay minus any earnings he received in the interim from other employment due to his removal. The grievant received all seniority and pension credit and was to be compensated for all expenditures for health incurred that would have been covered by state-provided insurance. All leaves balances were restored and any reference to this incident was ordered stricken from the grievant's personnel record.

925) Steven Stultz 16-11-(040820)-0071-01-09

ARBITRATOR: Dwight Washington

ISSUE: Was the grievant's removal for just cause? If not, what should the remedy be?

CONTRACT SECTION: 24.01

TOPIC HEADINGS: Failure to provide proper call off; Absent w/o leave three days or more; Absent w/o leave four days or more; Misuse or abuse of any approved leave.

AGENCY: Department of Job and Family Services

POSITION: Customer Service Representative

RESULT: The grievance was denied.

REASON: The grievant was allegedly injured by an unknown assailant who was attempting to enter the building where the grievant worked. There were no witnesses to the incident. Due to inconsistencies in the grievant's statements, the arbitrator found that the record did not indicate that the grievant was injured at work.

The arbitrator found that the grievant was well aware that he did not have leave balances accrued and that the medical choices made by the grievant were his own doing. Given the arbitrator's finding regarding the assault, the arbitrator determined that the grievant was absent without leave for more than four days and that he misused/abused approved leave. The arbitrator stated that those violations warranted removal. The arbitrator concluded that the facts did not support a work-related injury. He stated that critical to his conclusion was the grievant's credibility. The grievant provided no evidence to conclude that an unknown assailant injured him. The arbitrator stated that the grievant's overall testimony was not believable and his refusal to acknowledge wrongdoing negated any mitigating factors.

926) Linnelle Hamilton 35-04-(050506)-0032-01-03

ARBITRATOR: Robert Stein

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

CONTRACT SECTION: 24.01

TOPIC HEADINGS: Excessive Use of Force; Dishonesty; Failure to Follow Procedure

AGENCY: Youth Services

SITE: Indian River Juvenile Correctional Facility

POSITION: Juvenile Correction Officer

RESULT: The grievance was granted in part, and denied in part. The grievant's removal was converted to a 7-day suspension. He received back pay minus the 7 days and interim earnings. His benefits and seniority were restored.

REASON: The grievant was charged with excessive force in subduing a youth during an incident in the gym at a youth facility. The arbitrator noted a disparity in the discipline decision to remove the grievant, but not to discipline a General Activities Therapist whose actions included dragging a youth to the floor by his shirt. The arbitrator found that the grievant's actions warranted progressive discipline, but not removal. The grievant failed to take the most appropriate action during the incident and was unable to timely anticipate the need to call for assistance from other officers. The arbitrator determined that the charge of dishonesty lacked sufficient evidence. There was no evidence in the grievant's employment record to indicate that he could not correct his actions through additional training. The employer's decision to allow the grievant to continue to work for an extended period of time following the date of the incident indicated that the employer did not foresee any additional problems.

927) Louis Barrett 35- 04-(050511)-0033-01-03

ARBITRATOR: Robert Stein

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

CONTRACT SECTION: 24.01

TOPIC HEADINGS: Excessive Force; Dishonesty; Failure to Follow Policies and Procedures

AGENCY: Youth Services

SITE: Indian River Juvenile Correctional Facility

POSITION: Juvenile Correction Officer

RESULT: The grievance was granted in part, and denied in part. The removal was vacated and converted to a 15-day suspension without pay. The grievant received back pay, less 15 days and any interim earnings. The arbitrator noted that the grievant needed to

understand that taking a youth to the floor without provocation was a misjudgment that should never happen again.

REASON: The grievant was charged with excessive use of force on a youth at his facility. The evidence presented included a video recording of the incident. The video did not have sound which precluded hearing the level of the disturbance in the gym where the incident took place. The tape did not reveal provocations by the youth indicating that the grievant's actions were warranted. The arbitrator noted a disparity in the discipline decisions to remove the two officers involved, but to issue no discipline to a General Activities Therapist whose actions included dragging a youth to the floor by his shirt. The arbitrator reversed the removal stating, "Based particularly on the disparity regarding the levels of discipline imposed, the significance of the Grievant's inappropriate response to the Youth's activity in the gym incident, and the Grievant's previous work record with DYS, the arbitrator finds that the Grievant's summary discharge in response to this one performance offense is excessive, does not fit the 'crime,' and does not fundamentally comport with either progressive discipline or 'just cause.'"

928) Gloria Crable 35-04-(050517)-036-01-03

ARIBTRATOR: Robert G. Stein

ISSUE: The Grievant was terminated for violation of Rule 1.2-Call off procedures; Rule 3.4 Unauthorized Leave (2 days or less); Rule 5.1-Failure to follow policies and procedures. Was the grievant removed for just cause?

If not, what shall the remedy be?

CONTRACT SECTION: 24.01, 24.02

TOPIC HEADINGS: Absenteeism, Just Cause, Progressive Discipline, Removal

AGENCY: Department of Youth Services

SITE/OFFICE: Indian River Juvenile Correctional Facility

POSITION: Juvenile Probation Corrections Officer

RESULT: The grievance was denied.

REASON: The Arbitrator found that the Employer exercised sound discretion given the fact that the Grievant had failed to respond in a meaningful way to prior progressive corrective action steps (particularly to a fifteen day suspension) in an effort to improve her dependability. The Grievant also failed to present any convincing mitigating factors that would excuse her late call or her one hour and twenty-four minute absence from work. The Arbitrator did not agree that the Grievant was treated in a disparate manner, that a misstated year on a letter had any impact on the timing of the investigation, and that there was bias when the investigator was a witness to the Grievant's calling in late.

929) Richard Moore 27-25-(050725)-2563-01-03

ARBITRATOR: David Pincus

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

TOPIC HEADINGS: Interfering w/, failing to cooperate in or lying in official investigation; Failure to immediately report violation of any work rules.

CONTRACT SECTION: 24.01

AGENCY: Rehabilitation and Correction

SITE: Southern Ohio Correctional Facility

POSITION: Correction Officer/Block Control Center Officer

RESULT: The grievance was sustained in part. The grievant was reinstated without back pay and seniority. The award should be considered a serious suspension.

REASON: An inmate committed suicide in his cell block. The COs responsible for periodic range checks neglected to make rounds. A proper check may have saved the life of the inmate. A discrepancy was discovered between the ledger and the video recording. The grievant was charged with failing to confirm the range checks and logging them into the ledger properly. The arbitrator found that the grievant was responsible for maintaining the logs, not entering the data. The grievant testified that he felt the officers could have done something more, but management could show no direct connection between the grievant and the officers to indicate that he assisted in misrepresenting their duties. The arbitrator based his decision to reinstate the grievant without back pay upon the grievant's "failure to adequately fulfill his *supportive* responsibility with respect to the log sheet and his inconsistent and evasive testimony about operating the DVR in the cell booth". Because he could not be held accountable for a duty which was only a supportive duty at best, the removal was too harsh and without just cause.

930) Class Action 33-00-(041230)-1568-01-04

ARBITRATOR: Anna DuVal Smith

ISSUE: Did the Ohio Veterans' Home violate Article 27 by denying personal leave requests? If so, what shall the remedy be?

TOPIC HEADINGS: Notification and Approval of Use of Personal Leave

CONTRACT SECTION: 27.04

AGENCY: Ohio Veterans' Home

POSITION: Various Direct Staff

RESULT: The Ohio Veteran's Home violated Article 27 by denying personal leave requests. It was directed to cease and desist from such denial when the requests are properly filed.

REASON: The Veterans Home dealt with chronic shortages of direct care staff. Mandatory overtime and harsh disciplines caused burn-out and staff turnover. Article 27 clearly states that personal leave shall be granted with proper notification. The arbitrator found that if the staffing levels fell below legal minimums, it was management's responsibility to find a way to achieve its goal (increase staffing levels) without denying proper requests for personal leave. Because there was no proof of harm other than a postponement of a benefit for those individuals affected, a cease and desist was awarded.

931) Fred Peterson 27-03-(051013)-1520-01-03

ARBITRATOR: Dwight Washington

ISSUE: Was the grievant's removal in violation of a Last Chance Agreement? If not, was the grievant removed for just cause? If not, what shall the remedy be?

TOPIC HEADINGS: LCA; Tardiness

CONTRACT SECTIONS: 24.01, 24.02, 24.05

AGENCY: Rehabilitation and Correction

SITE: Chillicothe Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was denied.

REASON: The grievant was observed arriving late for work on two separate dates and upon arrival did not clock in. The grievant stated that he did not clock in because he was on an LCA and did not want to get into additional trouble. During his pre-disciplinary meeting the grievant stated he was forced to sign the agreement, his representative misled him regarding the agreement and its effects, and he had been wrongly placed on an LCA because his disciplinary record was incorrect. A ten-day suspension had been reduced to a five-day suspension through NTA. The arbitrator found that the grievant and the Union should have sought to correct the grievant's record prior to the LCA and based upon the untimely manner in which the issue was raised there was no longer appropriate relief. The agency's conduct complied with the intent of the LCA and no mitigating factors were presented to warrant reversing the removal.

932) Shawn Turner 27-03-(050824)-1500-01-05

ARBITRATOR: Nels E. Nelson

ISSUE: The Grievant was terminated for violating Rule 12 of the Performance Track of the Standards of Employee Conduct-making obscene gestures or statements, or false, abusive, or inappropriate statements. Was the grievance procedurally arbitrable? If the

grievance was procedurally arbitrable, was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT SECTION: 24.01, 24.02, 24.05, 25.02

TOPIC HEADINGS: Arbitrability; Removal Notice; Reinstatement; Fitness to return to work

AGENCY: Department of Rehabilitation and Correction

SITE/OFFICE: Chillicothe Correctional Institution

POSITION: Food Service Coordinator

RESULT: The grievance was upheld in part and denied in part. The employer was directed to send the Grievant to a psychologist or psychiatrist to determine his fitness to return to work. If the Grievant was determined to be fit to return to work, he was to be promptly reinstated to his former position on a last chance basis with no loss of seniority. The Grievant was to be given back pay and benefits from the date of the third step grievance meeting until he was returned to work. Any interim earnings were to be deducted from his back pay.

REASON: The Arbitrator rejected the Employer's contention that the grievance was not arbitrable because it was untimely. It was unclear when the Grievant was removed. A notice of removal without an effective date has no force or effect.

The allegation of misconduct arose from three incidents involving a coworker. In the first the Grievant was joking and it should have been obvious to the coworker.

Given the questions about the coworker's view of the first incident and her failure to report the alleged misconduct until the next day, the Arbitrator could not accept the coworker's testimony on the second incident. Because he was out of line when he confronted the coworker in a rude and aggressive manner, the Grievant merited some disciplinary action for the third incident. The strict adherence to the schedule of penalties in the Standards of Employee Conduct sometimes results in a penalty that is not commensurate with the offense and the employee's overall record.

The Arbitrator denied the request for full back pay based on the Grievant's failure to contact the employer or to authorize the union to contact the employer on his behalf.

933) Gregory Nesser 27-03-(050824)-1501-01-06

ARBITRATOR: Anna DuVal Smith

ISSUE: The Grievant was removed for violation of Rule 42--physical abuse and Rule 25--failure to report the incident. Was the Grievant removed for just cause and, if not, what is the remedy?

CONTRACT SECTION: 24.01

TOPIC HEADINGS: Just Cause, Physical Abuse; Removal; (Failure to Report an Incident)

AGENCY: Department of Rehabilitation and Correction

SITE/OFFICE: Chillicothe Correctional Institution

POSITION: Plumber 2

RESULT: The grievance was upheld. The Grievant was reinstated with full seniority, benefits, and back pay less five days for the Rule 25 violation. The Rule 42 violation was removed from his record.

REASON: A heavy master lock left the Grievant's hand and struck an inmate in the groin area. This occurred in the context of an argument that resulted in the Grievant firing the inmate. There were no reliable witnesses to the incident. The accusing inmate waited to report the incident for over 24 hours, thus giving time to conspire with other inmates present at the time. The nature of the injuries suggests a different source for the injuries. The Arbitrator could not tell if the incident occurred as the inmate said or as the Grievant said; therefore, the State's case lacked the required quantum of proof on the physical abuse charge. The Grievant struck an inmate while engaged in horseplay and should have reported it and did not. Since the abuse charge was unproven and the Grievant's record only had a 2-day fine on it, he received a 5-day penalty for the Rule 25 violation. The Arbitrator found that the Grievant was removed without just cause.

934) Class Action 17-00-(060322)-0027-01-09; 17-00-(060609)-0059-01-09; 17-00-(060609)-0061-01-09; 17-00(060623)-0068-01-09; 17-00-(060623)-0069-01-09; 17-00-(060609)-0600-01-09; 17-00-(060420)-0038-01-09; 17-00-(060525)-0040-01-09; 17-00(060525)-0042-01-09; 17-00-(051011)-0027-01-09; 17-00-(051114)-0002-01-09.

ARBITRATOR: David Pincus

ISSUE: Clarification of existing contract language in Article 28.03-Vacation Leave.

CONTRACT SECTION: 28.03

TOPIC HEADINGS: Consent Award, Vacation Canvas, Vacation Leave

AGENCY: Industrial Commission

SITE/OFFICE: Claims Management Department

RESULT: A Consent Award was issued by the Arbitrator. The Employer shall not implement a policy which eliminates vacation usage in the Claims Management Department. Vacation requests shall be considered on an ad hoc basis based on the totality of the facts and circumstances. A yearly vacation canvas shall be conducted in October or November of each year for the upcoming calendar year. Vacation requests that are approved will be for one week or more and will be based on seniority. All other vacation requests will be considered on an ad hoc basis. Those vacation requests that are approved will be approved on a first come, first served basis. When the Claims Management Department determines that it needs to implement leave restrictions beyond minimum staffing levels it will communicate those circumstances to the Union President and/or designee prior to issuing notice to the bargaining unit members of the department.

935) Joyce Moore 24-14-(051220)-3097-01-04

ARBITRATOR: David Pincus

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

TOPIC HEADINGS: Removal; Workplace Violence

CONTRACT SECTION: 24.01

AGENCY: Mental Retardation and Developmental Disabilities

SITE: Warrensville Developmental Center

POSITION: Therapeutic Program Worker

RESULT: Grievance was denied.

REASON: The grievant was charged with striking a co-worker during a verbal altercation at work. The arbitrator found that the security video tape demonstrated the grievant was the aggressor during the incident. A review of the tape recording and testimony supported the employer's position that termination was warranted. The arbitrator noted that the supervisor could have been more effective in diffusing the situation before it escalated. Although the co-worker may have been a "problem employee", the workplace violence displayed by the grievant should not be tolerated and removal was for just cause.

936) Patricia Milliken 16-11-(060222)-10224-01-09

ARBITRATOR: Anna DuVal Smith

ISSUE: Is the matter of the Grievant's removal arbitrable? Was the Grievant in her "initial probationary period" at the time of her removal?

CONTRACT SECTIONS: Article 25.01 B; Article 6.01

TOPIC HEADINGS: Arbitrability; Initial Probationary Period; Trial Period

AGENCY: Department of Job and Family Services

POSITION: Clerk 1

SITE: Jackson Processing Center

RESULT: The grievance was not arbitrable.

REASON: The Grievant had accepted an inter-agency transfer, demotion, and headquarter county change. The Department sent her a letter that erroneously stated that she would "serve a probationary period of 60 days in this position." A month later the Department issued a "Corrected Letter" informing her that she would serve a probationary period of 120 days, provided by Article 6.01 D.

The Grievant's Final Probationary Evaluation rated her performance as unsatisfactory and she was probationarily removed. The Arbitrator held that the Grievant was in an initial probationary period and not a trial period when she was removed. The Acknowledgment

she signed explicitly referenced Article 6.01 D, used the term “initial probationary period”, and placed her on notice that she could be removed during that period without recourse. The Grievant neither consulted the Collective Bargaining Agreement or Union before signing the Acknowledgment; nor did she inquire about the change or file a grievance when she got the corrected letter. Trial periods differ from probationary periods in that they are one-half the regular probationary period and employees in trial periods are not prohibited from using the grievance procedure to protest discipline and discharge actions. The Arbitrator held that regardless of the mistake made by the Department (but later rectified) she had no authority to review the Department’s removal decision. Therefore, the matter of the Grievant’s removal was not arbitrable.

937) Janice Wilson 29-04(112304)-0745-01-14

Elizabeth Steward 29-04(112304)-0748-01-14

ARBITRATOR: Harry Graham

ISSUE: Was the State’s denial of a promotion to Disability Claims Specialist for the Grievants, employees senior to the selected candidates, a violation of Article 17 and , if so what shall the remedy be?

CONTRACT SECTIONS: 17.05

TOPIC HEADINGS: Promotion Selection

AGENCY: Rehabilitation Services Commission

SITE: Campus View Office

POSITION: Disability Claim Adjudicator 3

RESULTS: The grievances were denied.

REASON: The Arbitrator held that the Employer’s evaluation process was reasonable. It could not be determined that it was tainted with favoritism or discrimination. It was not administered with hostility to the Grievants. In all respects, its use was permitted by the Agreement. The selection procedure used by the Employer for these positions had been the subject of intense scrutiny and development. The element of subjectivity was reduced by the manner in which the Employer utilized the interview. By using the interview process the Employer did not violate the agreement. The ranking of and scale assigned by the Employer to education and experience was not arbitrary. Applicants were required to take a test to determine the factors of “qualifications, experience, and education.” The test had been given previously and had been taken by some applicants in the past. The action of the Employer was exceptionally generous to applicants in that the applicants were awarded the higher of the two scores they had attained. The record shows that the selected candidates were superior to the Grievants in the assessment and testing process. A claim that the

selected candidates had falsified their applications could not be shown. Both grievances were denied.

938) Debra Hartman 15-00-(05070)-0068-01-14

ARBITRATOR: Nels E. Nelson

ISSUE: Did the Employer violate the Collective Bargaining Agreement by not affording the Grievant an opportunity to interview for the vacant Planner 3 position within the Department of Public Safety, Emergency Management Agency when it did not award her the position? If so, what shall the remedy be?

CONTRACT SECTIONS: 2.01, 17.04, 17.05

TOPIC HEADINGS: Minimum Qualifications

AGENCY: Department of Public Safety

SITE: Emergency Management Agency

POSITION: Training Officer

RESULT: The grievance was denied.

REASON: While the Grievant claimed to have the necessary background in research methods in her summary of her qualifications, the information contained in her application and resume did not support her claim. She failed to show any experience with operational, mathematical, analytical, or statistical research methods. The Grievant's education also did not demonstrate the required knowledge of research methods. The Arbitrator rejected the claim that when the state denied her an interview for the Planner 3 position and awarded it to someone else, it engaged in sex and/or age discrimination in violation of Article 2. A large portion of the employees in the Emergency Management Agency are women and three of the top five leadership positions are held by women. The Arbitrator held that the Grievant failed to show that she satisfied the minimum qualifications for the Planner 3 position when she applied. The grievance was denied.

939) Jason Owens 15-00-(041130)-0136-01-09

ARBITRATOR: Robert G. Stein

ISSUE: Did the employer violate the Collective Bargaining Agreement when it demoted the Grievant from his position as an Electronic Design Coordinator? If so, what shall the remedy be?

CONTRACT SECTIONS: 5, 6, 22.03, 24.03

TOPIC HEADINGS: Demotion; Disparate Treatment; Management Rights; Non-Traditional Arbitration; Step Probationary Period

AGENCY: Ohio Department of Public Safety

SITE/OFFICE:

POSITION: Electronic Design Coordinator

RESULT: The grievance was denied.

REASON: The Employer initially took a firm position that the Grievant was not qualified for the promotion of Electronic Design Coordinator position, but agreed to place the Grievant in the position following a grievance settlement/NTA award. A considerable amount of assistance was given to the Grievant in performing his work; however, after the probationary period the Grievant was removed from the position. The Arbitrator found that the Union failed to prove that the Employer, following a reasonable and contractually adherent period of probationary observation, acted in an unreasonable, arbitrary, or capricious manner in determining the Grievant was not able to perform the job requirements of the position of Electronic Design Coordinator. The testimony of the Employer's witnesses contained the important element of specificity that was not refuted by the Grievant in any specific or substantial manner. In contrast, the Grievant's direct testimony was far more general, vague, and for the most part accusatory in nature. There was little evidence to demonstrate the Grievant knew enough and was sufficiently skilled to successfully perform the work of an Electronic Design Coordinator in accordance with acceptable standards.

940) Todd Jackson 27-32-(051123)-0830-01-03

ARBITRATOR: Dwight Washington

ISSUE: Was the removal of the Grievant in violation of the Standards of Employee Conduct, Rule 45 (A) & (B). If not, what shall the remedy be?

TOPIC HEADINGS: Giving Preferential Treatment to an Inmate

CONTRACT SECTIONS: 24.01, 24.02, 24.05

AGENCY: Rehabilitation and Correction

SITE: Noble Correctional Institution

POSITION: Correction Officer

RESULT: Grievance MODIFIED. The Arbitrator found the Employer had just cause for removal, but the Grievant was awarded \$5,000 back pay.

REASON: The Grievant was a Corrections Officer who was terminated for violating Work Rule 45 that prohibits employees from giving preferential treatment to any individual under their supervision. The Employer argued that the Grievant's co-workers who were aware of the conduct and failed to report were not disciplined despite a duty to report because they trusted and believed the Grievant to be exchanging food for information that

would lead to a drug bust. These employees reported the conduct when it was evident a drug bust was not making progress.

The Arbitrator found that the Employer treated the Grievant disparately in disciplining him for his attempt to gain drug bust information since his coworkers were not disciplined for failing to report the conduct. He found their knowledge made them complicit in the violation and found that they only came forward after the disciplinary process commenced. Therefore, the Arbitrator found that DR&C failed to enforce its rule on an equal basis.

941) Class Action 27-34-(041026)-1721-01-03

ARBITRATOR: David M. Pincus

ISSUE: Did the Employer violate Section 11.11 of the parties' Collective Bargaining Agreement? If so, what shall the remedy be?

CONTRACT SECTIONS: 11.11, 27, 29.02

TOPIC HEADINGS: Pick-A-Post; Pregnancy Accommodations, Seniority Rights

AGENCY: Ohio Department of Rehabilitation and Correction

SITE/OFFICE: Richland Correctional Institute

POSITION: Corrections Officers

RESULT: The grievance was denied.

REASON: The Arbitrator found that the Employer did not violate Section 11.11 because the Employer engaged in a good faith effort to provide alternative comparable work and equal pay to the two pregnant Grievants. On four of five scheduled work days the employees would work "relief" in "non-contact" posts. On the fifth day the Union requested that the two employees be assigned to an "extra" or "ghost" post or be permitted to take the day off and use accrued leave for coverage purposes. However, the Warden placed the Union on notice that the institution could no longer have pregnant employees assigned to posts as extras. Certain posts were properly rejected based on the Grievants' doctor recommendations. The Union's proposals would have resulted in "ghost posts." The Grievants would have worked in positions at the expense of other established posts. Also, unapproved "ghost posts" would violate the spirit of the local Pick-A-Post agreement. Proposed uses of accrued leave balances, personal leave, and sick leave failed. Nothing in the record indicated the Grievants had sufficient leave balances available to cover one day off per week. In addition, if the Grievants were allowed to take vacation time on dates previously selected, the Employer would be violating a mutually agreed to number of vacation days made available for bid. Other correction officers' seniority rights would be violated if vacations were preferentially granted to pregnant employees. Section 27.02 entitles an employee to four personal leave days each year; however those four days could not possibly cover the entire pregnancy period. Section 29.02 grants sick leave to

employees “unable to work because of sickness or injury.” A pregnancy cannot be viewed as an “illness or injury.”

942) Shelli Jackson 35-04-(050405)-0017-01-03

ARBITRATOR: Nels E Nelson

ISSUE: The Grievant was terminated for violation of DYS General Work Rule 2.1-Insubordination; Rule 3.3 Leaving the work area without permission; Rule 3.6-Failure to follow work assignment; and, Rule 4.1-Failure to follow a direct order, instructions, or command of a supervisor. Was the Grievant removed for just cause, and if not, what should the remedy be?

CONTRACT SECTIONS: 2.01, 24.01, 24.03, 24.05

TOPIC HEADINGS: Disciplinary History, Disparate Treatment, Insubordination, Removal

AGENCY: Ohio Department of Youth Services

SITE/OFFICE: Indian River Juvenile Correctional Facility

POSITION: Juvenile Correction Officer

RESULT: The grievance was denied.

REASON: Insubordination is a serious offense. The Grievant’s misconduct took place in a correctional facility where following orders is particularly important. The very next day the Grievant violated policies and procedures when she left a youth unattended. The Grievant’s disciplinary history was a major factor supporting termination—she had received a 12-day suspension on January 19, 2005. The Arbitrator rejected the claims that the Grievant was the victim of disparate treatment; that the imposition of discipline was delayed; and that the employer was “stacking” charges against the Grievant in order to justify her termination. The Union was unable to show how the delay prejudiced the Grievant’s case or violated the contract. The decision to combine two incidents appeared to be reasonable. The disciplinary record of another JCO involved in leaving the youth unattended justified the different treatment. The Arbitrator concluded that the Grievant’s discharge was for just cause and was in compliance with the collective bargaining agreement.

943) Robert Reynolds 35-07-(040520)-00268-01-03

ARBITRATOR: Dwight A Washington

ISSUE: The Grievant was charged with violating General Work Rules 103.17, Level Three (3) Rule 3.1-Dishonesty; Rule 3.8-Interference in an investigation; Rule 4.14-Excessive use

of force; and Rule 5.1-Failure to follow policies and procedures. Was the removal of the Grievant for just cause? If not, what shall the remedy be?

CONTRACT SECTION: 24.01

TOPIC HEADINGS: Burden of Proof, Excessive Force, Lying to an Investigator, Removal

AGENCY: Department of Youth Services

SITE/OFFICE: Scioto Juvenile Correctional Facility

POSITION: Juvenile Correctional Officer

RESULT: The grievance was granted. The Grievant was entitled to reinstatement with back pay. Back pay did not include roll call, shift differential or holiday pay. Institutional or other applicable seniority rights were restored.

REASON: The Arbitrator held that the burden of proof needed in this case to support the removal was absent. DYS removed the Grievant for two distinct reasons: use of excessive force with a youth and lying to an investigator regarding an incident in the laundry room. The evidence, even if viewed in light most favorable to DYS failed to establish that the Grievant's inability to recall the laundry room matter was designed purposely to deceive. Both parties agreed that nothing occurred in the laundry room that would warrant discipline. The record failed to support a violation of Rule 3.1 for deliberately withholding or giving false information to an investigator, or for Rule 3.8-interfering with the investigation. The Grievant's misstatement of fact was nothing more than an oversight, caused by normal memory lapses. He handles movement of multiple juveniles each day, and the investigatory interview occurred eight days after the incident in question. No evidence existed to infer that the Grievant exhibited dishonest conduct in the past or had a propensity for untruthfulness. The evidence did not support that the Grievant violated Rules 4.14 and 5.1. The use of force by the Grievant was in accord with JCO policy aimed at preventing the youthful offender from causing imminent harm to himself or others. The grievance was granted.

944) James Green 31-08-(111205)-27-01-06

ARBITRATOR: Robert Stein

ISSUE: Was the grievant's removal for just cause? If not, what should the remedy be?

TOPIC HEADING: Drug test; Unauthorized absence.

CONTRACT SECTIONS: 24.01, Appendix M

AGENCY: Transportation

SITE: District 8

POSITION: Highway Worker 3

RESULT: The grievance was denied.

REASON: The Grievant was a Highway Worker 3 who reported 12 minutes late for work, went to the lunchroom, sat down and then suddenly fell out of his chair and passed out on the floor. An emergency squad was called, and he was taken to the nearest medical clinic. At the clinic, medical personnel were unable to determine a medical cause for the Grievant's passing out or other behavior. The Grievant resisted taking a test and orchestrated a number of delays. After approximately one hour, the Grievant finally complied with the order and provided a urine sample. The Employer did not arrange for a union steward to be present prior to the testing. The sample was negative for alcohol but positive for cocaine. The Grievant had active discipline in his file in the form of a counseling, a written reprimand, a one-day fine and a three-day suspension. He was offered a Last Chance / E.A.P. agreement several times over the course of four days, but he refused the offer. The Employer then terminated his employment for violations of the directives regarding drug testing and unauthorized absence.

Evidence undeniably established that the Grievant had reported to work under the influence of an illicit substance. The Arbitrator followed the "plain meaning rule" in determining that the contract language made a clear distinction between employees subject to federal law and all other employees, and found that the Union did not prove that federal law requires union representation as a pre-condition to testing. The Arbitrator further stated that, under the circumstances, the presence of a Union representative would have had no impact on the eventual outcome, especially in view of the fact that there was no claim or any evidence of procedural defects either in the testing procedure itself or of any actual rights violations to the Grievant. The Grievant's refusal to use available rehabilitation opportunities precluded any opportunity for continued employment with ODOT.

945) Evelyn Brenner 27-14-(060222)-2545-01-03

ARBITRATOR: John Murphy

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

TOPIC HEADINGS: Threatening an Inmate; Abusive Language; Dishonesty; Interfering with, failing to cooperate in, or lying in an official investigation/inquiry.

CONTRACT SECTION: 24.01

AGENCY: Rehabilitation and Correction

SITE: Lorain Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was denied.

REASON: The grievant was involved in a verbal altercation with an inmate at the facility. At arbitration the employer attempted to introduce an enhanced recording of a taped conversation which also contained the argument between the grievant and the inmate. The arbitrator found that the enhanced tape did not exist during the investigation and could not

be presented. He determined that all other evidence – the original tape, interviews of both the grievant and the inmate and the grievant’s lack of remorse or acknowledgment of what occurred during the confrontation - supported management’s position that the grievant was removed for just cause. The grievant threatened the security and safety of the inmate by challenging the inmate to engage in a physical confrontation. The arbitrator stated, “...the evidence of the egregious conduct by the Grievant under the three rules—24, 38, and 44—stands alone as a basis for the justification for the removal in this case.” The Union’s allegation that the grievant’s removal was in retaliation for a sexual harassment suit filed against the institution was unfounded. The arbitrator noted there was no evidence connecting this grievance to the suit. The warden was not charged with any liability in the suit and the investigating superior in this grievance was not connected to the suit.

946) Mike Meehan 35-20-(060421)-0014-01-03

ARBITRATOR: Robert Brookins

ISSUE: The Grievant was removed for violation of Rule 3.8--Failure to cooperate and Rule 4.12--Inappropriate or unwarranted use of force. Was the Grievant removed for just cause, and if not what should the remedy be?

CONTRACT SECTIONS: 24.01, 24.02

TOPIC HEADINGS: Excessive Force, Interfering with an Investigation,

AGENCY: Department of Youth Services

SITE/OFFICE: Ohio River Valley Correctional Facility

POSITION: Juvenile Corrections Officer

RESULT: The grievance was denied.

REASON: The Grievant deliberately used excessive force on a youth who was totally complying with the Grievant’s directives. The Arbitrator held that the Agency failed to prove that the Grievant interfered with or hampered its investigation of events because one cannot reasonably expect an employee to disobey a direct order from his supervisor not to report events of abuse he witnessed. The Grievant’s six years of tenure, above average job performance, discipline-free work record, and winning an award for “JCO of the Month” for June 2004 were factors in his favor. However, the Arbitrator held that the nature of the Grievant’s misconduct and abuse of his position as JCO warranted his removal, even though the Agency’s disciplinary grid did not absolutely demand that measure of discipline. The Grievant’s continued employment with the Agency would be inconsistent with its policy and fundamental mission. The grievance was denied in its entirety.

947)Andrew Baker 35-07-(050906)-0039-01-03

ARBITRATOR: David M. Pincus

ISSUE: The Grievant was removed for violating DYS Policy 103.7, General Work Rule 3.1-Dishonesty and Rule 4.11-Sexual conduct or activity with youth. Was the Grievant removed for just cause? If not, what should the remedy be?

CONTRACT SECTIONS: 24.01, 24.02

TOPIC HEADINGS: Employee Credibility, Impartial Investigation, Sexual Misconduct with youth

AGENCY: Department of Youth Services

SITE/OFFICE: Scioto Juvenile Correctional Facility

POSITION: Juvenile Correction Officer /Transportation Officer

RESULT. The grievance was sustained in its entirety. The Grievant was reinstated to his former position, suffered no loss of benefits or seniority and was made whole. The remedy included all back pay, roll call pay, shift differential, and missed holiday pay.

REASON: The Arbitrator held that the Employer did not meet its quantum of proof that the Grievant was guilty as charged. None of the charges were properly supported by the record. Other investigation-related factors, those within the Employer's control, raised sufficient doubts regarding the credibility of the Employer's decision. The Youth Offender had never filed one formal complaint regarding general allegations about the Grievant's actions. The allegations only came to the Employer's attention when the Youth Offender's cell mate raised concerns. However, the cell mate was never interviewed nor was she brought forth to testify at the arbitration hearing. The Youth Offender suffered an untimely death prior to the arbitration hearing. Her sole link to the dispute, her cell mate, should have been made available for direct and cross-examination. Specific incidents of sexually related misconduct were raised by the Youth Offender and the Employer. One incident allegedly took place on a medical trip. The transport log never surfaced at the hearing. The other incident allegedly took place outside a cottage. The allegations were not supported by something or someone other than the deceased Youth Offender. A security camera existed in the exact location; however, the Employer never attempted to determine whether an archival copy existed. An impartial investigation requires such an effort; anything less jeopardizes any just cause determination. The Employer did not have just cause to terminate the Grievant. The grievance was sustained.

948) Christina Woods 04-00-(051122)-0036-01-14

ABITRATOR: John J. Murphy

ISSUE: Did the Grievant voluntarily quit or was she constructively discharged on November 10, 2005 when she tendered a written resignation? Did the Employer violate the

Contract by not allowing the Grievant to rescind her resignation? If the Employer violated the Contract, what is the appropriate remedy?

CONTRACT SECTIONS: 5, 25.01, 44.02, Ohio Administrative Code 123:1-25-02

TOPIC HEADINGS: Resignation, Rescinding Resignation

AGENCY: Ohio Department of Agriculture

SITE/OFFICE: Consumer Analytical Laboratory

POSITION: Administrative Assistant

RESULT: The grievance was denied.

REASON: The Grievant orally and by e-mail communicated to her direct supervisor her intent to end the employment relationship, which was accompanied by packing her belongings. The Grievant was in a state of anxiety and emotional distress at the time she voiced her intention to resign and acted upon it. The evidence did not show that the Grievant was in such a deteriorated mental condition that she was rendered incapable of understanding what she was doing, or the consequences of what she was doing. Her workplace situation could not be found to be so intolerable that a resignation would be compelled. The Arbitrator held that the resignation was voluntary and not coerced. The Arbitrator held that the resignation was effective since the Employer had accepted the resignation before the Grievant made any efforts to rescind the resignation. The Arbitrator held that the Department of Agriculture did not have a legal duty under Administrative Code 123:1-25-02 to reinstate the Grievant. This provision only creates a privilege on the part of the appointing authority to request a reinstatement. The administrative code provides that the employee "may be reinstated." There is no right to be reinstated. The grievance was denied.

949) Five Corrections Officers

27-02-(050921)-2172-01-03

ARBITRATOR: Robert Brookins

ISSUE: Whether Section 7(f) of a 1990 Settlement Agreement excludes from the contractual grievance/arbitration procedures how the Agency strip searched the Grievants ("Reasonableness") and the reasonable suspicion for those searches.

CONTRACT SECTIONS: 44.01, 44.02, 25.03; Settlement Agreement § 7(f); § 2933.32 (B)(2)

TOPIC HEADINGS: Substantive Arbitrability; "Cause for Search"; Strip Search

AGENCY: Department of Rehabilitation and Corrections

SITE/OFFICE: Allen Correctional Facility

POSITION: Correction Officers

RESULT: The grievance was sustained.

REASON: In January 1990, the OCSEA and the DRC entered into a Settlement Agreement containing several conditions intended to regulate future strip searches. This was a result of the Union suing DRC in federal court, challenging the constitutionality of the DRC's strip search procedures. The instant case arose from DRC's decision to strip search five black female correction officers after receiving an anonymous tip that described a correction officer who allegedly intended to bring drugs into the Allen Correctional Facility. The Arbitrator held that the Settlement Agreement was intended to be part of the Collective-Bargaining Agreement. Section 7(f) explicitly removes only "cause for search" from arbitration and grievances. "Cause for search" does not include the terms "suspicion" or "reasonable" and is not necessarily synonymous with the phrases "reasonable suspicion", "cause for suspicion supporting the search", or "cause for suspicion". These are separate issues. In addition, Section 7(b) affords employees targeted for strip searches the right to review much of the information that went into the decision to strip search them. Affording employees access without the right to subject it to independent review does not protect them from arbitrary, discriminatory, or unreasonable searches or decisions. The Arbitrator held that issues involving how strip searches are conducted and the element of reasonable suspicion supporting decisions to strip search employees are substantively arbitrable under the Collective-Bargaining Agreement, which is referenced under Section 7(f) of the Settlement Agreement. The case was then settled with the Grievants receiving back wages and back leave accrual.

950) Holiday pay **

ARBITRATOR: Nels E. Nelson

ISSUE: In 26.04 of the CBA, do the terms "the day before ... or the day after a holiday" mean the calendar day before and the calendar day after the holiday or the employee's last scheduled work day before and first scheduled work day after the holiday? For purposes of 26.04 of the CBA, what constitutes a documented, extenuating circumstance which prohibits an employee from reporting to duty?

CONTRACT SECTION: 26.04

TOPIC HEADINGS: Eligibility for Holiday Pay

AGENCY: All agencies

SITE: All

POSITION: All

DECISION: After approval of the 2006-2009 contract, a number of disputes arose over the interpretation and application of Section 26.04 of the Collective Bargaining Agreement. The parties agreed to submit two questions to an Arbitrator and to use his answers as a guide in resolving the pending grievances. Question two consisted of ten scenarios for when an employee would or would not be eligible for holiday pay. In two scenarios the

employee may or may not meet the standard depending on the nature of the sickness. (In cases where an employee's ability to report for work is not clear, the state has the right to ask the employee for further documentation.) The first scenario is if an employee calls in sick and then provides a doctor's slip confirming the sickness, which does not explain how the sickness prevented him/her from working. The second scenario is if an employee calls in because his/her minor, dependent child is sick and the employee provides a doctor's slip confirming the sickness, which does not explain how the child's sickness prevented the employee from working. This case is currently being appealed by the union in court.

951) Danita Drake 23-07-(060221)-0001-01-04

ARBITRATOR: Anna DuVal Smith

ISSUE: Did Management prove that patient abuse occurred? If not, did Management have just cause to remove the Grievant? If not, what should the remedy be?

CONTRACT SECTION: 24:01

TOPIC HEADINGS: Neglect of Duty, Patient Abuse, Removal, Suspension

AGENCY: Ohio Department of Mental Health

SITE/OFFICE: Northcoast Behavioral Healthcare Cleveland Campus

POSITION: Therapeutic Program Worker

RESULT: The grievance was denied in part and granted in part. The removal was converted to 2-day suspension.

REASON: A patient escaped and was subsequently hurt. The grievant did not notice the patient's absence and reported the patient was present when making her rounds. The Grievant's actions did not rise to the level of recklessness because she was not indifferent to the consequences, nor did she intend that there be harmful outcomes. The facts were not enough to establish "abuse." However, the Grievant was negligent. She allowed herself to be fooled by a pile of blankets, a cold room, and by not taking greater care during her rounds to see what was under the blankets. This was not abuse, but it was neglect of duty and warranted corrective discipline. Language in the written policies was not specific and there was room for a range of interpretations about what the grievant knew was required or what she should have known.

The burden management places on an employee to speak up if they don't understand the written policy, overlooks the possibility that an employee may be confident he or she understands what to do and yet, in reality, be wrong about their understanding. Management did not prove that patient abuse occurred and, therefore, did not have just cause to remove the Grievant. But Management did have just cause for discipline. The Grievant was reinstated to her former position with full back pay, seniority, and benefits, less two days pay. Her discipline record reflects a 2-day suspension for a first offense of Neglect of Duty.

952)Richard Johnson 35-03-(060905)-0029-01-03

ARBITRATOR: Harry Graham

ISSUE: Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT SECTIONS: 24.01, 44.02

TOPIC HEADINGS: Abuse of a Youth Inmate; Dishonesty

AGENCY: Youth Services

SITE/OFFICE: Cuyahoga Hills Boys Juvenile Correctional Facility

POSITION: Juvenile Correction Officer

RESULT: The grievance was granted in part and denied in part.

REASON: The grievant was involved in a response to a "Signal 14" call for assistance at the institution. The State charged the grievant with dishonesty in regards to the incident. Neither the grievant nor the Union was informed of the "abuse" charge prior to the imposition of discipline. The Agency also refused to allow the Union to review the video tape of the incident prior to arbitration. Both of these procedural issues were presented at arbitration. Following the State's presentation of its case at arbitration, the Union Representative requested a directed verdict. The arbitrator found that the grievance was sustained in part and denied in part. The grievant's removal was reduced to a one (1) day suspension. The grievant received all straight time pay he would have incurred if he had not been removed. Deductions for any interim earnings are to be made, except for any earnings received from a pre-existing part-time job. All leave balances and seniority are to be restored. The grievant is to be given the opportunity to repurchase leave balances. The grievant is to be reimbursed for all health-related expenses incurred that would have been paid through health insurance. The grievant is to be restored to his shift and post and his personnel record is to be changed to reflect the suspension.

953) Scott Howard 27-03-(060504)-1595-01-03

ARBITRATOR: Nels Nelson

ISSUE: The Grievant was removed for violation of Rule 45(C)-Giving Preferential Treatment to an Inmate and 46(B)- Unauthorized Relationship with an Inmate. Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT SECTION: Article 2.01; Articles 24.01, 24.02 & 24.05

TOPIC HEADINGS: Giving Preferential Treatment to an Inmate; Unauthorized Relationship with an Inmate

AGENCY: Rehabilitation and Correction

SITE: Chillicothe Correctional Institution

POSITION: Correction Officer

RESULT: Grievance denied

REASON: The grievant was a CO who was charged with allegedly giving preferential treatment to an inmate and having an unauthorized relationship with an inmate. The grievant admitted at arbitration that on occasion he provided an inmate cigars, scented oil and food from home and restaurants. He admitted that he accepted cigarettes from inmates who received contraband. The arbitrator found that the grievant was removed for just cause. His misconduct continued for an extended period of time; thus his actions were not a lapse in judgment. He attempted to conceal his misconduct by hiding food so the inmates could find it. Therefore, the grievant knew what he was doing was wrong. The grievant accepted "payment" for the contraband when he accepted cigarettes in exchange for the food and other items he provided to the inmates. The arbitrator found that grievant's actions compromised the security and safety of inmates and all other employees at the facility.

954) Joseph Eichhorn 15-00-(060113)-0013-01-04

ARBITRATOR: Dwight A Washington

ISSUE: Whether just cause exists to support the suspension for ten days for violating the Ohio Department of Public Safety Work Rules 501.01(C)(3), leave without pay and (C)(2), notification of absence.

CONTRACT SECTION: 24.01

TOPIC HEADINGS: Extenuating Circumstances Warranting Mitigation, FMLA leave—notification of changes, Progressive Discipline, Suspension

AGENCY: Department of Public Safety

SITE/OFFICE: IT /PC Technical Support Unit

POSITION: Network Administrator I

RESULT: The grievance was denied.

REASON: The Arbitrator found that the Employer applied the principles of progressive discipline and no evidence existed that the Employer's conduct was arbitrary, unreasonable or capricious. The Grievant was given a ten-day suspension for failure to notify the employer of an absence within the 30 minutes required. Grievant also was absent without pay on one day, assuming he had not exhausted his FMLA leave after an extended disability leave. The Union considered the ten-day suspension punitive and asked the Arbitrator to consider medical reasons as extenuating circumstances warranting mitigation and to lessen the discipline. The grievant's history of FMLA use, plus four prior disciplines involving the exact issue of this grievance, failed to convince the Arbitrator that the

grievant's conduct was an honest mistake.. In considering mitigation for a long-term employee (24 years), quality of service must also be weighed. The grievant engaged in repeated violations of the work rules and seemingly made no effort to change his conduct, despite progressive discipline. Discipline imposed has reasonable and fair in an effort to correct his conduct. The discipline was issued for just cause.

955) John McQuithy 25-20 (060720)-0024-01-03

ARBITRATOR: Robert Brookins

ISSUE: The Grievant was removed for violating General Work Rule Policy 103.17:3.7-Failure to Report Physical Force or Verbal Abuse and 4.12-Inappropriate or Unwarranted Use of Force. Was the Grievant removed for just cause for use of excessive force against youths? If not, what shall the remedy be?

CONTRACT SECTIONS: 24.01, 24.02, 24.06

TOPIC HEADINGS: JCO "field discretion," Mitigation, Use of Excessive Force, Removal,

AGENCY: Department of Youth Services

SITE/OFFICE: Ohio River Valley Correctional Facility

POSITION: Juvenile Corrections Officer

RESULT: The grievance was denied.

REASON: The Arbitrator concluded that the decision to remove the Grievant was not unreasonable, arbitrary, or capricious and denied the grievance. The Arbitrator concluded that the Grievant did everything wrong. He used an unauthorized "physical action" in the form of kicks; he made no effort to modulate the force of the kicks in compliance with Policy No. 301.05; he used the unauthorized form of "physical action" to punish or retaliate against the Youth rather than to control him; and, he failed to report that he kicked the Youth three times, but readily reported that the Youth had assaulted him. An aggravating factor was that a JCO cannot afford to lose his temper and lash out at youth. The Agency need not or should not tolerate such conduct. The strongest mitigative factors were that the Grievant had not been trained and had little experience with cell extractions. In addition, the Grievant had a record of satisfactory performance and an unblemished disciplinary record. These mitigating factors did not diminish the Grievant's misconduct. The Arbitrator opined that one must afford JCOs some "field discretion." JCOs are not perfect and one cannot reasonably expect perfect implementation of applicable rules and regulations without fail in the "heat of battle." As a practical matter, slight deviations from the strict application of rules governing interactions with youth must be tolerated—consistent with prohibitions against abuse and use of excessive force.

956) Sandra Rienzi 31-04-(050601)-0028-01-06

ARBITRATOR: Nels E. Nelson

ISSUE: Was the grievant removed for just cause for violating items 4, 26, and 30 B of Directive No. WR-101 by organizing a work stoppage during a snow and ice event and by being untruthful during her investigative interview? If not, what is the remedy?

CONTRACT SECTIONS: 24.01, 24.02, 24.05, 44.03

TOPIC HEADINGS: Disparate Treatment, Organizing a Work Stoppage, Interfering with an investigation, Progressive Discipline, Removal

AGENCY: Ohio Department of Transportation

SITE/OFFICE: Summit County ODOT

POSITION: Highway Maintenance Worker 2

RESULTS: The grievance was denied.

REASON: When the Grievant organized, planned, and promoted a work stoppage she violated rule 30B. The Arbitrator believed she developed the plan and solicited the participation of other employees. When the grievant organized a work stoppage in the face of an approaching winter storm, she engaged in “action that could harm or potentially harm . . . a member of the general public” and violated Rule 26. Grievant violated Rule 4 by interfering with the investigation of the work stoppage. Testimony from other witnesses showed that the grievant was not truthful in her accounts of the events. The Arbitrator believed the state conducted a full and fair investigation. The Arbitrator did not believe the grievant was the object of disparate treatment. Leaders of work actions are identified and discharged, while employees playing a lesser role receive less severe penalties. The Arbitrator did not believe the state failed to use progressive discipline. In the case of very serious misconduct an employer is not required to follow the usual sequence of increasingly severe discipline. Mitigating factors of long service, good evaluations, and behaving in a professional manner in her work as a union steward did not offset the seriousness of the Grievant’s misconduct. The Arbitrator concluded that when the Grievant organized a work stoppage in the face of major winter storm she provided the state with just cause for her discharge.

957) Charlie Hines 27-14-(060224)-2548-01-03

ARBITRATOR: Dwight Washington

ISSUE: Was the Grievant disciplined for just cause? If not, what shall the remedy be?

CONTRACT SECTION: 24.01

TOPIC HEADINGS: Removal; Threatening, Intimidating, Coercing an Inmate; Abusive Language towards an Inmate

AGENCY: Rehabilitation and Correction
SITE/OFFICE: Lorain Correctional Institution
POSITION: Correction Officer

RESULT: The grievance was granted in part and denied in part. The grievant must enroll in and successfully complete an EAP program associated with anger management. The grievant was required to enroll in the program no later than thirty days from the date of the award. Failure to enroll would be grounds for removal. The grievant was reinstated with all applicable seniority rights within thirty days of the award. The discipline was reduced to a two-day fine. The grievant received no back pay.

REASON: The grievant was a Correction Officer charged with threatening an inmate and using abusive language towards the inmate. The arbitrator found that the grievant's conduct warranted discipline; however, the Union demonstrated that a co-worker who previously committed a similar offense was treated differently. The employer offered no explanation for the disparate treatment. The removal was ruled excessive and the grievant was reinstated.

958) Rex Donnelly 23-06(-(060605)-0013-01-04

ARBITRATOR: Nels Nelson

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

TOPIC HEADINGS: Failure of Good Behavior; Neglect of Duty; Inattention to Duty

CONTRACT SECTIONS: 24.01, 24.02

AGENCY: Department of Mental Health

SITE: Twin Valley Behavioral Healthcare – Columbus Campus

POSITION: Therapeutic Program Worker

RESULT: The grievance was denied.

REASON: The grievant was a TPW working third shift at a group home. When he arrived at work he was told that a resident was found with knives and Tylenol. He was instructed to position himself so he could visually monitor the resident. Co-workers testified that they saw the grievant sleeping while on duty. They also testified that the grievant was not in a physical position to see the resident if he were on the stairs. During his shift the grievant placed three telephone calls to the supervising nurse at home. He was allegedly rude and disrespectful each time he called. The arbitrator found that the grievant's removal was just. In addition to his rude behavior the grievant had previously been given a verbal warning and two (2) five-day working suspensions for similar offenses within his four years of employment.

959) Attorney Class Action 02-10-(060411)-0101-01-03

ARBITRATOR: Robert G. Stein

ISSUE: Were all Attorneys properly placed in the bargaining unit as of March 5, 2006 and were they properly compensated, pursuant to the settlement agreement, for any losses sustained as a result of their displacement from the bargaining unit? If not, what shall be their remedy?

CONTRACT SECTION: 25

TOPIC HEADINGS: Back Pay

AGENCY: Statewide

POSITION: Attorney

RESULT: The grievance was upheld in part and denied in part.

REASON: The grievance involved the implementation of terms of an agreement that placed some Attorney classifications into the bargaining unit as of March 5, 2006 after they had been removed on May 17, 2003. As a result of the Agreement, 247 Attorneys were placed into the bargaining unit. This Grievance consolidated all individual issues that arose into one Union grievance. The Employer did not consider the automatic probationary advancement for some District Hearing Officers 1's and 2's. Six employees had adjustments made and were paid back pay ranging from \$158.40-\$2319.20. The Employer did not consider step movement that would have occurred between July 1, 2005 and March 5, 2006 for 17 attorneys. Back pay was paid ranging from \$9.60 to \$2424.40. Employees who had vacation balances reduced but were not compensated for those hours were paid for the removed hours at the rate of pay applicable as of the date of the removal. The Arbitrator found that the Agreement did not address the issue of recalculating yearend cash-in balances for sick and personal leave; did not address the issue of employees who may have separated from service with the State of Ohio during or subsequent to the implementation of the Agreement; and, the Agreement did not address the issue of the use of advance step placement as a remedy to place an employee at a bargaining unit step that is closer to the exempt step at which the employee was hired.

960) Class Action 02-10-(041230)-0097-01-13

ARBITRATOR: David M. Pincus

ISSUE: This disputed matter arose as a consequence of a class action grievance dealing with a series of weather-related grievances for the period December, 2004 and January, 2005.

CONTRACT SECTION: 13.15

TOPIC HEADINGS: Weather emergency

AGENCY: All

SITE/OFFICE: All

POSITION: All

RESULT: Any grievant which used sick leave on the four selected dates shall not have such leave restored. Only grievants that worked the four selected dates were credited with one hour compensatory time for every two hours worked, at the straight time rate of pay. If less than one hour was worked by any grievant, he/she received compensatory time at the rate of 50% of the time worked. Grievants who used leave other than sick leave shall have restored any personal leave, vacation, and comp time, as long as it was not prescheduled.

REASON: The State of Ohio abused its discretion when it failed to declare an emergency under the circumstances on four selected dates. Review of the data reflected heavy and wide-spread weather emergency activity on December 23, 2004, December 24, 2004, January 6, 2005, and January 7, 2005. The arbitrator was aware that the State of Ohio was able to declare an emergency under Article 13.15 and was not attempting to add or subtract from the existing language in the Collective Bargaining Agreement. The award is non-precedent setting and the full remedy requested by the Union is inappropriate for the four dates. This particular case shall not be cited in any future dispute involving Article 13.15-weather emergency.

961) Jerome Watkins 27-14-(060621)-2599-01-05

ARBITRATOR: Anna DuVal Smith

ISSUE: The Grievant was removed for violation of Rules 7 and 28 and his Last Chance Agreement. Did the employer appropriately terminate the Grievant for violation of his last chance agreement? If not, did the Employer have just cause to remove the Grievant? If not, what shall the remedy be?

CONTRACT SECTIONS: 24.01, 24.02

TOPIC HEADINGS: Last Chance Agreement, Removal

AGENCY: Ohio Department of Rehabilitation and Correction

SITE/OFFICE: Lorain Correctional Institution

POSITION: Correctional Food Service Coordinator (FSC)

RESULT: The grievance was denied.

REASON: The central question was whether the Grievant lost control of security keys to an inmate through no fault of his own. The Arbitrator felt that the Grievant used poor judgment in holding the keys in front of an inmate and letting him take them without protest. The Grievant's actions afterward suggested he knew he had made a mistake and was trying to cover it up. These were not actions in-and-of-themselves warranting termination; however, a proven act of misconduct must be viewed in context. This was the Grievant's sixth performance related misconduct in his less than two years service and he was on a Last Chance Agreement strictly limiting an arbitrator's authority to that of reviewing whether he violated the Last Chance Agreement and/or the rule. When he

violated the rule he broke the Last Chance Agreement and the Employer had the right to terminate his employment. The grievance was denied in its entirety.

962) Lorraine Stephens 14-18-(050920)-050-01-13

ARBITRATOR: Anna DuVal Smith

ISSUE: Did the Employer violate Article 11.05 by denying Health Physicists in the Bureau of Radiation Protection pre-exposure hepatitis B vaccinations. If so, what is the remedy?

CONTRACT SECTION: 11.05

TOPIC HEADINGS: Communicable Diseases, Occupational Exposure, OSHA Guidelines.

AGENCY: Ohio Department of Health

SITE/OFFICE: Bureau of Radiation Protection

POSITION: Health Physicist 3

RESULT: The grievance was denied.

REASON: Health physicists were assigned on a rotating basis to respond to incidents, including those at landfills. The Grievant sought pre-exposure vaccinations and protective gear for onsite inspections. OSHA guidelines state that vaccine is to be offered to employees who have occupational exposure to the hepatitis B virus. Occupational exposure has the same definition as in the OSHA guidelines. The expert witness, a PERRP program administrator, reviewed the Bureau's written policy and the duties of health physicists and testified that these employees were not reasonably expected to have contact with blood or other potentially infectious materials and were not required to have pre-exposure vaccinations. The incident of falling in the muck at the landfill, as related by the grievant, was an accident for which the right to post-exposure evaluation and treatment was created. The Arbitrator concluded that Health Physicists did not have "occupational exposure" and therefore were not entitled to hepatitis B vaccine pre-exposure. The grievance was denied.

963) Mark Weikle 33-00-(0600425)-0045-01-05

ARBITRATOR: John J. Murphy

ISSUE: Whether the Agency's assignment of duties within the DAS EEO Officer Classification series 6913 to an exempt employee was consistent with the collective bargaining agreement. If not, what should the remedy be?

CONTRACT SECTIONS: 1.05, 25.03

TOPIC HEADINGS: Arbitrator's Authority, Bargaining Unit Erosion

Special Procedures: Telephone Conference

AGENCY: Ohio Veteran's Home Agency

SITE/OFFICE: Sandusky

POSITION: Administrative Assistant 3

RESULT: The grievance was denied.

REASON: The Agency issued an announcement that an employee in an Administrative Assistant 3 classified exempt position had been selected as the EEO Officer for the Agency. A hearing was waived and the parties presented written briefs with largely undisputed facts. Then the arbitrator had a telephone conference with representatives from each party combined. To uphold the fairness of the procedure, the Grievant submitted a sworn affidavit waiving his right to have the grievance heard in person. Classification language was the first issue. The Agency's announcement that an exempt employee would serve as EEO Officer does not constitute an announcement that the employee is occupying a class title belonging to the bargaining unit. The duties assigned by the Agency are similar to the EEO Manager class title, one of the four exempt class titles that are within the DAS classification Series 6913 entitled "EEO Officer." The second issue was a policy consideration: Who should be the "EEO Officer—a bargaining unit member or an exempt employee? The questions of who should perform the duties and to whom they should be assigned were beyond the scope of an arbitrator's duties. The contract limits the arbitrator to "disputes involving the interpretation, application or alleged violation of a provision of the Agreement." The contract does not give the arbitrator the authority to consider and answer questions that appeal only to the arbitrator's personal sense of what is fair or just. The third issue was bargaining unit erosion. The part-time duties of the EEO Officer at the Agency had always been performed by management personnel. Therefore, the assignment of duties to an exempt employee as EEO Officer was the same action that the Agency had taken over the past several years. Since the amount of bargaining unit work performed by supervisors did not increase, the arbitrator found no basis for claim that the Agency took action for the purpose of eroding bargaining unit work. The grievance was denied.

964) Deborah Watts 16-11-(060922)-1090-01-09

ARBITRATOR: Harry Graham

ISSUE: The Grievant was discharged for one day of call-in, no show absenteeism. Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT SECTION: 24.01

TOPIC HEADINGS: Absenteeism, Last Chance Agreement, Mitigating Circumstances, Progressive Discipline

AGENCY: Department of Job and Family Services

SITE: Cleveland

RESULT: The grievance was sustained in part and denied in part. The discharge was to be converted to a thirty (30) day suspension without pay. The Grievant was to be restored to employment with all back pay and benefits, less the thirty day suspension. The restoration to employment was to be regarded as a "last chance." Further instances of discipline, if not overturned or modified in the grievance procedure of the parties, would result in her discharge.

REASON: Neither the Employer nor the Union were entirely right or wrong in the case. The Grievant's discipline did not stand in isolation. She had 29+ years of service with the state with a satisfactory record until 2004. In addition, she had been diagnosed with sleep apnea and begun treatment. Under the circumstances her discharge could not stand. The Employer acted properly in administering progressive discipline to the Grievant; on the other hand, the Grievant was ill. Because she had called-off the two days prior to the day in question she had a reasonable belief, albeit erroneous, that the Employer knew she would not report. As a veteran of many years of service she should have known that she should call in. She had been subject to recent and increasingly serious discipline. Therefore a make-whole remedy could not be adopted.

965) Thomas Halas 24-06-(061122)-0894-01-14

ARBITRATOR: Dwight A Washington

ISSUE: The Grievant was removed for violating MRDD policies 1.09-Incident Reporting and Review, and 5.11-Individual Abuse and/or Neglect. Was the Grievant removed for just cause for failure to report or act, for delayed reporting, and for failure to follow policy in three incidents? If not, what shall the remedy be?

CONTRACT SECTION: 24.01

TOPIC HEADINGS: "Code of Silence," Disparate Treatment, Incident Reporting, Removal

AGENCY: Department of Mental Retardation and Developmental Disabilities

SITE/OFFICE: Columbus Developmental Center

POSITION: Therapeutic Program Worker

RESULT: The grievance was denied.

REASON: The Arbitrator held that the discipline was for just cause and was not excessive. TPW's are required to report any incident of known or suspected abuse they observe or become aware of, to ensure that a proper and timely response occurs, while considering the unique circumstances of each client. The Grievant had a duty to report and did not comply. Three incidents were not timely reported on a UIR, but were disclosed by the Grievant during an official investigation by CDC's Police Department into alleged

abuse. The Grievant admitted a UIR was incomplete, but attempted to justify his actions by alleging that: a.) he had been employed only seven months; b.) he did not want to be viewed as a “snitch” among his peers; c.) he has a passive personality; d.) he was concerned other TPWs might retaliate against him; and e.) an unwritten “code of silence” was used by his co-workers which encouraged TPWs not to report unusual conduct. The Arbitrator determined that the Grievant’s overall testimony was not credible and believable. This was buttressed by the Grievant’s failure to provide any specific facts or verifiable supportive evidence to support claims that alleged abuse, unknown to CDC, occurred during his employment. An affirmative defense of disparate treatment could not be supported. Evidence offered was insufficient for a finding that one employee’s and the Grievant’s behavior were closely aligned or that another employee was similarly situated.

966) William Wheeler 27-14-(060424)-1514-01-03

ARBITRATOR: Dwight A. Washington

ISSUE: Did the employer violate the Collective Bargaining Agreement in terminating the grievant? If so, what shall the remedy be?

CONTRACT SECTION: 24.01

TOPIC HEADINGS: Removal; Failure to Follow Post Orders; Interfering in an Official Investigation

AGENCY: Rehabilitation and Correction

SITE: Northeast Pre-Release Center

POSITION: Correction Officer

RESULT: The grievant was reinstated with all applicable seniority within thirty (30) days of the award. The discipline for violating Rule 3(G) – leaving the work area without authorization was a five-day fine. The grievant received thirty (30) days back pay, but no other benefits.

REASON: The grievant was accused of failing to follow post orders and interfering with an official investigation. He allegedly improperly stored a large package brought in by a visitor to the institution and he left his post to go to a unit where he was seen having an unauthorized conversation with an inmate. Prior to the grievant’s removal he received a two-day fine for a rule violation that the employer then included in its basis for the removal. The Union argued that the employer subjected the grievant to double jeopardy because the charges resulting in the fine were also included in the charges for which the grievant was removed. The arbitrator found that “the conduct of the Grievant in violation of Rules 3(G) and 24, became intertwined in the investigation and was never separated during the disciplinary process to establish the division required in maintaining the disciplinary grids regarding attendance and performance offenses argued by the Employer.” The arbitrator found the investigatory interview flawed in that there was no difference in

the questions for each specific violation. The arbitrator found that the grievant did violate the work rule regarding visiting an inmate in the segregation area without authorization.

967) David Redd 27-24-(060310)-1124-01-03

ARBITRATOR: David M. Pincus

ISSUE: Did the Grievant's actions against an inmate constitute physical abuse? If not, was the Grievant's removal for just cause? If not, what shall the remedy be?

CONTRACT SECTION: 24.01

TOPIC HEADINGS: Abuse of Inmate, Arbitrator's Authority, Removal

AGENCY: Department of Rehabilitation and Correction

SITE/OFFICE: Southeastern Correctional Institution

POSITION: Corrections Officer

RESULT: The grievance was denied.

REASON: In accordance with Section 24.01 the Arbitrator found the Grievant abused another in the care and custody of the State of Ohio. The force used by the Grievant was excessive and unjustified under the circumstances. The inmate's documented injuries were a direct result of the Grievant's actions. The Grievant admitted the entire situation could have been avoided if he had walked toward the crash gate and asked for assistance. Since abuse was found, the Arbitrator did not have the authority to modify the termination. This provision precluded the Arbitrator from reviewing the reasonableness of the imposed penalty by applying mitigating factors.

968) Stanley Gates 35-07-(040513)-0255-01-03

ARBITRATOR: Robert Brookins

ISSUE: The Grievant was removed for violating Rule 3.7-Failure to Report Physical Force; Rule 3.8-Interference with an Investigation; Rule 4.14-Excessive Use of Force; Rule 5.1-Failure to Follow Policies and Procedures. Was the Grievant removed from his position as a Juvenile Corrections Officer for just cause? If not, what shall the remedy be?

CONTRACT SECTIONS: 24.01, 24.02, and 24.06

TOPIC HEADINGS: *Alford* Plea¹; Excessive Force Against Youth; Failure to Report Physical Force; Interference with Investigation; Failure to Follow Policies and Procedures; Removal; Modified Grievance

AGENCY: Department of Youth Services

SITE/OFFICE: Scioto Juvenile Correctional Facility

¹ In the law of the [United States](#), an *Alford plea* is a [plea](#) in criminal court. In this plea, the defendant does not admit the act and asserts innocence, but admits that sufficient evidence exists with which the prosecution could likely convince a judge or jury to find the defendant guilty.

POSITION: Juvenile Corrections Officer

RESULT: The grievance was denied.

REASON: The Grievant was indicted on criminal charges, but entered an *Alford* plea to the lesser charges of criminal Assault and Falsification. As part of the *Alford* plea the Grievant agreed not to work in an environment with juveniles, which precluded his being reinstated at Scioto. The Union subsequently modified the Grievance to exclude the demand for the Grievant's reinstatement and that he only sought monetary relief and a clean record. The Arbitrator was not persuaded that there was clear and convincing evidence that the Grievant used excessive force against the Youth. The Arbitrator held that for constitutional purposes an *Alford Plea* was equivalent to a guilty plea; however, for the purposes of arbitration the Grievant's *Alford Plea* did not establish that the Grievant used excessive force. In addition, the Arbitrator held that the Grievant did not violate any duty to report the use of force. The Grievant did have a clear and present duty to submit statements from youth when requested and violated Rule 3.8 and 5.1 when refusing to do so. The Arbitrator found that the termination of the Grievant was unreasonable. Under ordinary circumstances he would have reinstated the Grievant without back pay, but reinstatement could not occur due to the *Alford* plea. However, because of the number of violations and the defiant nature of his misconduct, the Grievant was not entitled to any monetary or non-monetary employment benefits. The grievance was denied.

969) Joseph Eichhorn 15-02-(060623)-0132-01-04

ARBITRATOR: Dwight A Washington

ISSUE: The Grievant was charged with violating DPS Work Rule 501.01(C)(10)(b)—Neglect of duty. Was the Grievant disciplined for just cause? If not, what shall the remedy be?

CONTRACT SECTIONS: 2.01, 24.01,

TOPIC HEADINGS: Failure to complete work assignments; Failure to follow rules regarding leaves without proper pay/proper call in; Last Chance Agreement; Medical Condition and Length of Service as Mitigating Factors; Reinstatement

AGENCY: Department of Public Safety

POSITION: Network Administrator 1

SITE/OFFICE: Information Technology --Personal Computer Technical Support Unit

RESULT: The grievance was granted in part. The Grievant was reinstated, but was not entitled to back pay or any other economic benefit. The Grievant must enter into a Last Chance Agreement with DPS for two years and must successfully complete an appropriate program under the Ohio EAP guidelines. If the Grievant failed to comply with any of the conditions he would be subject to immediate removal.

REASON: The Employer waited 55 days to notify the Grievant that a problem existed with two assignments. The Arbitrator agreed that this delay was unreasonable under Article 24.02 and was not considered grounds to support removal. Given that his direct supervisors considered the Grievant a good worker, any conduct which could accelerate his removal should have been investigated in a timely manner. The Arbitrator found that sufficient evidence existed to infer that the Grievant's conduct surrounding one incident--in which proper approval was not secured nor was the proper leave form submitted--was directly related to a severe medical condition. Twenty one years of apparent good service was an additional mitigating factor against his removal. DPS met its burden of proof that the Grievant violated DPS' Work Rule 501.01(C)(10)(b) on two dates and that discipline was appropriate, but not removal. However, as a long-term employee the Grievant was knowledgeable about DPS' rules relating to leave and any future violation would act as an aggravating factor warranting his removal.

970) Joann Grissom 33-00-(070122)-0012-01-05

ARBITRATOR: John J. Murphy

ISSUE: The Grievant was terminated for violating three provisions in the Employer's Correction Action Standards: AN-03 and AN-06—Resident Abuse/Neglect and I-04-Insubordination. Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT SECTION: 24.01

TOPIC HEADINGS: Defective Removal Order, Lax Enforcement of Agency Policy, Removal, Suspension

AGENCY: Ohio Veteran's Home

SITE/OFFICE: Sandusky, Ohio

POSITION: Food Service Worker

RESULT: The grievance was denied in part and upheld in part. The termination was converted to a 3-month suspension. The Grievant should be made whole for her lost wages and other benefits under the contract from the date of the end of the suspension to the date of her return to work.

REASON: The Employer did not have just cause to terminate the Grievant, but did have just cause to suspend her for a lengthy suspension for accepting money from a resident. There was sufficient basis to convince the arbitrator that the Grievant did accept money from a resident. The lax enforcement of Policy No. 4 lulled the employees into a sense of toleration by the Employer of acts that would otherwise be a violation of policy. This lax enforcement negates the expectation by the Grievant that termination would have occurred as a result of the acceptance of money from a resident. The age of the resident and the amount of money involved called for a lengthy suspension. The Arbitrator held that there

was no evidence to support the claim that the Grievant had received a defective removal order and that the requirement that the Grievant be made aware of the reasons for the contemplated discipline was met.

971) Jon A. Tersigni 35-04-(060620)-0031-01-03

ARBITRATOR: Robert Brookins

ISSUE: Was the grievant removed for just cause? If not, what should the remedy be?

CONTRACT SECTION: 24.01, 24.02, 24.06

TOPIC HEADINGS: Inappropriate or Unwarranted Force; Failure to Follow Policies and Procedures

AGENCY: Department of Youth Services

SITE: Indian River Juvenile Correction Institution

POSITION: Juvenile Correction Officer

RESULT: The grievance was sustained in part and denied in part. The grievant was reinstated without back pay. However, his seniority was left intact. The grievant was not awarded any other benefit the interim of his removal.

REASON: The grievant was charged with pushing and attempting to choke a youth inmate. The arbitrator found that the grievant used inappropriate force against the youth on three occasions. However, the removal was unreasonable in light of the grievant's seventeen years of service and his discipline-free record. The arbitrator stated that a "healthy dose of discipline was clearly warranted to impress upon the grievant and any other JCOs of like mind " that such behavior is unsatisfactory.

972) Tyrone Fountain 35-07-(060830)-88-01-03

ARBITRATOR: Robert Brookins

ISSUE: The Grievant was removed for violation of Work Rules 3.1 Dishonesty; 3.8 Failure to Cooperate; 3.9 Unauthorized Correspondence with Youth; 4.10 Unauthorized Contact with Youth/Family; 5.17 Sexual Conduct or Contact with Youth; and 6.1 Abuse of any youth under the supervision of the Department. Was the Grievant removed from his position of Juvenile Correction Officer for just cause? If not, what shall the remedy be?

CONTRACT SECTIONS: 24.01, 24.02, 24.06

TOPIC HEADINGS: Failure to cooperate, Polygraph evidence, Removal, Sexual misconduct with a youth

AGENCY: Department of Youth Services

SITE/OFFICE: Scioto Juvenile Correctional Facility

POSITION: Juvenile Correctional Officer

RESULT: The grievance was sustained in part and denied in part. The Grievant's removal was reduced to a three-month (3-month) suspension. The Agency was entitled to deduct from any back pay owed to the Grievant any and all wages he either did or could have earned with due diligence and a good-faith effort to secure alternative employment. The Grievant was entitled to Roll Call Pay, Shift Differential, and Holiday Premium Pay. He received overtime pay for any overtime that he could prove he normally would have worked based on his historical work record. He received any Vacation Leave, Sick Leave, and Personal Leave that he would have accrued during the reinstatement period. Any leaves the Grievant had on the books and cashed out were restored to his balances. The Agency compensated the Grievant for any medical or dental costs he incurred during the reinstatement and for which he was not otherwise compensated.

REASON: The Arbitrator held that the Agency failed to establish by preponderant evidence that the Grievant engaged in either sexual activity or sexual contact with a Youth. In addition, preponderant evidence in the record did not establish that the Grievant violated Rule 6.1, Rule 3.1, Rule 3.9, and 4.10. The Arbitrator concluded that the Youth was less credible than the Grievant. The Grievant's refusal to submit to a polygraph test did not establish his guilt. The slight probative value of polygraphic examinations disqualifies them as independent evidence and relegates them to mere corroborative roles. Because the Agency established the Grievant's failure to cooperate under Rule 3.8, some discipline was indicated. The strongest mitigative factor was the Grievant's satisfactory and discipline-free work record. The major aggravative factor was the Grievant's dismissive attitude toward the Agency's administrative investigation.

973) Patty Porter 12-00-(060118)-0026-01-13

ARIBTRATOR: Anna DuVal Smith

ISSUE: Did Management of EPA violate the Collective Bargaining Agreement by failing to give EPA employee Patty Porter a pro-rated vacation dump? If so, what shall the remedy be?

CONTRACT SECTIONS: 28.01, 44.01, 44.02

TOPIC HEADINGS: Binding Past Practice, Part-time Employment Policy, "Vacation Dump"

AGENCY: Environmental Protection Agency

SITE/OFFICE: Central Office

POSITION: Environmental Specialist 2

RESULT: Management of EPA violated the Collective Bargaining Agreement by failing to give the Grievant a pro-rated vacation dump. The State was directed to credit her with 36 hours of vacation leave.

REASON: Article 28 is clear in that permanent part-time employees earn and are to be credited with paid vacation leave the same as permanent full-time employees but pro-rated for the hours worked. The Agency has complied with column one of the schedule; however, it has ignored the second column in the milestone years, thus denying these employees their entitlement to the full pro-rata amount earned in the milestone year. While it was true that neither the CBA nor the part-time policy mention “vacation dump”, this was the method used for years for other public employees in Ohio in the milestone years. A “vacation dump” is a lump sum credit of earned vacation that has not accrued on a biweekly basis by virtue of the fact that accrual rate increases lag increases in earned annual vacation leave by one year. The mere fact that there has been a practice of not making similar adjustments for most part-time State employees does not evince a binding past practice. A past practice is binding only when it rests on a mutual agreement. There was no such evidence here.

974) Chad Rawlings 27-03-(060609)-1608-01
Gary Watkins 27-03-(060609)-1607-01-03

ARBITRATOR: David M. Pincus

ISSUE: Removal

TOPIC HEADINGS: Removal; Abuse of an Inmate

CONTRACT SECTION: Article 24

AGENCY: Rehabilitation and Correction

SITE: Chillicothe Correctional Institution

POSITION: Correction Officer

RESULT: Grievance denied.

REASON: The arbitrator found that when CO Watkins handcuffed inmate “X”, who was mentally ill, to inmate “Y”, a known homosexual, he committed an act of emotional abuse. While handcuffed together, inmate “Y” made sexually explicit comments to inmate “X”. The COs laughed at inmate “X” in an insensitive and humiliating manner. The situation escalated when CO Rawlings did not intervene in a timely manner. The conduct was determined to be emotionally abusive when viewed and analyzed by any reasonable observer.

975) Richard B. Penn 35-07-(061025)-0117-01-03

ARBITRATOR: Dwight A. Washington

ISSUE: Was the Grievant disciplined for just cause? If not, what shall the remedy be?

CONTRACT SECTIONS: 24.01

TOPIC HEADINGS: Removal, Unwarranted use of force on youth

AGENCY: Department of Youth Services

SITE/OFFICE: Scioto-Delaware

POSITION: Juvenile Corrections Officer

RESULT: The grievance was denied.

REASON: The grievant was removed for violating DYS Policy 103.7, General Work Rules, Section 4.12-inappropriate or unwarranted use of force, 5.1-failure to follow policies and procedures, and 5.12-actions that could harm or potentially harm an employee, youth or a member of the general public. The arbitrator held that just cause existed to discipline the Grievant and that the discipline was not excessive, arbitrary, or unreasonable. While being escorted back to his room, a Youth threw a trash can at the Grievant, resisted being placed on the wall, and began to tussle with the Grievant. Both fell to the floor, but the Youth returned to his feet. When the Grievant returned to his feet, he used his arm to retake the Youth to the floor. The arbitrator held that the he situation, although very serious, did not rise to the level that the youth was engaged in combative resistance. There was insufficient credible evidence to conclude that the Youth assaulted the Grievant while on the floor. The situation did not require that the Grievant gain physical control of the Youth by retaking him to the floor. No credible evidence existed to conclude that the Youth's behavior while on his feet required the response displayed by the Grievant; therefore, the Grievant's response was unreasonable and borderline punitive. In addition, the Grievant's behavior could have seriously injured the Youth, and under these facts no mitigation was warranted. The Grievant's behavior in carrying out a physical takedown when he was not in peril was sufficiently egregious to waive the longevity/good service arguments.

976) Veronica Moore

02-02-20060810-0016-01-09 Issue

ARIBTRATOR: Nels E. Nelson

ISSUE: Did the Employer violate Article 17 of the contract when it did not select the Grievant for a vacant Computer Operator 4 position? If so, what shall the remedy be?

CONTRACT SECTIONS: 17.05, 25.09

TOPIC HEADINGS: Failure To Provide Documents, Selection, Promotion

AGENCY: Department of Administrative Services

POSITION: Computer Operator 3

SITE/OFFICE: State of Ohio Computer Center

RESULT: The grievance was denied

REASON: The Arbitrator held that the state properly assigned points to the applicants for the Computer Operator 4 position and selected the appropriate applicant for the job. The Grievant was not selected because her score was more than ten points below that of the top scorer. The Union argued the Grievant should have been selected because she was within ten points of the selected candidate and therefore, should have been chosen because she had more seniority credits than he did. The language could be clearer, but the intent is clear. If one applicant has a score of ten or more points higher than the other applicants, he or she is awarded the job. If one or more applicants have scores within ten points of the highest scoring applicant, the one with the most state seniority is selected for the position. The Arbitrator pointed out that the union's position could result in the lowest scoring person being granted a job. If that person was awarded the job, someone within ten points of him or her could argue that he or she should have gotten the job. The Arbitrator commented on the union's complaint that the state violated Article 25.09 when management refused to provide notes of the applicants' interviews. The issue submitted to the Arbitrator was simply the violation of Article 17. The state provided the requested material at the arbitration hearing and the Union had the opportunity to address the notes at the hearing and in its written closing statement.

977) LaNese Powell

15-02-060518-123-01-09 Issue

Arbitrator: Anna DuVal Smith

Issue: Did the Employer violate the contract by not offering the Grievant overtime from October 15, 2005 through April 29, 2006? If so, what shall the remedy be?

Contract Sections: 13.07, 25.01, 25.02

Topic Headings: Overtime Pay, Timeliness

Agency: Department of Public Safety

Site/Office: PI/SG

Position: Certification/Licensure Examiner 2

Result: The grievance was denied.

Reason: The grievance was not dismissed as untimely. The Arbitrator held that the grievant was mistaken in her belief about what the grievable event was. However, only work performed by others during the ten days preceding her grievance, which was work normally performed by the grievant, would be compensable. The Arbitrator found that the project work of developing, testing, and implementing changes to the processes and programs of registration renewals was clearly outside the domain of the Grievant's normal work. Since the Union had the burden to show by a preponderance of evidence that the Grievant "normally performed the work," and the Arbitrator could only make an educated guess, the grievance must be denied.

978) Timothy Townes
35-04-20070316-0010-01-03 Removal

Arbitrator: Nels E. Nelson

Issue: The Grievant was removed for an alleged violation of General Work Rules 3.6 and 5.1. Was the Grievant removed for just cause, and if not, what should the remedy be?

Contract Sections: 24.01, 24.02, 24.06

Topic Headings: Administrative Leave, Just Cause, Long Service, Progressive Discipline, Removal

Agency: Department of Youth Services

Site/Office: Indian River Correctional Facility

Position: Juvenile Correctional Officer

Result: The grievance was denied.

Reason: The Grievant admitted that he failed to make all of the required 30-minute hallway checks and a 2:00 a.m. headcount and then made entries in the unit log indicating he had done so. The Arbitrator held that just cause existed for discipline. Since the Grievant committed a serious offense less than two years after being suspended for six days for the same offense, the Arbitrator held that the principles of progressive discipline had been followed. In addition, the Arbitrator held that long service cannot excuse serious and repeated misconduct. It could be argued that an employee with long service should have understood the importance of the hallway checks and headcount more than a less senior employee. The Union argued that since the Grievant was not put on administrative leave, it suggested that his offense was not regarded as serious. The employer, however, reserved the use of administrative leave for cases where an employee is accused of abuse. The Union also argued that the time it took to discipline the Grievant should mitigate against his termination. The Arbitrator held that the investigation and pre-disciplinary hearing contributed to the delay and the state made its final decision regarding the Grievant's discipline within the 45 days allowed.

979) Michael Keltner et.al
27-02-2006-05-24-2300-01-03 Issue

ARBITRATOR: Dwight A. Washington

ISSUE: Did the Employer violate the CBA by assigning feeding duties to Corrections Officers who work in satellite locations at Allen Correctional Institution? If so, what should the remedy be?

CONTRACT SECTIONS: 2.02, 5, 13.02, 13.07, 19.01, 19.02, 24.01, 24.03, 44.01

TOPIC HEADINGS: Article 19, Working Out of Class

AGENCY: Department of Rehabilitation and Corrections

SITE/OFFICE: Allen Correctional Institution

POSITION: Corrections Officer

RESULT: The grievance was denied.

REASON: The Arbitrator held that the proper resolution of this issue lies within Article 19. To hold that Article 19 is inapplicable to the grievance would require the Arbitrator to ignore the parties' CBA and the plain meaning of Article 19. The plain language of Article 19 does not forbid multiple grievances over a similar infraction, but only limits the remedy to individual claims. The Arbitrator held that the Agreement does not guarantee that classifications will remain unchanged throughout the life of the agreement. The analysis sought to resolve each claim needs to occur in accord with Article 19 to determine the appropriate remedy.

980) Darbha Subrahmanyam

04-00-2006-1103-0050-01-04 Removal

ARBITRATOR: Robert Brookins

ISSUE: The Grievant was removed for violation of ODA Disciplinary Action Guidelines No.28 and No.33. Violations of these Rules rendered the Grievant ineligible either to work or live in the United States due to visa restrictions. Was the Grievant removed for just cause? If not, what shall be the proper remedy?

CONTRACT SECTIONS: 24.01, 24.02

TOPICAL HEADINGS: Back Pay, H-1B Visa, Removal

AGENCY: Department of Agriculture

SITE/OFFICE:

POSITION: Network Services Technician

RESULT: The grievance was denied in part and sustained in part.

REASON: The Arbitrator held that the Grievant was neither eligible for, nor entitled to, reinstatement. Based on the degrees of fault the Grievant was entitled to twenty-five (25) percent of the back pay from the date of his removal to the date of the opinion. In addition, the Agency shall compensate the Grievant for twenty-five (25) percent of all medical costs he incurred and paid for out-of-pocket, as a direct result of his removal. The triggering event for the removal was the failure to extend the Grievant's visa. The following factors contributed to the untimely effort to extend the visa: (1) the Agency's failure to monitor the visa's expiration, leading to a belated attempt to extend the visa; (2) the Agency's failure to monitor the Grievant's job movements; (3) the Grievant's decision to transfer to the Network Services Technician position, which stripped him of proper status under his visa; and (4) the Grievant's decision not to notify his attorney about the transfer to the NST position. The Grievant's violation of a statutory duty, together with his silence, looms larger in the lapse of the visa than the Agency's violation of its implicit duties. The Arbitrator held that the Agency failed to establish that the

Grievant violated Rule 28. Because the Grievant was out of status with an expired visa, the Arbitrator held that he was not entitled to reinstatement. As to comparative fault, the Agency and the Grievant displayed poor judgment in this dispute and neither Party's fault absolves the other.

981) Mary Lamb

22-01-20060825-007-01-14 Removal

ARBITRATOR: John J. Murphy

ISSUE: Did the Grievant voluntarily resign her position with the Ohio Lottery Commission or was the Grievant improperly removed?

CONTRACT SECTIONS: 24.01

TOPIC HEADINGS: Constructive Discharge, Removal, Retaliation, Voluntary Resignation (Quit),

AGENCY: Ohio Lottery Commission

OFFICE/SITE: Region 1--Cleveland, District 106

POSITION: Sales Representative

RESULT: The grievance was denied.

REASONS: Three grievances with a factual connection were combined.

The Arbitrator held that the events of August 23, 2006 clearly indicated an intention on the part of the grievant to resign. The Grievant and her supervisor met in the supervisor's office. At some point in time the Grievant threw the lanyard that held her ID card and her key card on to the supervisor's desk and said "I'm out of here." She left to go home. The Union argued that the comment "I'm out of here." was the result of a panic attack and the Grievant was suffering from safety concerns arising out of the performance of her work. The Arbitrator found that the Grievant's panic or anxiety arose in part from her decision to challenge her supervisor "to burn in hell." She then learned that this challenge had been reported by the supervisor. The Arbitrator held that there was no retaliatory discipline against the Grievant for expressing safety concerns about where she was assigned to work; nor was she denied emergency personal leave.

982) Bryan Robinson

27-13-20061226-2832-01-03 Removal

ARBITRATOR: David M. Pincus

ISSUE: The Grievant was removed for allegedly violating SOEC Rule 22-Falsifying, altering, or removing any document or record. Was the Grievant removed for violation of Rule 22 for just cause? If not, what shall the remedy be?

CONTRACT SECTION: 24.01, 24.05, 24.06

TOPIC HEADING: Falsifying Documents, Notice Defects, Removal

AGENCY: Department of Rehabilitation and Corrections

OFFICE/SITE: London Correctional Institution

POSITION: Correction Officer

RESULTS: The grievance was denied.

REASONS: The Arbitrator held that the Employer had just cause to remove the Grievant for falsification. When an employee is found to have falsified a series of request forms to receive compensation for which he is not entitled, this misconduct is equivalent to "theft." The Grievant used education leave for periods of time when no classes were scheduled and falsified a request for sick leave on a date he was not sick. The Arbitrator found no notice defects. The Grievant's credibility was terribly hurt based on the differing justifications for his misconduct.

983) **George Yancy**

33-00-20070418-0063-01-05 Removal

ARBITRATOR: Anna DuVal Smith

ISSUE: The Grievant was terminated for alleged violation of two rules, AWOL-Job Abandonment (A-03) and Late Notification of an absence (A-01)). Was the Grievant removed from his position of Food Service Worker for just cause? If not, what shall the remedy be?

CONTRACT SECTIONS: 24.01, 24.10

TOPIC HEADINGS: Corrective Discipline, Just Cause, Mitigation, Removal, Suspension

AGENCY: Ohio Veteran's Home

SITE/OFFICE: Ohio Veteran's Home

POSITION: Food Service Worker

RESULT: The removal was reduced to a thirty-day suspension.

REASON: In the period leading up to his dismissal the Grievant was having issues with members of his household and his own health. The Grievant did not call in or show up for work for three consecutive days. The Arbitrator held that employers unquestionably have the right to expect employees to come to work ready to work when scheduled. However, just cause also demands consideration for the surrounding circumstances of a violation, both mitigating and aggravating. The Arbitrator found the circumstances in this case did not indicate a "troubled employee" such as one suffering from addiction or serious mental illness. Rather, the Grievant was an otherwise good employee, temporarily in crisis (because of circumstances beyond his control) and unable to help himself. This case, in which professional intervention may eventually rehabilitate the employee, was ripe for corrective discipline rather than discharge. The Grievant received a thirty-day suspension to impress upon him his responsibility to inform his employer of his status.

984) Marc Camboni
35-07-20060110-0008-01-03 Issue

ARBITRATOR: Dwight A. Washington

ISSUE: The Grievant was given a fifteen (15) day suspension for allegedly violating the DYS Policy 103.7 General Work Rules, Section 4.11-physical assault, 5.1-failure to follow policies and procedures, and Policy 301.5-management of resistant youth behavior. Was the discipline for just cause? If not, what is the remedy?

CONTRACT SECTIONS: 24.01

TOPIC HEADINGS: Just Cause, Physical Assault on Youth Offender, Suspension, Timeliness

AGENCY: Department of Youth Services

SITE/OFFICE: Scioto Juvenile Correctional Facility

POSITION: Juvenile Correctional Officer

RESULTS: The grievance was granted.

REASON: The Employer's procedural objection as to timeliness was denied because the record failed to indicate that the Union received notification in writing to comply with Article 24.06 of the CBA. The Grievant was involved in breaking up an altercation between two youth offenders and was then accused of injuring one of the youth offenders. The incident was recorded by video camera.

The Employer attributed all of the youth offender's injuries to the Grievant; the Arbitrator disagreed. In the opinion of the Arbitrator the youths were not credible, either in their own statements and testimony or their combined statements and testimony. The youths were not able to recall with sufficient clarity the material facts of an incident that was not complicated. In addition, in their hearing testimony each youth admitted that his written statement was at odds with the video. The grievance was granted; however, the Arbitrator stated: "If in fact the Grievant committed those violations the finding that this evidence failed to demonstrate just cause should not be viewed as a victory only that, in my opinion the evidence fails to support that the discipline was for just cause." In other words the State failed to prove their case, but the grievants were not found to be innocent.

985) Donald Bugg
30-04-070102-0137-01-14 Removal

ARBITRATOR: Anna DuVal Smith

ISSUE: The Grievant was removed for allegedly threatening a co-worker Was the Grievant removed from his position as a Computer Operator II for just cause? If not, what shall the remedy be?

CONTRACT SECTION: 24.05, 25.09

TOPIC HEADINGS: Discovery, Investigations-Fair and Objective, Just Cause Relevant Documents, Removal, Third-Step Hearing Officer

AGENCY: Department of Taxation

POSITION: Computer Operator 2

RESULT: The grievance was granted. The Grievant was reinstated to his former position and the removal stricken from his record.

REASON: The Arbitrator held that to sustain a charge of threatening another employee an employer must have clear and convincing proof. Here the proof did not even rise to the preponderance standard, being based solely on the report of the co-worker allegedly threatened who had a deteriorated relationship with the Grievant since the events of a prior discipline. The investigator did not consider that the co-worker may have exaggerated or over-reacted. Management's handwritten notes were held to be discoverable under Article 25.09. It had refused to produce them until after the grievance was filed and they had to be transcribed for clarity, which delayed the arbitration. The investigator breached the just cause due process requirement for a fair and objective investigation which requires that whoever conducts the investigation do so looking for exculpatory evidence as well as evidence of guilt. Then, to make matters worse, the same investigator served as the third step hearing officer, essentially reviewing his own pre-formed opinion.

986) Marie Dubose

34-03-20061030-0076-01-09

20-day suspension

ARBITRATOR: Dwight A. Washington

ISSUE: The Grievant was suspended for 20 days for violating the BWC Work Rule, Attendance (i)-improper call. Was the Grievant disciplined for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24, 29.03

TOPIC HEADINGS: Failure to Call Off Properly, FMLA, Management Discretion, Mitigating Circumstances, Progressive Discipline, Suspension

AGENCY: Bureau of Worker's Compensation

SITE/OFFICE: Canton Service Center

POSITION: Claims Service Specialist

RESULT: The grievance was denied.

REASON: The failure of the Grievant to timely call off by 47 minutes is not in dispute, nor is the past disciplinary record which contains various interventions and four separate, but similarly related infractions that resulted in discipline. The

Grievant maintained that over-the-counter medication she took for severe leg cramps caused her to oversleep. The Grievant was certified for certain medical conditions recognized under the FMLA; however, none of the Grievant's certified FMLA medical conditions affected her ability to call off properly.

The facts failed to support a finding that "circumstances" precluded proper notification. The Arbitrator held that BWC exercised discretion under Art. 29.03 and the Work Rules when it determined removal should not occur and instead imposed the suspension. Given the choice of removal versus suspension, BWC acted properly. "Just cause" existed and no standards were violated in disciplining the Grievant. The record is undisputed that the Grievant received increasing levels of discipline, including economic penalties, to impress upon her the significance of her non-compliance with the attendance procedures. The absence of attendance infractions since her last discipline indicates that the Grievant can correct her behavior.

987) Jacquelyn D. Davis
27-16-(2007-01-19)-4044-01-03 Removal

ARBITRATOR: Robert Brookins

ISSUE: The Grievant was removed for allegedly violating SOEC Rule 19—Striking, fighting or otherwise engaging in a physical altercation with another employee and Rule 37—Actions that could compromise or impair the ability of an employee to effectively carry out his/her duties as a public employee. Was the Grievant removed from employment for just cause? If not, what shall the remedy be?

CONTRACT SECTIONS: 24.01, 24.02, 24.06

TOPIC HEADINGS: Long Service, Removal, Suspension

AGENCY: Rehabilitation and Corrections

SITE/OFFICE: Marion Correctional Institution

POSITION: Corrections Officer

RESULTS: The grievance was denied in part and sustained in part. The removal was reduced to a three-month suspension.

REASON: Verbal exchanges between two corrections officers resulted in a physical struggle between the two officers. The Arbitrator held that the Agency failed to prove that the Grievant violated either Rule No. 19 or Rule No. 37. The Arbitrator held that more likely than not, the other officer was the aggressor in the events leading up to the struggle. The Grievant acted in self defense and believed that any reasonable person would have acted similarly. Rule 19 was not intended to deprive the Grievant or other corrections officers of the right to defend themselves against a physical attack from a fellow staff member. The Arbitrator held that it strained credibility to argue that the purpose or spirit of Rule No. 37 was to deprive correctional officers of the right to protect themselves against attacks from coworkers. The Grievant's behavior was the kind of

misconduct that undermines the Grievant's position as a role model for the inmates. However, the altercation took place where only a handful of inmates were present. The Grievant's fault or misconduct in this dispute was her voluntary participation in verbal exchanges with the other corrections officer that led to a physical struggle between the Grievant and that Officer. That misconduct warranted some measure of discipline. The Arbitrator held that the Grievant was not removed for just cause. The Agency should not terminate a fourteen-year employee for self-defense conduct or for engaging in juvenile verbal exchanges with a coworker, even though the behavior is clearly unacceptable. Some measure of discipline is clearly warranted to notify the Grievant and the other corrections officer that verbal barbs have no place in the Agency and will not be tolerated. A three-month suspension without pay should sufficiently deter the Grievant and others from embracing such conduct. The agency was ordered to reinstate the Grievant.

988) Eddie Wright

27-27-905-22-060-2691-01-03

Dan Miller

27-27-906-11-200-2728-01-03 Issue

ARBITRATOR: Craig Allen

ISSUE: Did Management violate the CBA, Appendix M, Section 4(E) by testing the Grievants for reasonable suspicion of alcohol abuse, at the Ohio Highway Patrol outpost? If yes, what shall the remedy be?

CONTRACT SECTION: Appendix M, 4(E)

TOPIC HEADINGS: Past Practice, Ohio Highway Patrol, Reasonable Suspicion Testing for Alcohol Abuse

AGENCY: Rehabilitation and Corrections

SITE/OFFICE: Trumbull Correctional Institution

RESULT: The State shall cease and desist from using State employees (Ohio State Patrol) for "reasonable suspicion" alcohol testing.

REASONS: The Arbitrator found that the real issue is whether a past practice of long standing has changed the "plain meaning" of the language in Appendix M to the Collective Bargaining Agreement. At Trumbull and other institutions the Ohio State Patrol conducts reasonable suspicion testing for alcohol abuse testing. The Union queried 27 institutions as to their methods of handling the testing. Of the 25 institutions that responded 14 said they did not use the Ohio State Patrol and 11 said they did. This creates a past practice that is not followed by a plurality of the institutions. The Arbitrator found that the requirements for management to make a past practice argument were not met.

989) 25-11-20060706-0004-01-13 Issue

ARBITRATOR: Robert Brookins

ISSUE: Whether the Grievance is procedurally defective, and whether the Grievance establishes a prima-facie case under Article 25.03.

CONTRACT SECTIONS: 1.05, 17.035, 17.05 25.02, 25.03

TOPIC HEADINGS: Posting Vacancies, Presumption In Favor of Arbitration, Prima Facie Case; Procedural Arbitrability, Timeliness

AGENCY: Department of Natural Resources

POSITION: Environmental Specialist 1, Administrative Assistant 2

RESULT: The grievance was sustained. The grievance is fully arbitrable and, barring a contrary mutual agreement by the Parties or a decision by the Union to withdraw the Grievance, it is ripe for arbitral review.

REASONS: On April 24, 2006 the Agency posted a position for an Environmental Specialist 1 (ES1). Later the Agency withdrew that posting and applicants were sent letters on or about May 26, 2006 that the position would not be filled. Then the agency posted for an Administrative Assistant 2, with a job description which was essentially the same as that of the ES1. That position was filled on June 26, 2006. On July 6, 2006 the Union filed a grievance arguing that assigning an exempt employee to that position violated Articles 1.05 and 17.05 of the CBA. The Agency raised a timeliness objection. The Union contended that the triggering event was the June 26 filling of the AA2 position with an exempt employee and not the announced withdrawal of the ES1 position. The Arbitrator held that the Agency effectively waived its right to raise the issue of procedural arbitrability by waiting until the arbitration hearing to assert that issue. Each Party has an obligation to scrutinize the substantive and procedural aspects of a grievance while processing it through the negotiated grievance procedure and to raise relevant procedural and/or substantive objections *before* going to arbitration. When procedural objections are not raised earlier in the grievance process, there is a risk of losing relevant information or losing opportunities to negotiate settlements. The Arbitrator was persuaded that Article 25.03 does not impose a duty on the Union to establish a prima facie case before arbitrating the merits of a dispute. The Agency's argument rests on their own interpretation of that Article. However the Arbitrator held that reasonable minds may differ on their interpretations; consequently, reinforcing the need for a review of the issues in an arbitration. The Agency arguments also rest on several assertions that have not been established as facts in the dispute (e.g. "bargaining unit work does not exist in the ESS.") These assertions are better left to an arbitration. The Arbitrator held that because of the special nature of collective bargaining relationships, there is a heavy presumption in favor of arbitration when disputes arise.

990) Patty Rich—Class Action
02-10-20070626-0107-01-03 Issue

ARBITRATOR: Dwight A. Washington

ISSUE: Under the 2006-2009 CBA between OCSEA and the State of Ohio, how should part-time employees be paid when they work on the holiday?

CONTRACT SECTIONS: 26.01, 26.02, 26.03, 26.04

TOPIC HEADINGS: Holiday Pay; Part-Time Employees

AGENCY: All

SITE/OFFICE: All

POSITION: All

RESULT: The grievance was denied.

REASONS: No dispute exists that non part-time employees are entitled to be paid the “normal” number of hours they would be scheduled to work as holiday/straight time pay. The dispute centers upon number of hours part-time employees are to be paid as holiday pay under Article 26.02 and/or straight time pay under Article 26.03. The language to standardize the computation of holiday pay for part-time employees was accomplished during negotiations and the evidence offered by the Union fails to contradict the final written agreement. The reading of Article 26.03 in conjunction with Article 26.02 does not modify the language to make it ambiguous or unclear. The parties could have made it clear in Article 26.02 that part-time employees who work holidays were entitled to holiday pay based upon the actual hours worked that day. They did not. There is no evidence to find that a mutual mistake occurred which would require reformation.

991) Robin Criswell
33-00-20061215-0153-01-05 Removal

ARBITRATOR: Anna DuVal Smith

ISSUE: The grievant was removed for allegedly violating Corrective Action Standards AN-03 (Misappropriation/Exploitation), AN-06(Failure to Follow Policy—Resident Related), and I-04 (Failure to Fully Cooperate in an Investigation.) Was the Grievant removed from her position of Food Service Worker for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01

TOPIC HEADINGS: Aggravating Circumstances, Just cause, Lax Enforcement of Agency Rules, Reinstatement, Removal

AGENCY: Ohio Veterans Home

SITE/OFFICE: Sandusky

POSITION: Food Service Worker

RESULTS: The grievance was granted in part and denied in part. The grievant was reinstated to her former position. The request for back pay and benefits was denied.

REASON: The Arbitrator held that the removal lacked just cause and must be set aside. In a related case Arbitrator Murphy held that lax enforcement of the employee-resident personal relationship ban undermines enforcement of other provisions of the policy, including the ban on accepting money from residents. This Arbitrator agreed. Management's actions have to be consistent with the published policy and rules, and similar cases have to be treated in a like manner for them to have value in guiding employee conduct. Because of lax enforcement of far more serious infractions elsewhere in the agency, the Grievant could not have expected removal for borrowing money from a resident. This Grievant had previous counseling for receiving a bag of gratuities from a resident. She should have learned that accepting gratuities from residents makes her subject to discipline. Her case is aggravated by her contact and attempted contacts with witnesses against her pending the arbitration. For this reason she is reinstated, but without back pay and benefits.

992) Donnia Pearson

33-00-20070315-0051-01-05 Removal

ARBITRATOR: Anna DuVal Smith

ISSUE: The Grievant was removed for two alleged violations of Rule A-06—extending lunch or break, or being out of the work area without permission. Was there just cause to remove the Grievant from her position? If not, what shall the remedy be?

CONTRACT SECTIONS: Article 24.01

TOPIC HEADINGS: Extended Lunch Break, Disparate Treatment, Just Cause, Reinstatement, Vacated Suspension

AGENCY: Ohio Veterans Home

SITE/OFFICE: Sandusky

POSITION: Custodial Worker

RESULTS: The grievance was upheld in part. The Grievant was to be reinstated to her former position with a five-day suspension. Back pay and benefits were granted.

REASONS: The Grievant was removed after two violations—one involving taking an extended lunch break, the second involved her being away from her work area after punching in. Within the past year the Grievant had been counseled and reprimanded several times for tardiness and absenteeism; therefore, she should have know she was at risk of further discipline if she was caught. Discipline was justified. The second incident occurred a week later when the Grievant left to park her car after punching in. The video camera revealed two employees leaving after punching in. The other employee was not disciplined for it until after the Grievant was removed. That the Reviewing manager took no action against another employee when the evidence was in front of him is per se disparate treatment. No discipline for the parking incident was warranted. Management

argued that removal was appropriate since this was the fourth corrective action at the level of fine or suspension. The Grievant knew she was on a path to removal. But she also had an expectation of being exonerated at her Non-Traditional Arbitration.. Her 3-day suspension was vacated by an NTA decision. That fine was not to be counted in the progression. The Grievant was discharged without just cause.

993) Cynthia O'Dell Removal

ARBITRATOR: John J. Murphy

ISSUE: The Grievant was removed for allegedly violating the SECR 3F-Failure to provide physician's verification when required; and 3H—Being absent without proper authorization. Did the employer appropriately terminate the grievant for violation of her Last Chance Agreement? If not, did the employee have just cause to remove the grievant? If not, what shall the remedy be?

CONTRACT SECTIONS: 24.01, 29.04

TOPIC HEADINGS: Last Chance Agreement, Physician's Verification, Removal

AGENCY: Mental Health

SITE/OFFICE: Oakwood

POSITION: Psychiatric Attendant

RESULTS: The grievance was denied.

REASON: The Grievant had a prescheduled medical appointment on the afternoon of July 24. Then the Grievant called off for her entire shift early in the morning of July 24. An employee is under a duty to provide a statement from a physician who has examined the employee and who has signed the statement. The statement must be provided within three days after returning to work. The Grievant should have submitted a physician's statement on the new request—the second request for an eight (8) hour leave. The Grievant, instead, submitted the physician's statement that comported entirely with her initial request for a leave on July 13 for three (3) hours. The record does not show that the reason for the prescheduled appointment was for the same condition that led her to call of her shift. The letter from the doctor made it clear that they could not provide an excuse for the entire shift absence requested by the Grievant as her leave. There was no testimony from the Grievant about why she called off her entire shift. The record does not support the finding that the Employer "demanded" a second physician's verification. The physician's verification submitted by the Grievant on its face supported only a leave for three (3) hours, and the record is sufficient to show that the Employer did note this inadequacy to the Grievant on August 7.

Based on the record, the Arbitrator found that the Grievant failed to provide physician's verification when required—an offense under Rule 3F of the Absenteeism Track set forth in the disciplinary grid. This constituted a breach by the Grievant of her Last Chance

Agreement. Proof of this violation requires that “termination be imposed.” Furthermore, the Arbitrator does not have any authority to modify this discipline.

994) Amy Wobser

29-04-(06-05-11)-0794-01-14

Neil Preston

29-07-(06-05-11)-0795-01-14

Christopher Smith

29-04-(07-07-17)-0958-01-14

Keith Goudy

29-04-(07-07-07)-0962—1-14

ARBITRATOR: David M. Pincus

ISSUE: Validity of instruments used to determine who receives a promotion.

CONTRACT SECTIONS: Article 17

TOPICAL HEADINGS: Assessment

AGENCY: Rehabilitation Services Commission

SITE/OFFICE: Campus View Boulevard

POSITION: Disability Claims Specialist

RESULTS: Two employees were promoted to DCS, and two employees will receive a promotion to DCS, once the agency’s budget allows it.

REASON: The 2006 DCS Assessment is content valid. The union is not limited in grieving content validity for a new DCS Assessment. The union and employees will be notified if a new assessment is implemented. Betsy Stewart and Robert Watts will be placed at management’s discretion into a DCS position once OBM gives approval. They will begin their probationary period then. They will begin receiving compensation as a DCS beginning with the pay period 04/13/08. The placement of Betsy Stewart and Robert Watts is not precedent setting nor does it violate Article 17.

995) Mark Herron

35-07-20040513-0255-01-03 Removal

ARBITRATOR: Robert Brookins

ISSUE: The Grievant was removed for allegedly violating Rule 3.7—Failure to Report Physical Force; Rule 4.3—3 or more days of unauthorized leave; 4.12—Inappropriate or Unwarranted Use of Force; 5.1—Failure to Follow Policies and Procedures; and 5.12—Actions that could harm or potentially harm an employee, youth, or member of the general public. Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02, 24.06

TOPIC HEADINGS: Imposition of Discipline, Last Chance Agreement, Mitigation, Progressive Discipline, Removal

AGENCY: Department of Youth Services

SITE/OFFICE: Marion Correctional Facility

POSITION: Juvenile Correctional Officer

RESULT: The grievance was sustained in part and denied in part.

The Grievant was reinstated, but under strict conditions.

REASONS: The Arbitrator held that, management demonstrated by a preponderance of the evidence that the Grievant violated General Work Rules 4.12, 5.1, and 5.12, and therefore some measure of discipline was indicated. Mitigating factors were the Grievant's three years of tenure, satisfactory performance record, and no active discipline. In addition, the Agency established only one of the three major charges that it leveled against the Grievant. Also, nothing in the record suggested that the Grievant held ill will against the Youth. The Arbitrator held that removal was unreasonable, but only barely so, in light of the Grievant's poor judgment and his less than credible performance on the witness stand. The primary reason for his reinstatement is that the Grievant never intended to harm the Youth. The Grievant was reinstated under very strict conditions: he was entitled to no back pay or other benefits during the period of his separation, and he was reinstated pursuant to a two-year probationary plan, under which he shall violate no rule or policy involving any youth. Failure to comply will be grounds to remove the Grievant.

996) Marcus Peacock

35-07-20071012-0060-01-03 Removal

ARBITRATOR: Dwight A. Washington

ISSUE: Was the Grievant removed for just cause for violation of Ohio Department of Youth Services Policy 103.7, General Work Rules, Sections 4.12—Inappropriate or unwarranted force and 5.1—Failure to follow policies and procedures? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01

TOPIC HEADINGS: Failure to Follow Policy, Unwarranted Force, Long Service, Mitigation, Removal

AGENCY: Department of Youth Services

SITE/OFFICE: Scioto

POSITION: Juvenile Correction Officer

RESULT: The grievance was granted in part and denied in part. The removal was modified to a ten-day suspension. The Grievant was restored to work, but would not receive any back pay, roll call pay, holiday pay, or shift differential.

REASONS: The Arbitrator relied on the video evidence. The video indicated that the youth was not engaged in any conduct that required imminent intervention by the Grievant. The Arbitrator held that, given the seriousness of the use of unwarranted force by the Grievant and his failure to follow proper procedures when judgment indicated that a planned use of force was required, just cause for discipline existed. However, removal was inappropriate. The Grievant's record of fourteen years of good service as well as his reputation of being a valued employee in helping diffuse potential problem situations mitigated against his removal. The incident was hopefully an isolated, one-time event in the Grievant's career.

997) Thomas Romine—Class Action
31-05(022707)0007-01-07 Issue

ARBITRATOR: Dwight A. Washington

ISSUE: Under the CBA between the parties, did any violation occur when the Employer instituted twelve hour shifts on February 13, 14, and 15, 2007 in response to a snow storm?

CONTRACT SECTIONS: 1.05, 5, 7.06, 13.01, 13.02.13.10, 13.07(2), 13.07(3)

TOPIC HEADINGS: Notice, Short-term Operational Need, Overtime Pay—Avoiding Payment, Standard and non-standard work schedule, Weather Emergency

AGENCY: Department of Transportation

SITE/OFFICE: ODOT--Jacksontown

POSITION: Highway Technician

RESULTS: The grievance was denied.

REASON: The Union filed separate grievances from Guernsey, Fairfield, Licking, Knox, Perry, and Muskingum Counties that were consolidated into a single case. Implicit in the authority to schedule employees is the ability to alter the work schedule, subject to the limitations in Article 13.07 that the work schedule was not made solely to avoid the payment of overtime. The Arbitrator found that there was no evidence that the schedule change was motivated by a desire to avoid overtime; therefore, no violation of the contract occurred. Based upon the weather forecast known to the Employer on February 12, 2007 justifiable reasons existed to roll into 12 hour shifts. Prior notification under Article 13.02 was not required. No entitlement existed that the employees were guaranteed 16-hour shifts under a snow/ice declaration. The Employer's conduct did not violate Section 13.07(2)'s Agency specific language. The snow storm was a short term operational need. To conclude that a snow storm is not a short term need but that rain over an extended period of time is, would be nonsensical. The record consisted of over

500 pages of exhibits and three days of hearing. That record failed to indicate that the Employer violated the parties' agreement.

998) Raphael Turner

27-04-20070914-1673-01-03 Removal

ARBITRATOR: John J. Murphy

ISSUE: Did the Grievant violate the Standards of Employee Conduct, specifically Rule No. 26, Failure to Immediately Report Any Personal Arrest or Criminal Charge? Was there just cause for his removal? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01

TOPIC HEADINGS: Disparate Treatment, Duty to Understand Agency Rule, Last Chance Agreement, Removal

AGENCY: Department of Rehabilitation and Corrections

SITE/OFFICE: Medical Center

POSITION: Corrections Officer

RESULTS: The grievance was denied.

REASONS: The Arbitrator found that the Grievant should have been aware of Rule 26. He held that there was no disparate treatment. The choice of the charge of the Grievant was reasonable and quite distinguishable from the facts concerning another corrections officer. The record contained evidence of evasion by the Grievant as to the reason why he did not report his arrest immediately. Any violation of Rule 26 would have been the first offense by this Grievant of Rule 26 and, as such, the maximum sanction for the first offense is a 2-day fine, suspension, or working suspension. However, there was a last chance agreement signed by the Grievant, the warden, and by a union representative. The Arbitrator was limited by the rules which the Grievant accepted in the last chance agreement; therefore, the Arbitrator has no authority to modify the discipline in this case. Rule 26, an SOEC Rule on the performance track of the disciplinary grid was violated by the Grievant. Once such a finding is made, the Grievant himself agreed in the last chance agreement "that the appropriate discipline shall be termination from (his) position."

999) Jaimee Touris

17-09-071109-0095-01-14 Removal

ARBITRATOR: Dwight Washington

ISSUE: The Grievant was removed for allegedly violating IC Work Rules: Neglect of Duty (d) sleeping while on duty and Failure of Good Behavior (a) making false, abusive, inflammatory or obscene statements toward or concerning another employee, supervisor or member of the general public, and (e) menacing or threatening behavior toward an

employee or manager. Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLE: 24.01

TOPIC HEADINGS: EAP treatment, Failure of Good Behavior, Last Chance Agreement, Mitigation, Neglect of Duty, Removal, Threats and Menacing

AGENCY: Industrial Commission

SITE/OFFICE: Columbus

POSITION: Attorney

RESULT: The grievance was granted in part. The Grievant was reinstated with conditions and received a 15-day suspension.

REASONS: The Arbitrator found that the evidence showed the Grievant had violated Work Rule Neglect of Duty (d) and Failure of Good Behavior (e). The evidence failed to demonstrate any words or conduct that rose to the level of a threat or menacing. The Arbitrator held that the removal was excessive due to the Grievant's medical condition; the Grievant's acute personal issues; a relatively minor discipline record at time of removal; eleven years of satisfactory service; and the absence of no threatening conduct. The Arbitrator reinstated the Grievant with conditions: she will successfully complete an EAP program for anger management and stress—failure to do so would be grounds for immediate removal; discipline of a 15 day suspension without pay for violating the work rules; she shall receive no back pay, seniority and/ or any other economic benefit she may have been entitled to; she shall enter into a Last Chance Agreement, providing that any subsequent violation of the work rules for a year following her reinstatement will result in immediate removal.

1000) Tom Lambrecht Class Action

31-02-(022307)-01-01-07

ARBITRATOR: Dwight Washington

ISSUE: Did the Employer violate the contract by failing to include Wood County in the February 14, 2007 weather emergency from 10:00 a.m. to 5:00 p.m.? If so, what shall the remedy be?

CONTRACT ARTICLE: 13.15

TOPIC HEADINGS: Weather Emergency

AGENCY: Department of Public Safety

SITE/OFFICE: Wood County Garage

RESULT: The grievance was denied.

REASONS: The decision to lift Wood County's emergency declaration after 10:00 a.m. was based upon a process that involved various state departments, the identification of public safety problems, impact assessment of the snow, and recommendations to the Governor and key staff. The decision to lift Wood County's declaration was based upon

the conditions existing within the geographic area of Wood County, not those of its neighbors. Wood County was removed from the list of counties designated for a snow emergency, while all surrounding counties were not. The facts indicate that reliable evidence existed for DPS to decide that lifting the ban on Wood County was appropriate. This is especially true when considering that the County had been downgraded to a Level 2 by its Sheriff's Department, whereas all of the neighboring counties remained at a Level 3. The Arbitrator held that the decision by DPS in not extending the declaration of emergency beyond 10:00 a.m. for Wood County was not arbitrary or capricious and was, in fact, supported by reliable, probative, and substantial evidence.

1001) Kathy Bowman

33-00-20070822-0143-01-05

ARBITRATOR: Dwight A. Washington

ISSUE: The Grievant was suspended for allegedly violating the OVH Correction Standard AN-06, Failure to Follow Policy/Procedure—No. 10-Div-S (e.g., failure to follow policy, procedures, or program which was implemented specifically for resident safety or well being; failure to report abuse) and I-04, Failure to Fully Cooperate in an Investigation (e.g., truthfully and completely answering questions) or making false statements to investigative officials, (e.g., including but not limited to any verbal or written statement). Was the ten (10) day suspension for just cause? If not, what shall the remedy be?

CONTACT ARTICLE: 24.01

TOPIC HEADINGS: Failure to Follow Policy/Procedure, Failure to Cooperate in an Investigation, Just Cause, Lax Enforcement of Policies, Notice

AGENCY: Ohio Veterans' Home

SITE/OFFICE: Sandusky

POSITION: Dietary

RESULTS: The grievance was granted. Grievant was made whole for lost wages and any other benefits lost during her suspension.

REASON: The Arbitrator found that from approximately 1995 until 2006 the Employer did not investigate relationships and/or other improprieties involving gifts or money received by employees from residents. The Arbitrator cited a 2007 decision: "Arbitrator Murphy found that the Employer's lax enforcement of its policies ' . . . lulled the employees into a sense of toleration by the Employer of acts that would otherwise be a violation of policy.'" There was no evidence that the Employer made any efforts to put its employees on notice that certain policies/procedures which were previously unenforced would no longer be ignored. The Arbitrator noted that statements made by the Grievant and her co-workers indicated evasiveness, but not falsification. The

Arbitrator held that just cause did not support the decision to suspend the Grievant for ten (10) days. Furthermore, the Grievant's failure to report any information under Policy No. 4 prior to November, 2006 occurred in an environment indicating that relationships or the exchange of items of value was known and tolerated by OVH Management.

1002) Colby Glaze

35-07-20071101-0061-01-03 Removal

ARBITRATOR: Dwight Washington

ISSUE: The Grievant was removed for allegedly violating DYS Policy 103.17 General Work Rules, Section 4.12—Inappropriate or unwarranted force and 5.1—Failure to follow policies and procedures, 403.32—Suicide prevention and response. Was the Grievant removed from his position as a Juvenile Correctional Officer with the Scioto Juvenile Correctional Facility for just cause? If not, what shall the remedy be?

CONTRACT ARTICLE: 24.01

TOPIC HEADINGS: Credibility, Failure to Follow Policy, Removal, Unwarranted Force

AGENCY: Department of Youth Services

POSITION: Juvenile Correctional Officer

SITE/OFFICE: Scioto Juvenile Correctional Facility

RESULTS: The grievance was denied.

REASONS: Central to the issue was the credibility of the Grievant. There was evidence to contradict the Grievant's statement that the youth threatened to harm himself. Reliable evidence existed to conclude that the youth was not suicidal and did not state that he was going to harm himself. Even though the Grievant claimed the youth was going to harm himself, he did not implement a planned use of physical response per DYS policy 301.05. The physical response utilized by the Grievant was unwarranted under the facts, and it constituted a violation of Rule 4.12. The Grievant escalated the situation by removing items from the youth's room—an action that was not required. The Grievant could have utilized other options, but did not. After physically restraining the youth, the Grievant contacted two operations managers. If he was able to contact his supervisors after the restraint, what was the imminent intervention that precluded his contacting them prior to the altercation? The Arbitrator held that DYS had just cause to discipline the Grievant and given his prior discipline of record, their actions were not arbitrary, unreasonable, or capricious.

1003) Brenda Battle

27-05-20070807-1546-01-03 Removal

ARBITRATOR: Robert Brookins

ISSUE: The Grievant was removed for alleged violation of Rule 24, Interfering with, failing to cooperate in, or lying in an official investigation or inquiry; Rule 30, while on duty or on state owned or leased property C. Unauthorized conveyance, distribution, misuse, or possession of other contraband; Rule 38, Any act or commission not otherwise set forth herein which constitutes a threat to the security of the facility, staff, any individual under the supervision of the Department, or a member of the general public; and Rule 46(A), Unauthorized Relationships A. 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.

Was the Grievant removed for just cause? If not, what should the remedy be?

CONTRACT ARTICLES: 24.02, 24.06, 25.09

TOPIC HEADINGS: Affirmative Defense—Burden of Persuasion: Mitigating Factors: Permissible Scope of Subpoena; Progressive Discipline, Removal; Transporting/Using Cell Phone Inside Institution.

AGENCY: Department of Rehabilitation and Corrections

SITE/OFFICE: Corrections Reception Center

POSITION: Corrections Officer

RESULTS: The grievance was denied.

REASONS: The Arbitrator concluded that more likely than not the Grievant transported a cell phone into the institution within the period in question, violating Rule 30, by using it to photograph her fellow officers. The Arbitrator held that the Agency clearly had probable cause to subpoena and search 13 months of the Grievant's prior cell phone records. The prospect of serious present consequences from prior, easily perpetrated violations supported the probable cause. The Arbitrator held that the Grievant violated Rule 38 by transporting the cell phone into the institution and by using it to telephone inmates' relatives. The Arbitrator held that the Grievant did not violate Rule 46(A) since the Grievant did not have a "relationship" with the inmates, using the restricted definition in the language of the rule. The Arbitrator held that the Grievant did not violate Rule 24. The Agency's interpretation of the rule infringed on the Grievant's right to develop her defenses and to assert her constitutional rights. The mitigating factors included: the Agency established only two of the four charges against the Grievant; the Grievant's almost thirteen years of experience; and her record of satisfactory job performance and the absence of active discipline. However, the balance of aggravative and mitigative factors indicated that the Grievant deserved a heavy dose of discipline. Just cause is not violated by removal for a first violation of Rules 30 and 38.

1004) Ronald Richards

07-00-20070703-0513-01-09

ARBITRATOR: Nels E. Nelson

ISSUE: Did the employer violate Section 17.05 of the collective bargaining agreement by not selecting the Grievant for the position of Customer Service Assistant 2 in the Division of Real Estate? If so, what shall the remedy be?

CONTRACT ARTICLE: 17.05

TOPIC HEADINGS: Back Pay, Promotion, Selection

AGENCY: Department of Commerce

SITE/OFFICE: Division of Real Estate

POSITION: Customer Service Assistant 2

RESULT: The Grievant and the selected applicant will be given the state Civil Service Test for Customer Service Assistant 2. If the Grievant's score is greater than or substantially equal to the score of the previously selected applicant, the Grievant shall be awarded the position; otherwise, the previously selected applicant shall remain in the position. If the grievant is awarded the position, he shall be made whole for the difference in the rates of pay for the position he holds and the position he is seeking.

REASONS: The Arbitrator held that the procedure used by the division was not a valid method for selecting the employee to be promoted to Customer Service Assistant 2. However, simply placing the Grievant in the position would be unfair to the selected applicant. Thus, a valid method must be used to choose between the Grievant and the selected applicant. While it might be desirable for the union to have input into developing the process, the test prepared and administered by DAS would provide a speedier resolution. The Arbitrator saw nothing that would justify denying the grievant back pay if he was wrongly denied a promotion because of the invalid selection method used by the employer.

1005) George Simmons

29-03-2007-0046-0127-01-14 Removal

ARBITRATOR: John J. Murphy

ISSUE: The Grievant was charged with violating four work rules: 4.2—Making false, abusive, inflammatory or obscene statements toward or concerning a supervisor or representative of management; 4.3-Failure to fully cooperate, interfering with and/or providing false, incomplete or misleading information in an investigation or inquiry; 7.1-Failure to carry out assigned job duties; and, 7.5-Failure to follow work rules, administrative rules or regulations, written policies or procedures, the Ohio Administrative Code, and/or the Ohio Revised Code. Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01

TOPIC HEADINGS: Failure to Carry Out Job Duties, Failure to Follow Administrative

Rules, Long Service, Making a False Statement About a Supervisor, Providing False Information in an Investigation, Removal

AGENCY: Rehabilitation Services Commission

SITE/OFFICE: RSC Headquarters, Campus View Boulevard

POSITION: Business Enterprise Specialist

RESULT: The grievance was denied.

REASONS: The Arbitrator held that a statement by the Grievant in an email was a false, abusive, and inflammatory statement concerning his supervisor, and that he did provide false information in an investigation. The Arbitrator found that the Grievant was not permitted to complete closing inventory on the Operation in question; consequently, he did not breach his job duty to complete the inventory properly. The record supported the finding that the Grievant did not provide even a minimal level of support to the Operator in dealing with customer complaints about the operation of her facility. Therefore, the Arbitrator held that the Grievant did fail to carry out one of his assigned job duties and failed to follow administrative rules. Because some of the Grievant's work was for his personal business and for his job at Columbus State Community College, the work was for his personal gain. The Arbitrator held he did fail to follow administrative regulations in the use of his computer equipment assigned to him. The Grievant did have 27 years service to the Commission and had no disciplinary record. However, his ease in involving his blind clients in the investigation of his own conduct as a Specialist demonstrates a lack of sensitivity to the vulnerability of his clients. His supervisor was visually impaired and he wrote a false statement about her in the course of an investigation. Both actions show that the Grievant exhibits little concern for the blind. The Arbitrator found that the grievant cannot be trusted to return to an organization devoted to the service of the blind.

1006) Marie Dubose

34-03-(2008-01-15)-0109 Removal

ARBITRATOR: David Pincus

ISSUE: The Grievant was discharged for allegedly violating Work Rule: Dishonesty (f) Willful falsification of an official document. The Grievant allegedly entered an earlier start time than she actually started working. Was the Grievant discharged for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01. 24.04

TOPIC HEADINGS: Disparate Treatment, Investigatory Interview—Nature of Purpose, Removal, Right to Representation

AGENCY: Bureau of Worker's Compensation

SITE/OFFICE: Canton

POSITION: Worker's Compensation Claims Specialist

RESULTS: The grievance was upheld.

REASONS: The Arbitrator found nothing in the record to support the falsification charge. The administration and interpretation of the Hours of Work/Time Accounting Policy were inconsistent. The policy in no way restricts an employee's ability to supplement the time allotted to leave plus lunch with the time attributable to an afternoon break. The Employer admitted violating Article 24.04 by failing to inform the Union about the purpose of the interview. The Employer viewed the violation as de minimus. The Arbitrator found that this cannot be viewed as a mere procedural defect. "Without prior specification of the nature of the matter being investigated, the right of 'representation' becomes a hollow shell." Without a purpose specification, interviews become an unfocused information gathering forum and can often lead to ambiguous results. The Employer attempted to raise certain credibility concerns because the Grievant provided differing justifications for her action at the investigatory interview versus the pre-disciplinary hearing. This difference in justification was plausible when the purpose requirement of Section 24.04 was violated. A contractual violation of the sort represents a severe due process abridgment, which the Ohio Revised Code and state and federal courts view as a critical element of representation rights. Investigation defect allegations dealing with unequal treatment were also supported by the record. Other similarly situated bargaining unit members who had not been disciplined for similar offenses were identified for the Employer. The Employer did nothing to investigate this unequal treatment.

1007) Rod Hasal 33-00-(08-01-14)-0008-01-04 Removal

ARBITRATOR: Craig Allen

ISSUE: Was the grievant removed for just cause for leaving a resident unattended? If not, what shall the remedy be?

CONTRACT ARTICLE: 24.01, 24.02

TOPIC HEADINGS: Objection to Video Evidence, Progressive Discipline, Removal

AGENCY: Ohio Veteran's Home

SITE/OFFICE: Sandusky

POSITION: Nurse's Aide

RESULTS: The grievance was denied.

REASONS: The Arbitrator held that there was ample evidence that the Grievant failed to take care of a resident of the Ohio Veteran's Home. The Grievant left the resident, who was unable to take care of himself, unattended for five and one-half hours. In light of the Grievant's prior discipline, the Arbitrator found the removal to be progressive. The Union made a procedural objection to the use of video evidence on a CD, because it was not advised of the CD's existence until less than a week prior to the hearing. Since the employees and the Union are aware that video cameras are placed throughout the

institution, the Arbitrator ruled that the CD could be used; however, he reserved the right to rule on its admissibility in relation to the evidence. The Union's objection to the use of video evidence was sustained as to all events that occurred in a break room. The Arbitrator found little independent evidence of those events and did not consider any of that evidence on the video in reaching his decision.

1008) Ella Tullius 23-04-(06-08-21)-0031-01-09 Issue

ARBITRATOR: Dwight Washington

ISSUE: Under the 2006-2009 Collective Bargaining Agreement, what should the formula be to calculate part-time pay for a holiday?

CONTRACT ARTICLE: 26.02

TOPIC HEADINGS: Holiday Pay, Part-Time Employees

AGENCY: Department of Mental Health

SITE/OFFICE: Washington County CSN Program

POSITION: Therapeutic Program Worker

RESULT: The grievance was denied.

REASON: Section 26.02 was newly negotiated contract language in the 2006-2009 collective bargaining agreement. The disputed language was proposed by the Employer and accepted by the Union. The Arbitrator held that the Employer did not violate Section 26.02 when it implemented and applied a formula for calculating part-time employees' holiday pay. Section 26.02 contains language which is clear and unambiguous because holiday pay is pro-rated and based on the daily average of actual hours worked. The parties admitted the primary goal with the provision was to standardize outcomes across and within agencies. The Union argued that the parties did not intend to have any workers harmed as a consequence of the new formula. The Arbitrator held that maintaining holiday pay outcomes within this circumstance were highly unlikely, since the parties agreed to a standardized methodology, where various methodologies were employed in the past. This would result in some employees having holiday pay increases or decreases from pre-negotiated methods of calculation.

1009) Mark Weikle, et al. 33-00-(2007-07-08)-0137-01-05

ARBITRATOR: Meeta Bass Lyons

ISSUE: Did management violate Article 1 (Bargaining Unit work) or Appendix N (Pick-A-Post Agreement) of the collective bargaining agreement or the 1994 Grievance Settlement when it gave the Veterans Hall Kitchen cooking duties to the Ohio Veterans Home Resident Workers and changed the work area of the union cooks to Secret Kitchen? If so, what should the remedy be?

CONTRACT ARTICLES: 1.05, 39.01, Appendix N

TOPIC HEADINGS: Erosion of the Bargaining Unit; Procedural Arbitrability; Subcontracting, Timeliness

AGENCY: Ohio Veterans Home

SITE/OFFICE: Sandusky

POSITION: Cook

RESULT: The grievance was denied.

REASONS: Management argued that the grievance was considerably untimely, since the cause of action had occurred fifteen years earlier, when a resident worker started working as a short order cook. The grievance was filed on the same day the cooks were ordered to report to the new location. The Arbitrator held that the grievance was timely. The Arbitrator found there was insufficient evidence that the reason for giving the Veterans Hall Kitchen cooking duties to the Ohio Veterans Home Resident Workers and changing the work area of the union cooks to Secrest Kitchen was to erode the bargaining unit. Members of the bargaining unit were not displaced. There were no layoffs. Members were not deprived of jobs that were normally available to them. It appears that the only change was the work assignment. There was no evidence of any deprivation of any economic benefit to membership. The Arbitrator held that the 1994 grievance settlement had not been violated. No bad faith was established. Further, the short order grilling was de minimis in nature when compared to production quantity work performed by the union cooks. The subcontracting in these circumstances had little or no effect on the bargaining unit, and was permissible under Article 39.01.

1010) Jorge Ruiz 27-09—(08-02-27)-0017-01-03 Removal

ARBITRATOR: Craig Allen

ISSUE: Was the Grievant's termination from his position as a Corrections Officer for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01

TOPIC HEADINGS: Failure to Follow Agency Rules, Just Cause, Removal

AGENCY: Department of Rehabilitation and Corrections

SITE/OFFICE: Grafton Correctional Institution

POSITION: Corrections Officer

RESULT: The grievance was denied.

REASONS: An inmate committed suicide while the Grievant was working. Post Orders required rounds to be made on a staggered basis every thirty minutes. On the night the inmate committed suicide, the Grievant did not check on the inmate for two hours. In addition, the Grievant admitted to making false entries in the log book and

admitted to not making rounds properly for ten years. The Union's claim that complacency by Management was the cause was not supported by persuasive evidence. There was evidence that "employees could be written up every day." But there was also evidence that Management took steps to correct this and employees were given plenty of notice. The Arbitrator reviewed the Seven Steps of Just Cause and found the discipline commensurate.

1011) Class Action 33-00-(2007-12-20)-0173-01-04 Issue

ARBITRATOR: Nels E. Nelson

ISSUE: Did management violate Article 24.04 by denying two Grievants union representation when they met with management to write statements related to an investigation of a supervisor.

CONTRACT ARTICLE: 24.04

TOPIC HEADINGS: Arbitrability, Timeliness, Union Representation

AGENCY: Ohio Veterans Home

SITE/OFFICE: Sandusky

POSITION: All

RESULT: The grievance was denied.

REASONS: The Arbitrator agreed with the state that the grievance was not properly filed. It was filed as a class action grievance on behalf of all employees at OVH; however, the dispute appeared to be limited to two employees, who were brought into an investigatory interview to provide evidence and requested union representation. That request was denied. However, the Arbitrator did not believe the grievance should be dismissed. Failure to list the members of the class by the Step Three hearing meeting did not require the dismissal of the grievance. Communication from the staff representative to the state indicates that the union identified the potential witnesses and the nature of their testimony.

The fact that the union may have requested an improper remedy does not mean that the Arbitrator could not consider whether there was a contract violation and, if necessary, devise a proper remedy.

The Arbitrator held that the two Grievants were not entitled to union representation. Their meetings with management were not investigatory interviews. They met with management as a result of a union complaint regarding the conduct of a supervisor. The supervisor was the object of the investigation, not the Grievants. The Grievants had no reason to believe that they could be subject to discipline; they were simply asked to write statements regarding what they saw or heard. The Arbitrator rejected the claim that an employee is entitled to union representation at a meeting with management where the employee feels uncomfortable or feels that he/she needs representation. This position is inconsistent with the standard adopted by SERB and the

NLRB which requires employees to reasonably believe that they could be subject to discipline before they are entitled to union representation.

**1012) Ciara Williams 24-06-(08-032-07)-
0011-01-04 Removal**

ARBITRATOR: John Murphy

ISSUE: The Grievant was discharged for being out of the work area for an extended period of time. The Grievant had four prior disciplines relating to performance. Was the Grievant disciplined for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02, 24.03,

TOPIC HEADINGS: Absence from Work Area, Due Process Unfairness, Notice, Removal

AGENCY: Department of Mental Retardation and Developmental Disabilities

SITE/OFFICE: Columbus Developmental Center

POSITION: Therapeutic Program Worker

RESULT: The grievance was denied.

REASONS: The Arbitrator found that the Grievant told her co-worker that she was taking a bathroom break at 6:30 a.m., left her assigned work area, and did not return until 7:30 a.m. This length of time was outside the right to take bathroom breaks, and therefore, the Grievant had a duty to notify her supervisor. Failing to notify the supervisor would have given rise to a duty to notify the grounds office supervisor who is available 24 hours a day, 7 days a week. The Grievant's prior discipline record should have put her on notice of the seriousness of the offense.

The supervisor should have raised the matter of the absence with the Grievant sooner, but there was nothing in the record to show that this failure in any way inhibited the case presented by the Union, or enhanced the case presented by the Employer.

The Arbitrator held that there was no proof that the discharge was tainted by any claim of due process or unfairness, when the same supervisor conducted both the fact-finding and the investigation. The most damaging testimony to the Grievant was presented by her co-employees, not by the supervisor. The Arbitrator found that the Grievant exhibited disregard for the performance of her duties to care for the residents, a matter for which she had been amply warned on previous occasions.

**1013) Lino Bartolozzi 31-12-(03-26-08)-06 -
01-06 Removal**

ARBITRATOR: Dwight Washington

ISSUE: Was the Grievant removed for just cause, and, if not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.05

TOPIC HEADINGS: EAP. Mitigating Factors, Performance Evaluation, Removal, Suspension, Threatening Behavior

AGENCY: Department of Transportation

OFFICE/SITE: ODOT District 12

POSITION: Signal Electrician 1

RESULT: The grievance was sustained in part and denied in part. The removal was reduced to a suspension. The Grievant was placed on administrative leave that continues until he completes an EAP-designed comprehensive anger-management program for a minimum of twenty consecutive work days. If the Grievant fails to successfully complete the EAP program, his removal shall be immediately reinstated.

REASONS: The evidence does support a finding that just cause exists for discipline under Rule #6 because it was the clear intent of the Grievant to threaten the co-worker. A picture posted in the break room by the Grievant was offensive and was intended to threaten and intimidate the co-worker. However, just cause does not exist for removal. The evidence fails to indicate that during the confrontation in the break room the Grievant engaged in any menacing or threatening behavior toward the co-worker. The co-worker's initial response to the posting of the picture failed to demonstrate any fear or apprehension on his part. In fact, his reaction in directly confronting the Grievant in the break room underscores his combative nature, and was inconsistent with someone allegedly in fear or apprehension.

The Arbitrator took into consideration several mitigating factors. None of the Grievant's allegations against the co-worker were investigated. The facts are unrefuted that the Employer failed to provide any documents or witness list before the pre-disciplinary hearing, in violation of Article 24.05. The Grievant's immediate supervisor was directed by his supervisors to alter his evaluation of the Grievant. The revised evaluation contained four "does not meet" areas, whereas his original evaluation had none. Witnesses from both sides, including management, were aware of the animus between the co-workers. The Employer was complicit in not addressing the conduct or performance issue of the Grievant and the co-worker, which escalated over time and culminated in the break room incident.

1014) Kevin Birchfield 27-22-(08-01-18)-0008-01-03 Issue

ARBITRATOR: David Pincus

ISSUE: Conditions under which a Kroll Collection site will conduct drug-testing of state employees.

CONTRACT ARTICLES: Appendix M

TOPIC HEADINGS: Drug testing; Drug-Free Workplace Program

RESULT: The DAS Drug-Free Workplace Program will provide a letter to Kroll to disseminate to its collection sites (approx. 155) reiterating when a collection site should conduct drug and/or alcohol tests for employees that have been injured and are being treated for workers compensation injury.

REASONS: A collection site should conduct a drug and/or alcohol test for employees that have been injured and are being treated for workers compensation injury only if the test is made:

- A. at the request of the Employer when there is reasonable cause to suspect the employee may be intoxicated by or under the influence of a controlled substance not prescribed by his/her doctor, or
- B. at the request of a Licensed Physician who is not employed by the employer, or
- C. at the request of Police Officer pursuant to a traffic stop and not at the request of the employee's employer.

In addition, the collection site will provide for tests that are conducted at the request of the Employer. An agency management designee will verbally contact the collection site to coordinate the test and the collection site should update its database to reflect this. If a collection site is not verbally contacted by an agency management designee, it may not conduct the test and if it is done, it will be invalid and the agency will not process payment for the test.

1015) Hardy Felder 35-03-(07-11-29)-0038-01-03 Removal

ARBITRATOR: Craig Allen

ISSUE: The Grievant was charged with the violation of DYS work rules 3.1 Dishonesty; 4.12-Inappropriate or Unwarranted use of Force; 5.1-Failure to follow policies and procedures; and 5.12-Actions that could harm or potentially harm an employee, youth, or member of the general public. Was the discipline for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.06

TOPIC HEADINGS: Progressive Discipline, Unwarranted use of force

AGENCY: Department of Youth Services

OFFICE/SITE: Cuyahoga Juvenile Correctional Facility

POSITION: Juvenile Corrections Officer

RESULT: The grievance was sustained in part and denied in part.

The Grievant was reinstated and received a forty-five day suspension.

REASONS: The Grievant acted contrary to the Employer's training and directives and admitted he acted inappropriately. The Youths made verbal comments that were tied in to their combative behavior. The Arbitrator found that there were grounds for discipline, but did not think removal was warranted. Considering the total evidence, the discipline

was not progressive and needed to be modified. The removal was changed to a forty-five day suspension.

1016) Noel Williams 33-00-(07-12-20)-0173-01-04 Removal

ARBITRATOR: Nels E. Nelson

ISSUE: The Grievant was charged with alleged violations of Policy 201.1 #2—Insubordination; 201.1 #5—Computer Use Policy; 201.1 #6—Dishonesty-Falsifying timesheets; and 201.2 #6—Working in excess of scheduled hours with authorization. Did the Department of Commerce remove the Grievant for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 2.01, 24.01, 24.02, 24.06

TOPIC HEADINGS: Computer Use Policy, Disciplinary Record, Insubordination; Removal

AGENCY: Department of Commerce

OFFICE/SITE:

POSITION: Public Information Specialist 2

RESULT: The grievance was denied.

REASONS: The Arbitrator found that the evidence and testimony clearly established that the Grievant committed numerous violations of the computer use policy on a regular basis. These included:

- a. installing a Palm Pilot on her work computer.
- b. maintaining non-work related files on her department computer.
- c. accessing two non-departmental email accounts from her computer
- d. using the computer to actively access shopping sites

The Arbitrator rejected the charge of insubordination. The Arbitrator held that “dishonesty” was not a proper charge. It implies serious misconduct where an employee’s motive is often to obtain pay that he/she is not entitled to receive. The Grievant’s timesheets suggest that she simply recorded her regular starting, lunch, and ending times regardless of the actual times and none involved a claim for extra compensation. Furthermore, all the timesheets were approved by her supervisor. The prior five-day suspension for computer misuse suggests that the Grievant was familiar with the computer use policy and knew that further discipline would result from continued computer misuse. It also indicates that she failed to take advantage of the opportunity to correct her behavior.

Despite the Grievant’s 13 years of state service, the Arbitrator held that the state had the right to remove her. The Grievant’s extensive violations of the computer use policy combined with the other less serious offenses support the state’s actions. Her prior five-day suspension for computer misuse removes any doubt that the state acted pursuant to its contractual authority.

1017) Robin Criswell 33-00-(08-05-19)-0030-01-05 Removal

ARBITRATOR: David Pincus

ISSUE: The Grievant was terminated for the alleged violation of Correction Action Standard A-05-AWOL-Exceeds Sick Leave Balance. Was the Grievant removed from her position for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01

TOPIC HEADINGS: Arbitration Decision #991; Earlier Settlement Agreement; Quasi Last Chance Agreement; Sick Leave; Time-Served Suspension

AGENCY: Ohio Veterans Home

SITE/OFFICE: Sandusky

POSITION: Food Service Worker

RESULT: The grievance was denied.

REASONS: The Arbitrator held that the Employer had just cause to remove the Grievant. Previously the Grievant had been reinstated to her position after a removal was reduced to a 433 day suspension (Arbitration Decision No. 991). No back pay or benefits were granted. The Grievant failed to “purchase” any leave balances upon her return to work.

Thereafter, the grievant requested sick leave coverage for two days (16 hours) of “gastritis”. She had insufficient sick leave balance and management refused to allow her to supplement by utilizing other leaves “in lieu” of sick leave. There was no claim that the situation was an emergency.

The union argued that intermittent and interim employees were treated differently from permanent employees in the same type of situations. The Arbitrator ruled that they did not hold the same status as full-time permanent employees and therefore, could be treated differently. The union further argued a 1999 grievance settlement, wherein, the Employer allegedly agreed to review, on a case by case basis the use of “other” leaves. The Arbitrator rejected this argument as having a “chilling” effect on future grievance settlement attempts.

1018) Todd Braden , Eric Thompson, Tom Hilbert, Shawn Sutton, Jim Judd 31-08-(07-10-10)-1001-06 Issue

ARBITRATOR: John J. Murphy

ISSUE: Whether District 8 of ODOT has violated the collective bargaining agreement by providing Flame or Flash Resistant (FR) pants and shirts to the Grievants without providing cleaning services of same at no cost to the Grievants? If so, what shall the remedy be?

CONTRACT ARTICLES: 11.01, 11.02, 33.01

TOPIC HEADINGS: Health and Safety, OSHA, PERRP, Personal Protective Clothing and Equipment, Uniforms,

AGENCY: Department of Transportation

SITE/OFFICE: District 8

POSITION: Signal Electrician 2

RESULT: With respect to Article 11.02, the grievance was denied. With respect to Article 33.01, the grievance was granted. However, the make whole remedy was limited to five months and was awarded only to Todd Braden.

REASONS: Throughout 2007 there was confusion about what was required to be purchased and what was optional for fire-resistant (FR) clothing. The Traffic Engineer, the Grievants' supervisor, relied on information from the ODOT Central Office and required the Grievants to wear the FR shirt and pants beginning in October, 2007. The supervisor rescinded the order in February, 2008 when she received the following email: "All FR Safety Apparel which has already been purchased can be distributed to employees if they wish to wear it. Since the apparel is only recommended, it will be the employer's responsibility to wash and maintain the safety apparel." The supervisor instructed the Grievants to wear the pants and suit if they wished, but cleaning and maintenance was their responsibility. The contract between the parties states that the arbitrator cannot impose an obligation that is "not specifically required by the expressed language of this Agreement." OSHA does not require FR clothing as personal protective equipment for the Grievants in the text of Section 1910.335. The Arbitrator held that the Employer was not obligated under Article 11.02 to provide FR shirts and pants to the Grievants and, consequently, did not have any obligation to clean and maintain same. Because the traffic engineer ordered the five Grievants to wear the FR shirt and pants from October, 2007 to February, 2008, the Employer was contractually responsible for the cost of cleaning and maintaining the FR clothing during these five months. Evidence was submitted showing that Todd Braden had a per week expense for care and maintenance of this clothing. The make whole remedy was requested for this Grievant only.

1019) Leanna Russell 24-14-(07-05-14)-0059-01-04 Issue

ARBITRATOR: Nels E. Nelson

ISSUE: Was the Grievant entitled to accrued personal or sick leave for September 15, 2005, to January 1, 2006, and/or from January 1, 2006, to December 27, 2006?

CONTRACT ARTICLES: 27.02, 29.02

TOPIC HEADINGS: Disability Separation, OCB Clarification Letter, Personal Leave Accrual, Sick Leave Accrual,

AGENCY: Department of Mental Retardation & Developmental Disabilities

SITE/OFFICE: Warrensville Developmental Center

POSITION: Therapeutic Program Worker

RESULT: The grievance was denied.

REASONS: The Grievant injured her back at work. She was off on leave and received payments from Workers' Compensation. She was then placed in the Transitional Work Program. After 90 days, she was placed back on leave and Workers' Compensation. The state implemented an involuntary disability separation and her employment with the state ended on January 1, 2006. Under Section 123:1-30-01 of OAC the grievant had reinstatement rights for two years. She was cleared to work by her doctor and was reinstated on December 27, 2006. At that time, she requested to have the state restore her personal and sick leave accruals from when she began work in the Transitional Work Program on June 13, 2005, through December 27, 2006. The Arbitrator held that the contract articles did not support the Grievants's request to have the leave balances restored. The Grievant was subjected to an involuntary disability separation on January 1, 2006, so that on December 27, 2006, she was not an employee returning to work under the contract but was an individual who was re-hired pursuant to Section 123:1-30-01 of the OAC, which has no provision for the restoration of accrued personal or sick leave. The Arbitrator held that he must ignore the clarification letter relied upon by the state. The letter represents the Office of Collective Bargaining's interpretation of the contract and its instructions to the agencies about how to handle the restoration of accrued leave. In addition, while Section 123:1-33-17(F) of the OAC provides for the accrual of sick leave while an employee is on occupational injury leave, there is no such requirement in Chapter 123:1-30 relating to separations.

1020) Benjamin Burton 35-20-(08-07-07)-0018-01-03 Removal

ARBITRATOR: Craig Allen

ISSUE: The grievant was removed for alleged violations of Work Rules 4.11-Physical Assault, 4.12-Inappropriate or Unwarranted Use of Force, 5.1-Failure to Follow Policy and Procedure—Response to Resistant Youth Behavior. Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.06

TOPIC HEADINGS: Forty-Five Day Time Limit, Unwarranted Use of Force

AGENCY: Department of Youth Services

OFFICE/SITE: Ohio River Valley Juvenile Correctional Facility

POSITION: Juvenile Correctional Officer

RESULT: The grievance was denied.

REASONS: The Arbitrator overruled the timeliness issue raised by the union. Article 24.06 gives the employer the option to delay the decision to discipline and halt the

running of the forty-five days until after any criminal investigation. The evidence was clear that there was a fight and that the Grievant and several other JCO's were injured. However, the evidence was clear from witnesses that the Grievant hit and kicked the Youth once the Youth was on the ground. Considering the severity of the assault, the Arbitrator found the removal to be correct.

1021) Carolyn Abron 34-29-(08-09-17)-0253-01-09 Removal

ARBITRATOR: John J. Murphy

ISSUE: Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24

TOPICAL HEADINGS: Attendance, Failure of Good Behavior, Insubordination, Investigatory Interview, Mitigation

AGENCY: Bureau of Workers' Compensation

OFFICE/SITE: Toledo Service Office

POSITION: Clerk 3

RESULT: The grievance was denied.

REASONS: The Arbitrator held that the Bureau had just cause to discipline the Grievant for a willful failure to carry out a direct order and for her failure to produce a Physician's Verification for an absence. This also constituted an unexcused absence for the same date. The Bureau also had just cause to discipline the Grievant for the improper call-off on a later day. The Grievant's refusal to answer any questions in both investigatory interviews constituted separate violations of the fourth form of insubordination, in that the Grievant failed to cooperate with an official investigation. The Arbitrator held that the record did not support the mitigating factor that the Grievant's work was placed under "microscopic" review. Nor did the record provide substantial information that the supervisors were universally committed to finding any violations of work rules by the Grievant.

1022) Brandon Doss 35-20-(08-09-24)-0038-01-03 Removal

ARBITRATOR: Craig Allen

ISSUE: The Grievant was charged with violating Work Rule 3.6 –Failure to follow work assignment; Rule 5.11-Failure to immediately report and/or investigate a violation of any departmental work rule, policy, or procedure; and Rule 5.12-Actions that could harm or potentially harm an employee, youth, or a member of the general public. Was the discipline for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24

TOPIC HEADINGS: Failure To Protect A Youth, Just Cause, Lack Of training, Removal

AGENCY: Department of Youth Services

SITE/OFFICE: Ohio River Valley Juvenile Correctional Facility

POSITION: Unit Manager

RESULT: The grievance was granted. The Grievant was reinstated to his post and to be made whole.

REASON: The employer removed the Grievant contending that he failed to protect a Youth; that he placed the Youth on restriction for seven to ten days without a Supervisor's approval in order to conceal the Youth's injuries; and that he failed to report Child Abuse. The Arbitrator held that the discipline imposed was without just cause. The Arbitrator found no evidence that the Grievant failed to protect the Youth. The evidence did not support the contention that the Grievant failed to see that the Youth got medical attention. The Arbitrator opined that "for the employer to assert that the Grievant should have substituted his judgment for that of the medical staff on this set of facts is unrealistic." The Arbitrator also found that there was clear evidence that Unit Managers receive no training and there is no written policy on restrictions. The Arbitrator found there was no evidence that the Grievant failed to cooperate or to file other reports as required to report Child Abuse. Management was aware of the incident. If the employer wanted the Grievant to complete a specific form, per its own policy, it should have given the Grievant the form.

1023) Eric Avery 35-20-(08-09-24)-0039-01-03 Removal

ARBITRATOR: Craig Allen

ISSUE: The Grievant was removed for the alleged violation of Rules 3.1-Dishonesty and Rule 4.12-Inappropriate or unwarranted use of force.

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

CONTRACT ARTICLES: 24.01

TOPIC HEADINGS: Dishonesty, Removal, Timeliness, Unwarranted Use of Force

AGENCY: Department of Youth Services

SITE/OFFICE: Ohio River Valley Juvenile Correction Center

POSITION: Juvenile Correction Officer

RESULT: The grievance was denied.

REASONS: The pre-disciplinary hearing was not conducted until three months after the investigation was concluded. However, the Arbitrator held that there was no evidence that the delay had an adverse impact on the union's case. The Arbitrator found the Grievant guilty of dishonesty. His incident report failed to mention his assault on the Youth or any allegations against another JCO. The Arbitrator found that it was clear the Grievant used inappropriate and unnecessary force on the Youth. The Grievant knew the difference between Active and Combative Resistance. The Youth's hands were underneath him and the other witnesses support the testimony of the JCO who said he

saw the Grievant hit the Youth six (6) to eight (8) times. The Arbitrator held that the discipline was commensurate with the offense and the Grievant was discharged for just cause.

1023) Eric Avery 35-20-(08-09-24)-0038-01-03 Removal

AGENCY: Department of Youth Services

SITE/OFFICE: Ohio River Valley Juvenile Correction Center

POSITION: Juvenile Correction Officer

RESULT: The grievance was denied.

REASONS: The Arbitrator found the Grievant guilty of dishonesty. His incident report failed to mention his assault on the Youth or any allegations against another JCO. The Arbitrator found that it was clear the Grievant used inappropriate and unnecessary force on the Youth. The Grievant knew the difference between Active and Combative Resistance. The Youth's hands were underneath him and the other witnesses support the testimony of the JCO who said he saw the Grievant hit the Youth six (6) to eight (8) times. The Arbitrator held that the discipline was commensurate with the offense and the Grievant was discharged for just cause.

1024) 25-11-(06-07-06)-0004-01-13 Issue

ARBITRATOR: Robert Brookins

ISSUE: The Agency posted a nonexempt Environmental Specialist 1 position. Subsequently, the Agency withdrew that posting and replaced it with a posting for an exempt Administrative Assistant 2 position. Did ODNR violate Articles 1.05, 17.03, and/or 17.05 of the Collective-bargaining Agreement? If so, what shall the remedy be?

CONTRACT ARTICLES: 1.05, 17.03

TOPIC HEADINGS: Constructive /Direct Erosion , Exempt Duties, "Hybrid" Positions, Nonexempt Duties, Screening "Hybrid" Positions

AGENCY: Department of Natural Resources

SITE/OFFICE: Division of Real Estate and Land Management

POSITION: Administrative Assistant 2/Environmental Specialist 1

RESULT: The grievance was denied.

REASONS: The issue was previously found arbitrable in Arbitration Decision 989. The Arbitrator held that the evidence did not demonstrate that the Agency possessed the intent to erode the bargaining unit. Nothing in the arbitral record suggested that the Agency exerted less than reasonable effort to preserve the bargaining unit. The Arbitrator also held that the record did not demonstrate that the Agency intended to withdraw the vacancy to circumvent the agreement. Constructive erosion occurs where a new position is erroneously labeled exempt when it should have been labeled nonexempt.

Constructive erosion restricts the future size of a bargaining unit; direct erosion reduces the present size of a bargaining unit. The Arbitrator used the label “hybrid” to explain the nature of the contested position, reflecting the presence of both exempt and nonexempt duties in one position. Furthermore, he posed that the fundamental issue of the grievance was: Whether the contested position was exempt or nonexempt? Consequently, the Arbitrator proposed a screening device for hybrid positions that might be useful in resolving subsequent classification disputes. This screening test puts the focus on essential duties (“Essence Test”): whether exempt or nonexempt duties are required in (essential to) daily job performance. A hybrid position is exempt if daily job performance entails exempt duties; a hybrid position is nonexempt if daily job performance necessitates nonexempt duties. The Arbitrator held that exempt duties do not somehow become nonexempt merely because bargaining-unit employees have performed them; nor do nonexempt duties become exempt because supervisors perform them. The Arbitrator’s application of the “Essence Test” indicated that the contested position was exempt. Although the duties were not fiduciary, many of the duties were central to managerial decision-making authority.

1025) Buddy Tatum 27-27-(08-03-06)-0010-01-03 Removal

ARBITRATOR: David Pincus

ISSUE: The Grievant was removed for the alleged violation of Rule 39-Any act that would bring discredit to the Employer; and Rule 37-Action that could compromise or impair the ability of an employee to effectively carry out his/her duties as a public employee. Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02

TOPIC HEADINGS: Just Cause, Nexus For Off-duty Misconduct, Progressive Discipline, Removal

AGENCY: Department of Rehabilitation and Corrections

SITE/OFFICE: Trumbull Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was denied.

REASONS: While on a hunting trip and staying in Mt. Vernon, the Grievant was arrested for operating a vehicle while impaired. The Grievant became very belligerent and verbally abusive. A newspaper report regarding the incident was later published in Mt. Vernon. The Arbitrator held that the Employer had just cause to remove the Grievant. The Arbitrator was unwilling to give the Grievant a chance to establish that he was rehabilitated. Some actions or misconduct are so egregious that they amount to *malum in se* acts--acts which any reasonable person should know, if engaged in, will result in termination for a first offense. Progressive discipline principles do not apply in these situations and should not be expected. The Employer established a nexus for the

off-duty misconduct. The Grievant's behavior harmed the reputation of the Employer. It would be difficult or impossible to supervise inmates who may find out about the charges and their circumstances. This would potentially place other officers in jeopardy; an outcome the Arbitrator was unwilling to risk.

1026) Donald Richards 35-20-(08-09-24)-0040-01-03

ARBITRATOR: Craig Allen

ISSUE: The Grievant was removed for the alleged violation of General Work Rule 3.1-Dishonesty and Rule 4.12-Inappropriate or unwarranted use of force. Was the discipline for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01

TOPIC HEADINGS: Dishonesty, Just Cause, Removal, Unwarranted Use of Force

AGENCY: Department of Youth Services

SITE/OFFICE: Ohio River Valley Juvenile Correctional Facility

POSITION: Juvenile Correction Officer

RESULT: The grievance was denied.

REASONS: The grievance involved two separate incidents. The Arbitrator found that the evidence was overwhelming that the Grievant used inappropriate and unwarranted force in both incidents. The Grievant was interviewed twice. The second time he changed his story and said it was the correct version. The Grievant also failed to file correct reports for one of the incidents. The Arbitrator held that the discipline was commensurate with the offense and consistent with ODYS's work rules and past practice.

1027) Edwin Togba 24-6-(04-28-08)-0015-01-04 Removal

ARBITRATOR: David Pincus

ISSUE: Did the Grievant commit an act of abuse, which resulted in the removal from his position as a Therapeutic Program Worker? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01

TOPIC HEADINGS: Abuse, Arbitrator's Authority, Removal, Self-Inflicted Injuries
Defense

AGENCY: Mental Retardation and Developmental Disabilities

SITE/OFFICE: Columbus Developmental Center

POSITION: Therapeutic Program Worker

RESULT: The grievance was denied.

REASONS: The Arbitrator held that the Employer properly terminated the Grievant for abuse. Section 24.01 limits the scope of an arbitrator's authority when dealing with abuse cases. The threshold issue becomes a factual determination of whether abuse can be supported by the record. The record here supported three abuse incidents. Any one of

these events in isolation could have led to proper termination; therefore the Employer was able to establish sufficient proof that abuse took place. The Grievant's inconsistent observations of the incidents led to a lack of credibility. The Arbitrator held that the self-inflicted injuries defense was not adequately supported. The Arbitrator found that the Grievant did not initiate a time out by removing the resident to "a separate non-reinforcing room" because no evidence helped to distinguish or equate the resident's bedroom from a "non-reinforcing room."

1028) Robin Schipp 24-01-(08-06-26)-0003-01-09 Removal

ARBITRATOR: Dwight Washington

ISSUE: The Grievant was removed for alleged theft. Was the discipline imposed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01

TOPIC HEADINGS: Just Cause, Lax/Inconsistent Enforcement of Rules, Mitigating Factors, Removal, Theft

AGENCY: Mental Retardation and Developmental Disabilities

POSITION: Grants Coordinator II

RESULT: The grievance was upheld. The Grievant was reinstated with all back pay, seniority, and any other economic benefit.

REASONS: To establish theft, the evidence must show that the Grievant intended to deprive the agency of funds provided to employees to attend conferences. The funds were operated as a short-term loan. No written policy or consistent pattern was present regarding repayment by users. The arbitrator held that it was irrelevant how many days it took the Grievant to repay the fund since the Employer essentially allowed each user to determine the date of repayment. The Arbitrator found that several factors mitigated against removal: lax/inconsistent enforcement of rules/policies governing the fund undermines any contention that the Grievant was put on notice regarding the possible consequences of her actions; the Grievant's treatment of the fund were explicitly or implicitly condoned by her supervisor; and other similarly-situated users of the fund were treated differently from the Grievant. No theft of public funds was proven ; when put on notice by Management that immediate payment was required, the Grievant complied. The Arbitrator held there was no just cause for the discipline issued.

1029) Scott Leist 27-23-(08-08-26)-0049-01-03 Removal

ARBITRATOR: Craig Allen

ISSUE: The Grievant was charged with violating Rule 40-Use of excessive force toward any individual under the supervision of the Department or a member of the general

public, and Rule 24—Lying. Was the Grievant removed from his position for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01

TOPICAL HEADINGS: Procedural Objections; Removal; Use of Excessive Force

AGENCY: Department of Rehabilitation and Corrections

SITE/OFFICE: Ross Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was granted in its entirety. The Grievant was reinstated to his post, shift, and days off; made whole; and the discipline was removed from his record.

REASONS: The Arbitrator ruled that the failure of the Employer to grant a one week continuance of the Pre-Disciplinary hearing was moot. The Arbitrator overruled the procedural objections. There was no evidence that the material requested—but not provided--was relied upon. The Arbitrator did not find the Grievant untruthful. The Investigator said the inmate made no specific allegations against the Grievant and the video showed no contact. No officer saw the Grievant hit the inmate. The Employer's conclusion is not supported by any evidence. The Arbitrator held that the discipline was not for just cause.

1030) James Franklin 09-00-(08-08-20)-0409-01-14 Removal

ARBITRATOR: David Pincus

ISSUE: The Grievant was charged with a violation of Work Rule 1b-Neglect of Duty, Minor-Poor/Substandard Work Performance. Was the discipline for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02

TOPIC HEADINGS: EAP, Progressive Discipline, Removal, Work Performance

AGENCY: Department of Development

POSITION: Internal Auditor 2

SITE/AGENCY:

RESULT: The grievance was denied.

REASONS: The Arbitrator held that the Employer had just cause to terminate the Grievant. The Grievant's disciplinary record exhibited several progressive attempts to modify his behavior, with the hope that progressive penalties for the same offense might lead to positive performance outcomes. As such, the Grievant was placed on clear notice that continued identical misconduct would lead to removal. The Arbitrator also held that the record did not reflect any attempt to initiate having the Grievant enroll in an EAP program within five days of the pre-disciplinary meeting or prior to the imposition of discipline, whichever is later. This barred any attempts at mitigation.

**1031) 33-00-(08-06-03)-0033-01-05 Tenequa
Phillips Removal**

ARBITRATOR: Marvin J. Feldman

ISSUE: Did the Grievant violate a Last Chance Agreement when she violated Corrective Action Standard A-05-AWOL-no approved request for leave.

CONTRACT ARTICLES: 24.01, 24.02

TOPIC HEADINGS: AWOL, Last Chance Agreement; Removal

AGENCY: Ohio Veteran's Home

POSITION: Dietary

SITE/OFFICE: Sandusky

RESULT: The grievance was denied.

REASONS: The Grievant had entered into a Last Chance Agreement with the agency. She then violated the Corrective Action Standard, AWOL—No approved request for leave. The Arbitrator held that the Last Chance Agreement was fair, just, and reasonable. The Grievant was knowledgeable of the corrective action standard and there was no evidence showing that those corrective action standards were not published or selectively used rather than even-handedly applied. The Arbitrator found that the Grievant's excuse for the absence lacked corroboration in any manner or respect. The Arbitrator reminded the parties that if a termination is based upon a Last Chance Agreement the just cause provisions may not apply, but rather the application is under the Last Chance Agreement.

1032) Franklin Kulp 35-04-(08-22-08)- 04601-03 Removal

ARBITRATOR: Meeta Bass Lyons

ISSUE: The grievant was charged with violating Rules 4.12-Inappropriate or unwarranted use of force, and Rule 5.1—Failure to follow policies and procedures. Was the grievant removed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02, 24.06

TOPIC HEADINGS: Combative Resistance, Emergency Defense, Just Cause, Notice, Removal

AGENCY: Department of Youth Services

SITE/OFFICE: Indian River Juvenile Correction Facility

POSITION: Juvenile Correction Officer

RESULT: The grievance was sustained.

REASONS: The Arbitrator found that the Grievant was removed without just cause. Management did not satisfy its burden of proving that he acted outside the Response to Resistance Continuum and engaged in the conduct for which he was removed. The Youth's level of resistance was identified as combative resistance. The Grievant's response was an emergency defense, which he had utilized one week earlier with the

same Youth and without disciplinary action by Management. A fundamental element of just cause is notice. Management cannot discharge for a technique where no discipline was issued earlier. In addition there was no self-defense tactic taught for the situation the Grievant found himself in.

1033) Kim Penn 34-23-(08-09-22)-0255-01-09 Removal

ARBITRATOR: Anna DuVal Smith

ISSUE: The Grievant was removed for Sleeping in the Workplace. Did BWC possess just cause for removing the Grievant from her employment? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02

TOPIC HEADINGS: EAP, LCA, Notice, Progressive Discipline, Removal, Sleeping in the Workplace

AGENCY: Bureau of Worker's Compensation

SITE/OFFICE: Portsmouth, Ohio

POSITION: Clerk 3

RESULT: The grievance was denied.

REASONS: The Arbitrator held that BWC had just cause for removing the Grievant, since the Grievant was either unwilling or unable to conform to her employer's reasonable expectation that she be awake and alert while on duty. The agency and the Grievant had entered into a settlement agreement, wherein the Grievant agreed to participate in a 180-day EAP. However, the Arbitrator found that the sleeping while on duty was a chronic problem which neither discipline or the EAP had been able to correct. The Grievant raised the fact that she had a common aging problem with dry eyes and was taking a drug that made the condition worse. However, she never disclosed to the supervisor her need to medicate her eyes. The Arbitrator held that this defense amounted to post hoc rationalization and couldn't be credited. The Arbitrator felt that a person on a last-chance agreement for sleeping at work and who had been interviewed for an alleged sleeping infraction would take the precaution of either letting her supervisor know in advance about this treatment, take the treatment while on break and away from her work area, or get a witness.

1034) Angela King 35-07-(08-08-20)-0021-01-03 Removal

ARBITRATOR: Susan Grody Ruben

ISSUE: The Grievant was removed for the alleged violation of Rule 4.12-Inappropriate or unwarranted use of force and Rule 5.1-Failure to follow policies and procedures. Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 5, 24.01

TOPIC HEADINGS: Failure to follow policy and procedures, Removal, Unwarranted use of force

AGENCY: Department of Youth Services

SITE/OFFICE: Scioto Juvenile Correctional Facility

POSITION: Juvenile Correctional Officer

RESULT: The grievance was sustained in part and denied in part. The removal was reduced to a 10-day suspension.

REASONS: The Arbitrator found that the Grievant committed the alleged misconduct; therefore, the Employer had just cause to discipline her. However, there was not just cause to remove her. Considering all the circumstances, the Grievant had an isolated and momentary lapse in judgment. There was no physical harm or dire consequences from the momentary lapse. Recent arbitration awards between the Parties, uniformly reinstated--without back pay--employees involved in physical altercations more substantial than the Grievant's. (See Arbitration Decisions: 971, 995, 996.) The Grievant was reinstated without back pay, but with seniority restored.

1035) Dwight Bethel 27-03-(08-05-09)-0032-01-03 Issue

ARBITRATOR: Meeta Bass Lyons

ISSUE: Did the Employer violate Article 34.07 of the 2006-2009 Contract, when it denied paid administrative leave to the Grievant, (to attend), an Industrial Commission of Ohio hearing. If so, what shall the remedy be?

CONTRACT ARTICLE: 34.07

TOPIC HEADING: Administrative Leave

AGENCY: Department of Rehabilitation and Corrections

SITE/OFFICE: Chillicothe Correctional Facility

POSITION: Correction Officer

RESULT: The grievance was granted.

REASONS: The Arbitrator found that the language of Article 34.07 is clear and unambiguous. The language specifically allows a one-time payment for one hearing before the Industrial Commission. The Arbitrator held that since the Grievant was never paid administrative leave for any hearing before the Industrial Commission, the grievance was granted. The Grievant shall be credited for loss of vacation time, and be paid one day administrative leave, less appropriate deductions.

1036) OCSEA 02-10-(09-03-20)-0001-01-03 Issue

ARBITRATOR: Harry Graham

ISSUE: Did the Department of Rehabilitation and Correction violate the contract when it placed Position Specific Minimum Qualifications on the Account Clerk II classification utilized in payroll? If so, what shall the remedy be?

CONTRACT ARTICLE: 5, 17.04

TOPIC HEADINGS: Position Specific Minimum Qualifications

AGENCY: Department of Rehabilitation and Corrections

SITE/OFFICE: Statewide

POSITION: Account Clerk II

RESULT: The grievance was denied.

REASONS: The PSMQ at issue required Account Clerk 2's to have six months experience in Workforce Management Systems and in the PeopleSoft system. The Arbitrator held that the State acted properly per its authority under Article 5. It acted reasonably considering the specialized knowledge required to fill the positions involved in the issuance of the PSMQ. In addition, the Arbitrator found that there was no harm to the bargaining unit. There were no bargaining unit positions lost as a result of this action.

1037) Robyn Dennis 24-09-(08-16-09)-0036-

01-04 Removal

ARBITRATOR: Meeta Bass Lyons

ISSUE: The Grievant was charged with Neglect. Was the Grievant removed for Just Cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02, 24.06

TOPIC HEADINGS: Disparate Treatment, Neglect, Removal, Sleeping on Duty

AGENCY: Mental Retardation and Developmental Disabilities

SITE/OFFICE: Mount Vernon Developmental Center

POSITION: Therapeutic Program Worker

RESULT: The grievance was sustained in part and denied in part. The removal was modified to a five-day suspension. The Grievant was granted full back pay and benefits less the five-day suspension.

REASONS: The Arbitrator found that Management satisfied its burden of proving that the Grievant failed to maintain the close supervision for one patient and one-on-one supervision for another patient. The Grievant chose to work without adequate sleep, rather than to seek leave, and her choice placed the residents in her supervision, and the Center at risk. However, Management had created an arbitrary distinction in supervision cases arising from sleeping on duty. The Union established that other similarly situated employees received suspensions and/or other disciplinary action far short of removal for

similar conduct. Therefore, the Arbitrator held that discipline was warranted, but the removal was without just cause.

1038) 35-01-(07-11-28)-0076-01-03 Tanya Davis-Prysock Issue

ARBITRATOR: Susan Grody Ruben

ISSUE: Was the grievance timely? If the grievance was timely, did the Employer violate Article 1.05 when it assigned Criminal Justice Policy Specialist duties to non-bargaining unit employees? If so, what is the appropriate remedy?

CONTRACT ARTICLES: 1.05

TOPIC HEADINGS: Arbitrability, Notice

AGENCY: Department of Youth Services

POSITION: Criminal Justice Policy Specialist

RESULT: The grievance was denied on the basis it was not arbitrable, because it was not timely filed.

REASONS: A Criminal Justice Policy Specialist (CJPS) bargaining unit position was eliminated on December 13, 2006. A grievance was filed on November 28, 2007. The Union argued that they were led to believe the DMC bargaining unit work had been distributed to other bargaining unit employees and that the occurrences giving rise to the grievance still existed today as they did in 2006. The Arbitrator held that the Union knew or should have known as of December 13, 2006 that the CJPS position had been eliminated, thereby putting the Union on notice of that position's duties being distributed to other employees. The Arbitrator held that the record established that the grievance was not filed pursuant to Article 25.02 (Step One); therefore, she was without authority to hear the merits of the grievance.

1039) Wesley Hawthorne 35-20-(08-11-24)-0049-01-03 Removal

ARBITRATOR: Craig Allen

ISSUE: The Grievant was removed for the alleged violations of dishonesty and actions that could cause harm to a Youth. Was the discipline for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01

TOPIC HEADINGS: "Culture" in a Facility, Dishonesty, Removal,

AGENCY: Department of Youth Services

POSITION: Juvenile Correctional Officer

SITE/OFFICE: Ohio River Valley Juvenile Correction Facility

RESULT: The grievance was sustained. The Grievant's pay, vacation, leave, benefits, and seniority were restored.

REASONS: The Grievant was involved in an incident in which a Youth was injured during a restraint. The Employer asserted that the report written by the Grievant was worthless and inaccurate. The entire thrust of the Employer's argument was based upon proximity and the "culture" at the Facility. The mere fact of proximity does not mean you saw or heard something. This is particularly true if you are engaged in trying to restrain someone. The Employer has no direct evidence that the Grievant saw anything. The Employer contended that the Grievant should have protected the Youth; however, the Arbitrator found that the Employer had no evidence as to how this should have been done. In most arbitrations, the Employer offers evidence as to what the Grievant should have done.

The Grievant was not placed on Administrative Leave, nor was he placed in a "No Youth Contact" status. It is a direct contradiction to claim the Grievant was guilty of such severe rule infractions that he should be removed and then to have ignored him for ninety (90) days. The Arbitrator also found no evidence to support the Employer's contention that there is a "culture" at the Facility that causes cover up.

**1040) Sonja Armistead 07-00-(08-11-10)-
0568-01-14 Removal**

ARBITRATOR: Nels Nelson

ISSUE: Was the Grievant removed for just cause for violation of agency policy, specifically Policy 201.2#1-Leaving the work area without authorization or extending a paid break without authorization, and Policy Rule 201.1 #6-Dishonesty--Providing false information in an investigation? If not, what shall the remedy be?

CONTRACT ARTICLES: 2.02, 24.01, 24.02, 24.06

TOPIC HEADINGS: Dishonesty, Progressive Discipline, Removal

AGENCY: Department of Commerce

POSITION: Administrative Assistant 1

SITE/OFFICE: Bureau of Building Code Compliance

RESULT: The grievance was denied.

REASONS: The Arbitrator held that despite the Grievant's 19 ½ years of service, her extension of her break, and more importantly, her dishonesty in the subsequent investigation, following closely her ten-day suspension for insubordination, gave her no alternative, but to deny the grievance and uphold the removal. The Arbitrator rejected the argument that the removal was inconsistent with progressive discipline because dishonesty and insubordination are different offenses. The Arbitrator found this contention contrary to the accepted view of Arbitrators regarding progressive discipline. Also, the agency policy stated that "discipline does not have to be for like offenses to be progressive."

1041) Corey Dorsey 35-07-(08-10-20)-0019-01-03 Removal

ARBITRATOR: Nels Nelson

ISSUE: The Grievant was charged with violating Rule 4.12-Inappropriate or unwarranted use of force, Rule 5.1-Failure to follow policy and procedure, and Rule 5.2-Action that could harm or potentially harm an employee, youth, or a member of the general public. Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLE: 24.01, 24.02, 24.05

TOPICAL HEADINGS: Mitigation, Progressive Discipline, Provocation, Removal, Unwarranted Use of Force

AGENCY: Department of Youth Services

SITE/OFFICE: Scioto Juvenile Correction Facility

POSITION: Juvenile Correctional Officer

RESULT: The grievance was denied.

REASONS: The Arbitrator found that the state had just cause to remove the Grievant. The Grievant punched the Youth in the head while he was being restrained. At that time, the Youth was no threat to staff or himself. Subsequently, the Grievant challenged the Youth to fight. This behavior was contrary to the Grievant's responsibility to de-escalate a situation and could have led to a situation which would have been hazardous for staff and youth. The Grievant persisted in his attempt to retaliate against the Youth. The Grievant had been spit on and punched in the head by the Youth. The Arbitrator held that, while this constitutes provocation, a JCO is apt to be subject to provocation from time to time and cannot respond to it by punching a youth in the head and challenging him to a fight. The Arbitrator held that the state did not violate progressive discipline requirements. The Grievant committed serious misconduct where it is not necessary to employ progressively harsher penalties. In addition, the Grievant had only two and one-half years of service. If he had a longer record of service demonstrating his ability to handle provocation in a proper manner, it would have been easier to conclude that the Grievant simply had a bad day and acted out of character.

1042) M. Jill Tummler-MacKenzie 17-15-(08-01-03)-0003-01-09 Issue

ARIBITRATOR: David Pincus

ISSUE: Did the Industrial Commission of Ohio violate the contract when it denied the Grievant's request to change her scheduled work hours? If so, what shall the remedy be?

CONTRACT ARTICLES: 5, 44.03

TOPIC HEADINGS: Discrimination, Disparate Treatment, Harassment, Retaliation, Anti-Union Animus, Work Schedule

AGENCY: Industrial Commission

SITE/OFFICE: Cincinnati Regional Office

POSITION: Claims Examiner 3

RESULT: The grievance was denied.

REASONS: The Grievant worked in the Hearing Administration section with a start time of 7:00 a.m. She was given a desk transfer to the Claims Examiner Section with a start time of either 7:30 a.m. or 8:00 a.m. The Grievant chose the 7:30 start time, but later requested that she be allowed to change her schedule to a 7:00 a.m. start time. The supervisor denied her change. The Arbitrator held that since the desk transfer was not challenged, claims relating to anti-union animus, discrimination, and/or harassment were virtually impossible to support. The desk transfer appeared justified as a means of alleviating future problems between the Grievant and her previous supervisor in the Hearing Administration Section. The Arbitrator found that the Grievant's previous schedule was properly discontinued, since the Employer has the right to schedule an employee's starting time. The Arbitrator held that the Grievant has not been treated differently than any other similarly situated employee supervised by the Grievant's current supervisor. The Hours of Work policy provides for the staggered hour schedule requested. No employee in the Claims Examiner Section works the option requested by the Grievant. The business justification provided by the Employer was in line with the policy.

1043) Reva Puckett 27-11-(08-12-26)-0151-01-03 Removal

ARBITRATOR: Meeta Bass Lyons

ISSUE: Did the employer appropriately terminate the grievant for violation of her last chance agreement? If not, did the employer have just cause to remove the grievant? If not, what shall the remedy be?

CONTRACT ARTICLES:

TOPIC HEADINGS: Last Chance Agreement, Removal

AGENCY: Department of Rehabilitation and Corrections

SITE/OFFICE: Lebanon Correctional Institution

POSITION: Corrections Officer

RESULT: The grievance was denied.

REASONS: The Arbitrator found that the Grievant violated work rule 7 when she conducted pat-down searches while seated; therefore she was appropriately removed for violation of her last chance agreement. The Grievant had been cautioned and reminded about proper procedure by her supervisor, but chose to return to her relaxed practice. Because the post assignment was located in the infirmary, her relaxed practice of performing searches while seated could endanger the public, fellow correctional officers, and inmates by failing to detect hidden tools that could be crafted by inmates into

weapons. The infirmary also stores medication, and if undetected, can become contraband. The Union argued that pat-down searches while seated are often conducted in the infirmary and employees are not disciplined; however, the witness could not recall any incident where pat-down searches conducted while seated were observed by or reported to Management. Management cannot be held accountable for violations of which they have no knowledge.

1044) Kim Miller 35-24-(09-02-03)-0003-01-03 Removal

ARBITRATOR: Susan Grody Ruben

ISSUE: Was the grievance timely filed pursuant to Article 25.02?

CONTRACT ARTICLE: 25.02

TOPIC HEADINGS: Arbitrability, Removal, Filing Timelines

AGENCY: Department of Youth Services

SITE/OFFICE: Marion Juvenile Correction Facility

POSITION: Juvenile Correction Officer

RESULT: The grievance was denied.

REASONS: The Arbitrator found that the grievance was untimely filed and thus not arbitrable. The Grievant was served with removal paperwork. However, the grievance was filed eleven (11) days past the negotiated deadline. The Arbitrator acknowledged that the agency had announced the closure of Marion Juvenile Correction Facility, which understandably resulted in much union activity during this period. However, prior arbitration awards between the parties, establish that the Article 25.02 timelines are strictly construed.

1045) Patricia Schulte-Singleton 30-04-(08-02-11)-0011-01-04 Issue

ARBITRATOR: Susan Grody Ruben

ISSUE: Is the Employer violating Article 11.08 by not scheduling at least 15 minutes of non-VDT work every 2 hours for the Tax Commissioner Agents? If so, what is the appropriate remedy?

CONTRACT ARTICLES: 11.08

TOPICAL HEADINGS: "Objective Theory" of Contract Interpretation, Video Display Terminal

AGENCY: Department of Taxation

SITE/OFFICE: Statewide

POSITION: Service Center Tax

Commissioner Agent

RESULT: The grievance was denied.

REASONS: Article 11.08 was negotiated into the Agreement in 1986. There have been no changes to the language; nor any evidence of bargaining on this subject since then. The Arbitrator framed the issue as this question: Does the Employer's 2004 switch to LCD monitors make Article 11.08 inapplicable to the grievances? The Arbitrator held that the Parties could not have contemplated the use of LCD technology at the time of contract formation in 1986. Therefore, the Arbitrator used the "objective theory" of interpretation which is rooted in common sense policy that contract interpretation ought to be based on objectively verifiable information. The objective evidence in the record does not establish TCA's work on a VDT as that term was understood by the Parties in 1986. The Employer provided evidence, which the Union was unable to rebut, that established the VDT's the TCA's use currently are more technologically advanced than the CRT VDT's used in 1986; and that these advancements in VDT technology have a direct correlation to an individual's ability to use a VDT for an extended period of time. This constitutes a materially-changed condition that goes to the heart of Article 11.08.

1046) Stephen Layne 35-20-(09-02-23)-0014-01-03 Removal

ARBITRATOR: Craig Allen

ISSUE: The Grievant was removed for alleged violations of Work Rule 4.12-Inappropriate or unwarranted use of force and 5.12-Failure to follow policies and procedures. Was the discipline for just cause? If not, what shall the remedy be?

ARTICLES: 24.01, 24.02

TOPIC HEADINGS: Removal, Timeliness, Unwarranted Use of Force

AGENCY: Department of Youth Services

SITE/OFFICE: Ohio River Valley Juvenile Correction Facility

POSITION: Juvenile Correction Officer

RESULT: The grievance from the incident in July, 2008 was denied. The charges related to the May, 2007 incident were dismissed.

REASONS: The Grievant was removed as a result of charges related to two separate events. The first incident occurred in May, 2007; the second incident occurred in July, 2008. The first incident was investigated by the Ohio State Patrol; however, the Grievant was not charged with any criminal offense. The Pre-Disciplinary was not issued until December, 2008-- 558 days later. The Arbitrator ruled that delay hinders the presentation of the case because witnesses cannot recall the details of the incident or witnesses are unavailable. The Arbitrator found the delay unreasonable; therefore, the charges related to the May, 2007 incident were dismissed. However, the Arbitrator held that the direct evidence from the July, 2008 incident demonstrated that the Grievant used inappropriate or unwarranted force on a Youth. The grievance was, therefore, denied.

**1047A) Lucille Micatrotto 31-13-(08-07-28)-
0022-01-09 / 31-13-(09-03-31)-0006-
01-09 Arbitrability**

ARBITRATOR: Craig Allen

ISSUE: Were the grievances arbitrable under the 2006-2009 Collective Bargaining Agreement?

CONTRACT ARTICLES: 18.12, 3.08

TOPIC HEADINGS: Arbitrability, Letter of Agreement, Notice

AGENCY: Department of Transportation

SITE/OFFICE: District

POSITION: Training Officer

RESULT: Both grievances are arbitrable under the 2006-2009 CBA.

REASONS: The Grievant had been laid off from her position as Training Officer, placed in the position of Account Clerk 1, and placed on a recall list. The Employer posted a vacancy for Training Officer on July 3, 2008, which included job duties of “driving equipment operation training--proficiently operates basic, standard, and complex equipment for demonstration.” Pursuant to Article 18.12 the Grievant submitted an application. The Employer notified the Grievant that she would be considered for the position and would be expected to demonstrate proficiency in the job duties in an assessment. The Grievant did not appear for the assessment and filed a grievance on July 31, 2008. The vacancy was not filled; however, on September 30, 2008 the same vacancy was posted again. The second posting clarified that the applicants had to show proficiency in the operation of equipment with an assessment. The Grievant again applied for the position and again did not appear for the assessment, claiming she was entitled to the position under Article 18.12. The Employer filled the position on January 4, 2009. On March 31, 2009 the Grievant filed her second grievance, which was denied on the basis that it was (1) untimely, (2) that the Grievant had withdrawn from the process, and (3) on the merits of the contractual language. The Arbitrator held that there is no dispute that the Grievant was covered under Article 18.12. Article 18.12 specifically says applicants under Article 18.12 must be “sorted and considered” before other Article 17 applications. The Arbitrator found the first grievance was timely filed. The Arbitrator held that the Letter of Agreement entered into on August 20, 2007 between the Union and the Employer modified Article 3.08 as to how Notice would be sent to the Union. The monthly computer transmission would only pertain to non-bargaining unit employees. Since the Grievant is a bargaining unit member, the Employer should have notified the Union and the Grievant that the position was filled. The Arbitrator found that Notice to the Union was not made until March 16, 2009. Therefore, the second grievance was timely filed.

**1047B) Lucille Micatrotto 31-13-(07-28-08)-0022-01-09 and 31-13-(03-31-09)-0006-01-09
Issue**

ARBITRATOR: Craig Allen

ISSUE: Based upon the Grievant's application, does the Grievant meet the minimum qualifications for the position of Training Officer in the Equipment Training Program pursuant to 18.12 of the collective bargaining agreement?

CONTRACT ARTICLES: 18.12, 18.13, 17, 6.011(B)

TOPICAL HEADINGS: PSMQ's Minimum Acceptable Characteristics, Minimum Qualifications, Position Description

AGENCY: Ohio Department of Transportation

SITE/OFFICE: District 3—Ashland County

POSITION: Training Officer

RESULT: The grievance was denied.

REASONS: After a job abolishment as an ODOT Training Officer, the Grievant was placed on the layoff/recall list with bidding rights outside her geographic area. In July, 2008 ODOT management posted a Training Officer position in District 3, Ashland County. The Grievant submitted an application, but did not attend a scheduled assessment. The position was reposted with PSMQ's. Again, the Grievant applied, but did not attend a scheduled assessment. Eventually the position was awarded to another employee with less seniority as a promotion.

The Arbitrator held that the Grievant did not meet the minimum qualifications. The Grievant's application and the Position Description did not show she was qualified. The Position Description indicated that 75% of the job was related to the operation of heavy equipment. Article 18.12 included the position description as part of the criteria for meeting minimum qualifications. The qualifications in the position description at issue were different from the qualifications of the Grievant's previously held Training Officer positions. The qualifications for the position itself are in the Minimum Acceptable Characteristics. The Arbitrator agreed with the ruling Arbitrator Graham made in Mychkovsky (#529): "in determining whether or not a person is qualified, attention must be devoted to whether or not the senior employee possesses a background of education, experience, and adaptability as to give a neutral reviewer reasonable confidence that the senior bidder will be able to competently perform the requisite duties within a reasonable period of time." In this case the Grievant would not be able to efficiently or proficiently operate a piece of equipment to teach others. The Arbitrator held that the Union was correct that Article 18.12 does not require assessment/testing and that Article 18.12 precludes the use of Article 17. In addition, the Arbitrator reviewed the application of the successful applicant and found him qualified for the position.

1048) Ralph Baker 12-00-(08-04-02)-0097-01-

13 Issue

ARBITRATOR: David Pincus

ISSUE: Were the Grievant's contractual rights violated in the EPA's selection of the Environmental Specialist 3 position, PLN 20043329?

CONTRACT ARTICLES: 17.05, 17.06

TOPIC HEADINGS: Assessments, Non-selection, Promotion, State Seniority

AGENCY: Environmental Protection Agency

SITE/OFFICE: Division of Drinking and Ground Water

POSITION: Environmental Specialist 3

RESULT: The grievance was denied.

REASONS: The Grievant was one of five bargaining unit employees who applied and were interviewed for the posted position. The Grievant was ranked in fourth place. The Grievant had 21 years of service; the selected applicant had seven years. The Arbitrator held that the Employer did not violate the Grievant's contractual rights when it selected an applicant with lower seniority to fill the vacant position. Testing outcomes clearly established a substantial difference which precluded the use of State Seniority as the determining factor. The Grievant challenged 15 questions; however, he was unable to support any of his challenges. The Arbitrator found that an analysis of the challenged questions established a clear pattern of superficial responses which lacked detail. The Grievant's problems were not the result of question vagueness or subjectivity in scoring. Rather, they were a consequence of an unresponsive interviewing style. The Arbitrator found that the Employer's scores were an accurate and unprejudiced depiction of the Grievant's responses. The grievance was denied.

1049) Robert Young 27-04-(08-11-25)-0166-01-03 Issue

ARBITRATOR: David Pincus

ISSUE: Whether the Grievant was removed from 8 West Doan, a post located at the Ohio State University Medical Center, in violation of the Contract? If so, what shall the remedy be?

CONTRACT ARTICLE: Appendix Q (B)(6), 25.03

TOPIC HEADINGS: Arbitrator's Authority, Pick-a-Post, Third Party Contract

AGENCY: Department of Rehabilitation and Corrections

SITE/OFFICE: Medical Services Center/OSU Medical Center

POSITION: Corrections Officer/Ward Officer

RESULT: The grievance was upheld. The Grievant shall be returned to his assigned post of Ohio State University "Ward Officer" within one (1) month of the opinion (12-18-09).

REASONS: The Grievant had been assigned to the position of Ward Officer, accompanying inmates to the Ohio State University Medical Center. Medical treatment is provided to inmates under a Medical Services Agreement between DRC and OSU. The DRC Medical Services Center Administrator was sent a letter telling him that OSU did not want the Grievant to work there due to personnel issues. The Grievant had bid on and received the post under a Pick-a-Post agreement. The DRC Administrator was concerned that the reciprocal agreement in the Medical Services Agreement could be jeopardized if he failed to remove the Grievant from his bid post “for good management reason.” The Arbitrator held that the Employer abused its discretion when the Administrator substituted contractually justified discretionary authority with a “third party contractual veil.” This contract between DRC and OSU Medical Center precluded any Union involvement, even though its terms and conditions potentially impacted bargaining unit members’ Pick-a-Post rights. The parties, moreover, never intended a third party contract to serve as “a good management reason.” An interpretation of this sort would place all of the discretion in the hands of Ohio State and eliminate a critical management right, while limiting the Union’s ability to protect members’ interests. A ruling in the Employer’s favor would be outside the scope of the Arbitrator’s authority, and would violate Section 25.03 by adding to or modifying the terms of the Collective Bargaining Agreement.

1050) Ruby Toran 30-04-(08-07-18)-0046-01-09 Issue

ARBITRATOR: Meeta Bass Lyons

ISSUE: Is the case properly before the Arbitrator? If so, did Management violate Article 44.04 of the Collective Bargaining Agreement? If so, what shall the remedy be?

CONTRACT ARTICLE: 25.01, 25.03, 44.04

TOPIC HEADINGS: Arbitrability, Conflict of Interest and Outside Activity Policy

AGENCY: Department of Taxation

SITE/OFFICE: Columbus

RESULT: The grievance is not arbitrable.

REASONS: The Grievant had applied for a TCA position. During the application process, she discussed with Human Resources if her volunteer work as the financial manager for her church would help her meet the minimum qualifications for the position. Human Resources requested the Grievant to provide a complete description of the volunteer duties to determine if there were any conflicts with her work per the agency’s Conflict of Interest & Outside Activity Policy. A cease and desist order was issued as to those activities which created a conflict or potential conflict with her employment. Specifically, the Grievant was not permitted to perform bookkeeping responsibilities for her church. In accordance with Article 44.04 a departmental policy must not violate the Agreement, must be reasonable, and the Union must be provided the opportunity to

discuss the policy prior to implementation. The Arbitrator held that the factual statement of the grievance did not support a violation of the Agreement, and that it failed to state a claim for relief for violation of Article 44.04.

Furthermore, the Arbitrator held that since the goals of Management in establishing a conflict of interest policy was to comply with statute, promote sound business principles, and further the public good, the policy was reasonable. The Arbitrator held that the Grievant was seeking a decision by an Arbitrator to review the business decision of Management denying her volunteer church work. The Arbitrator has no authority to make such a determination pursuant to Article 25.03 of the CBA. Unless the Agreement provides for a grievance procedure on the application of work rules outside the disciplinary process the grievance is not valid. Therefore, the Arbitrator held that the grievance was not arbitrable.

1051) Michael Fahle 34-090414-0032-01-09 Removal

ARBITRATOR: Meeta Bass Lyons

ISSUE: The Grievant was charged with the violation of work rule: Insubordination (b) Failure of Good Behavior (k) Violation of BWC/IC Code of Ethics: Dishonesty (a) Theft of state property, state time, public property or property of another employee; (f) Willful falsification of an official documentation; Memo 4.26-and Telephone Policy; and Memo 4.30 Teleworking Policy. Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02, 24.04, 24.05

TOPIC HEADINGS: Failure of Good Behavior, Falsification of Records, Investigatory Interview, Removal, Telephone Policy, Tele-working Policy, Theft of State Time

AGENCY: Bureau of Workers Compensation

SITE/OFFICE: Toledo Service Office

POSITON: Industrial Safety Consultant

RESULT: The grievance was denied.

REASONS: The Union objected to the use of some documents that had not been provided at the investigatory interview. The objection was denied because the due process rights of the Grievant had not been violated. The Grievant used his state cell phone to make personal calls while in other states and after his scheduled work hours. The Grievant allowed his spouse to use his state issued cell phone for personal reasons. The Employer conducted surveillance of the Grievant's work site and discovered discrepancies in the reported on-site time and actual on-site time. The Arbitrator held that the Employer did not meet its burden of proof for dishonesty as related to the misuse of the cell phone. The Arbitrator found that the Grievant engaged in conduct, which constituted theft of state time, falsification of documents and failure of good behavior (ethics) as defined in the agency policy. The Grievant had notice of the policies. The

Grievant did not establish a past practice of shifting time—the practice had not existed under the present supervisor. The Arbitrator held there was a reasonable relationship between the Grievant’s misconduct and the punishment imposed. The seriousness of the offense overshadowed his work record and tenure.

1052) Susan McQuiston 30-04-(08-07-18)- 0046-01-09 Issue

ARBITRATOR: David Pincus

ISSUE: Is a reasonable accommodation claim under Section 2.01 cognizable under the arbitration procedure of the collective bargaining agreement?

CONTRACT ARTICLES: 2.01, 5, 25.01, 25.03

TOPIC HEADINGS: Arbitrability(Substantive) , Bifurcation, Reasonable Accommodation,

AGENCY: Department of Taxation

SITE/OFFICE: Northland

POSITION: Clerk 2

RESULT: The grievance was denied

REASONS: The Grievant had given her supervisor a letter from her doctor that maintained she should not be assigned to an industrial extraction machine and suggested a number of accommodations, but all were refused. Subsequently, the Grievant experienced an anxiety attack while undergoing training on the machine. The Arbitrator held that a reasonable accommodation claim under Section 2.01 is not cognizable under the arbitration procedure of the CBA; therefore, the grievance lacked standing because of the substantive arbitrability deficiencies. By agreeing to the phrase “may undertake reasonable accommodation to fulfill or ensure compliance ...,” the Union has given the Employer certain unrestricted rights regarding these types of claims. The language is clearly permissive and if enacted precludes an arbitrator’s analysis. An alternative finding would exceed the scope of the Arbitrator’s authority as specified in Section 25.03. It would result in modification of Section 2.01 intended by the parties. A memo will follow to explain the ramifications of this decision.

1053) Dayna Newton 27-35-(09-06-26)-0113-01-03 Removal

ARBITRATOR: Meeta Bass Lyons

ISSUE: The Grievant was charged with violation of Rule 37 and Rule 49 of the Employee Standards of Conduct. Rule 37 prohibits an employee from engaging in actions that could compromise or impair the ability of an employee to effectively carry out his/her duties as a public employee. Rule 49 prohibits an employee from engaging in immoral conduct ...neglect of duty...or any failure of good behavior. Was the Grievant

removed from her position of Correction Officer for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01

TOPIC HEADINGS: Consensual Sex Act, Polygraph as Evidence, Quantum of Proof, Removal

AGENCY: Department of Rehabilitation and Correction

SITE/OFFICE: Toledo Correctional Institution

POSITION: Corrections Officer

RESULT: The grievance was denied.

REASONS: The Arbitrator held that the Employer met the burden of persuading her, by clear and convincing evidence, that the Grievant violated both work rules and therefore, the discharge was for just cause. The Arbitrator held that the removal was not so excessive as punishment as to be unreasonable. The incident concerned the Grievant and a Sergeant involved in a sexual act. The Arbitrator found that the sexual act was a consensual act, rather than sexual battery. The Grievant admitted that she did not tell the Sergeant to stop, pull her hand away, or call for help. If she did not have fear of her safety, then it is inferred that no threats or coercion happened. The Sergeant was not the supervisor and had no authority over the Grievant. The Arbitrator found the record replete with examples where the Grievant's versions of the facts and incident had changed, adding and omitting relevant, material facts throughout the process. The Arbitrator held that in a labor arbitration where the decision involves whether the grievant was removed for just cause, the appropriate measure of proof is by clear and convincing evidence, not the highest degree of proof beyond a reasonable doubt.

1054) Laura Morris 24-01-(2009-07-22)-0007-01-09 Issue

ARBITRATOR: David Pincus

ISSUE: Were the disputed grievances properly before the Arbitrator? If not, what shall the remedy be? Was the State proper in the job abolishment of the MA position for the reason of efficiency? If not, what shall the remedy be?

CONTRACT ARTICLES: 18.01, 25.01, 25.02

TOPIC HEADINGS: Job Abolishment, Consolidation, Non-fatal Defect, Timeliness

AGENCY: Department of Developmental Disabilities

SITE/OFFICE: Columbus

POSITION: Management Analyst

RESULT: The merged grievances were arbitrable. The grievance was denied.

REASONS: The Arbitrator held that the grievances were timely and the matter was properly before the Arbitrator. The parties have mutually agreed that when layoff grievances are initiated, the triggering date for timeliness purposes becomes the date of notification, not necessarily the effective date of the administrative action. The Arbitrator

found that the Management Analyst position was properly abolished and done in accordance with Article 18. It is well-established that if an appointing authority's reorganization can operate more efficiently or economically by either not performing a given service or by legitimately coordinating the services of the abolished position with other positions in the organization, then the appointing authority may abolish the position. Consolidation takes place when job elements are assigned to others within the organization but the consolidated job elements do not represent a substantial percentage of the "new" position. A valid redistribution takes place when various aspects of the abolished position are distributed amongst other existing positions, to the extent that the abolished position becomes permanently deleted or eliminated. The rationale had one defect. It did not identify the OA3 job classification, but once the merger took place it was determined that the OA3 position was already completing one of the major duties of the MA position. The Arbitrator held that the defect was not fatal to the propriety of the rationale, since the Employer substantially complied with statutory requirements.

1055) Benny Wilmoth 35-04-(09-05-08)-0021-01-03 Removal

ARIBTRATOR: Craig Allen

ISSUE: The Grievant was alleged to have use inappropriate force on a Youth. Was the Grievant's termination for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01

TOPIC HEADINGS: Absence of Witness, Inappropriate Force, Removal, Reinstatement

AGENCY: Department of Youth Services

OFFICE/SITE: Indian River Juvenile Correction Facility

POSITION: Juvenile Corrections Officer

RESULT: The Grievance was granted. The Grievant will be reinstated.

REASONS: The Employer relied on video and medical evidence. The Youth did not appear as a witness, nor was a reason given for the Youth's absence. The Arbitrator held that the absence caused a major problem for the Employer. In addition, the Youth had failed to sign the YBIR or to sign a statement right after the incident. The video evidence was interpreted by an investigator and a training manager. However, the eyewitness testimony refuted their conclusions from the video evidence. The Investigator testified that all the witnesses interviewed did not see the Grievant put his hands on the Youth's head. One JCO said the Youth busted his lip when he fell to the floor. All JCO's interviewed said if they had seen anything out of line they would have stopped it and reported it. The medical evidence showed only that the Youth was injured, not how he was injured. The Arbitrator granted the grievance.

1056) Robert White 34-06-(09-0121)-0006-01-09 Issue

ARBITRATOR: Susan Grody Ruben

ISSUE: The Grievant allegedly violated Wok Rules for Insubordination: a) Willful disobedience/failure to carry out a direct order; and Dishonesty: f) Willful falsification of an official document. Did the Ohio Bureau of Worker's Compensation possess just cause to issue the Grievant a ten (10) day suspension? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02, 24.04,24.06, 24.07

TOPIC HEADINGS: Disciplinary Grid, Dishonesty—Timekeeping, Due Process—Purpose of Investigatory Interview, Insubordination, Investigatory Interview, Similarly-Situated Employees, Suspension

AGENCY: Bureau of Worker's Compensation

OFFICE/SITE: Columbus

POSITION: Claims Assistant

RESULT: The grievance was denied.

REASONS: The Arbitrator held that it was the Grievant's own dishonest conduct, coupled with his failure to cooperate in his investigatory interview, is completely responsible for his discipline. The Grievant's failure to fully answer questions—all of which were work-related on the subject of his timekeeping practices—constituted insubordination for which the Grievant had been warned at the beginning of the investigation.

Other employees often entered their time into the system on a non-contemporaneous basis and were not disciplined. Non-contemporaneous entries are not a disciplinary offense and were not the basis for the Grievant's suspension. The Grievant's numerous false entries betrayed his basic obligation to work the hours for which he was paid. Moreover, he betrayed the trust his supervisor put in her employees to be honest about their flex time.

The Union representative who was called to the Grievant's investigatory interview was not informed of the purpose of the interview. The Arbitrator held that the Employer has a contractual duty to respond to a Union Representative's questions about the purpose of an investigatory interview. Ignoring this contractual duty can be the basis of a due process violation and this duty must not be ignored if the Employer wishes for its disciplines to be upheld.

1057) Debbie Fore 24-11-20090506-0011-01-04 Removal

ARBITRATOR: David Pincus

ISSUE: The Grievant was absent without leave for 9.9 hours in a pay period. Did the Grievant violate her last chance agreement, which resulted in removal from her position as a Therapeutic Program Worker? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01

TOPIC HEADINGS: AWOL, FMLA, "In Lieu Of" Sick Leave Policy, Last Chance Agreement, Physician's Statement

AGENCY: Department of Developmental Disabilities

SITE/OFFICE: Southwest Ohio Developmental Center

POSITION: Therapeutic Program Worker

RESULT: The grievance was denied.

REASONS: The Arbitrator found that the Grievant had violated the Last Chance Agreement and thus, her removal was proper. The Grievant had made contact, but was not in an approved leave status because she requested more sick leave than she had available. The Employer properly applied its "in lieu of sick leave" policy since the absences did not qualify as certified under FMLA. Under the circumstances, the Grievant was required to reference the qualifying reason for leave or the need for FMLA leave. The Employer's policy (Sick Leave Procedure 5.0--5.1, 5.11, and 5.12) specifically warns all employees that calling in "sick" without additional information does not trigger an employer's obligations. The Grievant eventually provided Notice, but the document was defective because it did not cover the dates in question. The Arbitrator held that an attempt to revise the FMLA-related dates by submitting an additional physician's document appeared tardy and suspicious--an obvious attempt to thwart the Employer's sick leave policy.

1058) Ed Woolum 27-03-08-07-03-0038-01-03 Removal

ARBITRATOR: Susan Grody Ruben

ISSUE: Did the Grievant's conduct constitute physical abuse? If the Grievant's conduct did not constitute physical abuse, was the Grievant removed for just cause? If the Grievant was not removed for just cause, what shall be the remedy?

CONTRACT ARTICLES: 24.01

TOPIC HEADINGS: Abuse, Administrative/Criminal Investigations Overlap, Polygraph Test, Private Citizen Witness, Removal

AGENCY: Department of Rehabilitations and Corrections

SITE/OFFICE: Chillicothe Correctional Institution

POSITION: Corrections Officer

RESULT: The grievance was denied.

REASONS: In dispute in the case is whether the Grievant lost his temper in response to being called derogatory names and used his fists to strike an inmate in the face multiple times, or whether a mentally-ill inmate became agitated and struck his own face against the handrail of his hospital bed, resulting in a busted lip. The Arbitrator held that the Employer proved to a high degree of certainty that the Grievant's actions constituted abuse.

At the time of the incident, a private citizen was in the adjacent cubicle of the emergency room with her husband, who was a patient. The Arbitrator found that the testimony of the private citizen had “an enormous impact on this case.” The citizen couldn’t see much, but what she did see was consistent with what she heard. Combined with the rest of the record, the citizen’s initial report and subsequent statements were found compelling and true. Everything the inmate and the citizen said throughout the matter had been sufficiently consistent that it enhanced both their credibility. The Arbitrator found that the administrative investigation and the criminal investigation overlapped, but the overlap did not deprive the Grievant of a fair investigation and a fair hearing. The Arbitrator did not use the positive results from the inmate’s polygraph test to make her decision.

1059) Woolley 30-07-(08-03-05)-0021-01-14 Issue

ARBITRATOR: Craig Allen

ISSUE: Did the Employer’s travel policy violate Article 32 of the Agreement? If so, what should the remedy be?

CONTRACT ARTICLES: 32.03, 44.01

TOPIC HEADINGS: Actual expenses, conflicting state laws, mileage reimbursement, OAC 126-1-02

AGENCY: Department of Taxation

SITE/OFFICE: Toledo

POSITION: Tax Audit Agent 3

RESULTS: The grievance was denied in part. The Employer does owe the Grievant the remainder of the mileage requested minus the equivalent of the Grievant’s commute mileage.

REASONS: On February 1, 2008 the Department of Taxation instituted a new mileage reimbursement policy, which did not reimburse employees for normal daily commute miles, even when the employee traveled to locations other than the employee’s headquarters. On February 22, 2008 the Grievant drove his personal car on a 115-mile round-trip audit appointment. He filed an expense report for reimbursement of \$46.00 (115 miles x \$.40 per mile). The agency denied the reimbursement request because the Grievant had not deducted his normal commute miles (30 miles one-way). Section 32.03 states: “If an employee is required to travel ...over forty-five miles from both his/her headquarters and residence...he/she shall receive the appropriate...reimbursement for actual expenses incurred”

The Arbitrator found no conflict between subtracting commute miles and reimbursing for actual expenses. The Arbitrator held that “actual expenses” are those expenses incurred by an employee over and above expenses normally the responsibility of an employee—e.g., commute mileage. The Arbitrator found the commute mileage

subtraction rule to be reasonable, given it would be unreasonable and, indeed, illogical for an employee to be reimbursed the equivalent of the employee's commute mileage on travel days, but not on non-travel days.

Section 44.01 states that the Collective Bargaining Agreement supersedes all conflicting state laws. The Arbitrator found that Sections 32.02 and 32.03 did not conflict with Regulation 126-1-02 and therefore prevail according to Section 44.01. The Arbitrator held that the commute mileage subtraction does not conflict with Article 32; therefore Section 44.01 does not apply.

1060) Christy Backus 15-02-090603-0072-01-09 Removal

ARBITRATOR: Meeta Bass Lyons

ISSUE: Grievant was removed for allegedly violating Work Rules 501.01 C-Leave without pay and 501(C)(10)(c)-Dishonesty. Was the removal of the grievant for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02, 28.03

TOPIC HEADINGS: Dishonesty, FMLA, Investigation, Just Cause, Removal

AGENCY: Department of Public Safety

OFFICE/SITE: Revenue Management Department

POSITION: Accountant Examiner 2

RESULT: The grievance was sustained in part. The Grievant was removed without just cause. The removal was modified to a 10-day suspension violating Work Rule on dishonesty.

REASONS: The Arbitrator found that the Employer had not satisfied its burden of proving that the Grievant engaged in intentional falsification of time sheets resulting in compensation of unearned pay. The Employer did satisfy its burden that the Grievant recklessly or carelessly falsified time sheets. Recklessly or carelessly recording false statements is also dishonesty, but this type of behavior can be corrected with direct supervision and proper controls.

The Arbitrator found that there was no just cause to discipline the Grievant for violating the work rule about leave without pay, since there was insufficient evidence on a material fact related to FMLA leave. The Arbitrator also held that the record demonstrated that the Employer did not conduct a fair and objective investigation. Just cause requires that the penalty imposed be reasonably related to the misconduct or infraction. The Grievant was an 18-year employee with a record of minor infractions with reprimands until a 3 day working fine for negligence for abusing FMLA time. The Grievant violated several policies on payroll/time and attendance management, facility access badges, employee daily attendance policy, and computer use, but she had not been charged with those violations. Therefore, a penalty of ten days was appropriate.

1061) Robert White 34-26-090429-0036-01-09 Removal

ARBITRATOR: David Pincus

ISSUE: The Grievant was charged with violation of work rules for insubordination and leaving the work area without authorization. Did BWC possess just cause to remove the Grievant from employment? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01

TOPIC HEADINGS: Insubordination, Investigatory Interview, Leaving the Work Area, Removal

AGENCY: Bureau of Workers' Compensation

SITE/OFFICE: Columbus

POSITION: Claims Assistant

RESULT: The grievance was denied.

REASONS: The Arbitrator found that both charges were completely supported by the record and justified removal. The Grievant parked his car in a no-parking zone and entered the building to work to avoid being tardy. Later he failed to obtain permission from his supervisor to leave the work area to move the car. During an investigatory interview the Grievant failed to follow a direct order to answer questions honestly and fully. The Arbitrator held that the Grievant's varied responses regarding justifications for refusing to answer lessened his credibility. On several dates, the Grievant had shortened his work day and left his work area without authorization. An agency memo provided the Grievant with notice about inappropriate conduct regarding breaks.

A previous grievance for a ten-day suspension had been denied in Arbitration #1056. The Arbitrator held that the duration between the ten-day suspension and the removal serves as an aggravating rather than mitigating factor: "The Grievant tried to play the system within three months of an arbitration decision which denied his grievance and upheld a ten-day suspension. A portion of the misconduct, insubordination, was identical to actions which led to the ten-day suspension...In fact, actions which resulted in the ten-day suspension could have led to removal but for the Employer's leniency." The Arbitrator held that arguments of double jeopardy and disparate treatment were not supported by the record.

1062) Kimberly Wakefield 24-06-(09-09-02)-0030-01-04 Removal

ARBITRATOR: Susan Grody Ruben

ISSUE: Did the Grievant cause loss or damage to property through a negligent act, which resulted in her removal from her position as Therapeutic Program Worker? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.06

TOPIC HEADINGS: Mitigation, Negligence, Removal

AGENCY: Department of Developmental Disabilities

SITE/OFFICE: Columbus Developmental Center

POSITION: Therapeutic Program Worker

RESULT: The grievance was denied.

REASONS: The Grievant was transporting residents in a State vehicle on the CDC grounds. While driving, she hit a co-worker's car in the parking lot, significantly damaging both vehicles. She was charged with attempting to use a short cut--entering the wrong way. The Grievant had been diagnosed with MS years before and claimed that her MS caused the incident. (The court that presided over the Grievant's traffic ticket held that her MS was an extenuating circumstance that mitigated her sentence.)

In dispute was: 1) whether the Grievant's medical condition caused her to lose control of the van and 2) whether the Grievant took a shortcut that involved going the wrong way on a one-way circle. The evidence did not demonstrate that it was likely the MS caused the accident or that it should be considered a mitigating circumstance. The Arbitrator found it credible-- from the photographic evidence of the scene, the officer's training, and the officer's straightforward testimony-- that the Grievant did take a shortcut.

The Arbitrator did not agree with the definition of negligence as willful, wanton conduct. Willful and wanton conduct are elements in gross negligence or intentional misconduct. Negligence is the failure to exercise reasonable care in a given situation. The Arbitrator held that the State carried its burden of proof that the Grievant took the shortcut and in doing so exhibited a "textbook example" of negligence. The Grievant failed to exercise reasonable care when she took the prohibited shortcut and caused damage to State property. There were no extenuating circumstances; therefore, given the Grievant's disciplinary history, removal was the next appropriate step.

1063) Greg Mason 27-14-09-12-21-0246-01-03 Removal

ARBITRATOR: Craig Allen

ISSUE: The Grievant was charged with Workplace Violence, violating Rule 18-Threatening, intimidating, or coercing another employee or a member of the general public, and Rule 24-Interfering with, failing to cooperate in, or lying in an official investigation or inquiry. Was the Grievant removed from his position of Correctional Sergeant for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01

TOPIC HEADINGS: Interfering with an investigation, LCA, Removal, Workplace Violence

AGENCY: Department of Rehabilitation and Corrections

SITE/OFFICE: Lorain Correctional Institution

POSITION: Correctional Sergeant

RESULT: The grievance was denied.

REASONS: An incident occurred on September 4, 2009 in which a Relief Officer felt threatened by the Grievant when he said “he would put her out on disability.” The Arbitrator held that the evidence was clear and convincing that the Grievant made a threat to another employee. The Grievant’s testimony that “out back” meant to go the Captain’s office was not credible. Another CO testified that the obvious meaning was to go outside and fight. There was direct evidence that the statement of the Grievant was threatening and menacing. In addition, the Grievant attempted to get witnesses to change their testimony.

The Arbitrator found that removal was the correct remedy. The Grievant seemed to have a problem with female coworkers and had a prior Rule 18 violation. The evidence was also clear that the Grievant violated both Rule 18 and Rule 24. Each by itself permits removal.

There was an issue of whether a five (5) day fine was still part of the Grievant’s record or was merged with a one (1) year LCA that had expired in August, 2009. The settlement part of the LCA was not available to the Arbitrator as per Rule. The Arbitrator held that the terms of the Contract rule and that the five (5) day fine was part of the Grievant’s record for two (2) years.

1064) Joseph Holzhauser 27-17-09-02-25-0003-01-03 Removal

ARBITRATOR: Mitchell Goldberg

ISSUE: The Grievant was charged with failing to follow post orders, administrative regulations, policies or directives; of falsifying, altering or removing any document or record; and engaging in an unauthorized relationship with an inmate. Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLE: 24.01

TOPIC HEADINGS: Burden of Proof; Criminal Trial Acquittal; Unauthorized Relationship with an Inmate

AGENCY: Department of Rehabilitation and Corrections

OFFICE/SITE: North East Pre-Release Center

POSITION: Corrections Officer

RESULT: The grievance was denied.

REASONS: The Arbitrator found that the unauthorized relationship clearly existed between the Grievant and the inmate; therefore, the Employer’s decision to remove the Grievant was for just cause. The Grievant abused his position of authority and control over an incarcerated person for his own self-interest. He acted inappropriately and irreparably violated the fundamental requirement of his trusted position. In addition, the Grievant’s past work record contained prior discipline and the Union presented no compelling mitigating factors.

The Arbitrator held that the criminal trial acquittal had limited relevance in the arbitration. First, the parties were different. Second, the issues were substantially different. The issue in the criminal trial was whether the State could prove the elements of the specific charge or crime involving the Grievant's action. The arbitration involved the issue of whether the Grievant violated the state employer's workplace policies and procedures.

Third, the burden of proof imposed upon the prosecutor and upon the employer was different. In criminal proceedings the State must prove charges "beyond a reasonable doubt," because a guilty verdict could result in confinement in prison. Arbitrations are civil matters that would result in termination of employment as the maximum penalty. In the Grievant's case most arbitrators would require the higher quantum "clear and convincing evidence." Most hold that "beyond a reasonable doubt" has no place in dispute resolution.

The remaining charges were not addressed, since the unauthorized relationship between the Grievant and the inmate was serious enough to sustain the removal.

1065) Christopher George 27-33-20090323-0032-01-03 Issue

ARIBTRATOR: Susan Grody Ruben

ISSUE: Did the Department of Rehabilitation and Corrections FMLA Policy violate Section 31.06 of the Agreement by requiring employees to exhaust all compensatory time balances before taking unpaid leave under the FMLA?

CONTRACT ARTICLES: 31.06, 13.10

TOPIC HEADINGS: Compensatory Time, Contract Interpretation –Interpreting Words in a Contract, FMLA, Paid Leave

AGENCY: Department of Rehabilitation and Corrections

OFFICE/SITE: All

POSITION: All

RESULT: The grievance was granted. The state was ordered to rescind the references to compensatory time in amended DRC policy 36-LEV-02, §VI(D)(1).

REASONS: The Arbitrator found that the grievance involved two intertwined questions: (1) whether 29 CFR § 825.207 (2009) permitted the state to unilaterally amend 36-LEV-02 (2009); and (2) whether the reference in Article 31.06 of the Agreement to "applicable" paid leave included banked compensatory time.

The U.S. Department of Labor amended its FMLA regulations to permit public employers to exhaust banked compensatory leave; but the new regulation did not require them to adopt that rule. The FMLA itself provided that it does not supersede a collective bargaining agreement. Therefore, the Arbitrator held that there was nothing in FMLA or FLSA that gave the State the right to unilaterally amend their policy.

The second question centered on the meaning of “applicable” in this context. (The Arbitrator opined that words in a collective bargaining agreement each have meaning. “Applicable” means something.) The only reasonable interpretation of “applicable” was that it related back to “any leave which qualifies under the FMLA.” Time taken using banked compensatory time is not a leave which qualifies under the FMLA. Rather, compensatory time off is in lieu of wages for overtime.

Additionally, the Arbitrator’s task is to determine to the extent possible the Parties’ intended meaning of the contract language in dispute.

When the current Agreement was negotiated, the FMLA did not permit the State to require exhaustion of compensatory time; therefore, the Parties could not have intended compensatory time to be included in the “applicable paid leaves” referred to in Article 31.06.

Note: The Arbitrator pointed out that had Article 31.06 not included the word “applicable” the grievance would be denied because banked compensatory time could reasonably be construed as being in the category of “all paid leave.”

1066) Brian Chaney 35-04-09-12-24-0064-01-03 Removal

ARBITRATOR: Susan Grody Ruben

ISSUE: The Grievant was charged with 1.) Use of excessive force, 2.) Failure to follow policies and procedures, 3.) Actions that could harm or potentially harm an employee, youth, or a member of the general public, and 4.) Use of prohibited physical response. Was the Grievant removed for just cause? If not what is the appropriate remedy?

CONTACT ARTICLE: 24.01

TOPIC HEADINGS: Excessive Force, Removal

AGENCY: Department of Youth Services

SITE/OFFICE: Indian River Juvenile Corrections Facility

POSITION: Juvenile Corrections Officer

RESULT: The grievance was granted. The Grievant was reinstated and made whole.

REASONS: A Youth attempted to shut himself in a small, one-toilet classroom bathroom. At some points during the incident, there were as many as four officers attempting to gain control over the Youth. The Youth and the Grievant engaged in a physical struggle, and eventually the Youth wrapped himself around the Grievant and reached for the Grievant’s genitals.

The Arbitrator held that the Grievant’s most egregious physical actions was elbowing the Youth in the head three times, resulting in the Youth’s head hitting the floor. However, those actions must be viewed in context and the Youth was not harmed. The Grievant found himself in a difficult situation due to the inaction of the Operations Manager, who should have implemented a planned intervention rather than a knee-jerk “take him down.” Once the Youth was physically wrapped around the Grievant in a

confined space, didn't respond when the Grievant told him to get off, and reached for the Grievant's genitals, it was hardly surprising the Grievant reacted physically. Nor was it surprising the Grievant reacted physically after the Youth kicked him in his genitals.

The Arbitrator held that in a difficult to navigate space, with limited information and minimal direction, the Grievant did the best he could under challenging circumstances.

1067) John Geiger 27-30-09-10-22-0150-01-03 Removal

ARBITRATOR: Dr. Pincus

ISSUE: Did the Grievant, John Geiger, commit physical abuse? If no, was there just cause for removal

CONTRACT ARTICLES: 24.01

TOPICAL HEADINGS: Abuse, Removal

AGENCY: Department of Rehabilitation and Corrections

SITE/OFFICE: North Central Correctional Institution

POSITION: Corrections Officer

RESULT: The grievance was denied.

REASONS: The arbitrator found that Grievant knowingly caused physical harm by physical contact with the inmate and his actions injured the inmate; therefore abuse existed.

An incident arose after an inmate refused to show his identification to the Grievant. The Grievant handcuffed the inmate and began to escort him toward the supervisor's office for discipline. The inmate was handcuffed from behind and was not a direct threat to the Grievant and other officers in the shift office. Arguments and abusive language were exchanged throughout the incident. The Grievant attacked the inmate by pushing him onto the Captain's desk. The Grievant held the inmate down and continued his verbal rants. Two lieutenants had to separate the Grievant from the inmate because the Grievant refused to comply with an order to get off the inmate. The inmate was injured as a consequence of the Grievant's misconduct. Four supervisors were present during the incident.

The Arbitrator held that when bargaining unit members engage in acts similar to those engaged in by the incarcerated population, order has to be restored. The fury and intolerance exhibited by the Grievant indicates that he can no longer be trusted to engage in correction activities. To allow his return to work would jeopardize the mission of the Department of Rehabilitation and Correction, and the safety and health of fellow bargaining unit members and inmates.

1068) Donnia Pearson 33-00-091202-0128-01-05 Removal

ARBITRATOR: Susan Grody Ruben

ISSUE: Is the grievance arbitrable? If the grievance is arbitrable, was the removal of the Grievant for just cause?

CONTRACT ARTICLES: 24.01, 24.05, 24.06, 25.02

TOPIC HEADINGS: Arbitrability

AGENCY: Ohio Veteran's Home

SITE/LOCATION: Sandusky

POSITION: Custodian

RESULT: The grievance was denied on the basis it was inarbitrable. The first grievance was filed before the actual removal date. There was no evidence a second grievance was filed.

REASONS: On October 20, 2009, the Grievant's supervisor saw the Grievant out of her assigned work area. On November 18, 2009, an investigatory interview was held. On or about December 2, 2009, the agency gave notice of a Pre-Disciplinary meeting for December 8, 2009.

On December 2, 2009, the Union filed a grievance. At the time the grievance was filed, the Grievant had not been removed or suspended. On December 3, 2009, the LRO emailed the staff representative that the Grievant was grieving an action that hadn't taken place yet. The Pre-Disciplinary Meeting was held on December 8, 2009. In a letter dated December 22, 2009, the Agency indicated that the Grievant was terminated effective December 5, 2009--since the discipline was her fourth corrective action at the level of fine or suspension.

At the arbitration hearing on July 7, 2010, the State alleged the grievance was not arbitrable. The Union requested a break and returned to the hearing room and presented an unnumbered single-page removal grievance hand-dated December 23, 2009. The State told the Arbitrator they had never seen the second grievance. The Parties agreed to suspend the hearing to give the Parties an opportunity to look for corroborating evidence regarding the filing of the second grievance. On July 19, 2010, the hearing resumed. Union witnesses testified the second grievance had been consolidated with the first grievance by the LRO; the LRO testified there had been no consolidation as there had been no second grievance.

The Arbitrator found that the first grievance was not arbitrable because it was "unripe"—the first grievance grieved that the Grievant was "charged" with being out of her work area; it did not grieve the Grievant's removal. The Arbitrator held that the Union could not show any documentary evidence the second grievance had been consolidated with the first grievance. Moreover, the timing of the Union's presentation of the second grievance—after a break early on the first day of hearing and immediately after the State alleged the non-arbitrability of the first grievance—was suspect.

1069) Andre Battle 27-20-10-02-25-0095-01-03 Removal

ARBITRATOR: Marvin Feldman

ISSUE: Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02

TOPICAL HEADINGS: Excessive Force, Progressive Discipline, Removal

AGENCY: Department of Rehabilitation and Corrections

SITE/LOCATION: Mansfield State Reformatory

POSITION: Corrections Officer

RESULT: The grievance was denied.

REASONS: The Arbitrator held that the Grievant was in clear violation of agency work rules 38 and 40 in that he exhibited severe excessive force. The Grievant was involved in a physical altercation in which another officer and inmates witnessed the Grievant grab the inmate by the throat unnecessarily. The Grievant did not follow the procedures of patting down a cell, and as such, found himself in an altercation which triggered his termination. The Grievant's credibility was highly suspect in his denial of ever receiving any training concerning the proper procedure in searching a cell.

When the activity of the grievant is such that the activity is grossly substandard, progressive discipline does not apply. In this case there was the possibility of serious injury occurring as a result of the severe excessive force. The Arbitrator found that there was good and sufficient evidence that the grievant inappropriately attacked a prisoner and "does not belong on the payroll of this employer."

1070) Bobbie Jo Whiteside 24-06-10-04-21-0006-01-04 Removal

ARBITRATOR: Sarah Cole

ISSUE: Did the Grievant neglect a client by a disregard for her duty resulting from carelessness or willfulness in failing to provide an individual with any treatment, care, goods, supervision, or services necessary to maintain health and safety of the individual, which resulted in the removal? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02

TOPIC HEADINGS: Agency Neglect, Disparate Treatment, Lack of Training, Neglect, Progressive Discipline, Removal

AGENCY: Department of Disabilities

SITE/LOCATION: Columbus Development Center

POSITION: Therapeutic Program Worker

RESULT: The grievance was upheld in part and denied in part. The removal was reduced to a five-day suspension.

REASONS: The Arbitrator held that the Grievant neglected her duties, but under the principles of progressive discipline and avoiding disparate treatment of similarly situated

employees, the Grievant should not have been removed. The Arbitrator also found that the CDC was negligent because it permitted sharp objects in the client's living area. Testimony strongly suggested that CDC had not trained the TPW's on the supervising clients who are both mentally ill and mentally disabled.

The Arbitrator held that the Grievant engaged in neglect when she failed to closely supervise the client at one point during the event and should receive a 5-day suspension. Because both parties' actions contributed to the harm in this case, the Arbitrator did not find the Grievant's punishment proportional to her error.

1071) Jeanett Lewis 22-10-(10-02-08)-0001-01-14 Removal

ARBITRATOR: David Pincus

ISSUE: The Grievant was charged with Insubordination, Failure of Good Behavior, and Dishonesty. Was the Grievant removed from her position for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02

TOPIC HEADINGS: Charges, Insubordination, Mitigation, Removal, Timeliness

AGENCY: Ohio Lottery Commission

SITE/LOCATION:

POSITION: Administrative Assistant

RESULT: The grievance was upheld in part and denied in part. The removal was reduced to a 30-day suspension.

REASONS: The Grievant had a significant number of Keno promotional tickets which she gave to her granddaughter's mother. Northfield Park personnel informed the Employer that one of its employees and companion had played Keno using the promotional tickets and signed claim forms on July 17, 2009.

On March 31, 2009, the Agency Director had sent an email to all employees directing them: "until further notice do not distribute or utilize any promotional tickets." This was in response to an Inspector General's investigation that had concluded that the Director's actions related to promotional tickets were not in good judgment and constituted an act of wrongdoing.

The Arbitrator held that the Employer had just cause to discipline, but not remove the Grievant. The Employer failed to demonstrate that the requisite element of notice had been met. An employee must be made aware of the consequences of failing to perform the work or follow the directive.

The Arbitrator found nothing in the record that identified the specific acts of misconduct used to support this charge. He reminded the agency that all charges used to impose discipline must be supported. The Employer must understand its obligation regarding the charges articulated in any removal order.

The Arbitrator found that the circumstances surrounding the episode in question warranted his discretion. The Grievant hoped to enhance her relationship and communication with her granddaughter. She was under emotional stress and responded badly. She also experienced some form of minor diabetic episode which caused confusion. The Grievant's 19 years of service, untarnished disciplinary record, and strong prior performance record were mitigating factors. However, the suspension placed her on notice that any form of future misconduct could result in removal.

1072) Hal Harlow 35-20-20090205-0010-01-03 Issue

ARBITRATOR: Sandra Grody Ruben

ISSUE: Is the grievance arbitrable? If so, did the State violate the Agreement when it denied overtime opportunities to the Grievant during the period he was on No Youth Contact?

CONTRACT ARTICLE: 13.07, 24.06, 25.02, 25.03

TOPIC HEADINGS: Arbitrability, No Youth Contact, Overtime

AGENCY: Department of Youth Services

SITE/LOCATION: Ohio River Valley Juvenile Correctional Facility

POSITION: Youth Specialist

RESULT: The grievance was denied.

REASONS: The Grievant was placed on No Youth Contact (NYC) status from June 9, 2008 through January 30, 2009 and therefore was denied overtime opportunities. The record showed that the Grievant requested overtime early and often during his NYC status. The February 3, 2009 grievance was filed 240 days after the beginning of the NYC status, well after both 10 days and 30 days after the event giving rise to the grievance. The Arbitrator held that the Grievant—not the State—slept on his rights regarding the missed overtime opportunities. The Grievant knew in June 2008 he was not receiving overtime during his NYC status. The Arbitrator held that at most, the grievance is timely for the 10 workdays preceding its filing. If meritorious the Grievant would have been compensated for lost overtime opportunities only during that period.

The Arbitrator held that the grievance was not meritorious. A Letter of Clarification dated February 1, 2008 between the parties explained that an employee on NYC status is considered overage: "When an employee is placed on a no contact post, the employee shall not take the post of another employee. The employee will be considered an extra on the shift unless there are posts available following roll call that can be considered "no contact posts." The record showed there are very few no-contact posts at the facility and those are regularly picked by the most senior employees. Therefore, the Arbitrator found no violation of the Agreement.

1073) Ingrid Jonas-Perry 34-17-(10-03-26)-0016-01-09 Removal

ARBITRATOR: Mitchell B. Goldberg

ISSUE: Did the Grievant violate the PV language in the CBA or the policy , and if so, whether there were mitigating circumstances that would excuse a violation? Does the tardiness on January 7 justify the Grievant's removal from service based on her employment record and the disciplinary grid? Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 29.04

TOPIC HEADINGS: Excusable mitigating/extenuating circumstances; Physician's Statement/ Verification, PV Employee, Removal

AGENCY: Bureau of Workers Compensation

SITE/OFFICE: Lima Service Office

POSITION: Claims Assistant

RESULTS: The grievance was sustained in part. The removal was reduced to a 1-day suspension.

REASONS: The Arbitrator found no evidence to support that the Grievant's absences should be considered unexcused or that she used more leave than was available to her. Moreover, no evidence suggested that the Grievant was insubordinate for refusing to carry out a direct management order. Requiring an employee to provide a physician's statement when an employee appears for the day and is visibly ill and in no condition to work is a meaningless and unreasonable requirement when management personally observed the employee's unfit condition and permitted the employee to leave work. Requiring a PV employee to visit a doctor or emergency care center to prove what is already known and apparent to management is a superfluous, unreasonable, and unnecessary requirement under these particular facts.

As to one of the absences, the grievant was already under the care of a physician who knew of her illness, could not diagnose it, and had referred her to a specialist. Under these particular and unique circumstances, going to an urgent care facility would be a meaningless gesture and needless expense even if the Grievant had been well enough to make the trip. Going to the emergency care center simply to get a PV statement was unnecessary and any discipline for her inability to produce a statement for that day should have been considered to be an excusable mitigating or extenuating circumstance under Section 29.04.

The Arbitrator held that there is no question the Grievant was tardy on January 7. Her daughter's circumstances did not excuse her from reporting to work on time. However, a minor suspension would appear to be enough of a corrective discipline to bring the Grievant's attention back to her attendance. Therefore, the Grievant received a 1-day suspension for tardiness.

ARBITRATOR: Dr. Pincus

ISSUE: Was the Grievant's written portion of the Disability Claims Adjudicator III promotional test scored correctly? If not, what shall the remedy be?

CONTRACT ARTICLES: 17

TOPIC HEADINGS: Content Validity, Promotion, Test Reliability, Test Subjectivity

AGENCY: Rehabilitation Services Commission

SITE/LOCATION: Bureau of Disability

POSITION: Disability Claims Adjudicator 2 (DCA2)

RESULT: The grievance was denied.

REASONS: The employer had established a 72% as the pass point for a promotional test. The Grievant scored 70.59% on the test. The Grievant was clearly notified that spelling would be evaluated by the scorer. She was, therefore, obligated to provide clear and accurate spellings in her responses. Any vagaries must be counted against the Grievant for it would require a determination of intent, which would burden the evaluation with an excessive amount of subjectivity. That would lead to potential inconsistent rating variance and jeopardize the reliability of the testing instrument.

The scoring format had been adjusted and was consistently applied to all evaluated tests. Therefore, the Grievant was not harmed, but was aided by the adjusted format. However, it failed to raise the Grievant's score beyond the pass point. The Arbitrator held that the promotional test was scored properly.

1075A) PUCO Field Employees

26-00-(09-06-24)-0013-01-07 Issue

26-00-(09-08-24)-0015-01-07

26-00-(09-07-20)-0016-01-07

26-00-(09-06-26)-0018-01-07

26-00-(09-06-30)-0020-01-07

26-00-(09-06-30)-0021-01-07

26-00-(09-07-20)-0022-01-07

26-00-(09-07-06)-0024-01-07

26-00-(09-07-20)-0028-01-07

26-00-(09-08-07)-0030-01-07

26-00-(09-08-19)-0031-01-07

26-00-(09-08-19)-0032-01-07

ARBITRATOR: Susan Grody Ruben

ISSUE: Are the grievances arbitrable?

CONTRACT ARTICLES: 25.01, 25.02

TOPIC HEADINGS: Arbitrability, Impact Bargaining, Report-In Locations

AGENCY: Public Utilities Commission

SITE/OFFICE: Field

POSITION: Field Employees

RESULT: The grievances are arbitrable.

REASONS: In May and June of 2009 the PUCO field staff was informed about changes being made to report-in locations. Eventually twelve grievances were filed regarding the change in report-in locations. The Arbitrator found the grievances arbitrable, with the exception of the second Zurfley grievance (26-00-(09-08-19)-0032-01-07).

The arbitrability falls into four categories: timeliness, ripeness, impact bargaining, and retaliation claims.

Timeliness. The arbitrator found the grievances arbitrable because they were filed within ten working days of the first day the Grievant was required to report to his new report-in location.

Ripeness. June 18 was the “official notice” date of the report-in changes. The Arbitrator held that the grievances were ripe for determination because they were filed after this date.

Impact Bargaining. The parties disagreed whether impact bargaining took place. The Arbitrator held that even if it had taken place, there is no record evidence that the Union agreed to withdraw or settle the grievances as a result of such bargaining.

Retaliation Claims. The Arbitrator held that the grievances alleging retaliation were not inarbitrable on the basis of SERB jurisdiction because SERB’s jurisdiction in this type of matter is concurrent with a collective bargaining grievance and arbitration process.

1076) Yuntaya Carter 27-11-(09-06-15)-0034-01-05 Removal

ARBITRATOR: Susan Grody Ruben

ISSUE: During an Investigatory Interview the Grievant refused to answer a question and referred the investigator to her attorney. Did the State have just cause to remove the Grievant? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02, 24.04, 24.06, 24.07

TOPIC HEADINGS: Investigatory Interview

AGENCY: Department of Rehabilitation and Corrections

SITE/LOCATION: Lebanon Correctional Institution

POSITION: Food Service Coordinator

RESULT: The grievance was denied.

REASONS: The Grievant was asked on three separate occasions to answer whether property was taken from her home in connection with an April, 2009 arrest. (The Grievant was eventually acquitted of the charge.) Each time, she responded the

investigator should speak to her attorney, indicating the question was not related to her fitness for duty.

A foremost interest of a corrections facility is ensuring that corrections employees are conducting themselves on the right side of the law. It was within the State's reasonable interest to investigate various aspects of the Grievant's arrest to determine whether she was fit for duty. By referring those questions to her attorney rather than answering them herself, the Arbitrator found the Grievant did not sufficiently cooperate during the internal investigation. The State's employment relationship is with the Grievant, not with her attorney.

At the time of her removal, the Grievant had seven active disciplines, three of them performance-related. Thus, the Arbitrator held, it was within the zone of reasonableness for the State to conclude it was appropriate to remove the Grievant for the serious offense of not cooperating in an internal investigation.

1077) Mal Corey 27-23-20100114-003-03 Issue

ARBITRATOR: Susan Grody Rubin

ISSUE: Was the grievance substantively arguable? If the grievance was arbitrable, did the State violate Article 1.05 when it entered into a Pick-A-Post agreement with OCSEA at RCI and implemented the terms and conditions of that agreement? If so, what shall the remedy be?

CONTRACT ARTICLES: 1.5, 25.01, 25.03, Appendix Q--DRC

TOPIC HEADINGS: Arbitrability, Pick-a-Post Agreements,

AGENCY: Rehabilitation and Corrections

SITE/OFFICE: Ross Correctional Institution

POSITION: Count Office Post

RESULT: The grievance was substantively arbitrable. The grievance was denied.

REASONS: The Arbitrator found that because the Pick-A-Post agreement derives from Appendix Q of the Parties' Agreement, a grievance regarding a Pick-A-Post is substantively arbitrable.

The Arbitrator held that there was no violation of the agreement. "It is unknown to the Arbitrator why this grievance was filed." Management agreed to the Union's proposal to eliminate the Count Office post and implemented the Union's suggestion to fill that post with a Lieutenant. The Statewide Oversight Pick-a-Post Committee approved the agreement. That should have been the end of the matter. "It is not a meritorious argument for the Union to belatedly lay claim to the Count Office post under Article 1.05." By agreeing in the Pick-A-Post agreement to eliminate the Count Office post, the Union waived any argument that replacing a Correction Officer with a Lieutenant in the Count Office post violated the Agreement.

1078) Chris Smith 29-04-(09-02-13)-0993-01-04 Issue

ARBITRATOR: Harry Graham

ISSUE: Is the grievance properly before the Arbitrator? If so, did the Employer violate the Collective Bargaining Agreement in the manner in which it administered the exam for Disability Claims Specialist in 2009? If so, what shall the remedy be?

CONTACT ARTICLES: 25.02, 17.05, 17.06

TOPIC HEADINGS: Arbitrability, *Collateral Estoppel*, Promotion, *Res Judicata*, Selection

AGENCY: Rehabilitation Services Commission

SITE/LOCATION: Columbus

POSITION: Disability Claims Specialist

RESULT: The grievance was arbitrable. The grievance was sustained.

REASONS: The Arbitrator held that the grievance was properly submitted.

A revised test policy was issued in September, 2007. There was no action precipitating a grievance until the test was administered in January, 2009.

When the test was administered in January, 2009 the Grievant acted promptly to protest perceived deficiencies.

Issues over promotional testing have reached arbitration before. That did not make this dispute *Res Judicata* or subject to *Collateral Estoppel*. This dispute arose under a policy different from that considered at past arbitrations; therefore the case holdings may, or may not, be applicable to this case. This dispute must be considered on its merits.

Changes had occurred in the test, which the Employer characterized as “maintenance.” Absent examination by a test expert, that may or may not be the case. No expert/consultant was involved, which is a breach of the 2001 Consent Award issued by Arbitrator Nelson.

The Arbitrator’s remedy: Grievants who scored 70 or above on the MAC and were not permitted to advance to the second round of testing are to be automatically advanced to the second round of any future examination for positions at pay range 28 and above for the term of the existing CBA. All scores achieved from 70-75.5 are to carry forward for the duration of the CBA without need for taking the initial stage of any test administered by the Employer. The Employer is to promptly afford the Union an opportunity for its test expert/consultant to evaluate the exam.

1079) Kimm Gorman 34-11-100625-0127-01-09 Removal

ARBITRATOR: Meeta Bass Lyons

ISSUE: The Grievant was charged with (1) Insubordination—failure to follow a written policy of the employer, and (2) Dishonesty—intentionally making false or untrue

statements regarding work-related matters to management and the intentional misuse, destruction, defacing of state property, public property or property of another employee. Did the Ohio Bureau of Workers' Compensation possess just cause to remove the Grievant from employment? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.02, 24.02

TOPIC HEADINGS: Dishonesty, Insubordination, Mitigating Factors, Removal

AGENCY: Bureau of Workers' Compensation

SITE/LOCATION: Columbus

POSITION: Fraud Investigator

RESULT: The grievance was denied.

REASONS: The Arbitrator found that the discharge was for just cause. The evidence was persuasive that the Grievant violated the work rules of Insubordination and Dishonesty. The screen shots of her computer from surveillance established that she intentionally accessed the personal folder of another employee. The Grievant accessed personal/sensitive/confidential information without any business related purpose. She then made false statements to management.

Considering the nature of the offense, the quasi criminal nature of its operations, the duties related to the position, and the effect on outside contracts, the Arbitrator held that there was a reasonable relationship between the Grievant's misconduct and the punishment imposed. Discharge was not so excessive a punishment as to be beyond managerial prerogatives. The seriousness of the offense overshadowed the Grievant's twelve year tenure with no active discipline.

1080) Louis Byers 30-04-(10-05-03)-0035-01-14Issue

ARBITRATOR: Susan Grody Ruben

ISSUE: Did the State violate the Agreement when it granted the Grievant Ohio National Guard prior service credit retroactive to only April 25, 2010? If so what shall the remedy be?

CONTRACT ARTICLES: 25.02, 28.01, 36.07

TOPIC HEADINGS: Longevity Pay, Prior Ohio National Guard Service Credit, Timeliness, Vacation Accrual

AGENCY: Department of Taxation

SITE/LOCATION: Columbus

POSITION: Network Services Technician 2

RESULT: The grievance was denied.

REASONS: Prior to being hired by the Department of Taxation in January, 1999, the Grievant had served six years in the Ohio National Guard. On or about April 25, 2010 the Grievant became aware that his National Guard service could be converted to state service credit. He submitted a written request to obtain the service credit which was

granted by the State, effective April 25, 2010. A grievance was filed in which the Grievant stated he should have the service credit all the way back to the time of employment—since he had documented the experience on his application.

In 2001, Arbitrator Harry Graham had awarded five grievants state service credit for service in the Ohio National Guard (OCSEA Arbitration Decision 763). Adjustments in vacation and longevity pay were to be retroactive to 30 days prior to the date of filing of the grievance. The award was limited to the five Grievants and to National Guard time only.

In this case, the Arbitrator held that the grievance –like all grievances--was subject to the deadlines of Section 25.02. The Agreement does not require the State to identify and seek requests for service credit from employees who served in the Ohio National Guard; therefore, the Arbitrator cannot impose that obligation upon the State. Section 28.01 of the CBA put employees on notice they must provide documentation in order to receive credit for Ohio National Guard service. As soon as the Grievant provided documentation, he was credited for that service.

1081) Mary Emmons 70-00-(10-10-08)-0001-01-09 Removal

ARBITRATOR: Craig Allen

ISSUE: Was the Grievant removed for just cause for being AWOL for more than 3 days? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.05, 24.06

TOPIC HEADINGS: AWOL, Lax Imposition of Discipline

AGENCY: Office of the Ohio Public Defender

SITE/LOCATION: Columbus

POSITION: Legal Secretary

RESULT: The grievance was denied.

REASONS: The arbitrator recognized the critical nature of the work done by the agency and the impact on inmates, attorneys, and co-workers if the work was not done efficiently and timely. There was no evidence the Employer's work rule was unreasonable.

The argument that the Employer was lax for not imposing discipline was outweighed by the extensive evidence of counseling given the Grievant. The evidence clearly showed that the Grievant was warned.

The Arbitrator found that the Grievant was a short term employee who had used up all available leave and still wouldn't come to work. If the Grievant failed to put any stock in counseling and warnings, it is unlikely that fines or short term suspensions would have gotten her attention.

1082) Jennifer Daniel 24-13-(03-30-10)-0010-01-04 Removal

ARBITRATOR: Craig Allen

ISSUE: The Grievant was charged with two incidents of Neglect of a client with multiple counts of Failure to Follow Policy. Was the Grievant discharged for Just Cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02, 1, 44

TOPIC HEADINGS: Failure to Follow Policy, Neglect, Removal, Timeliness—Initiation of Discipline

AGENCY: Ohio Department of Developmental Disabilities

LOCATION/SITE: Tiffin Developmental Center (TDC)

POSITION: Licensed Practical Nurse (LPN)

RESULT: The grievance was granted on both timeliness and the merits.

REASONS: The Employer contended that the Grievant failed to provide two different individuals, in separate instances, the proper care according to their respective behavior service plans (BSP) who were exhibiting self injurious behavior (SIB).

The agency placed the Grievant on Administrative Leave and waited four months to initiate discipline. The Arbitrator held that the delay in this case was unreasonable. TDC should have timely proceeded against the Grievant. The TDC had five working days to do its internal investigation. They also sent a report to the Nursing Board in two weeks.

The Arbitrator was persuaded by the fact that the Nursing Board determined that the Grievant had done nothing wrong. The Nursing Board is the primary enforcement agency of its licensees. Its determination of the Grievant's adherence to the Standard of Care cannot be disregarded.

In both cases, the nurse had the discretion to use Ativan. The Nurse decided to call the doctor. The Employer had no evidence that the Doctor's decision to order Ativan in both cases was based on false information from the Grievant. The Doctor's orders were therefore legal and binding on the Grievant.

1083) William D. Goffena 31-07-(07-29-2010)-08-01-07 Removal

ARBITRATOR: Frank A. Keenan

ISSUE:

CONTRACT ARTICLES: 24.01

TOPIC HEADINGS: Removal

AGENCY: Ohio Department of Transportation

SITE/LOCATION:

POSITION:

RESULT: The grievance was sustained in part and denied in part. The Grievant was reinstated, but without back pay.

REASONS:

1084) Chad Newport 31-08-(11-15-10)-32-01-07 Removal

ARBITRATOR: Marvin Feldman

ISSUE: The Grievant was charged with leaving the work area without permission; falsifying documents related to employment; and other actions that could compromise or impair the ability of the employee to effectively carry out his duties as a public employee. Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02

TOPIC HEADINGS: Grossly Substandard Conduct, EAP, Just Cause, Progressive Discipline, Removal,

AGENCY: Ohio Department of Transportation

SITE/LOCATION: Lebanon

POSITION: Highway Technician 3

RESULT: The grievance was denied.

REASONS: The Grievant did not deny any of the employer's allegations; there was no knowledge of any EAP activity prior to the discipline. The Grievant not only committed the acts, but was tardy in notification to the employer about the necessity of his participation in the EAP. Therefore, the grievance was denied.

The Arbitrator held that the employer acted properly with discipline in the form of discharge. He held that the Grievant was merely using the EAP as a crutch to defend against discipline when the event was highly substandard.

Ignoring concrete tests, failure to report time off, and not accurately reflecting the truth in the employer's documents is clearly grossly substandard conduct. The Arbitrator held that severely substandard conduct may trigger termination without progressive discipline.

1085) Doug Hunter 34-21-(10-07-27)-0136-01-09Removal

ARBITRATOR: Susan Grody Ruben

ISSUE: The agency charged the Grievant with these violations of policy: Insubordination (b) Failure to follow a written policy of the Employer; Neglect of Duty (c) Failure to perform the duties of the position or performance at substandard levels; and Dishonesty (a) Intentionally making false or untrue statements regarding work related matters to management. Did the Ohio Bureau of Workers' Compensation possess just cause to remove Grievant from employment? If not, what shall the remedy be?

CONTRACT ARTICLES: 2.01, 2.02,5, 24.01, 24.02, 24.04, 24.05, 24.06, 25.01, 25.07, 25.09

TOPIC HEADINGS: Dishonesty, “I don’t remember. “ Defense; Inspector General Investigation, Insubordination, Investigatory Interview, Removal, Neglect of Duty

AGENCY: Bureau of Workers’ Compensation

SITE/LOCATION: Cincinnati

POSITION: Fraud Investigator

RESULT: The grievance was denied.

REASONS: The Arbitrator held that the State proved the Grievant failed to adequately document the chain of custody of a videotape obtained in an undercover surveillance operation. This rendered the videotape unusable as a piece of evidence. This was a serious breach of the Grievant’s basic duties as a Fraud Investigator. The State also proved the Grievant was untruthful during both his Inspector General and BWC investigatory interviews. “I don’t remember,” is not an impervious defense when there is other evidence establishing what would have been the truthful response. Under these circumstances, “I don’t remember” was not credible.

The Arbitrator found that the State’s failure in providing union representation during his Inspector General interview did not materially change the course of events in this matter. The Grievant had a statutory and contractual duty to cooperate and be truthful during his Inspector General interview. (If a union steward had advised the Grievant to refuse to implicate himself during the Inspector General interview, and the Grievant followed that advice, there would be additional grounds for removal.)

The Arbitrator held that the language in Article 24.04 does not exclude Inspector General investigatory interviews from the right to Union representation.

The Arbitrator noted that the State did violate language in Articles 24.02, 24.05, 25.09. (Article 24.02 was never grieved by the Grievant.) However, these violations were not sufficient to offset the Grievant’s violations.

1086) Eddie Williams 23-18-(10-10-08)-0067-01-04 Removal

ARBITRATOR: Craig Allen

ISSUE: The Grievant was 1.5 hours late for work in violation of Rule 2.4--Absent Without Approved Leave. Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.

TOPIC HEADINGS: AWOL, Notice, Progressive Discipline, Removal, Seniority

AGENCY: Ohio Department of Mental Health

SITE/LOCATION: Northcoast Behavioral Healthcare

POSITION: Therapeutic Program Worker

RESULT: The grievance was denied.

REASONS: The Grievant arrived to work at 8:30 when he was scheduled to arrive at 7:00. There was no doubt that the Grievant had not made a prior leave request as he had overslept.

The Arbitrator found that the discipline was progressive. In light of prior attempts to correct his behavior, the Grievant surely knew “with this track record the sands of time were running out.”

The Arbitrator held that the investigation was not unreasonably late. Notice to the union is notice to the Grievant.

The Arbitrator found evidence that seniority was considered in the discipline. The Arbitrator held that the “seniority sword has two sides.” The Grievant was a long term Employee and knew or should have known of his options.

1087) Amy Parker 27-19-(10-10-14)-0286-01-04 Removal

ARBITRATOR: Meeta Bass Lyons

ISSUE: The Grievant was charged with a violation of SOEC Rule 48: Failure to obtain, maintain and/or keep current any certification, license, etc. that is required to perform the duties of the position or to meet the minimum qualifications of the position. Was the Grievant removed for just cause; if not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02, 24.06

TOPIC HEADINGS: Just Cause, Licensing, Mitigation, Removal

AGENCY: Department of Rehabilitation and Corrections

SITE/LOCATION: Ohio Reformatory for Women

POSITON: Licensed Practical Nurse (LPN)

RESULT: The grievance was sustained in part and denied in part. The Grievant was reinstated to her position as an LPN. There was just cause to discipline and the appropriate remedy is a three (3) day suspension.

REASONS: The Grievant failed to maintain her license. It is the responsibility of the Grievant—not her employer--to maintain her license. If a violation is proven, a decision must be made on the reasonableness of the discipline imposed in light of the nature, character and gravity of the situation, the employee’s prior record and any factors mitigating the employee’s proven guilt. If the predicates for just cause are proven, then the penalty imposed by the Employer is entitled to arbitral deference.

The Arbitrator held that removal was excessive as a punishment as to be beyond the Employer’s managerial prerogatives. The Grievant maintained her accreditation for the biennial period as required. Her nursing license was placed on inactive status solely due to the nonpayment of renewal fees; her license was reinstated two week later when she paid the renewal fee.

The Grievant had previously worked at Belmont Correctional Institution. Her license did lapse; however, she advised her employer prior to the occurrence and

arrangements were made to renew it. The Grievant had not been disciplined for an inactive license prior to this incident. The Employer made an invalid assumption and reported it as an aggravating circumstance.

An Employer has a legitimate interest in its employment of licensed individuals. Exposure to liability based upon the conduct of an employee is a consideration in the analysis of the appropriate penalty.

Even when removal is imposed for a first offense violation, the Employer must consider mitigation before a decision to impose removal rather than corrective action. The arbitrator found that the evidence indicated the Employer simply ignored the mitigating circumstances because the disciplinary grid provides for removal for a first time offense for violation of Rule 48. More importantly, the Employer failed to certify the entire disciplinary packet to the Director to assess just cause inclusive of the issue whether or not the justifications of Grievant for her late renewal were satisfactory evidence of mitigation or a simple plea for mercy.

1088) Linda Schultz24-13-10-09-30-0036—1-04 Removal

ARBITRATOR: Susan Grody Ruben

ISSUE: The Grievant was charged with Job Abandonment—Failure to Report for Duty—Not in Approved Leave Status for One Scheduled Shift or More. Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02

TOPIC HEADINGS: Job Abandonment, Removal

AGENCY: Ohio Department of Developmental Disabilities

SITE/LOCATION: Tiffin Developmental Center

POSITION: Therapeutic Program Worker

RESULT: The grievance was denied.

REASONS: The Arbitrator held that since this was the Grievant's fourth active discipline on the Attendance Track grid and there were no mitigating circumstances present in the record, the removal was for just cause.

The Grievant was accused of falsifying the reason for calling off from her assigned shift. She was accused of stating she needed FMLA leave to care for her ill son. However, two coworkers observed the Grievant at a local bar the night before the Grievant's shift for which she called off.

The Arbitrator found that the two coworkers credibly reported at the time of the incident and credibly testified at the hearing that the Grievant was at the bar at the time she called off. There was no record evidence to support the argument that another of the Grievant's sons could have called her at the bar to tell her his brother was sick and she could have legitimately called off from the bar.

The Grievant's version of events was inconsistent with the weight of the record evidence. She had contended that she went home, learned one of her son's was ill, and then called off.

1089) Michael Andrews 27-19-10-12-01-0340-03-01 Removal

ARBITRATOR: Susan Grody Ruben

ISSUE: The Grievant was charged with use of excessive force and physical abuse of an inmate. Was the discharge for just cause? If not, what is the appropriate remedy?

CONTRACT ARTICLES: 24.01

TOPICAL HEADINGS: Excessive Force, Physical Abuse, Removal

AGENCY: Department of Rehabilitation and Corrections

SITE/LOCATION: Ohio Reformatory for Women

POSITION: Corrections Officer

RESULT: The grievance was upheld.

REASONS: The Arbitrator held in a bench decision that the discharge was not for just cause. The Grievant is to be reinstated within seven (7) calendar days.

1090) Jennifer Grimes 33-00-20101021-0064-01-04 Removal

ARBITRATOR: Meeta Bass Lyons

ISSUE: The Grievant was charged with violating Ohio Veteran's Home Corrective Action Standards AN-06: Failure to follow policy/procedure (resident related). Was the Grievant removed from her position for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02, 24.04, 24.05, 24.06

TOPIC HEADINGS: Disparate Treatment, Failure to Follow Policy, Just Cause, Mitigation, Nursing Board, Removal

AGENCY: Ohio Veteran's Home

SITE/LOCATION: Sandusky

POSITION: Licensed Practical Nurse (LPN)

RESULT: The grievance was sustained in part and denied in part. The removal was modified to a five (5)-day suspension.

REASONS: The Arbitrator found that the evidence clearly established, and the Grievant did not deny, the violation of the policy when she failed to complete all the required documentation that demonstrated the need to administer a medication to a resident. The Arbitrator held that there was just cause for discipline; however, removal was so excessive a punishment as to be beyond the Employer's managerial prerogatives.

The misconduct of the Grievant could have been corrected by a less severe discipline--education. There was no opportunity for corrections on performance because of the nature and number of attendance infractions--dissimilar offenses. There was no

evidence of the Employer's consideration of mitigation. The RN manager testified that had the Grievant not been the subject of an unsubstantiated resident complaint, the documentation issue would probably not have surfaced.

The Arbitrator held that the claim of disparate treatment was without merit. Administering different punishments to differently situated employees is not disparate treatment. She also held that the Nursing Board is a separate entity; the Employer is not bound to accept its remedies as its own for discipline.

1091) Rock Nissen 27-35-20101029-0352-01-03 Removal

ARBITRATOR: Susan Grody Ruben

ISSUE: The Grievant was charged with violating Rule 40—Excessive Use of Force. Was the Grievant removed for just cause? If not, what should the remedy be?

CONTRACT ARTICLES: 24.01, 24.02

TOPIC HEADINGS: Excessive Force, Mitigation, Progressive Discipline, Removal

AGENCY: Department of Rehabilitation and Corrections

SITE/LOCATION: Toledo Correctional Institution

POSITION: Corrections Officer

RESULT: The State did not have just cause to remove the Grievant. The state did have just cause to issue a two-day suspension.

REASONS: The Grievant and an inmate became involved in a verbal altercation that escalated into a fight, instigated by the inmate. The Arbitrator found that the State had just cause to discipline the Grievant for an unnecessary use of force when he punched an inmate in the face while the inmate was in the process of being cuffed by another CO. The Arbitrator held, however, that a two-day suspension was the appropriate discipline for the Grievant's final punch. There was a lack of certainty that the Grievant disengaged, then reengaged, as well as the fact that the inmate did not suffer any substantial injury.

The Disciplinary Grid provides for a two-day suspension or removal for a first offense. The Warden chose removal because he felt the Grievant had disengaged from his altercation with the inmate and then reengaged when he knelt down and punched the inmate. (There was no videotape evidence—the hallway cameras were pointed the other way.) The Arbitrator held that “While CO's are highly trained to respond appropriately in a use of force situation, they also are human. The Grievant was likely a bit addled after being punched in the face. The fact that he was alert at a medical examination almost two hours later establishes little.”

While the Grievant may have been involved in previous incidents while employed at ToCI, disciplines for these incidents were no longer active; therefore, the contract required that this matter be considered a first offense.

The Arbitrator noted that the Grievant was charged with excessive force—not abuse. Article 24.01 prohibits an arbitrator from modifying a removal if the arbitrator found abuse. There is no such contractual limitation on an arbitrator modifying discipline for excessive force.

1092) Sheri Oliver/James Adkins Issue

27-19-20080915-0259-01-06

27-19-20090310-0047-01-06

27-19-20090303-0046-01-06

27-23-20090218-0006-01-03

27-31-20090319-0028-01-14

ARBITRATOR: David Pincus

ISSUE: The Employer enacted a tobacco free workplace policy on March 1, 2009. This policy was grieved and forwarded to arbitration. Prior to the hearing, the parties agreed to settle the disputed matters by entering into a settlement agreement. Are the grievances substantively arbitrable?

CONTRACT ARTICLES: 25.03, 25.05

TOPIC HEADINGS: Arbitrability, Arbitrator's Authority, Prior Grievance Settlements, Tobacco Free Policy.

AGENCY: Department of Rehabilitation and Corrections

SITE/LOCATION: All

POSITION: All

RESULT: The grievances were denied because they lacked substantive arbitrability.

REASONS: The Arbitrator found that the grievances were not properly before the arbitrator because of substantive arbitrability concerns; therefore, the merits could not be reviewed by the Arbitrator. The grievances arose as a result of the timely implementation of the terms of a settlement agreement. Moreover, the Union had exhausted the remedies available because it previously agreed that the tobacco free workplace policy did not have to be bargained, and it also agreed to resolve various other issues through the impact bargaining process.

The Arbitrator held that it is axiomatic that prior grievance settlements will not be allowed as evidence by arbitrators in de novo hearings. An exception exists when matters in dispute directly deal with enforcing the provisions and terms of a mutually agreed to settlement. The parties anticipated this potential enforcement outcome when they agreed to the language in the settlement agreement.

The Arbitrator recognized the consequences these policy restrictions place on lifestyle alternatives and that certain members of the bargaining unit dislike the tobacco free workplace policy. However, the settlement agreement was entered into without

duress as the parties mutually agreed to particular terms and conditions with specifically incorporated rights and responsibilities.

The alternative outcome would have the Arbitrator impose obligations unintended by the terms mutually agreed to by the parties and disallowed by the Collective Bargaining Agreement.

1093) Douglas Korba 27-31-2010-03-15-0028-01-03 Issue

ARBITRATOR: David Pincus

ISSUE: Did the Employer violate Article 1.05 when it allowed a Horticultural Teacher to escort Turf Management Program inmates to Monroe County to perform a landscaping detail for instruction and training? If so, what shall the penalty be?

CONTRACT ARTICLES: 1.05

TOPIC HEADINGS: Erosion of the bargaining unit

AGENCY: Department of Rehabilitation and Corrections

SITE/LOCATION: Belmont Correctional Institution

POSITION: Corrections Officer

RESULT: The grievance was denied.

REASONS: The Arbitrator found that the bargaining unit was not eroded as a consequence of the Employer's actions. The Correction Officers did not have exclusive jurisdiction over the escort and supervision of inmates engaged on a landscaping detail outside the institution. The Arbitrator held that this is especially true when the detail is under the auspices of the Turf Management Program, and a classified Horticulture Teacher 2 served as the escort.

Type B transport is a detail which does not require inmates to be restrained, includes community service work details and is an authorized reason for transportation. Those guidelines were adhered to when the teacher escorted the inmates. The teacher also engaged in proper search standards for Type B Transport.

The Arbitrator held that it is now a well-established generalization that erosion of the bargaining unit does not take place when two job classifications have overlapping duties and responsibilities. In these circumstance, the parties had not placed an absolute restriction on Correction Officers solely performing custodial or security duties.

1094) Rodney Burchett 27-02-2011-03-03-0023-01-03 Removal

ARBITRATOR: Craig Allen

ISSUE: The Grievant was removed for violations of Rules 22, 24, 38, and 39. Was the Grievant removed for just cause? If not, what should the remedy be?

CONTRACT ARTICLES: 24.01

TOPICAL HEADINGS: Act that would bring Discredit to Institution, Falsifying Documents, Failure to Cooperate in an Investigation, Threat to Security,

AGENCY: Department of Rehabilitation and Corrections

SITE/LOCATION: Allen Correctional Institution

POSITION: Corrections Officer

RESULT: The grievance was granted in part and denied in part. The Grievant was reinstated with one month's loss of pay, seniority, and benefits.

REASONS: An inmate had hung himself in his cell and eight hours elapsed before he was discovered. The Grievant was removed when the agency claimed that security rounds and formal counts had not been properly completed.

The Arbitrator held that the removal was not progressive or commensurate with the offense. The Grievant had worked seventeen years in a high stress environment with no discipline on record. He had good performance evaluations and his Lieutenant and Captain said he was a good officer. The Employer had not notified the officers that the inmate's father had died; despite the fact that increased stress and turmoil can cause inmates to attempt to harm themselves.

The Arbitrator found no evidence of a violation of Rule 22—Falsifying, Altering or Removing any Document of Record. The Employer contended that because the Grievant failed to see the inmate was deceased, he falsified the cell block records by including the inmate in the count. The Arbitrator held this is not what falsification means in this context. Records are usually falsified in order to protect the Grievant by obscuring or destroying the evidence.

The Arbitrator found no evidence of a violation of Rule 38—Any Act, or Failure to Act which Constitutes a Threat to the Security of the Facility, Staff, or any Individual Under the Supervision of the Department. There was no escape or attempted escape. Nor was there any assault or altercation with staff or inmates.

The Arbitrator found the Grievant violated Rule 24—Interfering with, Failing to Cooperate in, or Lying in an Official Investigation or Inquiry. The real issue was if the Grievant made quality Rounds and Counts. The Arbitrator held he did not. The Employer was correct that the Grievant should have seen if the inmates were breathing.

The Arbitrator found the Grievant guilty of a violation of Rule 39—Any Act That Would Bring Discredit to the Employer. There was ample evidence of newspaper articles bringing discredit to the institution.

As to the remedy (reinstatement), the Arbitrator cites Arbitration Decision #929 by Dr. Pincus.

1095) Michael Ely 34-25-2-10-09-22-0152-01-07 Issue

ARBITRATOR: Susan Grody Ruben

ISSUE: The Grievant was returned to his former position and was not allowed to work from home as he was prior to being placed in an exempt position. The Grievant is not a new hire or transferred employee. Other DSH employees are allowed to work from home.

1. Is the grievance substantively arbitrable?
2. If the grievance is substantively arbitrable, it is procedurally arbitrable?
3. If the grievance is both substantively arbitrable and procedurally arbitrable, does the Grievant being headquartered at OCOSH rather than at his residence violate the Agreement? If so, what shall the remedy be?

CONTRACT ARTICLES: 2, 18.06, 25.01

TOPIC HEADINGS: Arbitrability, Jurisdiction

AGENCY: Bureau of Workers' Compensation

SITE/LOCATION: Ohio Center for Occupational Safety & Health

POSITION: Safety and Health Consultant

RESULT: The grievance did not have substantive arbitrability and was denied.

REASONS: The Arbitrator held that the grievance is not substantively arbitrable. The Arbitrator has jurisdiction only over grievances as the Parties have agreed to define grievances in Article 25.

The grievance alleges violations of Article 2 and Article 18.06. The Arbitrator found that Article 2 does not apply because the Grievant is not alleging discrimination on the basis of any of the protected classes specified in Article 2. Article 18.06 does not apply because the Grievant was not laid off and Article 18.06 addresses a laid-off employee's bumping rights to a previously-held classification.

The Arbitrator held that the Grievant was, in essence, alleging a violation of ORC Section 4121.1221(B)(2). This section is not incorporated in the Parties' Agreement. As it is not in the Agreement, the Arbitrator does not have jurisdiction to determine whether it was violated.

ORC 4121.121(B)(2) states: "Reinstatement to a position in the classified service shall be to a position substantially equal to that position in the classified service held previously...If the position the person previously held in the classified service has been placed in the unclassified service or is otherwise unavailable, the person shall be appointed to a position in the classified service within the bureau that the director of administrative services certifies is comparable in compensation to the position the person previously held in the classified service...When a person is reinstated to a position in the classified service as provided in this division, the person is entitled to all rights, status, and benefits accruing to the position during the person's time of service in the position in the unclassified service."

1096) Robert Hughes 27-23-2011-10-08-0008-01-03 Removal

ARBITRATOR: Meeta Bass Lyons

ISSUE: The Grievant was charged with violation of Rule 7-Failure to follow post orders; Rule 30C—Unauthorized conveyance or possession of contraband; Rule 13—Improper Conduct-Acts of discrimination or harassment on the basis of sex; Rule 50-Any violation of ORC 124.24, Rule 24—Lying during an official investigation. Was the Grievant terminated for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02, 24.06

TOPIC HEADINGS: Admissibility of Evidence, Arbitrator's Authority, Disparate Treatment, Last Chance Agreement, Removal

AGENCY: Department of Rehabilitation and Corrections

SITE/LOCATION: Ross Correctional Institution

POSITION: Corrections Officer

RESULTS: The grievance was denied in part and sustained in part. The removal was modified to a twenty day (20) suspension with a performance based Last Chance Agreement.

REASONS: The Arbitrator held that the evidence demonstrated that the Grievant violated work rules and there was just cause to discipline; however, removal was excessive. The Grievant had no active disciplines on his record and was removed on his first offense. Furthermore, the Employer took no action to correct the Grievant's behavior once it became known.

The Union objected to the admissibility of sexually explicit photographs of the Grievant's wife located on a locked file on the Grievant's personal cell phone. The Arbitrator held that the photographs on his phone were relevant and material to the allegations made and were therefore admissible to support a fair investigation of the charges. However, at the arbitration hearing there was no evidence that these personal photographs which were locked in the cell phone were actually exhibited to anyone in the facility. Therefore, the objection was sustained in part, with no weight given to those photographs to support the charges.

ODRC policy provides the Director with the authority to issue subpoenas and the Ohio State Patrol with the authority to obtain warrants for the production of documents. The agency investigator was advised by the legal department that a warrant would be necessary to view the locked files of the Grievant if he did not consent. However, those avenues were not taken since the Grievant gave his consent. There was no deception and no violation of the Collective Bargaining Agreement on the part of the investigator.

1097) John Anthony 30-04-20101115-0064-01-14 Issue

ARBITRATOR: Meeta Bass Lyons

ISSUE: The Department of Taxation denied the request for a retired Union officer to attend a union meeting scheduled in the cafeteria of a secured facility. Did the Employer violate Article 3 of the Contract? If so, what shall the remedy be?

CONTRACT ARTICLES: 3.01, 3.04

TOPIC HEADINGS: Access, Meeting Space

AGENCY: Department of Taxation

SITE/LOCATION: Northland Facility

RESULT: The grievance was upheld. The Employer was directed to rescind the Denial of Access dated November 8, 2010.

REASONS: The Arbitrator held that the grounds cited by the Employer were not reasonable grounds for the Employer to deny access of the Union Treasurer from the union meetings at the Northland Facility cafeteria. The language in Article 3.01 requires the Employer to grant reasonable access to chapter officers for the purpose of administering the Collective Bargaining Agreement. The language also permits the Employer to provide a representative to accompany a non-employee representative. The parties, therefore, contemplated in the negotiations of the Agreement that a non-employee officer would have need to access the facility for union business.

The Local Chapter Treasurer retired from state service on June 30, 2010. On that date she transmitted an email to a massive number of employees' state email accounts from her department email account. The attachment to the email contained heart-felt thanks, but also made disparaging remarks about and character attacks against coworkers. The email also expressed criticism of the administration.

The Arbitrator agreed that sending the email constituted a misuse of the computer system, and but for her retirement, the Union Treasurer would have been disciplined. Her retirement rendered disciplinary measures moot. Although the email caused significant disruption in the workplace, it did not warrant a denial of access to a union officer to attend a union meeting.

Another employee expressed his displeasure with the email and the union officer. The Arbitrator found that the employee was justifiably upset about remarks made about him in the email. However, the employee testified that he had no intention to cause physical harm to the Treasurer at the workplace if she attended the meeting. Furthermore the employee's conduct, if necessary, could be corrected through the disciplinary process. He cannot make threats of violence in the workplace. This ground did not warrant a denial of access to a union officer to attend a union meeting. It is unreasonable to deny access to a Union officer simply because she is not liked by her peers.

As to the remedy, the Arbitrator held that she did not have the authority to issue an award that provided blanket access to the facility for union representatives and meeting space. The contract speaks to reasonableness for officers and feasibility for meeting space. The remedy stated in the grievance included a request for reimbursement of the travel cost of members to the chapter meeting's offsite location. The Arbitrator held that an award of damages would be punitive in nature, and inappropriate in this situation.

The Arbitrator held there was insufficient evidence to support the violation of Rule 13. Acts of harassment based upon sex whether verbal, visual or physical generally are unwelcomed advances which create a hostile work environment.

The Arbitrator found no evidence of disparate treatment. The investigation was not based solely on the normal use of the cell phone; therefore, the Grievant and other officers were not similarly situated.

The Arbitrator denied the union's request that the award mandate the Employer to place the disciplinary investigative records in the Grievant's private file per DR&C policy 33OERD-01. Such an award is outside the scope of the Arbitrator's authority.

1098) Sick Leave Pay/Compensatory Time Grievances Issue

ARBITRATOR: David Pincus

ISSUE: What should an employee be paid the week of a holiday if the employee uses sick leave, notwithstanding Article 26.04? What should an employee be paid the week of a holiday if the employee uses a CSD, notwithstanding Article 26.04? Can an employee convert any hours to comp time during the week of a holiday when an employee receives 12 hours of pay (8 hours coded –HOLPR which pays at time and half)? If so, how many hours can be converted into comp time?

CONTRACT ARTICLES: 13.10, 26.04, Letter of Agreement

TOPIC HEADINGS: Active Pay Status, Past Practice

AGENCY: Department of Rehabilitation and Corrections

SITE/LOCATION: All Institutions

POSITION: All positions in Bargaining Units 3, 4, and 5

RESULT: The grievance was denied except for the issue dealing with the conversion of overtime into comp time per Article 13.10.

REASONS: The Arbitrator held that with one exception the Employer's interpretation of the contract language was correct. The mixed practice raised by the union cannot overcome clear and unambiguous contract language negotiated by the parties.

The Arbitrator held that a mixed practice by its very nature fails to establish the very specific characteristics of a past practice. The grievances presented had system wide implications; they were not limited to two facilities. Similar practices at these facilities failed to establish a consistent way of handling a payment process across the Department. Even if a mixed practice was established, it cannot prevent an employer from reverting to clear and unambiguous language contained in a contract. Article 44.03 supports this notion because it allows the Employer to modify or discontinue, at its own discretion, any benefits or practices previously in effect.

The decision is summarized with the following:

- a. If the employee works on a holiday, the employee receives time and half for working the holiday, regardless of the employee's schedule for the rest of the week pursuant to 26.03.

- b. Holiday pay is the 8 hours of pay received whether the employee works or does not work the holiday, except for the reasons why the employee would forfeit the holiday pay under 26.04

If the employee takes sick leave, it is not considered active pay status and will not count toward 40 hours in active pay status for purposes of overtime or “holiday premium pay.”

If the employee takes a CSD, it is not considered active pay status and will not count toward 40 hours in active pay status for purposes of overtime or “holiday premium pay.”

If the employee does not work the holiday (holiday is the employee’s good day), but the employee is in active pay status (hours worked, vacation, etc.) for 40 additional hours during the week, the employee will receive 52 hours of pay (40 regular hours, 8 hours of holiday pay, plus 4 hours of premium pay because the holiday is also considered active pay status.)

1099) Melissa Perin 24-13-(10-11-08)-0037-01-04 Removal

ARBITRATOR: David Pincus

ISSUE: The Grievant was removed for abuse of a client and failure of good behavior. Did the Grievant commit an act of abuse? If not, what shall the remedy be? Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01

TOPIC HEADINGS: Abuse, Bifurcation, Removal

AGENCY: Ohio Department of Developmental Disabilities

SITE/LOCATION: Tiffin Developmental Center

POSITION: Therapeutic Program Worker

RESULT: The grievance was denied.

REASONS: The Arbitrator held that the Grievant abused a client. Support for an abuse charge does not require proof of physical injury. The living room door was significantly damaged as a consequence of the Grievant pushing the client into the living room from the hall. (hanging from one hinge, debris on the floor, including screws from the door) Nothing in the record provided an alternative explanation. Even if a prior incident had cracked the door, a unique set of circumstances resulted in the door being removed and demolished. The coworker’s evidence appeared credible; however, the Grievant’s version of events was not consistent, but evasive.

The parties limit abuse cases to a threshold determination regarding the facts surrounding an abuse allegation. A just cause standard is not applied. The Arbitrator bifurcated the opinion and award. Since the abuse allegation was supported by the record, the failure of good behavior charge became irrelevant and no analysis was necessary.

1100) Mickey Gonzalez 30-04-20110819-0104-01-14 Removal

ARBITRATOR: Thomas J. Nowel

ISSUE: The Grievant was removed for violation of Work Rule #3C4—Absenteeism—Absence Without Leave Three Days or More; and Work Rule #18—Any Violation of State of Ohio Policies and/or Departmental Policies. Did the Employer remove the Grievant for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 2.01, 24.01, 24.02, 24.05, 24.06, 44.02

TOPIC HEADINGS: Just Cause, Non-Appearance of Grievant at Pre-D, Progressive Discipline, Removal

AGENCY: Department of Taxation

SITE/LOCATION: Northland

POSITION: Tax Commissioner Agent

RESULTS: The grievance was granted in part and denied in part. The removal was modified to a five (5)-day suspension.

REASONS: The Arbitrator found that the Employer violated 24.01 and 24.02 when it imposed the penalty of termination on a long tenured employee with no official discipline. The Arbitrator also held that the Grievant was in violation of Policy #3C4 when he did not attempt to obtain additional approved leave to cover absences. The Employer had an opportunity to warn the Grievant that discipline was a possibility if he continued to call in sick without authorized leave. Inherent in the just cause standard are : (1) proper notice that an action may lead to discipline, (2) progressive discipline, and (3) the principle that the penalty must fit the violation. The Arbitrator held that both the Grievant and management could have handled this matter with open communication consistent with Department policy.

The Grievant had nearly 25 years service with no current disciplines in his personnel file. His performance had been described as acceptable to excellent during the term of his service. The Arbitrator pointed out that the Department's Policy #18 allows for elements of just cause and progressive discipline when it indicates that the penalty should be reflective of the offense. If the Grievant had significant absenteeism outside approved leaves and FMLA, lower level disciplinary action could have been used in an attempt to correct the behavior, but this did not occur. The Arbitrator concurred with the arbitrator in case 27-03-031205-1274-01-03 (#866, Harry Graham) that "a penalty short of discharge is warranted in this situation."

The Department argued that the Grievant's failure to attend the pre-disciplinary hearing strengthened their case. The Arbitrator held that the Grievant was represented by his Union steward at the hearing and the non-attendance of the Grievant was not persuasive at arbitration.

1101) Norm Spellman

25-20-20120213-0001-01-14

Removal

ARBITRATOR: Robert Brookins

ISSUE: The Grievant was charged with Failure of good behavior and Intentional misuse or disclosure of confidential information or material. Was the Grievant discharged for just cause, if not what shall be the remedy?

CONTRACT ARTICLES: 24.01, 24.02

TOPICAL HEADINGS: Aggravating Factors, Culpable Knowledge, Failure of Good Behavior, Mitigating Factors, Intentional Misuse of Confidential Information, Last Chance Agreement, Progressive Discipline, Removal

AGENCY: Department of Natural Resources

LOCATION/SITE: Office of Information Technology

POSITION: Information Technologist 3

RESULT: The grievance was denied in part and sustained in part. The Grievant was reinstated without back pay/benefits and placed on a Last Chance Agreement.

REASONS: The Grievant applied for a position as an Infrastructure Specialist 2. Applicants had to pass an evaluative interview. While preparing for his interview, the Grievant obtained a CD containing questions and answers virtually (if not actually) identical to those subsequently posed during his interview. Management launched an investigation when the Grievant set a record by scoring perfectly on the interview. Moreover, the substance and sequence of his answers virtually mirrored those on the answer key.

The Arbitrator held that the preponderance of evidence demonstrated that the Grievant had culpable knowledge when he used information on a CD to prepare for an interview. His statements and conduct showed that more likely than not the Grievant either knew or should have known that the CD information contained specific questions and answers to the interview. His intentional use of such material was inappropriate and constituted misconduct. Therefore, discipline was indicated.

Aggravating factors were that the Grievant's intentional use of inappropriate material to prepare for an interview/examination is fundamentally dishonest, and, as a Technologist 3, the Grievant held a highly visible position of trust. That the Grievant was a twenty-five year employee with a good performance record and an unblemished disciplinary record were the mitigating factors.

1102) Edward Rancher, Robert Long, Lori Thomas 34-21-20101103-0162-01-09 Issue

ARBITRATOR: Susan Grody Ruben

ISSUE: Did the State violate Article 28 and/or Article 2 of the Agreement by denying current BWC employees service credit for time they were employed by a public

retirement system for purposes of vacation accrual? If so, what shall the remedy be?
Relevant Stipulated Fact: The grievance is limited to whether Mr. Rancher's, Mr. Long's, and Ms. Thomas' prior employment with a public retirement system is employment with the state or a political subdivision of the state.

CONTRACT ARTICLES: 2.01, 2.02, 2.03, 28.01 29.05, ORC 9.44

TOPIC HEADINGS: "political subdivision of the state", vacation accrual, "whole document" rule of interpretation

AGENCY: Bureau of Workers Compensation

LOCATION/SITE: Columbus

RESULTS: The grievance was granted. The Grievants are to be made whole by being credited with their prior service at state retirement systems for the purpose of Article 28 vacation accrual.

REASONS: State retirement system employees who transfer to BWC (and other state agencies) are, pursuant to Article 29, credited with unused sick leave from their state retirement systems employment. Article 29 uses the terminology "political subdivisions" and the State is crediting *state* employees with sick leave from prior service at state retirement system boards. The Arbitrator held that for the State to then claim that Article 28 does not permit service credit from state retirement board employment because that prior employment was not with a "political subdivision of the State" is inconsistent and in violation of the "whole document" rule of contract interpretation.

If there was evidence the Parties intended different results from the use of the "political subdivisions" terminology in Articles 28 and 29, the Arbitrator would have found differently. Because there is no such evidence, the Arbitrator was compelled to read the language of Articles 28 and 29 consistently. A fundamental standard of collective bargaining contract interpretation is that the contract is to be reviewed as a "whole"—the "whole document" interpretation.

1103) Anthony Castelvetero 07-00-20110817-0012-01-07 Removal

ARBITRATOR: Susan Grody Ruben

ISSUE: The Grievant was charge with violation of Work Rule No. 1—Neglect of Duty (Major) and Work Rule No. 6—Dishonesty. Was the Grievant terminated for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02, 24.05, 24.06

TOPIC HEADINGS: Criminal Misdemeanor Plea, Neglect of Duty, Prior Rulings Between Parties, Progressive Discipline, Removal

AGENCY: Department of Commerce

SITE/LOCATION: State Fire Marshall, Code Enforcement Bureau

POSITION: Fire Safety Inspector

RESULTS: The grievance was denied. The State was ordered to update the DOC disciplinary grid by October 1, 2012 to make it consistent with the current Agreement.

REASONS: The Arbitrator found that the evidence in the record from two facilities alone demonstrated the Grievant was untrustworthy and seriously neglectful in fulfilling his work obligations. A Fire Safety Inspector cannot take a lackadaisical approach to his work ever because lives are at stake.

The Arbitrator held that removal was appropriate and that suspension would be insufficient because the State would have no way of knowing in the future, without extremely close supervision of the Grievant, if he had become a trustworthy employee. The Grievant is an adult and a highly trained safety professional. The State should not have to babysit him to ensure he is doing his job.

The Grievant had pled guilty to work-related misdemeanor charges. The Arbitrator regarded this as an aggravating factor, but not dispositive of wrongdoing.

The Union had three procedural complaints against the handling of the grievance. The State: 1.) did not provide adequate notice of the removal, 2.) used an out-of-date disciplinary grid, and 3.) did not discipline the Grievant in a timely manner. The Arbitrator held that none of the three complaints denied the Grievant due process. The State provided sufficient notice regarding the charges. The out-of-date grid is not inconsistent with the current agreement; however, the Arbitrator did order the State to update the grid. Discipline was delayed due to the Grievant's military leave of absence and a criminal investigation.

In its Post-Hearing Brief, the State objected to the Arbitrator considering any evidence and rulings not made part of the record. The Arbitrator agreed she should not consider any evidence not made part of the record. Prior rulings between the Parties is a different matter. That is a matter of advocacy and it is appropriate for the Arbitrator to consider prior awards between the Parties presented as part of the Parties' Post-Hearing Briefs.

**1104) Tobias Williams 16-11-20110406-
1027-01-09 Issue**

ARBITRATION: Susan Grody Ruben

ISSUE: Did the State violate the Agreement when it considered the Grievant to have resigned on March 21, 2011? If so, what shall the remedy be?

CONTRACT ARTICLES: 2, 5

TOPIC HEADINGS: "Affirmative Act", Rescission of Resignation, Resignation

AGENCY: Department of Jobs and Family Services

POSITION: Infrastructure Specialist 2

RESULT: The grievance was sustained. The Grievant was reinstated to his former position in his former location.

REASONS: The Arbitrator held that the Labor Relations Officer did not initiate some type of affirmative action that clearly indicated to the Grievant that she had accepted his

tender of resignation. The negotiated agreement is silent on the manner by which an employee submits a resignation and the manner by which the State accepts a resignation.

Arbitrator Ruben relied on a case decided by Arbitrator Brookins. In *Moyers*, 1999 (Arbitration Decision #700), Arbitrator Brookins stated: “Defining valid acceptance as a formal, affirmative action ensures that employees are clearly—though not necessarily directly—notified that their resignations have been accepted. Ultimately, then, employer should embrace some type of affirmative act which constitutes formal acceptance of employees’ resignations.”

In that decision Arbitrator Brookins relied on a case decided by the Ohio Supreme Court. The Ohio Supreme Court found in *Davis* (*Davis v. Marion County Engineer*, 60 Ohio St.3d 53, 55 (1991): “Therefore, we hold that a public employee may rescind or withdraw a tender of resignation at any time prior to its effective date, so long as the public employer has not formally accepted such tender of resignation. We further hold that acceptance of a tender of resignation from public employment occurs where the public employer or its designated agent initiates some type of affirmative action, preferably in writing, that clearly indicates to the employee that the tender of resignation is accepted by the employer.”

1105) Ralph McMillen 24-04-20111208-0018-01-04 Removal

ARBITRATOR: Thomas J. Nowell

ISSUE: The Grievant was removed for violating Policy E-2—Neglect of a Client when he “took down” a resident. Did the Grievant violate his Last Chance Agreement? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01

TOPIC HEADINGS: Last Chance Agreement, Neglect of a Client, Removal

AGENCY: Ohio Department of Developmental Disabilities

SITE/LOCATION: Cambridge Developmental Center

POSITION: Therapeutic Program Worker

RESULT: The grievance was denied.

REASONS: The Grievant was removed on December 7, 2011. The parties had settled a previous termination grievance with a Last Chance Agreement on August 5, 2011, which would remain in place for two years. The Arbitrator held that the Grievant violated Policy E-2, Neglect of a Client, for “the use of any behavior support method, including restraint or time-out, that is implemented in a manner prohibited by rules promulgated by the Department or by federal regulations or rules.” The Grievant had been disciplined on three occasions prior to this matter which resulted in the Last Chance Disciplinary Agreement. The Grievant’s record of discipline did not work in favor of his credibility in the face of two senior TPW’s who clearly witnessed and reported the “take down” of a resident.

1106) 27-19-12-12-06-0025-01-06 Warden's Raises Issue
27-01-12-02-09-0003-01-03
27-10-12-02-16-0001-01-03

ARBITRATOR: Susan Grody Ruben

ISSUE: Did the Department of Corrections violate the contract when the wardens received raises in January 2012?

CONTRACT ARTICLES: 36.13

TOPIC HEADINGS: Parity Clause, Wardens' Raises

AGENCY: Department of Rehabilitation and Corrections

RESULT: The Department of Corrections shall pay the Union Benefits Trust \$60,000 in January of 2013.

REASONS: The Arbitrator held that the Department of Corrections should have waited until March 1, 2012 to give the wardens raises.

1107) Judith Reid 05-00-12006001-0005-09-09 Removal

ARBITRATOR: Craig Allen

ISSUE: Was the Grievant removed from her position for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01

TOPIC HEADINGS: Removal, Work Slowdown

AGENCY: Office of Budget and Management

SITE/LOCATION: Shared Services Division

POSITION: Shared Services Associate

RESULT: The grievance was sustained. The Grievant was returned to work with back pay and benefits restored.

REASONS: The Grievant was removed for violation of Work Rule 5-2(A)—Participation in a work stoppage, strike, sit out, illegal strike, or any other activity that would interfere with the operation of a department, facility, installation or program. The Arbitrator held that there is no clear and convincing proof to support a removal.

The Employer's only witness testified that he was not asked to Slow Down. The Employer's evidence that the Grievant attend a Team Meeting and later had a discussion with the witness is not evidence that she asked him to Slow Down. The record shows that another employee did make comments at a Team Meeting that undermined the stated mission of high performance work and was disciplined for the comments.

1108) Brian Chaney 35-04-2012-04-16-0011-01-03 Removal

ARBITRATOR: Thomas Nowel

ISSUE: The Grievant was charged with violations of Rule 4.09P, 5.01P, and 6.05P. Was the Grievant removed for Just Cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 2.01, 24.01, 24.02, 24.03

TOPIC HEADINGS: De-escalation, Length of Service, Prior Discipline, Removal, Use of Prohibited Physical Response

AGENCY: Department of Youth Services

SITE/LOCATION: Indian River Juvenile Correction Facility

POSITION: Youth Specialist (JCO)

RESULT: The grievance was denied.

REASONS: The Grievant was terminated after an incident with a juvenile. He was charged with a.) failure to follow policies and procedures, b.) physical response beyond what was necessary to control/stabilize the situation, and c.) use of prohibited physical response. The Arbitrator found that the agency had just cause to remove the Grievant when he lost control of the situation and himself. He failed to follow policy which states that physical force is a last resort.

The Grievant knew the youth was a problem, and he had been trained to de-escalate. It was his responsibility to de-escalate the youth, and the evidence was clear that he made no attempt to do so at any time. Instead he further agitated the youth by throwing papers; he used an improper technique when he hit the youth and took him to the floor; and he attempted to re-engage the youth who was then being restrained by the manager.

The Grievant had been suspended six months prior to this incident for a similar infraction involving a disruptive youth. The Grievant had a second chance, and he failed to take advantage of it. Youth Specialists at the Indian River facility must be held to a high standard based on their charge to appropriately supervise youth offenders. The Grievant's continued employment at the facility would be a liability for the State of Ohio.

1109) James Adkins 27-19-10-06-24-0151-01-06; 27-19-09-08-31-0199-01-06 Issue

ARBITRATOR: David Pincus

ISSUE: Did the Employer violate Article 11 when it failed to issue keys to non-custodial employees on August 26, 2009 and June 23, 2010?

CONTRACT ARTICLES: 11.03

TOPICAL HEADINGS: Key policy, Safety

AGENCY: Department of Rehabilitation and Corrections

SITE/LOCATION: Ohio Reformatory for Women

POSITION: Non-custodial

RESULT: The grievance was sustained. Under different circumstances the Employer may implement a reasonable key policy under Article 5.

REASONS: Yard Day takes place once a year. The Employer implemented a Critical Incident Management plan because it viewed the day as a heightened security risk, since the inmates are not confined but are engaged in a number of activities. The Arbitrator held that to confine their counterpart non-security personnel without their keys was a safety and health risk under these circumstances.

Yard Days are used throughout DRC, yet only ORW has this key policy. The Union presented the potential risks if a serious incident took place. The Employer argued that the key policy was necessary to limit the movement of personnel so they completed their tasks. The Arbitrator found the Employer's major justification was flawed, since no prior discipline was introduced to support this argument.

The Employer raised the issue of an 11.03 defect. However, the Arbitrator held that the Union had complied with the required reporting process when it brought its concerns to the safety designee, who did not resolve the issue.

Prior to the event, the bargaining unit was notified that the decision regarding the key policy would take place on a case by case basis. Since it appears no non-custodial employees were granted access to their keys, the Arbitrator concluded that the notification was a pretext.

1110) Shawna Giddens 27-35-12-05-15-0140-01-03 Removal

ARBITRATOR: Craig Allen

ISSUE: The Grievant was charged with a violation of Conduct Rule 22— Falsifying, altering or removing any document or record. Was the Grievant removed from her position of Corrections Officer for Just Cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02

TOPIC HEADINGS: Disparate Treatment, Progressive Discipline, Removal

AGENCY: Department of Rehabilitation and Corrections

SITE/LOCATION: Toledo Correctional Institution

POSITION: Corrections Officer

RESULTS: The grievance was granted.

REASONS: The Arbitrator found that the Grievant was consistent in her testimony that she had problems with her watch and that she had told the Warden of this fact. The problem with the Log Book was an oversight.

The Arbitrator held that the Employer had a problem with disparate treatment. Another Corrections Officer and the Grievant were similarly situated. Both corrections

officers had problems with entries in the Log Book. Both had prior discipline. The evidence showed that the other Corrections Officer received no discipline, while the Grievant was removed.

The Grievant was a fifteen (15) year employee. Based on the evidence, the Arbitrator held that the discipline was not progressive.

**1111) Donald Vanterpool, Kelvin Jones 12-00-11-07-02-0190-01-04;
12-00-11-07-02-0191-01-13 Issue**

ARBITRATOR: Robert Brookins

ISSUE: Did the EPA violate Article 5 or Article 44 of the Collective Bargaining Agreement by denying the Grievant's request for outside employment under the agency's outside employment policy?

CONTRACT ARTICLES: 5, 44

TOPIC HEADINGS: "Common law of the shop" Rights; Management Rights, Right to Outside Employment

AGENCY: Ohio Environmental Protection Agency

SITE/LOCATION: Division of Air Pollution Control

POSITION: Staff Attorney 3

RESULT: The grievance was denied.

REASONS: In 2005, the Grievant accepted a position as a Court-Appointed Counsel for indigent minors in the Domestic Relations and Juvenile Branch of the Franklin County Common Pleas. Effective June 2011, the Agency promulgated an Outside Employment Policy requiring employees to obtain managerial approval before conducting outside employment that conflicted with the Agency's "core business hours." Specifically, the policy favored pre-arranged, reasonably static outside employment that did not compete with the employee's EPA duties. On June 8, 2011, the Grievant requested permission to continue his private practice. The agency denied the request, including the reason that the Grievant's work "may create an appearance of impropriety or appearance of conflict of interest."

The Arbitrator explained "Common law of the shop" rights. Employers may protect their legitimate business interests against employee's unreasonable conduct that either actually or unreasonably threaten to undermine employer's legitimate interests. Employers may shield their legitimate interests from conduct that poses an unreasonable risk to those interests by taking protective steps. Employers need not wait for their rights to be diminished before taking protective steps.

The Policy in question comprised two types of provisions: 1) Impact Provisions—that prohibit outside employment that actually adversely impacts EPA's operational interests; and 2) Risk Provisions—that prohibit outside employment that threatens to adversely impact EPA's operational interests.

The Arbitrator held that the evidence did not establish that the EPA could rely on the impact provisions to prohibit the Grievant from engaging in a private legal practice. The Arbitrator held that the EPA did not reasonably apply the risk provision of outside employment that is “prearranged months in advance and reasonably static.”

However, the Arbitrator held that EPA did not violate Articles 5 or 44 by prohibiting the Grievant’s private practice under the risk provision that “Outside employment that may create an appearance of impropriety or appearance of a conflict of interest is disfavored.” The EPA prevailed for three reasons. First, any employer has the right to protect its legitimate interests from unreasonable risks/threats. The language in Articles 5 and 44 gives management the right to make rules that include the risk provision and reasonably apply them to protect EPA’s legitimate interests. Third, because the Grievant must conduct most, if not all, of his private practice during EPA’s core business hours, there is a continual risk/threat that members of the public will identify him as an EPA attorney who practices law during EPA’s core business hours.

1112) John Milling and Eric Smith 31-13-20120402-0010-01-14 and 31-13-20120402-0011-01-14 Removal

ARBITRATOR: Thomas Nowel

ISSUE: The Grievants were charged with violating two work rules: 2B—Disobedience/Refusal of an order or assignment by a superior; and 2C—failure to follow policies of the Director, Districts, or offices. Were the Grievants removed for just cause, if not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02, 24.07 (11.03)

TOPIC HEADINGS: Insubordination, Removal, Safety

AGENCY: Ohio Department of Transportation

SITE/LOCATION: Division of Aviation

POSITION: Aviator 2

RESULT: The grievances were sustained.

REASONS: The two pilots had indicated their safety concern over the flight controls not being “free and correct” when they would be assigned in the future to operate the P68 aircraft. On March 8, 2012 the Aviation Manager drafted a memo stating to the Grievants that they were required to submit to ground training on the P68 and then operate the aircraft. He demanded their verbal commitment to do so by the end of the work day. The Grievants signed the memo, as directed, and wrote on the bottom that it was unsafe for them to operate the aircraft due to flight controls. Neither Grievant made contact with the Aviation Manager before he left that day. The termination commenced the next day.

The Arbitrator held that there was no direct order, and therefore the Grievants did not refuse a direct order. There is no evidence that the Grievants ever refused a direct order to train on the P68 or fly the aircraft at any time. It wasn't possible for the Grievants to disobey a direct order to operate the aircraft, since it was common knowledge that the P68 sat in the hangar with no engines. They did not engage in an act of defiance.

The supervisor's order was defective for a number of reasons. It was a verbal order; verbal orders are often unclear and open to interpretation. The verbal order was not specific to date and time. The Grievants were not presented with a direct order; the supervisor demanded to know what they would do in the future. The supervisor's memo did not state that failure to communicate compliance to him before he left for the day could result in termination of employment.

The Arbitrator found no evidence that the Grievants violated specific policies of the Employer.

The Arbitrator found it problematic that the verbal order was communicated to the Grievants on the day they filed a grievance pursuant to the safety provision of the CBA.

1113) Kelly Johnson 35-04-12-07-08-0018-01-03 Removal

ARBITRATOR: Craig Allen

ISSUE: The Grievant was charged with Failure to Follow Policies and Procedures; Use of Excessive Force with injury; and Use of Prohibited Physical Response. Was the Grievant removed for Just Cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02

TOPIC HEADINGS: Excessive Force, Failure to Follow Policy, Removal, Use of Prohibited Physical Response

AGENCY: Department of Youth Services

SITE/LOCATION: Indian River Juvenile Correctional Facility

POSITION: Youth Specialist

RESULT: The grievance was denied.

REASONS: An incident occurred in which the Grievant was splashed with window cleaner by a Youth. The Grievant responded by charging the Youth, striking him in the head with her radio, placing the Youth in a choke hold, biting the Youth, and pushing the Youth's head to the floor. The Arbitrator held that the Grievant retaliated against the Youth instead of following the procedure on which she had been trained.

The Arbitrator found that the Grievant made no effort to use any verbal strategy and had had many training sessions on Use of Force. The evidence also contains the Grievant's statements: "I don't know why I have to defend my actions in regards to my response. I immediately got up and hit him upside the head with my radio" and "The

Youth is not going to pour chemicals on me and think that is OK and not have anything done or said to him.”

The Arbitrator did not find the Grievant’s thirteen years of service and no discipline of record as mitigating factors.

1114) Kirk Saxon 27-14-120201-0017-01-03 Removal

ARBITRATOR: Robert Brookins

ISSUE: Whether Management had just cause to remove the Grievant? If not, what shall the remedy be? The Grievant was charged with violations of Rule 12A—Making obscene gestures or statements; Rule 13—Improper Conduct; and Rule 49—Sexual conduct or contact while on state time.

CONTRACT ARTICLES: 24.01, 24.02, 24.05

TOPIC HEADINGS: Disparate Treatment, Improper Conduct, Last Chance Agreement, Making Obscene Gestures or Statements, Mitigating Factors, Procedural Errors, Progressive Discipline, Removal, Sexual Conduct/Contact, “Stacking Charges”

AGENCY: Department of Rehabilitation and Corrections

SITE/LOCATION: Lorain Correctional Institution

POSITION: Corrections Officer

RESULT: The grievance was sustained in part and denied in part. The Grievant was reinstated without backpay and without any employment benefits. The Grievant’s seniority remained intact. The Grievant was reinstated pursuant to a Last Chance Agreement with the central provision prohibiting the Grievant from engaging in any kind of sexual behavior, including contact, gestures, or statements that violate either the language or spirit of any applicable work rules that prohibit sexual and/or discriminatory behavior.

REASONS: The Arbitrator found clear and convincing evidence that demonstrated the Grievant continually made sexual comments and engaged in sexual behavior in violation of Rules 12A and 13. Therefore, just cause warrants some measure of discipline. The Arbitrator held that this case typifies an occasion to replace progressive discipline with a sterner disciplinary measure, more likely to secure the Grievant’s attention and precipitate his rehabilitation; therefore, the agency could deviate from its penalty table. The Arbitrator stated: “A reasonable balance of the aggravative and mitigative factors in the instant case places the Grievant’s sexual statements and conduct, including gestures, far beyond the pale of any fathomable definition of tolerable behavior in any workplace.” The mitigating factors included the fifteen years of service; the lack of active discipline; the procedural errors; and the prevalence of sexual behavior in the Medical Department.

The Arbitrator explained several affirmative defense arguments and procedural errors:

Inadequate Investigation. A thorough investigation does not necessarily entail interviewing every possible witness that observed a given episode of alleged misconduct. If the witnesses began to recount the same set of facts and circumstances, terminating the investigation may be reasonable.

Whether the Grievant's behavior offended witnesses is not a factor because offensiveness is not an element of Rules 12A, 13, or 49. Consequently, to establish a violation of those rules one need not prove that the alleged victim was also offended or otherwise discomfited. It is enough that the prohibited behavior occurred. The Arbitrator held that the Agency did conduct an adequate investigation.

Stacking Charges. "Stacking charges" generally entails asserting the same charges against an employee for a single episode of alleged misconduct. Management is free to assert multiple independent charges that address different aspects or components of a single behavioral episode. When an employee commits a single episode of misconduct management may level all applicable, independent charges against that employee.

The Arbitrator held that the Agency stacked charges when they added Rule 49 to the list of rules violated because it did not cover any aspect of the Grievant's sexual behavior that Rules 12A and 13 did not cover.

Disparate Treatment. To establish this affirmative defense the Union must identify specific employees who were similarly situated to the Grievant in all relevant aspects and who were disciplined less harshly than the Grievant, if at all. This same-or-similar element is absolutely pivotal to establishing a disparate treatment claim. The disparate treatment argument failed.

Shoptalk. Preponderant evidence established that more likely than not sexual comments, gestures, and innuendo were common in the Medical Department.

Zero Tolerance. The Arbitrator found nothing in the record that the Agency claims to have or applied a zero-tolerance rule.

Progressive Discipline. The Arbitrator held that the rehabilitative potential of progressive discipline is contraindicated given the nature and frequency of the Grievant's sexual behavior and his extensive sensitivity training. Consequently, the circumstances of this case do not support a reasonable expectation that progressive discipline will likely correct the Grievant's sexual behavior at work.

Pre-Disciplinary Notice. Although the measure of discipline does not appear on the first page of the pre-disciplinary notice, the penalty table, containing the measure of discipline, was attached to the pre-disciplinary notice. This procedural error was dismissed.

Failure to Provide Witness Statements. Failure to supply the list of witnesses and documents known at the time to support the possible disciplinary action constituted a procedural error. This error was factored into the remedy.

Notice of Purpose of Investigatory Interview. The Agency committed a procedural error by failing to notify the Grievant of the purpose of the investigatory interview with the Assistant Warden. This error was factored into the remedy.

1115) Jessie Hubbard 27-11-11-12-01-0010-01-03 Removal

ARBITRATOR: David Pincus

ISSUE: The Grievant was charged with violating Work Rules 18, 37, and 39. Was the Grievant removed from his position for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01

TOPIC HEADINGS: Bringing Discredit to Employer, Facebook Posting, Protected Concerted Activity, Removal, Threat

AGENCY: Department of Rehabilitation and Corrections

LOCATION/SITE: Lebanon Correctional Institution

POSITION: Corrections Officer

RESULT: The grievance was granted in part and denied in part. The removal was modified to a time-served suspension without back pay. The Grievant will retain his seniority and recoup lost benefits and accruals.

REASONS: The Grievant posted a Facebook message that stated: “Ok, we got Bin Laden ... let’s go get Kasich next ...who’s with me?” It was determined a total of 17 people viewed the transmission and “liked” it. Four of those people were employed by Lebanon Correctional Institution.

The Arbitrator found that the Facebook posting was not a threat justifying removal, but was severely inappropriate, justifying an extensive suspension. Words, themselves, do not establish a threatening circumstance. They must be evaluated in terms of context, the way the words are used, and the circumstances existing at the time.

The arbitrator held that the conduct was improper and violated Rule 39 in bringing discredit to the Employer. The Grievant disparaged the Governor. The message was uttered in a public forum and exhibited a certain job-related nexus. His Facebook profile designated his job location and public employee status.

The Arbitrator did not view the posting as protected concerted activity. The activity was not concerted; the Grievant acted solely on behalf of himself and the Facebook statement cannot be considered a discussion of complaints. Disputes involving potential legislative enactments [SB5] are not specific enough to be equated with existing terms and conditions of employment.

The Grievant had a good performance record with no active prior discipline which mitigated the imposed penalty. The Arbitrator also held that this ruling, with the

extended suspension, should place the Grievant on notice that virtually any future misconduct could result in termination.

1116) Michael Danko 31-02-02-15-12-0002-01-07 Issue

ARBITRATOR: Mitchell Goldberg

ISSUE: Was the agency eroding the bargaining unit when they assigned duties of the Safety and Health Inspector to managerial staff?

CONTRACT ARTICLES: 1.05

TOPIC HEADINGS: Bargaining Unit Erosion

AGENCY: Ohio Department of Transportation

SITE/LOCATION: District 2

POSITION: Safety and Health Inspector 1

RESULT: The grievance was sustained in part and denied in part. The Agency shall cease and desist from assigning any supervisor, consultant, manager or administrator any of the job duties of a Safety & Health Inspector as described in the classification specifications.

The cease and desist order shall remain during the time that the SI position remains unfilled. The Agency may eliminate the work described in the job description; but, it may not alter the shared proportion of that work that existed between the SC and other supervisors when the CBA became effective by keeping any amount of that work for supervisors, consultants, managers and/or administrators, but eliminating it for SI's. Specifically, the Agency shall cease and desist from having supervisors or managers perform independent multiple site safety inspections. Peer to peer safety inspections that are not of this type shall be permitted. The shared work and duties that the former Safety Inspector performed with his SC and other managers, administrators, and supervisors shall not be altered with respect to his work investigating personal injuries and vehicle accidents, safety training, preparing OVAR worksheets or other similar reports and form or his other described duties, by assigning any portion of that work to non-bargaining unit members for the term of the CBA.

REASONS: The arbitrator found that he could not find a violation when the Agency decided to eliminate the work of both the Safety Program Consultant (SC) and the Health and Safety Inspector (SI). This eliminated the shared work. However, when the SC was rehired, even on a shared basis with another district, the SC and other supervisors began performing at least some of the work that was previously performed on a shared basis with the SI. This circumstance increased the unit work described in the SI job description for the SC and left the SI position unfilled with none of the work. Moreover, parts of the SI work described in the job description and performed by the SI was dispersed among other managers and administrators, in the addition to the SC. The SI job description is

part of a full time safety assignment that involved physical feet on the ground unannounced site visits at multiple sites for the principal purpose of assuring safety compliance and finding violations that were present. The job also requires follow-up work that brings attention to the violations and assures that they are addressed and corrected. The Agency may not delegate this type of work solely to an SC or other managers and administrators while removing it entirely from the SI 's. The Arbitrator held that the altering of the existing work sharing arrangement in favor of supervision and against the SI unit position was expressly prohibited by Section 1.05 as a form of bargaining unit erosion.

1117) Jacqueline McClain 70-00-2012-02-03-0001-01-04 Issue

ARBITRATOR: Craig Allen

ISSUE: Did Management violate Article 11.09 and 36.05 of the CBA by not granting the Grievant hazardous/supplement pay, if so, what shall the remedy be?

CONTRACT ARTICLES: 11.09, 36.05

TOPICAL HEADINGS: Hazardous supplement pay

AGENCY: Ohio Public Defender

SITE/LOCATION: Correction Reception Center

POSITION: Administrative Professional 3

RESULT: The grievance was granted. The Grievant is entitled to 3% Supplemental Pay.

REASONS: The arbitrator held that the Grievant works in a hazardous environment and is entitled to 3% supplement pay.

The Grievant is the sole employee of the agency assigned to the Corrections Reception Center. Her office is in an area where there are many male inmates. While there are CO's in the areas within which the Grievant works, the CO's have numerous other duties than protecting the Grievant. The Grievant also meets with new inmates prior their classification into the various security levels.

The Employer argued that this situation was covered solely by OAC 123:1-37-04 which says that the "granting of hazard pay is subject to the approval of the director." The Employer also contended that the grievance was outside the confines of the contract (citing 25.03) and also contended that the supplemental pay can only be bargained for.

The Employer argued that "dealing with criminals is what we do." The evidence is that Corrections Sergeants, Counselors and Non CO's at penal institutions get supplemental pay.

The Arbitrator found that Article 11.09 does not apply. While the Grievant may be "alone in the crowd" Article 11.09 seems to be concerned with "alone" as in by yourself.

**1118) Shannon Bear 27-25-2012-10-04-
0110-01-03 Removal**

ARBITRATOR: Thomas Nowel

ISSUE: The Grievant was charged with excessive force when an inmate was being moved following an assault on another corrections officer. Was the Grievant removed from employment for just cause. If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02, 24.06

TOPICAL HEADINGS: Burden of Proof, Excessive Force, Last Chance Agreement—
for another grievant

AGENCY: Department of Rehabilitation and Corrections

SITE/LOCATION: Southern Ohio Correctional Facility

POSITION: Sergeant/Correctional Counselor

RESULT: The grievance was sustained in part and denied in part. The termination was modified to a five-day suspension.

REASONS: The arbitrator found that the agency violated Article 24.01 because there was no clear and convincing evidence to sustain the charge of excessive force. However, the Grievant, by his own admission, violated Rule 24 based on his initial incident report which failed to describe the take down of the inmate and his actions used to control the situation.

The Arbitrator held that the Employer's burden of proof in the case of a removal, which may be career ending, must be clearly and convincingly established. With the exception of the testimony of the inmate, there was no evidence at hearing that placed the boot of the Grievant on the face or head of the inmate. The testimony of the nurse was persuasive. Her two medical reports indicated no injuries to the inmate.

The Last Chance Agreement that the other officer entered into, could not be entered into the record.

1119) Larry Smith 19-00-120511-0003-01-07 Issue

ARBITRATOR: Howard Silver

ISSUE: Did the Employer violate Article 17 of the parties' collective bargaining agreement when it did not select the Grievant for the position of Insurance Complaint Analyst 3? If so, what shall the remedy be?

CONTRACT ARTICLES: 17.04, 17.05, 17.06

TOPIC HEADINGS: Arbitrator's Authority, Promotional Test Procedure.

AGENCY: Ohio Department of Insurance

LOCATION/SITE: Columbus

POSITION: Insurance Complaint Analyst 3

RESULTS: The grievance was denied.

REASONS: The arbitrator held that the failure of the agency to select the grievant for the vacant position was not a violation of the CBA. The arbitrator considered the Grievant's responses to nine questions and found that in four questions the scoring applied to the Grievant had been arbitrary. The arbitrator ordered that 3.5 points be added to the Grievant's score for a total of 97 points. However, the score of 97 points remained short of the 98 points required for a passing score. There was nothing arbitrary or capricious about the agency's determination of a passing score and the minimum passing score was applied uniformly.

The arbitrator has no power to order a change to the testing process applied by the agency so long as the testing process is not arbitrary, capricious, or an abuse of discretion, or a violation of the CBA. A dispute between the parties about how the scoring system was applied to the Grievant does raise an issue within the scope of the arbitrator's authority.

1120) Kenneth Finch 01-00-12-03-19-0001-01-07 Issue

ARBITRATOR: Craig Allen

ISSUE: Is this matter substantively arbitral? If it is, does the Adjutant General's practice of not granting paid military leave for travel and rest time violate the parties CBA?

CONTRACT ARTICLES: 30.02, Appendix Q

TOPICAL HEADINGS: Arbitrability, Military Leave Pay, Past Practice

AGENCY: Adjutant General

SITE/LOCATION: Columbus

POSITION: Firefighters

RESULT: The grievance was granted. The current Military Leave Policy is reversed. Individuals who were forced to take vacation, compensatory or personal time shall have their leave balances restored.

REASONS: Prior to the Firefighters joining the Union in 2003 and continuing until March 2012, the Firefighters were paid military leave for travel to monthly National Guard training duty. In addition they were paid Military Leave if they elected to take rest periods after the training. In March 2012 the Firefighters were told they would no longer be paid Military Leave for travel or rest time.

The Arbitrator held that the issue was arbitrable. Article 30.02 of the CBA and Appendix Q have specific references to payment for Military Leave. The question is an interpretation of the CBA as to what form or kind of Military Leave requires payment.

The Arbitrator held that the evidence is clear that Ohio law permits a CBA to grant greater benefits to an employee than may be found in existing statutes. Appendix Q

grants Firefighters 408 hours of Military Leave as opposed to Article 30.02 which grants other employees 176 hours.

The Arbitrator found that the evidence is undisputed that there was a long standing practice of paying for travel and rest as a Military Leave Benefit. The Arbitrator agreed that a past practice must be unequivocal, clearly enunciated, and readily ascertainable over a period time. However, the Arbitrator did not agree that a past practice must be common to multiple state agencies. The operations of diverse agencies with their differing skills, hours of operations and sometimes hazardous duty means that their practices, both past and present, are often times unique to the agency.

1121) Willie Mathis 16-11-12-10-15-1089-01-14 Removal

ARBITRATOR: Thomas Nowel [Related to Arb Decision 1122]

ISSUE: The grievant had been charged with violations of two policies: F1—Failure to carry out and/or follow directions, assignments, written policies, procedures, and/or work rules and F11—Purposeful, careless, or unauthorized use of abuse of state equipment, property, state paid time, or the property of another. Did ODJFS have just cause to remove the Grievant? If not, what shall the remedy be?

CONTRACT ARTICLES: 2, 13.08, 13.12, 13.16, 24.01, 24.02, 24.04, 24.05, 24.06

TOPIC HEADINGS: Investigatory Interview, Just Cause, Mitigation, Progressive Discipline, Time Clocks, Timeliness of Discipline

AGENCY: Ohio Department of Job and Family Services

LOCATION/SITE: SETS Unit of ODJFS, Columbus

POSITION: Software Development Specialist 4

RESULT: The grievance is granted in part and denied in part. The Grievant will be reinstated. He is to receive no back pay. Lost pay and benefits from the date of termination to the date of reinstatement will be considered a disciplinary suspension.

REASONS: In August 2009 the OIG received an anonymous complaint that six employees in the SETS unit were paid for time not worked. The ODJFS Chief Investigator initiated an investigation of the Grievant's work time from March 2009 through September 2009. The Grievant was interviewed in March 2010. In October 2010 the Ohio State Highway Patrol investigated to see if the alleged theft of time could result in criminal charges. The Prosecutor's office declined prosecution, so OSHP closed their investigation. The agency resumed their investigation and expanded their review of the Grievant's records to April 2010. A second investigatory interview was conducted in April 2012. The Pre-D was held on August 16, 2012. The Grievant was removed on October 2012.

The Arbitrator found that the investigation of the Grievant indicated late arrival, long lunch periods, and early departure from the work site on many occasions. The Grievant clearly entered information into TimeKeep which was not an accurate reflection of time actually worked on many occasions during the one year period which was the subject of the investigation. This justified the charge of violation of ODJFS Standards of Employee Conduct, policies F1 and F11.

However, the Arbitrator found that removal was not for just cause. There were several serious mitigating factors. The failure of supervision to address the practice of late arrival and early leaving created an environment in which short work days were an acceptable practice. In addition, management directed employees to enter eight hour work days in TimeKeep regardless of actual time worked in order to avoid overtime with the understanding that employees would flex their time. This practice enhanced the laxity and acceptability of flexible coming and going in violation of department policy. The Grievant was never counseled, confronted over, or disciplined for his shortcomings even when it became evident, in the early stages of the investigation, that his behavior was unacceptable. Finally, the length of time involved with the investigation and disciplinary process was difficult to reconcile.

The Arbitrator further ruled that the Agreement between the parties does not prohibit the employer from utilizing the same member of management to conduct hearings at each step of the process and to then present the case at arbitration. The merits of the case will be determined by the proofs offered by the parties and not by who the advocates might be. It would not be unusual for a Union staff person to represent a member at the pre-disciplinary hearing, the step 3 meeting and to serve as the advocate at arbitration.

The Arbitrator held that the review of the card swipe mechanism is a fair investigative tool.

1122) Lloyd Clark 16-11-12-10-15-1088-01-14 Removal

ARBITRATOR: Craig Allen (Related to #1121)

ISSUE: The Grievant was charged with F1—Failure to carry out and/or follow directions, assignments, written policies, procedures, and/or work rules; and F11—Purposeful carelessness, or unauthorized use or abuse of State equipment, property, State paid time, or the property of another. Did the Ohio Department of Jobs and Family Services have just cause to remove the Grievant? If not, what shall the remedy be?

CONTRACT ARTICLES: 25.01

TOPIC HEADINGS: Disparate Treatment, Investigation, Notice

AGENCY: Ohio Department of Jobs and Family Services

LOCATION/SITE: Office of Information Services/Air Center Building

POSITION: Software Development Specialist 2

RESULT: The grievance was denied.

REASONS: The Arbitrator held that there was ample evidence of the Grievant's absence from work. The amount of unaccounted time was substantial and the amount of time and money involved was so large that removal was justified.

In August 2009 the Inspector General's office received an anonymous letter stating that the Grievant and five other employees had been observed coming in late on a regular basis, leaving early, and disappearing for long periods during the day. The ODJFS Office of Chief Inspector began an investigation in September 2009. The OCI notified the Ohio State Highway Patrol of potential criminal activity. The Franklin County prosecutor declined to prosecute. OSHP advised the agency they could proceed with their investigation in December 2011. The OCI initiated a full review of the period March 29, 2009 to April 2010. The six employees were interviewed by the OCI.

The Arbitrator held that the Grievant had Notice of the probable consequences of his actions and that the agency rule was reasonable. The Arbitrator found no conflict of interest with the participation of one manager in all steps of the grievance process. The Arbitrator held that the investigation was fair and objective—the CBA provides for delay when there is a criminal investigation involved.

The Grievant was given ample opportunity to provide information as to his whereabouts and failed to do so. The Employer has the burden of proof; however, once the Employer focuses on discipline a Grievant is in peril if he doesn't defend himself. The Grievant was given full credit for the days the Kiosk system wasn't working.

The Arbitrator held that the treatment of the Grievant was equal. There were other employees removed. Evidence of settlements with other employees is not admissible.

1123) Jessica Williams 35-07-2013-03-01-0008-01-03 Removal

ARBITRATOR: Craig Allen

ISSUE: The Grievant was charged with violations of Rule 3.03P—leaving work area without permission; Rule 5.01P—failure to follow policy and procedures; Rule 5.27P—unauthorized or inappropriate contact with youth; Rule 5.28P—failure to follow work assignment or the exercise of poor judgment in carrying out an assignment. Was the Grievant removed from her position with Just Cause? If so, what shall the remedy be?

CONTRACT ARTICLES: 24.01

TOPICAL HEADINGS: Expert Witness, Failure To Follow Work Assignment, Leaving Work Area Without Permission

AGENCY: Department of Youth Services

LOCATION/SITE: Scioto Juvenile Correctional Facility

POSITION: Youth Specialist

RESULT: The grievance was denied.

REASONS: The Arbitrator found that the Grievant left her assigned post without permission. He found clear evidence that the Grievant gave gang signs to Youth. The Arbitrator found the testimony credible that the Grievant's relationship with two Youths was not the normal Staff/Youth relationship.

The Arbitrator held that the testimony of the Union's expert was not persuasive. The expert was provided only part of the evidence and the employer had no opportunity to cross examine him. In addition, the arbitrator held that it was not credible that the Grievant had no knowledge of gangs. She had worked at the facility long enough to be aware of gangs.

The Grievant left her post to go the school to see a youth because she thought he would be upset over an issue. However, she did not contact Operations and did not log it in. While there she displayed gang signs to two known gang members.

1124) Belinda Bradley 35-07-13-02-05-0005-01-03 Removal

ARBITRATOR: Robert Brookins

ISSUES: Procedural Issue: Whether the Agency timely notified either the Grievant or the Union of the Grievant's termination. Merits-Based Issue: Whether the Agency terminated the Grievant for just cause. If not, what shall be the remedy?

CONTRACT ARTICLES: 24.06

TOPICAL HEADINGS: Burden of Proof, Contract Interpretation, Imposition of Discipline, Past Practice

AGENCY: Department of Youth Services

LOCATION/SITE: Scioto Juvenile Correction Center

POSITION: Youth Specialist

RESULT: On the procedural issue, the grievance was sustained; therefore the arbitrator refrained from addressing the merits of the dispute. The Grievant was reinstated with full back pay and benefits.

REASONS: During the Grievant's shift, the Unit Manager was viciously assaulted in her office. The Grievant never entered the Unit Manager's office. Instead, she alerted other staff to the ongoing emergency. She also yelled verbal commands to the juvenile offenders from the doorway of the Unit Manager's office. To avoid escalation of the violence, the Grievant ordered other juvenile offenders to return to their rooms, per Agency rules. With staff assistance, the Grievant secured the juveniles in their rooms.

The Grievant was charged with Failure to Follow Policy and Procedures and Actions That Could Harm An Employee. The agency issued a formal Order of Removal fifty-seven days after the Pre-D hearing. However, the Agency notified the Grievant of her removal sixty-three days after the Pre-D hearing. Article 24.06 places a deadline of sixty days on the agency for notification.

The Union argued that that Agency had ample time to notify the Grievant within the sixty-day window. The Parties did not mutually agree to modify the sixty-day window language and that Union officials were available to receive the disciplinary decision within the sixty-day window.

Management argued that the Grievant failed to notify the Agency of her hospitalization which prevented the Agency from timely notifying her of the disciplinary decision. Management also argued that about two and a half years ago the Parties adopted a past practice of notifying the Union of disciplinary decisions only after it had notified the Grievant—even if that occurs after the sixty-day window.

The Arbitrator held that the language in 24.06 is not only clear and unambiguous regarding the Agency's duty of notification to the Union, but also explicitly enumerates the sole circumstance in which the Agency may ignore the sixty-day window. The Arbitrator did hold that the Grievant was duty-bound to inform the Agency of her whereabouts, including her hospitalization. However the Agency learned of the Grievant's hospitalization and likely could have notified her within the sixty-day time frame.

The Agency was seeking to support a past practice argument by showing numerous documents in which the union did not sign off on the Agency's disciplinary decision and, also, affidavits of the alleged past practice. The Arbitrator held that where contractual language is clear and unambiguous on a given issue, evidence of an intent to modify that language must be equally clear and unambiguous. The numerous documents which showed the Union did not sign off on the Agency's disciplinary decisions and the affidavits of the alleged past practice did not meet that standard.

The Arbitrator attached an Appendix to explain his contract interpretation. One approach is the "Plain Meaning Rule", which obligates the arbitrator to enforce clear and unambiguous contractual language. Parole evidence (past practice, bargaining history) becomes relevant if and only if contested contractual language is susceptible to more than one reasonable interpretation.

A contrasting interpretive approach ignores contractual language, however clear and unambiguous, regarding the issue in question. This interpretive approach maintains that past practice more accurately reflects the parties' intent. Conduct trumps language. Arbitrator Brookins adheres to the Plain Meaning Rule interpretation and poses the question to those who adhere to the other approach: Why have collective-bargaining agreements in the first instance if conduct is the sole interpretive source?

1125) Cheri Davis 31-09-13-02-12-0001-01-07

Removal

ARBITRATOR: Susan Grody Ruben

ISSUE: The Grievant was charged with 1.) Making defamatory or false statements, 2.) Interfering with and/or failing to cooperate in an official investigation or inquiry, and 3.)

Other actions that could compromise or impair the ability of the employee to effectively carry out her duties as a public employee. Was the level of discipline (removal) imposed against the Grievant commensurate to the work rule violations? If not, what shall the remedy be?

CONTRACT ARTICLE: 24.01, 24.02, 24.05, 24.06

TOPIC HEADINGS: Making Defamatory or False Statements, Progressive Discipline

AGENCY: Department of Transportation

POSITION: Highway Technician 2

SITE/LOCATION: Ross County Maintenance Facility

RESULT: The grievance was denied.

REASONS: Despite the lack of progressive discipline and the Grievant's sixteen years of service, the Arbitrator held that the State had sufficient just cause to remove the Grievant based on her seriously defamatory and false statements.

In November 2012, the Grievant left a voicemail for the ODOT District 9 Business and Human Resources Administrator in which she made statements she later admitted were false.

The Arbitrator held that while the Grievant had some legitimate workplace gripes, she seriously crossed the line when she made the decision to elaborate on her gripes with defamatory and false statements. Her defamatory and false voicemail caused the State to instigate an Administrative Investigation and an EEO investigation, which wasted State resources. Moreover, the false statements related to the workplace make it difficult, if not impossible, for ODOT administration and employees to be able to rely on the Grievant to be truthful and to conduct herself appropriately in the workplace.

1126) Norman Spellman 25-20-20121017-0002-01-14 Issue

ARBITRATOR: Sarah Cole

ISSUE: Whether the Grievant, who was terminated and later reinstated through an arbitrator's decision, is entitled to longevity pay and vacation benefits at the same rate as he had received them prior to his termination, even though he retired shortly after his termination?

CONTRACT ARTICLE: 36.07

TOPICAL HEADINGS: Retirement

AGENCY: Department of Natural Resources

SITE/LOCATION: DNR IT

POSITION: Information Technologist 3

RESULTS: The grievance was denied.

REASONS: ODNR removed the Grievant from his position. A few days later, the Grievant chose to retire with his OPERS benefits. Arbitrator Brookins issued an opinion in which he reinstated the Grievant to his position “without back pay or any other job-related benefits to which he would have been entitled but for his removal ... the Grievant’s seniority shall remain undiminished as if he were never terminated” and a Last Chance Agreement (Arbitration Decision #1101).

The Arbitrator found that the Grievant is not entitled to receive longevity pay and vacation benefits at the same rate as he had received them prior to his removal. The Grievant’s decision to retire was voluntary. Retirement triggered the provisions in ORC 9.44 and 124.181 and the language in 36.07. The language of the Agreement, and the state statutes, compelled the State to treat the Grievant as an employee who had retired.

1127) Matthew Dandino 27-35-2012-02-05-0312-01-03 Removal

ARBITRATOR: Craig Allen

ISSUE: The Grievant was charged with violation of Rule46A-The exchange of personal letters, pictures, phone calls or information with any individual currently under the supervision of the Department, or any individual within 6 months following their release from custody or supervision of the Department, or friends or family of same, without express authorization of the Department. Did Management have Just Cause to remove the Grievant? If not, what should the remedy be?

CONTRACT ARTICLES: 24.01

TOPICAL HEADINGS: Exchange of Personal Letters, Nexus

AGENCY: Department of Rehabilitation and Corrections

SITE/LOCATION: Toledo Correctional Institution

POSITION: Corrections Officer

RESULTS: The grievance was denied.

REASONS: The Grievant began supervising an Inmate who was a former friend/acquaintance. The Inmate began passing notes to the Grievant asking him to convey drugs and tobacco into the prison. Over the course of six weeks, the Inmate passed the Grievant three notes.

The Arbitrator held that the evidence was clear that notes concerning drugs are to be reported right away. It is also clear that any personal connection to an Inmate is to be reported right away. There was no evidence that the CO’s have a virtual free hand in “running their Block.”

The Arbitrator found that the evidence is that the Grievant didn’t report the notes originally because the Inmate wanted to stay close to his family and the Grievant wasn’t

sure what would happen if he reported the notes. However, when the Grievant received a note of a sexual nature from another Inmate he reported that right away. In contrast, the local union president and CO testified that if she got a note requesting drugs she would have turned it in, since CO's take such a request seriously.

The Arbitrator noted that the Union objected to the length of time it took to discipline the Grievant. At the arbitration, no clause was cited in the CBA in support of this objection, nor was any evidence offered to support this argument. The objection was raised in the Union's closing argument and was overruled.

1128) Renee Roberson 34-21-130405-0014-01-09 Issue

ARBITRATOR: Howard Silver

ISSUE: Did BWC violate Article 17 in its selection process for a vacant BPA1 position by not selecting the Grievant for the position? If so, what shall the remedy be?

CONTRACT ARTICLE: 17

TOPICAL HEADINGS: Burden of Persuasion, Selection

AGENCY: Bureau of Worker's Compensation

SITE/LOCATION: Columbus

POSITION: Business Process Analyst 1

RESULT: The grievance was denied.

REASONS: The Arbitrator found that a preponderance of the evidence did indicate that the candidate selected for the position met the minimum qualifications. The hearing record indicated that the selected applicant's application contained a single error, a mistaken response to a supplemental question. The mistake was singular and stood out in bold contrast to other information provided in the application and in response to other supplemental questions. The Employer had every reason to believe that the response to the supplemental question was a mistake and had sufficient information available from the remainder of the application to determine that minimum qualifications had been met. The decision by the Employer was not arbitrary, capricious, or an abuse of discretion. Additionally, the selected applicant was the most senior of the applicants.

The applications were filled out on-line, using on-screen drop-down boxes to indicate responses to supplemental questions in the application. The selected applicant had obviously made a mistake in registering her response, reporting that she had less than three years of the work experience required when she actually had more than three years of experience.

The burden of persuasion in this case was not upon the selected applicant to defend her experience but upon the Union to show that the applicant selected did not meet the minimum qualifications for the position at issue.

1129) Frederico Reyes 07-00-12-12-17-0019-01-14; Hedglin 26-00-13-03-27-0002-01-07
Issue

ARBITRATOR: Sarah Cole

ISSUE: Did the State's denials of the bereavement leave request of the Grievants violate Articles 2 or 30 of the CBA? Does Federal Law require the State to provide bereavement leave to an employee whose same-sex spouse's parent dies?

CONTRACT ARTICLES: 2.01, 30.03

TOPICAL HEADINGS: Arbitrability, Bereavement Leave, Discrimination on Basis of Sexual Orientation; Same-Sex Spouse

AGENCY: Department of Commerce and Public Utilities Commission

POSITION: IT Architect; Hazardous Material Investigations Specialist 2

RESULT: The grievances were granted.

REASONS: Both Grievants were married to a same-sex spouse. (The marriages/civil unions were performed in Ontario, Canada and Vermont.) The Arbitrator held that the Grievant's partners must be considered "spouses" for purposes of applying the CBA's bereavement leave provisions. If they are spouses, then the spouses' parents are the grievants' in-laws.

First, the Arbitrator found the case arbitrable. The union argued for a different interpretation of the contract language than did the employer. This kind of disagreement is clearly arbitrable. The Union's contention that the State is discriminating against its members on the basis of sexual orientation is also arbitrable because Article 2 requires that the CBA be interpreted in a manner "not inconsistent" with federal or state laws. In fact, the language of the CBA requires the arbitrator to determine whether the application of the bereavement leave provision discriminates against the Grievants in a way that violates federal or state law.

1130) Keith Crumley 31-13-04-19-13-16-01-07 Removal

ARBITRATOR: Meeta Bass Lyons

ISSUE: The Grievant was removed for the following violations: Failure to follow policies; Making defamatory or false statements; and Other actions that could harm or potentially harm the employees, a fellow employee, or a member or members of the general public. Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLE: 24.01, 24.02, 24.05, 25.01., 25.03

TOPICAL HEADING: "Competent Person ; Failure to Follow Policy; Lay Opinion Testimony; Making Defamatory or False Statements, Progressive Discipline

AGENCY: Department of Transportation

SITE/LOCATION: District 3

POSITION: Highway Technician 3

RESULT: The grievance was denied.

REASONS: The arbitrator held that the Employer had just cause to discipline the Grievant for failure to follow policy and to remove the Grievant for making false statements and other actions that could harm or potentially harm the employees, a fellow employee, or a member or members of the general public.

The Grievant was a lead worker on a construction project. The safety violation at issue was severe. The Grievant had two alternatives-- to stop the project or go up the chain of command. The Grievant chose to do neither, but instead, allowed his crew to work in an unsafe environment. Applying progressive constructive discipline principles, the Arbitrator held that removal would have been excessive and a heavy suspension due to the safety concerns would be commensurate with the infraction of failure to follow policies.

The Grievant could have stopped the project or run the chain of command, he chose not to do either and placed his crew in an unprotected trench. Further, he had no intention of reporting the incident until he was reprimanded for another incident involving improper waste removal, and he was going to get even with his supervisor. What does it say about the Grievant as an employee of the agency—that he is willing to place his crew at risk, avoid compliance with policy and regulation, and place allegations of wrongdoing by a coworker in his arsenal to use for future reference. In addition, this was not the first time the Grievant acted in such a manner.

The Arbitrator found there was no credible evidence to support a finding of witness intimidation by the supervisor.

The Arbitrator ruled on several procedural objections. If advocates cannot agree on a stipulation, the fact is disputed and the trier-of-fact must determine its admissibility. A Last Chance Agreement was properly admitted for the limited purpose of establishing the employment record of the Grievant at the time of the incident and it was not used for progressive discipline.

The Union contended that any evidence and testimony regarding the interpretation of the cell phone billing documents must be excluded by the Arbitrator. Lay opinion testimony is permissible. A trier-of-fact may permit a person who is not testifying as an expert to testify in the form of an opinion if the opinion is both rationally based on his perception and helps to explain the witness testimony.

The Union argued that all new evidence presented by the State at arbitration hearing should be excluded. The Arbitrator held that the Union did not specifically state what evidence it deemed was improperly admitted, so it was difficult to address this assignment of error. Without knowing the specific document in question, the Arbitrator could only state it depends on the document, the facts to be proved, whether or not

measures can be taken to alleviate any harm or prejudice, whether the information was discoverable by the opposing side, whether the information was known or should have been known by the opposing side, whether or not it was intentional “sandbagging”. Exclusion is a harsh sanction, and it must be tempered by fundamental principles of fairness.

The union argued that the Grievant was not properly trained to act as the lead worker for the project in question. A “competent person” is someone who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them. The Arbitrator held that on paper the Grievant was a competent person. The Grievant had completed the required coursework for the HT3. The Grievant had worked on 44 jobs involving trenching. The Grievant had experience as a lead worker for an earlier project involving excavation and sloping.

1131) Scott Bunting 34-11-13-04-22-0020-01-07 Removal

ARBITRATOR: Susan Grody Ruben

ISSUE: Did the State have just cause to terminate the Grievant’s employment. If not, what is the appropriate remedy?

CONTRACT ARTICLES: 5, 24.01

TOPICAL HEADINGS: Demotion, Insubordination, Mitigation, Neglect of Duty

AGENCY: Bureau of Worker’s Compensation

SITE/LOCATION: Cambridge

POSITION: Fraud Investigator

RESULT: The grievance was denied.

REASONS: The Arbitrator found that the State had just cause to terminate the Grievant. The Grievant’s multiple mistakes and reckless actions caused a citizen of Ohio to be wrongfully arrested and incarcerated. The Grievant admitted his negligence; he failed to take proper care while performing his duties. BWC demonstrated in the record that the negligence was repeated and inexcusable.

The Arbitrator held that the insubordination charge was inappropriate. Insubordination charges are based on an employee’s willful refusal to follow a direct order. Negligence in performing work is not considered insubordination under these circumstances.

The most significant mitigating factor was that the Grievant is a 23-year employee. The Arbitrator opined whether a demotion might have been more appropriate than a termination? BWC considered that. However, the Arbitrator held that the Grievant’s ongoing, abject carelessness with his work made a demotion difficult to implement. Even after the Grievant was told on April 5, 2013 of his errors having caused

a wrongful arrest and incarceration, he prepared a memorandum that day summarizing his investigation and spelled the citizen's name in the 1-1/2 page memo four different ways. Such a lack of attention to detail makes it difficult, if not impossible, to employ the Grievant.

1132) Sandi Friel 02-10-20130729-0011-01-03 Issue

ARBITRATOR: Howard Silver

ISSUE: Did the Department of Administrative Services properly apply the point factor system to determine the pay range of the FEIB Investigator (26531) classification in accordance with Section 36.05(A) of the Collective Bargaining Agreement? If not, what shall the remedy be?

CONTRACT ARTICLES: 25, 36.05

TOPICAL HEADINGS: Arbitrator's Authority, Classification Pay Range, Jacobs Point/Factor System

AGENCY: Department of Commerce (DAS)

POSITION: Fire and Explosion Investigative Bureau Investigator

RESULT: All FEIB Investigators (26531) shall have their pay ranges changed to pay range 33 effective July 28, 2013, and shall receive back pay retroactive to that date.

REASONS: The Arbitrator held that DAS did not properly apply the point factor system to determine the pay range of the FEIB Investigator classification. The previous title of the classification was Arson Investigator at Pay Range 32. The title was changed to Fire & Explosion Investigative Bureau Investigator, but the Pay Range remained at 32.

Each of the categories of the Jacobs Point/Factor evaluation system has within it degrees that are to be compared to the duties of the position under review. The degree most comparable translates to points that are to be added up, producing a total that indicates an appropriate pay range.

Three factors were challenged. The Arbitrator held that the proper degree for Worker Characteristics is ten; the proper degree for Safety of Others is two; the proper degree for Mental Skills is six. These degrees when added to the other degrees produce a point total of 110 points, indicating pay range 33.

The addition of investigations of explosions and related crimes to the arson investigations presents a position that has been broadened in its scope of responsibilities. The Arbitrator ordered no change to the assignment of degree two and its three points under the category of Safety of Others. The Arbitrator found that the duties require the kind of advanced professional-level methods and principles indicated in degree six.

The Arbitrator pointed out that he is not employed to substitute his judgment for that of DAS. However, Section 36.05(A) empowers the union to dispute the proposed action of the Employer and, if necessary, the issue is to be resolved through arbitration.

1133) Rock Nissen 27-35-20130327-0056-01-03 Removal

ARBITRATOR: Meet Bass Lyons

ISSUE: The Grievant was charged with violating Rule 10—Sleeping on Duty and Rule 38-Any act or commission not otherwise set forth therein which constitutes a threat to the security of the facility, staff, any individual under the supervision of the Department, or member of the general public. Was the Grievant removed for just cause? If not, what should the remedy be?

CONTRACT ARTICLES: 24.01, 24.02

TOPICAL HEADINGS: Investigatory Interview, Progressive Discipline, Sleeping on Duty

AGENCY: Department of Rehabilitation and Corrections

SITE/LOCATION: Toledo Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was sustained.

REASONS: The Grievant and another correction officer were assigned to guard an inmate who was on suicide watch. Both officers were armed with 40 caliber handgun and 32 rounds of ammunition. The next day the Institution received notice from the hospital staff that both corrections officers were caught sleeping on duty.

The Arbitrator held that the Employer failed to establish that the Grievant was sleeping and that because he was asleep while armed, he engaged in an act which constituted a threat. Of the five persons present in the room, no one testified that the Grievant was asleep. There was no independent evidence that the Grievant was asleep on duty; therefore, the Employer did not have just cause for discipline or removal.

The investigative report was largely predicated on the statements and documents provided by the nurses. The Grievant's silence in these circumstances may not be deemed to constitute acquiescence or admission to the statement that he was sleeping. (See Arbitration Decision 1135-same situation.)

1134) Christine Minney 27-23-2013-02-28-0015-01-03 Issue

ARBITRATOR: Howard Silver

ISSUE: Did the Employer violate Article 17 of the Contract when it filled a Training Officer position at the Ross Correctional Institution? If so, what shall the remedy be?

CONTRACT ARTICLES: 17.01, 17.06, 17.05

TOPICAL HEADINGS: Arbitrator's Authority, Evidentiary Burden, "substantially equal," TWL

AGENCY: Department of Rehabilitation and Corrections

SITE/LOCATION: Ross Correctional Institution

POSITION: Training Officer

RESULT: The grievance was denied.

REASONS: The Arbitrator found that the Employer did not violate section 17.05 of the CBA. The Grievant was interviewed for a Training Officer position, but was denied the promotion based on the scores of the assessment instrument. It was clear to the arbitrator that the Grievant understood question five differently from the interviewers/raters. If there was a cognitive disconnect involving question five, proving which party committed the error was an evidentiary burden which the Union must bear in this proceeding. The issue was whether the Union had presented a preponderance of evidence to indicate that the error as to the meaning of the question was committed by the Employer rather than the Grievant.

The Arbitrator opined that it was regrettable that the selection of a bargaining unit member for a promotion should depend on a miscommunication between the interviewers and the interviewee. The determination of who is to bear the adverse consequence of this miscommunication rests upon evidence, or the lack thereof, as to the party that committed the mistake. There was not a preponderance of evidence in the hearing record to indicate that it was the Employer who made the mistake in this instance.

The Arbitrator found no basis upon which to change the points assigned to the Grievant. The disputed six points of the selected candidate would not change the outcome of the arbitration.

The Arbitrator held that the fact that two versions of the assessment instrument were used only complicates the comparisons to be made between the two candidates, but does not present a circumstance that in and of itself violates the CBA.

The Arbitrator held that the assignment of the selected candidate to a TWL was an issue outside the scope of the arbitrator's authority under the stipulated issue statement. The Arbitrator found no direct effect upon the scores of either candidate by the TWL assignment under the assessment instruments used by the Employer. The Arbitrator expressed no further opinion regarding the TWL.

1135) Robert Pitzen 27-35-20130327-0057-01-03 Removal

ARBITRATOR: Meeta Bass Lyons

ISSUE: The Grievant was charged with violating Rule 10—Sleeping on Duty and Rule 38-Any act or commission not otherwise set forth therein which constitutes a threat to the security of the facility, staff, any individual under the supervision of the Department, or

member of the general public. Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02

TOPICAL HEADINGS: Investigatory Interview, Progressive Discipline, Sleeping on Duty

AGENCY: Department of Rehabilitation and Corrections

SITE/LOCATION: Toledo Correctional Institution

POSITION: Corrections Officer.

RESULT: The grievance was sustained.

REASONS: The Grievant and another correction officer were assigned to guard an inmate who was on suicide watch. Both officers were armed with 40 caliber handguns and 32 rounds of ammunition. The next day the Institution received notice from the hospital staff that both corrections officers were caught sleeping on duty.

The Arbitrator held that the Employer failed to meet its burden of proof and show that the action of the Grievant were in violation of Rule 10 and Rule 38; therefore the Employer did not have just cause to discipline or for removal. The Employer failed to establish that the Grievant was sleeping and that because he was asleep while armed, he engaged in an act which constituted a threat. (See Arbitration Decision 1133--same incident.)

1136) Lois Bryant 34-12-12-10-12-0052-01-09 Issue

ARBITRATOR: Meeta Bass Lyonss

ISSUE: Did the Employer violate the CBA when it denied Grievant's Request for Leave for Personal Leave submitted on August 29, 2012 for two hours of absence on August 27, 2012? If so, what shall the remedy be?

CONTRACT ARTICLES: 13.07, 13.10, 27.02, 27.04, 44.04, Appendix Q BWC

TOPIC HEADINGS: Overtime, Personal Leave, Emergency Personal Leave

AGENCY: Bureau of Workers' Compensation

SITE/LOCATION: Garfield Heights

POSITION: Claims Service Specialist

RESULT: The grievance was granted. Employer was directed to approve the personal leave request, adjust the personal leave balance for the requested two hours, and pay the additional two hours of overtime worked as flex time.

REASONS: The Arbitrator held that it was a violation of the CBA to require Grievant to flex her time instead of submitting the request for leave for a determination of whether or not an emergency existed and if the Employer could accommodate the request. Personal leave is a bargained benefit of the Grievant. An employee is entitled to four personal leave days per year. The plain unambiguous language of Article 13.10 provides that the

Grievant shall be compensated for overtime work for hours in active pay status more than 40 hours and specifically defines active pay status to include personal leave.

Contrary to the process set forth in Article 27.04, the Grievant was informed not to submit a request for leave pursuant to the CBA, but instead she was to flex her hours. She agreed and left the workplace. Two days later she submitted her leave request for personal leave.

The email notification/policy in effect for overtime required the Grievant to waive her contractual rights to personal leave afforded under the CBA to participate in the overtime opportunity. The Grievant is entitled to know whether she can take discretionary personal leave during overtime week under the terms of the CBA, and be permitted to avail herself of the grievance process if her request was unreasonably denied.

The Arbitrator agreed that in hindsight that no emergency existed as required by Article 27.04 of the CBA. However, her supervisor allowed the Grievant to leave the workplace because her daughter and two grandchildren needed transportation from the airport. The Employer is estopped from making a different determination at this stage, and is bound by the overtime reason.

1137) Johnetta Gwinn 30-04-14-01-06-001-01-14 Removal

ARBITRATOR: Meeta Bass

ISSUE: The Grievant was charged with violation of Work Rule 31, Neglect of Duty—failure to meet work standards for quality or quantity of work to be performed and Neglect of Duty—unsatisfactory work performance. Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 22, 24

TOPICAL HEADINGS: Back Pay, Just Cause, Mitigation, Performance Evaluation, Performance Improvement Plan

AGENCY: Department of Taxation

POSITION: Tax Commissioner Agent 1

LOCATION: Columbus

RESULT: The grievance was sustained in part. The Grievant violated Departmental Work Rule 31; however, the discipline was modified. The Grievant was reinstated to her former position with no back pay. The term of her suspension was to be equivalent to the number of days from her removal to her return. Grievant was placed on a Performance Improvement Plan for 90 days to address issues of competency and production. Training shall be provided by the agency.

REASONS: The arbitrator held that there was just cause for discipline; however, removal was not commensurate with the offense. The Grievant failed to routinely

process an expected average level of correspondence and/or items per day in a satisfactory manner.

In May, 2013 the supervisor began coaching the Grievant in an effort to improve her productivity. In an evaluation in June the Grievant's performance was rated "below meets" in every category. On July 1, 2013 the employer established a Performance Improvement Plan, which then expired on July 31, 2013. The Employer continued to closely monitor the productivity of the Grievant.

The Arbitrator held that the Employer limited its consideration of mitigation to tenure, employment record, and poor job performance and failed to consider failure of supervision as a mitigating factor. The supervisor was lax in his enforcement of the departmental work rules on neglect of duty against the Grievant; there was no evidence of any corrective action taken to address and resolve any performance issues from March, 2012 through April, 2013.

The Arbitrator held that the Grievant-- who had received the rules and understood the instructions to meet the expected average level of units per day-- failed to take the initiative to independently meet the requirements, in spite of the lack of enforcement by her supervisor. Back pay was inappropriate based on her work ethic.

1138) David Stewart 27-08-20140321-0031-01-03 Removal

ARBITRATOR: Craig Allen

ISSUE: The Grievant was charged with violations of Standards of Employee Conduct Rule 7--Failure to follow post orders, administrative regulations, or written or verbal directives and Rule 37--actions that could harm or potentially harm the employee, fellow employee or a member of the general public and Rule 39—any act that could bring discredit to the employer. Did Management have just cause to remove the Grievant? If not, what should the remedy be?'

CONTRACT ARTICLES: 24

TOPICAL HEADINGS: Mitigation, Nexus, Off-Duty Misconduct

AGENCY: Department of Rehabilitation and Corrections

POSITION: Corrections Officer

LOCATION: Franklin Medical Center

RESULT: The grievance was denied.

REASONS: The Grievant had been a member of a motorcycle club, which was considered by the Columbus Police Department to be a criminal gang. The Grievant had not been investigated for being involved in specific criminal activity, but had participated in club activities.

The Arbitrator held that there was a rational relationship between the conduct in question and the employee's ability to do his job. Whether or not the Grievant was still a member of the club, there was evidence that he maintained his relationship with the club

and its officers. The Grievant's argument that he thought the club was just a social motorcycle club was not credible.

The Arbitrator found that it was clear the Grievant failed to file a nexus report concerning an inmate who was in a DRC institution.

1139) Dennis Coley 27-19-20140702-0157-01-09 Removal

ARBITRATOR: Howard Silver

ISSUE: Was the Grievant removed from employment for just cause? If not, what shall the remedy be? The Grievant was charged with violations of Rule 12A—making obscene gestures or statements or false, abusive or inappropriate statements; Rule 44—threatening, intimidating, coercing or use of abusive language toward any individual under the supervision of the Department; Rule 45—without express authorization, giving preferential treatment to any individual under the supervision of the Department, but not limited to the offering, receiving, or giving of anything of value.

CONTRACT ARTICLES: 24, 25

TOPICAL HEADINGS: Abusive language, Improper conduct, Inmate witness statements

AGENCY: Rehabilitation and Corrections

LOCATION: Ohio Reformatory for Women

POSITION: Storekeeper 2

RESULT: The grievance was denied.

REASONS: The Arbitrator found that the misconduct engaged in by the Grievant, proven by a preponderance of the evidence was egregious, harmful, intimidating, and abusive. The evidence in the hearing record shows that the Grievant made abusive and inappropriate statements to co-workers and inmates. The Grievant was a storekeeper who intimidated inmates and directed abusive language toward them. This abusive language included treating inmates in a manner than emphasized their subservient status rather than their work.

The Arbitrator did not find sufficient evidence to conclude that a violation of Rule 45B had been proven. That violation was not substantiated by a witness available for questioning by both parties.

The Arbitrator did consider inmate written statements when the written statements provided corroboration in support of the veracity of related statements in the testimony of witnesses at the arbitration hearing—testimony that was open to cross-examination. In this context the written statements provided by the inmates do not present “novel” evidence.

The arbitrator shared the union's concern about investigative documents being presented in lieu of live witnesses. The Arbitrator did not accept as credible those

statements contained in the written inmate statements that did not relate to a subject addressed by the witnesses who testified at the hearing.

1140) Danielle Lazaro 24-25-20140102-0001-01-04 Removal

ARBITRATOR: Susan Grody Ruben

ISSUE: The Grievant was charged with violations of Rule A-1-- Abuse of a Client and Rule F-1--Failure to Report. Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLE: 5, 24.01, 24.02

TOPIC HEADINGS: Abuse, Failure to Report, Just Cause, Neglect of a Client

AGENCY: Ohio Department of Developmental Disabilities

SITE/LOCATION: Youngstown Developmental Center

POSITION: Therapeutic Program Worker

RESULT: The Grievant was reinstated to her former position and made whole with full back pay, seniority, and benefits, less 30 working days pay, seniority and benefits. Her discipline record will reflect a 30-day suspension for a first offense of Rules E-3 and E-5.

REASONS: The Arbitrator found that the State did not have just cause to terminate the Grievant's employment, but did have just cause to discipline the Grievant. The Arbitrator found that the Grievant violated Rule E-3 and Rule E-5--Neglect of a Client.

The video evidence showed the Grievant's co-worker hit the client in the client's side, kicked the client, and grabbed the client by the back of the client's neck. The Arbitrator found it difficult, if not impossible, to say with a degree of significant certainty that the Grievant definitely saw her coworker's acts of physical aggression. Therefore, the Grievant did not fail to report.

The Grievant's worst act occurred when she slapped the client's hand while the client was holding food taken from the refrigerator. The Arbitrator found this momentary lapse in judgment to be serious but not fatal to the Grievant's employment. The Grievant appeared quite capable of better judgment in the future.

The Union used the definition of abuse contained in ORC2903.33. Ordinarily, a criminal standard would not be used as the standard for a labor arbitration. In 1987, however, Arbitrator Pincus held this is the standard to be used for these parties. The collective bargaining agreements between the Parties in the years since 1987 have not negotiated a change to Arbitrator Pincus's decision (Arbitration Decisions 56, 108).

NOTE: The state has filed a Motion to Vacate this arbitration award. The case is pending in Franklin County Common Pleas Court.

1141) Charles Lightle 31-09-14-09-30-29412-01-07 Removal

ARBITRATOR: Craig Allen

ISSUE: The Grievant was charged with a violation of WR-101, Item 8—carelessness with tools, keys and equipment or vehicle resulting in loss, damage, or unsafe act. Did Management have just cause to remove the Grievant? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02

TOPICAL HEADINGS: Detrimental reliance, Progressive discipline

AGENCY: Ohio Department of Transportation

LOCATION/SITE: Ross County Garage

POSITION: Highway Technician 1

RESULT: The grievance was denied.

REASONS: The Arbitrator found there was just cause for the removal. The discipline was progressive and commensurate with the offense. The Grievant had been assigned with a work crew to clean up debris of an old shed. He was operating a front loader, attempting to move I-beams. While moving the load, the I-beams slid off the forks into the windshield of the loader. He removed the beams from the loader by using a track hoe.

The Grievant was employed for ODOT for less than 4 years. During that time he had committed four preventable accidents and was charged three times with a violation of Work rule 101, Item 8. He was under a performance improvement plan (PIP).

The Union argued that the agency made a procedural error that the prior discipline should have no force and effect because the Grievant was told by the former LRO that the prior disciplines had been inactivated. The Arbitrator held that this was not a situation where the Grievant's reliance on the error would have protected him from the consequences of his actions. The Contract rules and the Grievant had all his contractual rights.

1142) Redonica Banks 23-13-2014-06-03-0009-01-04 Removal

ARBITRATOR: Craig Allen

ISSUE: The Grievant was removed for violations of the Code of Conduct and General Work Rules 5.1-Failure to follow policies and procedures and 5.10-safety rules 5.14—Actions that could potentially harm a patient, employee or member of the public Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02

TOPICAL HEADINGS: Failure to follow policies and procedures, Past practice, Progressive discipline

AGENCY: Department of Mental Health

LOCATION/SITE: Summit Behavioral Healthcare

POSITION: Therapeutic Program Worker

RESULT: The grievance was denied.

REASONS: The Arbitrator found that the evidence that the clearly showed the Grievant violated work rules. The Grievant permitted unauthorized access to EMS personnel and their patient to her unit. The Grievant was assigned to complete census rounds, but she did not participate in the census. The Arbitrator did not find evidence of a bona fide past practice.

A patient escaped, but the Grievant did not make notification for an hour and ten minutes. The Grievant had previously been given a one-day working suspension as a settlement on a previous patient escape only five months prior to this incident.

The Arbitrator held that it was clear the Grievant was unwilling to follow the rules.

1143) Perry Watley 15-02-20140124-0010-01-07 Issue

ARBITRATOR: Howard Silver

ISSUE: Was the contract violated when the Employer took the Grievant's application out of the selection process, and if so what shall the remedy be?

CONTRACT ARTICLES: 17.09

TOPICAL HEADINGS: Lead Work, Nepotism, Selection, Supervision

AGENCY: Department of Public Safety

LOCATION/SITE: Cincinnati Reinstatement Office

POSITION: Customer Service Assistant 2

RESULTS: The grievance was granted.

REASONS: The Arbitrator held that the language in 17.09 was not properly applied to the Grievant's pending application for the Customer Service Assistant 2 Position. The CSA2 position was posted and two applicants applied. The Grievant was the more senior applicant. The grievant was removed from consideration because the Grievant's spouse is a CSA3, who is the lead worker over the CSA2 position.

The Arbitrator was not persuaded that if the Grievant were installed in the CSA2 position he would be "directly supervised" by his spouse. The Arbitrator understands the term "supervised" as used in Article 17, section 17.09 to mean managerial supervision, commonly referred to as "direct supervision," a type of supervision that is not carried out from a position located in the bargaining unit. Lead work, therefore, is not understood by the arbitrator to be the type of supervision intended by the language of Article 17, section 17.09.

1144) Maria Combs 15-02-20140905-0082-01-09 Removal

ARBITRATOR: Sarah Cole

ISSUE: The agency removed the Grievant claiming that she obtained a VIP's personal phone number from official work related documents without his permission and used her personal cell phone to text and/or call the VIP and his father for non-work related purposes and used her position to solicit discounted and/or free tickets to Columbus Blue Jackets games and used her computer for non-work related purposes

CONTRACT ARTICLES: 24

TOPICAL HEADINGS: Investigatory approach, personal cell phone use; storing personal information on work computer

AGENCY: Department of Public Service

SITE/LOCATION: Columbus

POSITION: Customer Service Assistant

RESULT: The grievance was granted.

REASONS: The arbitrator held that ODPS's decision to terminate the Grievant was unjustified. The agency did not satisfy its burden of proof. The Grievant admitted she stored personal information on her work computer, thus violating Rule 1.12. However, ODPS cites violation of all three work rules as the basis for the termination. Because the Grievant violated only one work rule the arbitrator would not uphold the termination.

The Arbitrator found that the Grievant's use of her personal cell phone when assisting a VIP customer was not a violation of ODPS rules. That VIP customers exist at the Bureau suggests to both customers and employees that the normal rules do not apply.

ODPS was unable to establish that the Grievant used her position to ask for free or discounted tickets. She was not asking the VIP customer for free or discounted tickets, but rather was asking for his help to find a source where she might obtain free or discounted tickets.

The arbitrator raised concerns about the investigatory approach by the agency. The agency claimed the Grievant, a non-native English speaker was untruthful in her investigatory interview. Her "admission" did not prove that she asked for free or discounted tickets. Her testimony where she asserted that she asked only for a source of obtaining tickets and the denial of both VIP customers that she asked for tickets leads to the conclusion that ODPS was not justified in concluding she solicited tickets.

1145) Larry Rector 07-00-20140612-0005-01-07 Removal

ARBITRATOR: Meeta Bass

ISSUE: Did the Ohio Department of Commerce violate the collective bargaining agreement by not allowing the Grievant to rescind his resignation? If so, what shall the remedy be?

CONTRACT ARTICLES: 2.02

TOPICAL HEADINGS: Constructive Discharge, Resignation

AGENCY: Ohio Department of Commerce

SITE/LOCATION: Columbus

POSITION: Investigator

RESULT: The grievance was denied.

REASONS: On May 30, 2014 the Grievant tendered his resignation effective June 13, 2014. The Grievant returned to work on June 2, 104 and stated to the Superintendent that he would like to continue his employment. The Superintendent responded that the resignation had been accepted.

The Arbitrator held that the Grievant failed to meet the burden of proof that it was unreasonable for him to have to resign in the manner that he did, and the circumstances giving rise to his resignation constituted a constructive discharge

The Arbitrator held that the Grievant's supervisor's interpersonal relationships with his subordinates was poor. However, the situations cited by the Grievant as related to the supervisor do not provide evidence of a workplace that was permeated with discriminatory intimidation, ridicule, and insult that was sufficiently severe or pervasive to create a hostile or abusive working environment. The Arbitrator was not persuaded that the Grievant's working conditions were so intolerable or unbearable that a reasonable person would have been compelled to resign. The Grievant's resignation was voluntary and not constructive discharge.

1146) Dennis Johnson 27-19-(2013-11-22)-0261-01-04 Removal

ARBITRATOR: Craig Allen

ISSUE: The Grievant was removed for violations of the Code of Conduct and General Work Rules: Rule 8, failure to carry out a work assignment or the exercise of poor judgment in carrying out an assignment; Rule 41, unauthorized actions or a failure to act that could harm any individual under the supervision of the Department. Was the Grievant removed for Just Cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01

TOPICAL HEADINGS: Arbitrator Authority, Confidential Records, Progressive Discipline

AGENCY: Department of Rehabilitation and Corrections

SITE/LOCATION: Ohio Reformatory for Women

POSITION: Licensed Practical Nurse

RESULT: The grievance was denied.

REASONS: The arbitrator held that the Grievant clearly violated Rule 8 and Rule 41 and that discipline was progressive. The Grievant gave an inmate the wrong medication

The Grievant also documented that he administered medication to another inmate, yet the medication was found by another LPN undistributed the following day.

Inmate 1 says she received the drugs from the Grievant and the inmate obviously ingested some medicine as she had a reaction. The RN verified the medicines and said the medicine was the cause of the Inmate's reaction. The inmate's statement and the effects of the medicine were documented by medical professionals and the lay witness who helped Inmate 1 to the Infirmary.

As to Inmate 2, the Grievant admitted that he didn't correctly follow procedure.

***The Union had filed an action in the Union County Common Pleas Court after the hearing on August 5, 2014. The Employer had contended that certain documents requested by the Union were prohibited by the Ohio Revised Code. The Arbitrator had ruled that the documents were to be provided to the Union. The Union dismissed part of its action concerning subpoenas and the Court found that the Arbitrator's Award was not an award because removal was the issue. This decision is from the arbitration hearing date of September 29, 2015.

1147) David Strine 27-19(2012-08-29)0280-01-03 Issue

ARBITRATOR: Craig Allen

ISSUE: The Grievant resigned from employment on August 21 and later the same day rescinded his resignation. The Employer had accepted the Grievant's resignation prior to his rescission. Did the Employer violate the CBA by unreasonably refusing to permit the Grievant to rescind his resignation?

CONTRACT ARTICLES: There is no contract article.

TOPICAL HEADINGS: Resignation Rescission

AGENCY: Department of Rehabilitation and Corrections

SITE/LOCATION: Ohio Reformatory for Women

POSITION: Corrections Officer

RESULT: The grievance was denied.

REASONS: The Arbitrator held that the evidence was clear that the Warden had the authority to accept the resignation and did so well before the rescission. There is no case law that says the Grievant has to be notified directly. In fact he was notified of the acceptance early in the morning of August 22. There is no requirement that the acceptance be instantaneous but only prior to the rescission. The evidence shows the Grievant was notified about nine hours after the acceptance of his resignation. The Arbitrator found that time frame reasonable under the circumstances.

There was no independent medical evidence or any corroboration of the Grievant's testimony that his physical or mental condition impaired his judgment.

1148) Diana Starcher (Wittenbrook) DMR-2015-02450-4 Removal

ARBITRATOR: Thomas Nowell

ISSUE: Did the Grievant abuse a client at the Cambridge Developmental Center?

CONTRACT ARTICLES: 24.01, 24.02, 24.06

TOPICAL HEADINGS: Abuse, Progressive Discipline, Investigation

AGENCY: Ohio Department of Developmental Disabilities

LOCATION/SITE: Cambridge Developmental Center

POSITION: Therapeutic Program Worker

RESULT: The grievance was denied.

REASONS: The Arbitrator held that the termination was for just cause. Evidence confirmed that the Grievant abused Client F and therefore violated Policy A-1. In addition, the actions of the Grievant violated OAC 5123:2-17-02. The CBA states in Section 24.01 “if the arbitrator finds that there has been an abuse of a patient ... the arbitrator does not have the authority to modify the termination of an employee committing such abuse.”

Two witnesses testified that the Grievant engaged in abusive behavior. The two witnesses were short-term residents at Cambridge Behavioral Health, a private rehabilitation facility located on the grounds of Cambridge Developmental Center. Neither witness knew the client or the Grievant. The witnesses live almost three hours away and yet made the long trip to testify. They made convincing statements regarding what they observed and their testimony mirrored their original witness statements.

The arbitrator opined that the Superintendent’s response to the incident was timely and professional and that the investigator completed his investigation in a thorough and professional manner.

1149) Evan Nephew DRC-2014-39519-3 Removal

ARBITRATOR: Sarah Cole

ISSUE: The agency charged the Grievant with these violations: Rule 5F: Damage, loss, or misuse of state owned or leased computers, e-mail, internet; Rule 20: involvement in horseplay; Rule 24: interfering with, failing to cooperate in, or lying in an official investigation; Rule 30C: while on duty unauthorized conveyance, distribution, misuse, or possession of other contraband; Rule 37: Any act or failure to act that could compromise or impair the ability of an employee to effectively carry out his duties as a public employee; Rule 38: Any act, or failure to act, which constitutes a threat to the security of the facility; Rule 41: Unauthorized actions or a failure to act that could harm any individual under the supervision of the Department; Rule 44: Threatening, intimidating,

coercing, or use of abusive language toward any individual under the supervision of the Department. Did the agency have just cause to remove the Grievant?

CONTRACT ARTICLES: 25.01

TOPICAL HEADINGS: Cell phone/E-mail usage, Horseplay; Inmate Intimidation, Lie detector evidence, Procedural Objection

AGENCY: Ohio Department of Rehabilitation and Corrections

LOCATION/SITE: Ohio Reformatory for Women

POSITION: Correction Officer

RESULT: The grievance was denied.

REASONS: The Arbitrator held that the Employer established that the Grievant committed some of the asserted violations, but failed to establish others. The violations the Employer established justify the termination.

Rules 5F, 24, 30C, 37, 38. The record and the testimony established that the Grievant repeatedly used his work and personal e-mail accounts during work hours to send non-business related e-mails. He used his cellphone, a contraband item, while on perimeter and he was untruthful during the investigation process.

Rule 20--Engaging in horseplay. The arbitrator held that while "horseplay" might not be the most appropriate word, the Grievant acted unprofessionally by repeatedly teasing the inmate who was signing up for an activity.

Rule 44-- Inmate intimidation. The Arbitrator did not find just cause that Rule 44 was violated. Two inmates passed lie detector tests regarding the Grievant's encouragement of an inmate to fight another inmate. The Arbitrator did not consider the evidence, as this kind of evidence is not reliable.

Rule 38 and 41. The Arbitrator found insufficient evidence that the Grievant enticed an inmate to fight another inmate. However the Grievant did violate Rules 38 and 41 and acted improperly because of the lapse of time between the fight and the cuffing of one of the inmates.

The union made a procedural objection against the bifurcation of the pre-disciplinary hearings. The Arbitrator held that the Grievant had sufficient time to review all the documentary and video evidence prior to the second pre-disciplinary hearing. The Employer did not issue discipline until after the second pre-disciplinary hearing and both hearings took place within the contractual sixty-day time limit for issuance of discipline.

1050) Dale Dettrick COM-2015-01552-14Removal

ARBITRATOR: Howard Silver

ISSUE: Did the Department of Commerce remove the grievant from his position as Fire Training Officer 2 for just cause? If not, what shall the remedy be? The Grievant was charged with the following work rule violations: Work Rule 2—Insubordination; Work

Rule 5--any act that embarrasses, discredits, or interferes with the Department's mission;
Work rule 4--Failure of good behavior, any actions disruptive to the workplace,
unprofessional conduct,

CONTRACT ARTICLES: 24.02, 24.05, 24.06

TOPICAL HEADINGS: Just Cause, Procedural Objections, Progressive Discipline,
Using state property for unauthorized purposes

AGENCY: Department of Commerce

SITE/LOCATION: Ohio State Fire Marshall office

POSITION: Fire Training Officer 2

RESULTS The grievance was denied.

REASONS: It was alleged that the Grievant used the Fire Academy dormitory rooms on 88 days. The usage did not meet an operational need and he did not pay for the use of the dorm room. The arbitrator held that the frequency of the stays at the Ohio Fire Academy dormitory without a public purpose and without approval supported the discharge.

In May 2013, Commerce directed to the Ohio Inspector General an anonymous written complaint that had been received that alleged that two state employees of the Department of Commerce State Fire Marshal's office were living at the Ohio Fire Academy in the dormitories.

From February 1, 2010 through March 4, 2013 the Grievant used the dormitory facilities at the Ohio Fire Academy for personal gain on about eighty-five separate occasions. After being informed of a written policy that was established in reaction to the Grievant's longstanding and improper overnight stays the Grievant stayed two nights without approval and in contravention of the new policy.

The arbitrator found that the lack of a written policy does not immunize an employee from accountability for misconduct that is known or should have been known to be prohibited, even in the absence of a written policy to that effect. Ohio law does not permit a public employee to use state resources for private gain.

The Grievant's mocking gesture of placing tape with a number written on it to make the uniform appear more like a prisoner's uniform rose to the level of insubordination, an embarrassment, and unprofessional conduct. But the arbitrator held that that gesture standing alone, did not present an offense that could support the removal of a five-year employee with no prior discipline.

The union raised four procedural issues. The arbitrator ruled that there were no violations of the contract or applicable remedies and therefore no grounds upon which to end the consideration of the grievant.

1. The Union requested the weekly status reports of the Grievant. The agency did provide a good deal of information to the Union. The explanation was that a search was conducted, but the information was not found. The arbitrator did not find an unreasonable denial by the Employer to provide the

information requested by the union, nor did the absence of the information interfere with the preparation of the Grievant's defense such that fundamental principles of fairness and due process were violated. There was no violation of section 25.09.

2. The second procedural issue was failure to issue a Step 2 response following the Step 2 meeting. An absence of a Step 2 response allows the union to move the case to mediation or to move the grievance to the next step in the grievance procedure. The union did move the unresolved grievance to mediation and after waiving mediation moved the unresolved grievance to arbitration. Whether a violation occurred or had not occurred the Union received any and all remedies available under the contract.
3. The third violation was failure to provide a copy of the hearing officer's report of the pre-disciplinary meeting prior to the imposition of discipline. Nowhere in the parties' Agreement is there a requirement that the hearing officer's report and recommendation arising from the pre-discipline meeting be provided to the union or the Grievant. In the absence of an express requirement, the Arbitrator did not find a violation.
4. The amount of time that elapsed from the date of the pre-discipline meeting to the date upon which the discipline was imposed was longer than 60 days. However, there were criminal charges pending. The Ohio Inspector General referred the case to Licking County Prosecutor. The agency decided to wait to take disciplinary action until the issue of criminal charges had been resolved. Such discretion is allowed to be exercised under the language in 24.06. The arbitrator found no violation.

1151) Ryan Shaner DMH-2015-04500-4 Removal

ARBITRATOR: Thomas Nowel

ISSUE: The Grievant was charged with a violation of Rule 5.4—Abuse, exploitation, or intimidation of any patient under the supervision of the department. Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02, 24.06

TOPICAL HEADINGS: Abuse, Burden of Proof, Pre-D Hearing Officer

AGENCY: Mental Health

LOCATION/SITE: Heartland Behavioral Healthcare

POSITION: Therapeutic Program Worker

RESULT: The grievance was granted. The grievant is to be reinstated to the unit and shift he had been assigned and he will be made whole.

REASONS: The Arbitrator held that evidence did not lead to a conclusion that the Grievant knowingly caused physical harm or recklessly cause physical harm to Patient M. Following a thorough investigation by the agency's internal police department, it was concluded that a charge of abuse was "unfounded."

The level of proof most often applied to ordinary discipline and discharge cases is a "preponderance of the evidence" standard. However, the union argued, and the Arbitrator found persuasive, that the level of proof for this abuse case should be "clear and convincing," particularly with the inconsistent statements and testimony in evidence. A discharge based on the abuse of a patient in a mental health facility is damaging to an employee's reputation and any future employment.

There was sufficient evidence to indicate the Grievant did not proceed in the situation consistent with policy and training for diffusing a potential crisis. The Grievant had been trained to avoid the use of negative words and to avoid "hands on" physical contact. The Grievant's better approach may have been to call for a pre-crisis assist team, an H-Team, before physically removing the patient from the treatment room. The arbitrator noted that the initial elements for an H-Team were already available in the treatment room—the psychiatrist, the social worker, the Grievant, and two other TPW's. The Arbitrator questioned why the psychiatrist and the social worker didn't proceed in this manner instead of having the Grievant enter the treatment room.

The Arbitrator found the suggestion that blame must be shared by those who conducted the treatment/assessment compelling. The Arbitrator found the inaction of the psychiatrist and the social worker troubling.

Having the hospital CEO act as the hearing officer at the Pre-D and then making the recommendation to terminate the employee was not a procedural defect and not a violation of the collective bargaining agreement. But based on the perception of a conflict of interest, the Arbitrator opined that the agency may in the future want to consider a different management employee as the hearing officer.

1152) Penny Bentley DRC-2015-03821-3 Removal

ARBITRATOR: Howard Silver

ISSUE: The Grievant was charged with violation of the following work rules: 7-- Failure to follow post orders ; 18--Threatening, intimidating or coercing another employee ; 36.--Any act that could harm or potentially harm fellow employees; 37-- Actions that could compromise or impair the ability of an employee to effectively carry out her duties as a public employee; 38--Any act which constitutes a threat to the security of the facility or staff. Was the Grievant removed from her position as a Correction Officer for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 25.01

TOPICAL HEADINGS: Burden of Proof, Just Cause, Threat of Deadly Force to Coworker

AGENCY: Department of Rehabilitation and Corrections

LOCATION/SITE: Lebanon Correctional Institution

POSITION: Correction Officer

RESULT: The grievance was denied.

REASONS: On August 21, 2015 while working perimeter patrol the Grievant was accused of pointing the muzzle of a shotgun at the face of a coworker, with the muzzle approximately one foot from the face of the co-worker. The Arbitrator held that the evidence in the record was clear, convincing, and overwhelmingly to the effect that the Grievant pointed the shotgun's muzzle at the face of a coworker. The conduct of the Grievant was so dangerous, so reckless, so coercive and intimidating that these actions were found to comprise just cause for severe disciplinary action and were found to be sufficiently egregious to support the discharge of the Grievant.

The arbitrator did not express an opinion as to whether misconduct attributed to the coworker occurred; the arbitrator found that the alleged misbehavior had not been proven by a preponderance of the evidence. Even if the Grievant had suffered taunts from a co-worker, such misbehavior would not justify the threatened use of deadly force.

Because the Grievant had nineteen years of service and no prior discipline, and because the case addresses termination, the arbitrator understood the burden of proof carried by the Employer to prevail was between a minimum of a preponderance of the evidence and a maximum of clear and convincing evidence.

1153) Personal Leave OCS-02-10-15-07-02-02174-01-00 Issue

ARBITRATOR: Thomas Nowel

ISSUE: The State of Ohio agencies have advised OCSEA members of policy changes that all Personal Leave must be used only in two hour increments. Has the State of Ohio violated the language of Article 27.03 of the Collective Bargaining Agreement? If so, what shall the remedy be?

CONTRACT ARTICLE: 27.03

TOPICAL HEADINGS: Arbitrator Authority, Personal Leave, Plain Meaning Rule

AGENCY: State of Ohio, Department of Administrative Services

LOCATION/SITE: All

POSITION: All

REMEDY: The grievance was denied.

REASONS: The Arbitrator found there was nothing in Section 27.03 which might suggest an initial two hour unit with the ability to utilize a different numerical unit. The language dictates that an employee may utilize a two hour unit, four hours, six hours,

eight hours, and so forth. The clear language prohibits an employee from using a two hour unit and subsequently taking one-tenth hours, three hours, and so forth.

Evidence indicates that the tentative agreement was discussed in full committee session and also indicates that the Union did not raise an issue regarding initial use of personal leave when the final language was presented in full committee, and the tentative agreement was signed.

Section 27.03 is clear and unambiguous and therefore the Arbitrator possesses no authority to determine intent beyond the clear meaning of the provision—that is the Plain-Meaning Rule of contract interpretation. The arbitrator cannot attach a different interpretation as the language is clear and unambiguous.

1154) Kroeger 12-00-16-05-03-01771-01-13 Removal

ARBITRATOR: Susan Ruben

ISSUE: The Grievant had received a traffic citation while operating a State vehicle. Was the Grievant removed for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02, 24.06, 24.07

TOPICAL HEADINGS: Insubordination , Just Cause, Progressive Discipline

AGENCY: Ohio Environmental Protection Agency

SITE/LOCATION: Bowling Green

POSITION: Environmental Specialist 2

RESULT: The Grievant was reinstated and the termination was reduced to a 5-day unpaid suspension.

REASONS: In February, 2016 the Grievant received a traffic citation for making an improper right turn in violation of Columbus Municipal Code. The Grievant was driving a state vehicle at the time. The Grievant timely reported the citation to management and also timely paid the citation. The Pre-Disciplinary letter stated that the traffic citation while operating a State vehicle was the basis for a charge of insubordination.

The Arbitrator held that the citation does not form the basis for a charge of insubordination. The Grievant's actions were hardly insubordination as that term is understood by arbitrators—insubordination involves a failure or refusal to recognize or submit to the authority of a supervisor.

The Grievant did violate the Motor Vehicle Use policy. However, the Arbitrator found that termination was not appropriate for that violation. Making a prohibited right turn just cannot be the basis for a 16-year State employee losing his job. The record showed that other employees had not been disciplined for traffic citations.

The Grievant had received a 5-day working suspension in January, 2016 for violating the same work rules. Given that the Grievant's misconduct was mere

negligence the Arbitrator found that a 5-day unpaid suspension was the appropriate penalty.

1155) William Tyrone Capell DMH-2016-003163-4Removal

ARBITRATOR: William Lewis

ISSUE: The Grievant was removed for violating Rule 3.6--Failure to Adhere to professional standards and/or licensing requirements; Rule 4.1—Failure to follow policies and procedures; and Rule 5.6—Job Abandonment. Was the Grievant removed for just cause, and if not, what should the remedy be?

CONTRACT ARTICLES: 24.01, 24.05, 44.04

TOPIC HEADINGS: Disparate Treatment, Job Abandonment, Mitigation, Procedural Objections

AGENCY: Mental Health and Addiction Services

SITE/LOCATION: Summit Behavioral Healthcare

POSITION: Therapeutic Program Worker

RESULT: The grievance was denied.

REASONS: The Arbitrator held that the job abandonment violation was an egregious infraction and a first offense for a level five violation is removal. Although the other charges may have merit, they in themselves did not rise to the level of removal for a first offense.

The grievant was involved in a traffic accident and was charged with driving while under the influence and was incarcerated in jail for 18 days. His driver's license was suspended for three years. The Grievant did not report for work for eighteen scheduled shifts in December 2015. There was no communication from the Grievant during his incarceration.

The Arbitrator found that the evidence was clear and convincing that Rule 5.6--Job Abandonment was violated by the Grievant. It was an egregious violation of the rule to miss 18 days of scheduled work over a month's time without contacting the employer. The only evidence or claim of attempted Employer contact was a single phone call on a single day by the Grievant's wife.

The Arbitrator was asked to consider mitigating factors. The Grievant was a five year employee with a good work record and some commendations. The Arbitrator opined that all employees are reasonably expected to have a good work record and evaluations and the Grievant was not a long term employee.

The Grievant also made a disability claim; however, the disability claim was not sent to the agency until after the PreD hearing. The disability application was not delivered to the institution until a month after it was signed. The Arbitrator opined that if the Grievant could have signed an application for disability while jailed, why could he

not have contacted his employer while jailed? Based on the severity of the infraction, the Arbitrator did not consider these factors to mitigate the discipline.

The Union's examples of the treatment of other employees were not similar enough for the Arbitrator to consider them evidence of disparate treatment.

Two procedural allegations were brought forward by the Union. The Grievant claims he did not get the PreD packet before the PreD hearing. The Arbitrator held that the agency did not violate the notice procedure in 24.05. Evidence and testimony showed that the PreD packet was sent by registered and regular mail to the Grievant's address on file. The Grievant also claimed that he didn't know the date of his removal. The removal letter was delivered by two SBH police officers and the letter showed the date of delivery. In addition, the removal date was acknowledged when the union filed the grievance with the date the removal letter was delivered included on the grievance.

1156) Gerald Geter DRC-2016-00418-3 Removal

ARBITRATOR: Thomas Nowel

ISSUE: The Grievant had been given two notices of removal. This case involved the absenteeism charge and alleged violation of the Last Chance Agreement. The Grievant was charged with a violation of Rule 3G—Leaving the work area/post/facility without the permission of a supervisor. Was the Grievant removed from employment for just cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01

TOPIC HEADINGS: Double Jeopardy, Due Process, Last Chance Agreement, Pre-Disciplinary Hearing Rights

AGENCY: Department of Rehabilitation and Corrections

LOCATION/SITE: Ohio Reformatory for Women

POSITION: Correction Officer

RESULTS: The grievance was denied.

REASONS: The Grievant had been ordered twice to report to a unit to replace another correction officer; however the Grievant left the facility. He claimed he was given the option to leave and chose to do so.

The Arbitrator held that the core of this matter was the LCA and the violation of the Absenteeism Track and Grid. The evidence was clear that the Grievant left the facility without the permission of a supervisory employee. The Grievant violated Rule 3G and therefore violated the Last Chance Agreement. There was just cause to terminate his employment.

The Union's argument regarding double jeopardy was not convincing. The Employer cannot be faulted for conducting one investigation regarding allegations of two

rule violations which may have occurred during the same shift and within a short period of time.

The Union argued lack of due process in that the Grievant was not permitted to complete his rebuttal of the Rule 3G charge in the pre-disciplinary hearing. The Grievant had a contractual and legal right to present a complete rebuttal. Employer representatives realized the short comings of their approach and reconvened the hearing a few days later. However, the original Union steward was not available, so another union steward attended. The Arbitrator held that generally the Grievant was not denied his rights regarding the pre-disciplinary hearing.

However, the Arbitrator opined that the Employer fell short in the manner in which the pre-disciplinary hearing was conducted. He suggested that management may wish to review the manner in which these matters are conducted in the future.

The union called into question the actions and behaviors of the Human Resources Manager and suggested that bias on the part of the Employer impacted the decision to terminate the Grievant. The Arbitrator opined that the behavior of the Human Resources official was completely unprofessional. Nevertheless the issue in this arbitration was the Last Chance Agreement and the actions of the Grievant.

The Arbitrator stated that the Last Chance Agreement is an important tool utilized by labor and management to resolved disputes, allow for continued employment and provide for that one last chance. It must be honored by the arbitrator.

1157) Chad Sites DRC-2016-00807-14 Removal

ARBITRATOR: Craig Allen

ISSUE: The Grievant was removed from his position for violation of the Employee Code of Conduct Rule 12A—Making obscene gestures or statements, or false, abusive or inappropriate statements. Was the Grievant removed from employment for Just Cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02

TOPIC HEADINGS: Progressive Discipline, Racial Epithet, Shop Talk, Stacking Charges

AGENCY: Department of Rehabilitation and Corrections

SITE/LOCATION: Ohio Reformatory for Women

POSITION: Information Technologist 2

RESULTS: The grievance was granted.

REASONS: The Arbitrator was not persuaded that there was corroboration of the alleged racial epithet. Despite the fact that the Grievant and the coworker didn't like each other, several witnesses said they never heard the Grievant use derogatory or inflammatory language. The Grievant is a 12 year employee. The evidence required in a removal case for a long term employee is substantial.

The Employer argued that just because some witnesses did not hear the alleged comment does not mean it didn't happen. The Arbitrator held that the fact that some witnesses didn't hear the alleged comment also doesn't prove that it did happen.

The union argued that the removal and previous five-day suspension were for punishment purposes only and the charges were "stacked" rather than following progressive discipline principles. The Arbitrator held that the stacking charges argument was not persuasive.

1158) Anthony Hawkins DMH-2016-01155-4 Issue

ARBITRATOR: Craig Allen

ISSUE: Was the Grievant on probation when he was removed from his position?

CONTRACT ARTICLES: 6.01, 44

TOPICAL HEADINGS: Detrimental Reliance; Probation

AGENCY: Department of Mental Health and Addictive Services

SITE/LOCATION: Columbus

POSITION: Therapeutic Program Worker

RESULT: The Grievant was on probation. The grievance cannot be arbitrated.

REASONS: The Grievant signed a Consent to Voluntary Promotion on June 19, 2015 and was awarded the job July 15, 2015. The employer never told him the probation times changed with the new Collective Bargaining Agreement that became effective on July 1, 2015.

The Arbitrator found that the language in the Consent to Voluntary Promotion was not a promise and the Grievant had no detrimental reliance based upon the document. The Consent to Voluntary Promotion stated: "... does not constitute a commitment that I will receive the position" and included the phrase "probationary period per contract" and "this promotion will not be final until approved by the Department of Administrative Services."

The Arbitrator held that there is no citation to any article of the CBA that imposed a duty on the Employer to inform the Grievant of the CBA changes. The Arbitrator held that Article 44 of the CBA made the July 1 date an entirely new "ball game".

1159) Philabaum DPS-2015-01693-07 Issue

ARBITRATOR: Craig Allen

ISSUE: Did the Employer violate Article 13 of the Collective Bargaining Agreement by scheduling the Grievant to work a non-standard schedule? If so, what shall the remedy be?

CONTRACT ARTICLES: 13.02

TOPICAL HEADINGS: Arbitrability, Non-standard schedule, Notice

AGENCY: Department of Public Safety

LOCATION/SITE: Lancaster

POSITION: Motor Carrier Enforcement Inspector

RESULT: The grievance was sustained in part and denied in part. DPS was ordered to cease and desist changes to the standard work week without Notice to the Union. The Grievant shall have two vacation days restored. The request to pay the Grievant for the two incidents of missing consecutive days off was denied.

REASONS: The Arbitrator held that the evidence is clear that the MCEI's had always worked five days on and two day off and this had been current practice since March 1, 2012—the date of the CBA the grievance was filed under. The Employer had created a non-standard work week. It is required under Article 13.02 to give Notice to the Union. The Arbitrator found there was no Notice to the Union as required by the CBA.

The procedural objection that the grievance was not timely filed was overruled. The schedule was posted in January, but the first day-off occurrence was May 16. The grievance was filed on May 21. The Arbitrator cited Elkouri: "A party sometimes announces its intention to do a given act but does not do or culminate the act until a later date. Similarly, a party may do an act whose adverse effect upon another does not result until a later date. In some such situations arbitrators have held that the 'occurrence' for purposes of applying time limits is at the later date."

1160) Aaron Moran DOT-2016-02750-07 Removal

ARBITRATOR: Howard Silver

ISSUE: Was the Grievant terminated for just cause in violation of his Last Chance Agreement?

CONTRACT ARTICLES: 24.01

TOPIC HEADINGS: Actions that could compromise ability to carry out duties, Commercial Driver's License endorsement, Just Cause, Last Chance Agreement

AGENCY: Ohio Department of Transportation

SITE/LOCATION: District 9, Brown County

POSITION: Highway Technician

RESULT: The grievance was denied.

REASONS: The Arbitrator found that the inability of the Grievant to perform the duties of his position from June 5, 2016 through June 29, 2016 was a violation of work rule 17.015(P), item 19—actions that could compromise or impair the ability of the employee to effectively carry out his duties as a public employee. The violation of the work rule triggered the application of the Last Chance Agreement.

On January 27, 2015, the Grievant signed a Last Change Agreement. On June 4, 2016 the Grievant, who was off duty, was stopped by an Ohio State Highway Patrolman; the Grievant underwent a breathalyzer test which produced a result of 0.14% BAC. The Grievant was arrested for OVI. The Grievant was placed under an administrative license suspension, which left him without any driving privileges, including those under his operator's license and those under his commercial driver's license endorsement.

On June 7, 2016 the Grievant pled not guilty and demanded a jury trial in Brown County Municipal Court. On June 29, 2016 the Grievant entered a plea of no contest and was found guilty of a third degree misdemeanor. The Grievant appealed the suspension of his license. On June 29, 2016 the Grievant's appeal of the administrative suspension of his driver's license was upheld on the determination that the arresting law enforcement officer did not have reasonable ground to believe that a violation was committed before the breathalyzer test.

The Arbitrator found that the dispute in this case lies in the difference between what had been ordered retroactively by the Court and what actually occurred in real time prior to the action of the Court. The Arbitrator is not tasked with judging how or why the administrative license suspension appeal was upheld by the Court. The Arbitrator is left with the facts in real time from June 5, 2016 through June 29, 2016 when, prior to the Court's June 29, 2016 decision, the Grievant did not have an active, valid operator's license or valid commercial driver's license.

1161 Sonya Williams DRC-2016-04087-3 Removal

ARBITRATOR: Craig Allen

ISSUE: The Grievant was removed for violation of the following work rules: Rule 7: Failure to follow post orders Rule 8: Failure to carry out a work assignment or the exercise of poor judgment in carrying out an assignment. Was the Grievant removed from her position as a Correction Officer for Just Cause? If not, what shall the remedy be?

CONTRACT ARTICLES: 24.01, 24.02

TOPICAL HEADINGS: Constant Watch, Failure to follow post orders, Failure to carry out an assignment, Progressive Discipline

AGENCY: Department of Rehabilitation and Corrections

SITE/ LOCATION: Ohio Reformatory for Women

POSITION: Correction Officer

RESULT: The grievance was denied.

REASONS: The Arbitrator found the evidence clear and convincing that the Lieutenant found unsecured restraints on a file cabinet in an office which had been signed out by the

Grievant. The video shows the Grievant did not keep Constant Watch over the two Inmates assigned to her.

The post orders state “acts of violence should be addressed immediately, if feasible.” The Union’s argument that intent is an element of violence is correct. To delay reporting until after conversing with the Inmate is not correct. The Grievant is a 16 year employee who cannot claim an ignorance of post orders. The Grievant’s position that four employees all lied is not credible. The Grievant had a two day working suspension and a five day working suspension on her record; the discipline was progressive.

1162 Kenneth Rausch DRC-2016-01914-3 Removal

ARBITRATOR: Howard Silver

ISSUE: The Grievant was charged with violation of four Standard of Employee Conduct Rules: 5b—Purposeful or careless acts which result in damage, loss or misuse of State property; 18—Threatening, intimidating, or coercing another employee; 37—Any act or failure to act that could compromise or impair the ability of an employee to effectively carry out his/her duties as a public employee; and 38—Any act, or failure to act which constitutes a threat to the security of the facility, staff, individual. Was the Grievant removed from employment for just cause? If not, what shall the remedy be?

CONTRACT ARTICLE: 24.01, 24.02

TOPIC HEADINGS: Just Cause, Threatening text messages

AGENCY: Department of Rehabilitation and Corrections

SITE/LOCATION: Ohio Reformatory for Women

POSITION: Correction Officer

RESULT: The grievance was denied.

REASONS: The Arbitrator held that the hearing record shows the Employer proved by a preponderance of the evidence that the Grievant violated rule 5b, 18, and 37 of the Standards of Employee Conduct. The violation of rules 18 and 37 provide for a range of discipline that included removal for a first offense. The Arbitrator found that the Employer’s determination that the misconduct of the grievant was sufficiently egregious to support discharge, on these facts, to be a valid and enforceable action of the Employer, grounded in just cause.

The employee/ex-wife received angry text messages from the Grievant in 2013, 2014 and again in December, 2015, and January, 2016. The employee reported the situation to her employer. In addition, the employee/ex-wife petitioned for and was granted a civil protection order in the Franklin County Court of Common Pleas.

As the sender of text messages and the recorder of voice mail the Grievant is accountable to the recipient of the messages. If the recipient of the messages felt threatened, intimidated, or coerced by these communications it is the recipient’s reaction

to these messages that determines whether they are to be considered threatening, intimidating, or coercive. The Arbitrator found the actions of the employee/ex-wife to reflect a person who felt the text messages were threatening, intimidating, and coercive.

The Grievant had a single written reprimand and sixteen years of otherwise exemplary work on record. An Arbitrator must decide whether the discipline imposed is proportionate to the seriousness of the offenses that have been proven. The Arbitrator determined that the discipline imposed by the Employer was not an abuse of discretion nor was it imposed arbitrarily or capriciously or with a discriminatory intention. The violation of rule 38 was duplicative of the violation of rule 37.

1163 Jessica Doogan OCS-2017-00675-0 Issue

ARBITRATOR: Howard Silver

ISSUE: Did the Employer violate the collective bargaining agreement by closing and refusing the Union's request to arbitrate the grievances filed on behalf of Darlene Ballard, Deborah Queen, and Jonathan Payne? If so, what shall the remedy be?

CONTRACT ARTICLES: 25.02

TOPIC HEADINGS: Closing Grievances, Contract Interpretation, Discharge Grievances, Electronic Grievance System

AGENCY: Statewide

RESULTS: The grievance was sustained. Under the parties' collective bargaining agreement, the Union is not required to activate an appeal button to move a discharge grievance that is unresolved at Step Two to mediation as this movement to mediation under the language of the party's collective bargaining agreement is mandatory and automatic. The Employer shall honor the Union's request to move the three discharge grievances at issue under the class action grievance to arbitration.

REASONS: The Arbitrator found that the Employer violated the parties' collective bargaining agreement by closing and refusing the Union's request to arbitrate the grievance filed on behalf of the grievants in the class action grievance.

The Arbitrator held that the language agreed by the parties in Article 25, section 25.02 under "Discharge Grievances" guarantees to the Union the conduct of mediation within the 110 days extending from the filing of the grievance. To the extent the other time limits and appeal demands appear within Article 25, even in other subheadings in Article 25, section 25.02, the unique, express, agreed language presented under "Discharge Grievances is entitled to application and enforcement as the more specific and particular expression of the parties' intentions as they relate to a specific subset of grievances, namely discharge grievances.

The Arbitrator opined that the class action grievance was to be determined by the language in the party's current collective bargaining agreement and not on the operational necessities of the OH electronic grievance system.

The Arbitrator clarified the scope of the arbitration. The class action grievance before him would not consider the merits of the removals grieved by the three class action grievants. Whether each grievant can be proven to have engaged in misconduct that substantiates just cause for disciplinary action is not an issue. The class action grievance considered how the three grievances were treated under the parties' contractual grievance procedure, whether the grievants and the Union received those rights guaranteed to them by the express language of the parties' 2015-2018 collective bargaining agreement, in particular whether the language of Article 25 was applied appropriately to each of the three discharge grievances.

1164 Akintunde Durosinmi-Etti DMR-2016-04397-4 Removal

ARBITRATOR: Howard Silver

ISSUE: 1. Did the Grievant abuse an individual of the Columbus Developmental Center? 2. If the Grievant did not abuse an individual, was the Grievant removed for just cause? 3. If the Grievant was not removed for just cause, what shall the remedy be?

CONTRACT ARTICLES: 24.01

TOPICAL HEADINGS: Abuse, Arbitrator Authority, Credibility of Witnesses, Co-worker Testimony

AGENCY: Department of Developmental Disabilities

SITE/LOCATION: Columbus Developmental Center

POSITION: Therapeutic Program Worker

RESULT: The grievance was denied.

REASONS: The Arbitrator found the preponderance of the evidence clear and convincing that the Grievant punched a CDC resident in the face repeatedly. The punching of the resident constitutes physical abuse of an individual under the care and custody of the State of Ohio. Proof of such abuse removes from the arbitrator the discretion to modify the discipline imposed.

The Arbitrator explained that this case involved three disciplinary considerations. First, has abuse been proven? If abuse is not proven, are other grounds proven to substantiate just cause for the discipline? If neither abuse nor just cause is substantiated, how is the reinstatement and compensation of the grievant to occur?

The Arbitrator held the fact that the co-worker did not immediately declare that he had observed the physical abuse of the resident when surrounded by co-workers is not difficult to accept or understand. The co-worker at the time of the incident had been an intermittent employee and wondered, not unreasonably, how his response to what he had just observed affect his employment at the Center and his relations with co-workers there.

The co-worker in his testimony appeared to be an employee who, after taking some hours to consider what action to take, decided to tell the truth about what he observed and did so.

The Arbitrator found it curious that after restraining the resident and observing injuries to the resident's face, the Grievant decided that the participants in the restraint should come to a common agreement as to not only what had occurred but what could have occurred. This desire to ensure conformity based on a consensus rather than each participant writing down what each observed remains unexplained in the hearing record as anything other than an attempt to anticipate questions about how the injuries had occurred.

1165 Jennifer Simmons DMR-2016-04825-4 Removal

ARBITRATOR: Craig Allen

ISSUE: The Grievant was removed for violation of Rule B-5 Failure to Report for Duty -not in approved leave status for more than one hour but less than one scheduled shift while on a Last Chance Agreement. Did the Grievant violate her Last Chance Agreement? If not, what shall the remedy be?

CONTRACT ARTICLES: 24

TOPICAL HEADINGS: Failure to Report for Duty; Last Chance Agreement

AGENCY: Department of Developmental Disabilities

SITE/LOCATION: Columbus Developmental Center

POSITION: Therapeutic Program Worker

RESULT: The grievance was denied.

REASONS: The Arbitrator held that the Grievant was supposed to be working on September 30, 2016. Therefore, the Grievant was guilty of an attendance violation and was removed pursuant to her Last Chance Agreement. The fact that the Grievant's co-workers thought she was off was not persuasive. The Arbitrator held that it is no defense for the Grievant to claim she relied on a schedule revised by herself nor on a schedule sent by a co-worker. The Grievant admitted only management can issue a schedule.

