

ARBITRATION DECISION NO.:

31

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Mental Health,
Cleveland Psychiatric Institute

DATE OF ARBITRATION:

June 15, 1987

DATE OF DECISION:

June 16, 1987

GRIEVANT:

Michael Harris

OCB GRIEVANCE NO.:

G-87-0867

ARBITRATOR:

Jonathan Dworkin

FOR THE UNION:

John T. Porter

FOR THE EMPLOYER:

Marlaina Eblin

KEY WORDS:

45 Day Time Limit

ARTICLES:

Article 24 - Discipline
§24.05-Imposition
of Discipline

FACTS:

Grievant was a Therapeutic Program Worker at the Cleveland Psychiatric Institute and was charged with two acts of misconduct: 1) sleeping on the job; and 2) threatening an Administration Officer. In light of a previous fifteen (15) day suspension, the Hearing Officer approved the removal. The Union appealed.

ARBITRATOR'S OPINION:

Contract Section 24.05 requires the Agency Head to make a final decision on discipline no later than 45 days after the pre-disciplinary meeting. The Agency Head missed this deadline. Because the missed deadline weakened the Agency's position, mediation efforts were successful.

AWARD:

Removal modified to 45 day disciplinary suspension, reinstatement, and lump sum payment of one half of missed earnings. The State was ordered to withdraw objections previously filed against Grievant's unemployment application.

TEXT OF THE OPINION:

**CONTRACTUAL GRIEVANCE PROCEEDINGS
STIPULATED AWARD**

In The Matter of Arbitration
Between:

**THE STATE OF OHIO
Department of Mental Health
Cleveland Psychiatric Institute**

-and-

**OHIO CIVIL SERVICE
EMPLOYEES ASSOCIATION
OCSEA/AFSCME, AFL-CIO
State Unit No. 4, Local Union 11**

Case No.:

AFSCME JD 87-2

Grievance No.:

G87-0867

Decision Issued

June 16, 1987

APPEARANCES

FOR THE EMPLOYER

Marlaina Eblin,
Labor Relations Specialist
Ruth E. Spencer,
Director of Personnel
Austin Morehouse,
Area Program Administrator

Joanne Stewart,
Psychiatric Nurse
William Carlin,
Assistant Security Chief

FOR THE UNION

John T. Porter,
Associate General Counsel
Maxine Hicks, Local President
Michael Harris, Grievant
Charles Brabson, Witness

Jonathan Dworkin, Arbitrator

16828 Chagrin Boulevard
Shaker Heights, Ohio 44120

BACKGROUND OF DISPUTE

Grievant is a Therapeutic Program Worker at Cleveland Psychiatric Institute. His seniority date is July 20, 1981.

He was charged with two acts of misconduct -- sleeping on the job on December 12, 1986; menacing and threatening an Administration Officer on December 26, 1986. These violations of employment responsibilities, coupled with a previous fifteen-day suspension for abuse, threats, and profanity towards a supervisor, led the Administration to recommend Grievant's removal. Each of the charges was submitted to the contractually required pre-discipline hearing. When the proceedings ended, the Hearing Officer approved the removal.

The Union appealed to arbitration. A hearing was convened in Columbus, Ohio on June 15, 1987. At the outset, the parties stipulated that the appeal was procedurally correct and the Arbitrator was authorized to issue a conclusive award on the merits of the dispute.

One of the issues presented was whether the State complied with contractual due-process requirements. Of particular importance was Section 24.05 of the Agreement which requires the Agency Head (or the Acting Agency Head) to make a final decision on discipline no later than forty-five days after the pre-discipline meeting. The Union presented a strong argument that the Agency missed the deadline for one of the charges against Grievant. At the conclusion of the State's case and Grievant's testimony, the Arbitrator recessed the hearing to confer with the Representatives concerning the procedural issue. He expressed some preliminary conclusions -- that the State had presented persuasive evidence of Grievant's violations, but its apparent failure to comply with contractual time limitations for issuing discipline severely detracted from its position. The discussions between the parties and the Arbitrator developed into active mediation, and the effort proved successful. The parties reconsidered their stands and fashioned a resolution acceptable to the State, the Union, and Grievant. By direction of the parties, the specifics of their settlement are hereinafter set forth as an arbitral award, to have the same binding effect as any other award on the merits.

STIPULATED AWARD

1. The grievance is sustained in part and denied in part. The removal is modified to a forty-day

disciplinary suspension without pay.

2. Grievant shall be restored to active employment no later than ten days after the date of this award.
3. The State is directed to reimburse Grievant a lump-sum amount of money equivalent to one-half of the total straight-time earnings he would have received had he not been removed, less straight-time wages forfeited by the forty-day disciplinary suspension.
4. Grievant applied for unemployment compensation and his claim is pending. The State filed objections to his application. The State is directed to withdraw its objections and make no further attempt to intervene for disapproval of Grievant's claim.
5. Grievant's reinstatement shall be with full, unbroken seniority.

Decision Issued:

June 16, 1987

Jonathan Dworkin, Arbitrator