

ARBITRATION DECISION NO.:

157

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Rehabilitation
and Correction, Lebanon
Correctional Institute

DATE OF ARBITRATION:

DATE OF DECISION:

November 11, 1988

GRIEVANT:

Jeffrey L. Burg

OCB GRIEVANCE NO.:

G-87-2438

ARBITRATOR:

Frank A. Keenan

FOR THE UNION:

Michael Temple

FOR THE EMPLOYER:

Timothy Wagner

KEY WORDS:

Just Cause
Willingness To Exchange
Favors With An Inmate
For Personal Gain

ARTICLES:

Article 2 - Non-Discrimination
 §2.01-Non-Discrimination
 §2.02-Agreement Rights
 §2.03-Affirmative Action
Article 24 - Discipline
 §24.01-Standard
 §24.02-Progressive
Discipline

§24.03-Supervisory
Intimidation
§24.04-Pre-Discipline
§24.08-Employee
Assistance Program
Article 25 - Grievance
Procedure
§25.08-Relevant
Witnesses and Information

FACTS:

Grievant, a Correction Officer 2 at the Lebanon Correctional Institute, was discharged for offering to give or giving money or drugs to an inmate in exchange for favorable work assignments. The inmate was an administrative clerk and had access to the assignment schedule which was computerized. After agreeing to cooperate in the investigation of the grievant, the inmate was "wired", and a conversation with the grievant was taped. In this conversation payment of money for favors was mentioned by the inmate and not denied by the grievant.

ISSUE:

Was the Grievant disciplined by termination for just cause?

EMPLOYER'S POSITION:

Grievant can no longer be trusted because through his "dealings" with an inmate he has compromised his position as a Corrections Officer, compromised the safety of other Correction Officers, and compromised the safety of the Institution. These offenses are so severe that Grievant's lack of prior discipline cannot be viewed as a meaningful mitigating circumstance. There was no racial motivation behind Grievant's discharge. Furthermore, Grievant has failed to carry the burden of proof which he bears on this issue.

UNION'S POSITION:

Management has failed to provide sufficient proof that the Grievant is guilty as charged. No evidence of any exchange of money exists except for the inmate's testimony. The inmate was not a credible witness. He was coerced into fingering the Grievant, and received special treatments for his cooperation. Furthermore, it is not uncommon for officers to approach inmates for requests for days off or work assignment changes.

Grievant's discharge was racially motivated. All witnesses indicated racial discrimination existed at the Institution. Grievant has no reason to "deal" because Grievant's ongoing "where needed" status for assignments gave him preferred assignments 25 percent (25%) of the time.

ARBITRATOR'S OPINION:

Independent good and sufficient cause existed for Grievant's dismissal and/or resignation. The Grievant's contention that his discharge was discriminatorily motivated is without merit.

Grievant was willing to exchange money and/or marijuana with an inmate in exchange for that inmate arranging more favorable working hours and assignments for him. This willingness standing alone warrants discharge. The failure of the Agency to provide the actual monies involved does not work against the Agency's claim. The inmate's testimony was subjected to the closest scrutiny for credibility and passed.

Dealings with inmates such as involved here compromise an officer's effectiveness and jeopardize the officer and all others working with him. These dealings adversely affect the safety

and security of the entire staff. "Dealing with inmates and the introduction of contraband into the prison is so serious that the only commensurate penalty is removal."

AWARD:

Grievance is denied. Grievant was discharged for just cause.

TEXT OF THE OPINION:

ARBITRATION
BETWEEN

**STATE OF OHIO, DEPARTMENT OF
REHABILITATION AND CORRECTION**

and

**OHIO CIVIL SERVICE EMPLOYEES
ASSOCIATION, LOCAL 11,
A.F.S.C.M.E., AFL-CIO**

GR # LeCl-87-D-003-A.F.S.C.M.E.
G-87-2438

Appearances:

For the Agency:

Timothy Wagner, Asst. Chief,
Arbitration Services
Office of Collective Bargaining
Ohio Department of
Administrative Services
Columbus, Ohio

For the Union:

Michael Temple
Staff Representative
O.C.S.E.A. Local 11, A.F.S.C.M.E.
Cincinnati, Ohio

**OPINION AND AWARD OF
THE ARBITRATOR**

**FRANK A. KEENAN
ARBITRATOR**

Statement of the Case:

This case arises from the discharge of the Agency's Lebanon Correctional Institute's Correction Office II Jeffrey L. Burg's discharge. Burg's "Order of Removal" signed by Superintendent Dallman and Agency Director Seiter reads in pertinent part as follows:

State of Ohio

DEPARTMENT OF ADMINISTRATIVE SERVICES

ORDER OF Removal

Mr. Jeffrey L. Burg

This will notify you that you are Removed from the position of Correctional Officer II effective _____.

The reason for this action is that you have been guilty of (See attached list of violations of the Standards of Employee Conduct) in the following particulars, to wit: (See attached particulars).

Please be advised that those directions printed on this form pertaining to any appeal process with the State Personnel Board of Review are not applicable for those persons covered by Ohio Civil Service Employees Association, Local 11, AFSCME, AFL-CIO contract. In such cases, terms of the contract shall prevail.

Signed at Columbus, Ohio September 15, 19 87.

Name: Jeffrey L. Burg

Action: Removal

List of Violations of the Standards of Employee Conduct

1. Paragraph 20A: Offering or receiving a favor or anything of value to an inmate without authorization from the Department of Rehabilitation and Correction; and/or
2. Paragraph 22: Distribution of money or other contraband without authorization; and/or
3. Paragraph 12C: Coercing an inmate for personal gain or satisfaction; and/or
4. Paragraph 28: Any act which constitutes a threat to the security of the institution, its staff, or inmates. (Providing a prisoner with cash money or other valuables that could be used by the prisoner for illicit and illegal activities;) and/or
5. Paragraph 1A: Unauthorized absence; and/or
6. Paragraph 3B: Failure to follow written procedures. Burg grieved his discharge as follows:

"Contract Articles/Sections Allegedly Violated: Security Order #102, Article 2, (Sections) 2.01-2.02-2.03/Article 24 (Sections) 24.01 to 24.08/Any other applicable articles. Statement of Facts . . . On Oct. 6, 1987, Grievant was discharged without just cause. Further, Grievant is a black male, reported an incident involving the Ku Klux Klan and since has been treated differently because of his race. Remedy Sought: Re-instatement to his former job with no lost seniority or benefits, and full back pay and to be made whole."

In the course of processing Grievant Burg's grievance the Union advised the Agency that since ". . . we were denied all information used to determine this discipline, we are adding 25.08 and 24.04 to this grievance." However, during the course of the arbitration hearing the Union and the

Agency stipulated that the issue in the case is:

"Was the Grievant, Jeff Burg Corrections Officer 2, disciplined by termination for just cause? If not, what should the remedy be?"

In addition, the Union withdrew its procedural and/or "due process" flow type allegations and agreed that its challenge to the Grievant's discharge was grounded on the basis that the conduct alleged did not in fact occur and hence the discharge was not for just cause, and that the Grievant's discharge was discriminatorily motivated and hence arbitrary and capricious in violation of the just cause standard.^[1]

The parties also entered into the following stipulation of fact:

1. JEFF BURG WAS A CORRECTIONS OFFICER 2 AT THE LEBANON CORRECTIONS INSTITUTE.
2. HE WAS HIRED ON JUNE 24, 1985.
3. MR. BURG WAS REMOVED FROM HIS POSITION ON OCT. 6, 1987.
4. THE GRIEVANT HAS NO PREVIOUS DISCIPLINE CURRENT IN HIS FILE.
5. THE GRIEVANT WORKED NEARLY TWO AND A HALF YEARS WITH THE STATE.
6. INMATE CHARLES REES HAS ONLY ONE FELONY CONVICTION.
7. HE PLEAD GUILTY TO A CHARGE OF RAPE AND WAS SENTENCED 5-25 YEARS.
8. HE HAS SPENT HIS TIME FIRST AT THE MANSFIELD REFORMATORY, THEN LEBANON CORRECTIONAL INST., NOW HE IS AT ROSS CORRECTIONAL INSTITUTE.
9. THIS GRIEVANCE IS PROPERLY BEFORE THE ARBITRATOR FOR A DETERMINATION.

By way of background, the Lebanon Correctional Institute is a medium to maximum security facility for felons convicted of assaultive crimes. Correction Officers 2 are inmate guards and are assigned various guard related duties that bring them into varying degrees of contact with the Institution's inmates. Thus, assignment to patrol of a range entails considerable inmate contact, and a tower watch assignment requires little, if any, inmate contact. Needless to say, those assignments involving less inmate contact are generally considered to be more desirable. Assignments for Correctional Officers at the Lebanon facility were under the direction of Major Brown. Inmate Charles Rees served as Brown's administrative clerk. Rees had experience and expertise in computers and the assignment system was computerized. Corrections officers frequently went to Rees to ascertain their schedule and sometimes request change in assignments. For quite some time prior to his discharge the Grievant was assigned on a "where needed" basis. This led to a variety of assignments some of which involved little inmate contact.

Also assigned to Major Brown as a clerk was inmate Stamper. According to Captain Richard Jones, Stamper informed him through the isolation officer that corrections officers Burg and Dallis were "dealing" with inmate Rees, i.e., that they were offering Rees money and drugs, and money and alcohol, respectively, for choice assignments. This information led Jones to question Rees. Rees denied such "dealing." Rees was "put on investigation," which meant he was placed in solitary confinement for a few days. In the meantime Rees's Parole Board met. When the Board inquired as to Rees's status, they were informed that Rees was on investigation for alleged dealing with corrections officers. Rees was denied parole. Rees then offered to cooperate in any investigation of Burg and Dallis. According to Rees, he'd had several conversations with Burg concerning assignments away from the inmates and concerning changes in his scheduled off days in exchange for money or marijuana, and similar conversations with Officer Dallis in exchange for

money or alcohol. Commencing August 19th, Jones determined to use monitoring devices^[2] on the person of and/or near inmate Rees in an effort to intercept evidence of such dealings attributed to the Grievant by Rees and Stamper. In addition Jones assigned Captain Dan Burns to observe Rees telephone the Grievant on August 19, 1987, and to monitor Rees's phone call to the Grievant. In this regard it was the testimony of Captain Burns that on August 19th he observed Rees call "C block," the Grievant's assigned post. The Grievant concedes he was on "C" block that day. Someone answered the phone. Rees asked to talk to the Grievant. Someone came to the phone. Rees asked if it was the Grievant. The individual said it was the Grievant. Rees then stated that he was thinking about the Grievant's request for a change of days off in exchange for some money and that the price would have to go up. The Grievant asked how much and Rees said double. Burn's written recollection of this overheard conversation, reduced to writing on August 25, 1987, reads as follows:

DEPARTMENT: Custody **SHIFT:** Second **DATE:** August 25, 1987
SUBJECT: _____ **REFERENCE:** Jeffrey Burg
INVESTIGATED BY: Dan Burns

PERTINENT

INFORMATION: On Wednesday, August 19, 1987 at 5:20 p.m. I met Inmate Charles Rees (LeCl R128-724) in the office of Capt. R. K. Jones. Rees had been previously instructed by Capt. Jones to be present for the purpose of placing a telephone call to the work location of Correctional Officer Jeffrey Burg which would be monitored by me.

At 5:25 p.m. I observed Inmate Rees dial 140, the phone number in C-Block. I went to the telephone extension in the office of Capt. S. Bowman which is directly adjacent to Capt. Jones' office.

I picked up the extension and heard the phone ringing. It was answered by Correctional Officer Brunson. Rees asked to speak to Officer Burg. In approximately 30 seconds, Officer Burg came to the phone. Rees, to identify the person to whom he was speaking, asked, "J. Burg?" Burg replied, "Yeah." Rees said "This is Charlie Rees."

Inmate Rees made reference to an agreement he had previously made with Officer Burg to change his days off in exchange for payment of 35-40 dollars in cash. Rees explained, "I've been thinking . . . the price has to go up." Burg said

"Oh, man . . . like what?" Rees replied, "Double." Burg responded, "You mean eight-oh?" (meaning eighty dollars). Rees replied, "Yeah, seven-oh or eight-oh." Burg was silent for a few moments as if considering this new information. Rees said that he didn't like changing the price, but Burg was asking a lot. Burg said, "Yeah, ok," consenting to the increased cost.

Then Rees asked him to bring him in some marijuana by saying, "Can you bring me a couple sticks, or what?" Burg apparently misunderstood and asked, "Stickers?" Rees said, "No! Sticks!" Burg said, "Oh . . . ok. [and then as if someone unexpectedly came near him]. Do you still go to the Chapel?" Rees replied, "Yes." Then Burg replied, "I'll get it to you the regular way, through Chaplain Stephens."

After this exchange, Burg talked as if he didn't want to stay on the line any longer, and Rees said they'd talk later.

It was Rees's uncorroborated testimony that the Grievant had already paid him \$40.00 in the form of two twenty dollar bills. In this regard the Grievant produced in essence an "alibi" witness in Corrections Officer Clifford Brunson who, carpooling with the Grievant on August 19, 1987, indicated that at the end of the shift he accompanied the Grievant out of the institution and "didn't recall" the Grievant ever leaving his presence, thereby undermining inmate Rees's contention that within that time frame he'd received monies from the Grievant. However, Brunson also indicated on cross-examination that he couldn't be certain whether it was the 19th, concerning which he testified; that it could have been the 18th or 20th.

On August 20th and 22nd, 1987, Captain Steve Bowman, a Unit Manager, listened in by way of a radio transmitter, to conversations between Rees and Dallis and the Grievant. It was Bowman's testimony that on August 20th he heard Rees and Dallis converse, at which times Rees talked to Dallis about money for his daughter in exchange for a scheduling favor. On August 22nd, Rees pressured the Grievant to bring in money or drugs. It was Bowman's testimony that he recognized the Grievant's voice. Bowman taped these overheard conversations.

Transcriptions were made of Bowman's tapes.^[3] The transcriptions reflect in pertinent part as follows:

Rees/Tape #034:

Jeff, I want to apologize for being so rushy. I got myself into some shit out there - I owed some money - but I got---somethin with the twenty I got from you and I got fifty somewhere else. And with what reefer you're gonna give me is going to get me outa the rut. Then I might be okay. Seems some of these nuts out there tend to ah fear a little more than I do any a these fuckers around here.

Officer Burg/Tape #048:

You need

Rees/Tape #049:

Yeah, lets work that out--and know that

Officer Burg/Tape #054:

You know he - he just gives to anybody. If I get it from him - I get it from Adett. I'll get - I'll keep checkin myself around. Don't worry about it. But you know - I promised, you know I made the deal and that's alot. You - this thing ain't mushfaked now.

Rees/Tape #060:

No ----

Officer Burg/Tape #061:

I can work it out - I can work it out. Okay?

Rees/Tape #063:

Gotta have one or the other by Monday. You know its just my deadline, what I'm puttin on you. But I gotta put it on you. Like the backbone.

Officer Burg/Tape #065:

No.

Rees/Tape #066:

I thought probably the same thing before I got in my phone book and I said Jesus Christ, what's happenin

Officer Burg/Tape #070:

Yeah - ugh -

Rees/Tape #070:

That's my deadline unless you're gonna come in with three or four guys with sticks and help me take care of it, that way. (Laughter)

Officer Burg/Tape #072:

I'll do somethin - promise - then I'll get the memo then?

Rees/Tape #074:

Oh, I'll get a copy of it. Okay, that's the least I can do.

Officer Burg/Tape #076:

That forty did help some? Right

Rees/Tape #077:

Oh yeah - yeah like I said, I got fifty elsewhere - plus what you gonna give me one or the other either forty or the reefer.

Officer Burg/Tape #080:

Okay

Rees/Tape #080:

Cause that that'll cover my ass and I'll be all right.

Officer Burg/Tape #080:

All right.

Rees/Tape #082:

Be right back. (Rees leaves office to copy memo)

Rees/Tape #092:

J. Burg - this is set up for the 6th now. Okay?

Officer Burg/Tape #093:

6th of September?

Rees/Tape #093:

Yeah - don't be showin that to these other cops.

Officer Burg/Tape #094:
I'm not gonna show it to nobody.

Rees/Tape #094:
It'll take 'em two to three weeks for 'em to see you got Friday and Saturday instead of Thursday and Friday. At that time you just tell them assholes that its a temporary assignment. Okay? done - just that's it - like that.

Officer Burg/Tape #098:
Is that Bowman's signature?

Rees/Tape #099:
Yeah.

It is noted that Bowman had the authority to change a corrections officer's schedule.

Also of note is Rees's testimony to the effect that he was made no promises; that he was not coerced or threatened by any managerial employees in order to cooperate with management in its investigation of the Grievant. In this regard it is noted that while normally inmates in isolation are not given cigarettes, inmates in protective custody are. Rees was placed in protective custody following his investigation cooperation. Rees was permitted cigarettes while in that status. Rees has also since been placed at a less onerous corrections institution. Additionally, Rees's Parole Board has been advised that the Grievant had cooperated in the investigation of Officers Burg and Dallis.

On August 24th the Grievant arrived at the institution in blue jeans. According to the Grievant he'd intended to pick up his wife, who also works at the institution and arrived early to go fishing in the pond behind the prison. He asserts he then remembered that he wanted to ask for a particular day off and hence he entered the Institution to do so. It's clear that management surmised that the Grievant was going to pass money or contraband drugs on to Rees and hence it had him strip searched. According to management witnesses, the search uncovered some \$40.00+ on the Grievant's person. The Grievant's wife, however, insisted that he could not have had that amount of money on him. Corrections Officer Torbert was present for at least part of the Grievant's strip search. He testified that no folding money was found on the Grievant.

It is noted that on August 5, 1987, Captain B. Couch, 2nd Shift Captain wrote up the following Internal Affairs Incident Report:

DEPARTMENT: Custody **SHIFT:** First **DATE:** 8/5/87
SUBJECT: Failure to call in on time **REFERENCE:** Officer J. Burg
INVESTIGATED BY: Capt. B. Couch, Second Shift Captain

PERTINENT INFORMATION:

On August 4, 1987, Officer J. Burg called Central Control at 2:27 p.m. and reported he was sick. AFL CIO contract, Paragraph 29.02, and institution current practice require 60 minutes prior notification if you are sick and unable to work. The starting time for second shift is 2:20 p.m. and Officer J. Burg should have called in no later than 1:30 p.m.

EVIDENCE

SUBMITTED: Call-in slip, Attendance Record

SUMMARY:

This type conduct caused the second shift to be unable to fill all posts. By the time Central Control notified me, all first shift officers had left the institution at 2:30 p.m., and I was unable to get anyone to work overtime to fill Officer J. Burg's post. It is the recommendation of this writer that appropriate disciplinary action be taken.

When confronted with the allegations of dealing with inmates Officer Dallis confessed and voluntarily resigned. The Grievant when confronted denied doing so in the course of the Agency's investigation and at the hearings herein. Conceding that he went to Rees for schedule changes, he asserts that so did everybody else, and that in any event he never offered drugs or money in exchange for a schedule change from Rees. The Grievant denies engaging in the conversations between himself and Rees as attributed to him by Rees, Bruns, and Bowman. It was the Grievant's assertion that his discharge was simply racially discriminatorily motivated. In this regard the Grievant characterized himself as one who "frequently spoke out against discrimination." He was corroborated on this point by C.O. Ben Torbert. The Grievant also testified about a cross-burning incident in February 1987. In this regard it appears that certain "white shirts," that is Captains and Lieutenants (managers), were involved in an incident on an inmate range whereby two crossed night sticks were wrapped in toilet paper and set afire. It appears it was to symbolize a burning cross and conjure up images of the Ku Klux Klan. Two days later the Grievant reported the matter to his superior, Captain Couch. It was the Grievant's uncontroverted testimony that Couch sought to let the matter die. Couch did not testify. The Grievant was persistent, and following an investigation into the matter, several white shirts were disciplined by way of a 5 day disciplinary layoff. The Grievant claimed he was thereafter harassed, especially by Captain Couch. In support of this allegation the Grievant's wife related an incident on August 12, 1987, when, 8 1/2 months pregnant, she sought to call her husband at work because she was sick. The telephone operator reported her husband wasn't at the Institution when in fact he was. The Grievant's wife also related how the Grievant was wrongly being accused of dealing drugs with inmates and she was wrongly accused of dealing tapes. These accusations led the Grievant and his wife to go directly to Superintendent Dallman. According to Cecilia Burg, the Grievant's wife, Dallman told her and the Grievant that it was no secret that Capt. Couch did not like the Grievant, and that he'd heard rumors that her husband was dealing drugs but that they hadn't gotten any evidence of such to him.

It was the Grievant's uncontradicted testimony that Couch, as well as Lt. Wisecuff and Capt. Carnes, had called him a "nigger" in the past, and that Couch had done so recently. It was the Grievant's view that the Institution's management harbored racism. In this he was supported by his wife, who, although conceding that she had not personally experienced "racial problems" at the Institution, nonetheless believed that blacks were disciplined more harshly than whites. In this regard statistics on employee discipline in 1987 reveal that whereas blacks represented 13.6% of the entire workforce, they received 18.5% of the discipline meted out. Nonetheless more whites were disciplined than blacks and more whites were discharged than blacks. The Grievant's opinion that management was tainted by racism was also shared by black Corrections Officer Lucan Walker, who testified that "if you're not one of the good old boys you've got nothing coming

to you." It is noted that Walker had recently been demoted as a disciplinary measure and that his demotion was upheld by the State Personnel Review Board. Corrections Officer Torbert also testified that "a small percentage" of white managerial employees, Captain Couch among them, are racist.

In further support of his "discrimination" claim, the Grievant pointed out that he was an active participant on behalf of the institution of the Black Culture Club as liaison with the inmates and as a security guard for guest speakers called into the Institution by that long-standing inmate organization. The Grievant also points out that on two or three occasions he had disciplined inmate Stamper. He conceded he had never disciplined inmate Rees.

Finally it is noted that it was the testimony of Corrections Officer Thomas E. Guinness, Vice President of the Union, that some 3-1/2 years ago Captain Metcalf, his then shift commander, advised him to straighten out his absenteeism record because "they're looking to get two black officers and they want a white to get down with them."

The Union's Position:

The Union takes the position that management has not provided sufficient proof that the Grievant is guilty as charged. It asserts that there is no evidence aside from inmate Rees's testimony that money was ever exchanged between Rees and the Grievant. And in this regard, many officers, in addition to the Grievant, approached Rees with requests for different days off or work assignments different than those appearing on the official schedule. But Rees, asserts the Union, was not a credible witness. Thus, aside from his felon status, the Union contends that Rees was coerced into fingering the Grievant, having been placed in solitary confinement prior to his "agreeing" to "cooperate." The Union also suggests that Rees's credibility is impaired by the factors of the special treatments he received for his cooperation, namely, transfer to a more comfortable/less threatening prison; cigarettes while in solitude; and a note to his Parole Board highlighting his cooperation with the prison authorities.

The Union also contends that in any event the Grievant's discharge was racially motivated and in retaliation for the Grievant's stance vis-a-vis the February Ku Klux Klan type cross-burning. It is the Union's contention that "the cross-burning incident got Burg fired." The Union points out that all of its witnesses indicated racial discrimination existed at the Institution.

The Union would have the Arbitrator draw an adverse inference from the fact that the Agency did not introduce the "tapes," since such is "better evidence than the transcript of the tape."

The Union also points to what it implicitly characterizes as a lack of motivation on the Grievant's part to seek less inmate contact assignments by paying the inmate clerk who is in a position to change assignments, pointing to the fact that the Grievant's ongoing "where needed" status for assignments gave him preferred assignments 25% of the time in any event.

It is the Union's position that "the intent of management was to remove Burg because of his anti-discrimination stand."

So it is that the Union urges that the grievance be sustained.

The Agency's Position:

The Agency takes the position that the credible evidence readily discloses that the Grievant was "dealing" with an inmate and that he thereby compromised his position as a Corrections Officer; compromised the safety of other Corrections Officers; and compromised the safety of the Institution. It is the Agency's position that in light of this proven conduct on the Grievant's part, the Grievant can no longer be trusted. Given the compromising of the Institution's security by one of its

corrections officers being at the mercy of an inmate, the punishment of discharge cannot be said to be too severe. Thus, the Grievant's lack of prior discipline cannot be viewed as a meaningful mitigating circumstance. This is especially true, argues the Agency in light of the short term of the Grievant's employment.

Conceding some race relation problems at the Institution, the Agency nonetheless asserts that they are not condoned and that racially motivated incidents lead to discipline, thereby belying any racial motivation behind the Grievant's discharge. It is the Agency's position that the Grievant relies on "general" allegations only, and has fallen short of carrying the burden of proof which he bears on this issue. The Agency also points out that Dallis, who is white, received in essence the same treatment as the Grievant and that this too belies any anti-black motivation behind the Grievant's discharge. The Agency also points out that while the Grievant now alleges discrimination, he never did file a discrimination grievance on prior poor treatment he now characterizes as racially motivated.

So it is that the Agency urges that the grievance be denied.

Discussion and Opinion:

First addressed is the Grievant's contention that racially discriminatory motivations lie behind his discharge. In this regard the centerpiece of the Grievant's allegation is the February Ku Klux Klan incident. Assuming for the sake of analysis that, management's representative Captain Couch was indeed reluctant to pursue the matter, it must be noted that nonetheless an investigation was in fact conducted, and that rather severe discipline was meted out to Couch's peers who were involved in the incident. The principal difficulty is that neither Couch nor so far as the record shows, any of the "white shirts" involved in the Klan incident, were involved in the decision to discharge the Grievant. This same factor goes far toward undermining any conclusion that Couch's negative attitudes toward the Grievant, even if racially grounded, played a role in the Grievant's discharge. Nor does the record show that other managers, such as Captains Wisecuff and Ganes, to whom racial slurs were attributed in addition to the attribution of such to Couch, played any role in the Grievant's discharge. Similarly, the Union's suggestion, that white officer Dallis' discharge was simply a "cover" for dismissing the Grievant due to his race and anti-discrimination stance, as manifested by his position in the Klan incident and his support of the Black Culture Club, is unpersuasive. Thus the record establishes, as made more fully apparent hereinafter, that independent good and sufficient cause existed for Dallis' dismissal and/or resignation. In sum the most that can be said is that upper management recognizes that some racial problems exist within the Institution's staff; it has taken some steps to correct it; and in any event, this "problem" played no part in the Grievant's discharge. The evidence falls considerably short of establishing any nexus between the improper racial attitudes apparently held by a small number of managers, and the Grievant's discharge. Accordingly, the Grievant's contention that his discharge was discriminatorily motivated is found to be without merit.

Turning to the articulated reasons for the Grievant's discharge as outlined in his order of removal, I believe the credible record evidence readily reveals the Grievant's willingness to exchange money and/or marijuana with an inmate in exchange for that inmate arranging more favorable working hours and assignments for him. I am unimpressed with the Union's arguments that it didn't happen because it wasn't necessary for the simple reason that this argument fails to address at all the major matter of the Grievant's desire for certain days off, in addition to a desire for specific work assignments. Thus, Captains Bowman and Burns, both untainted by any discriminatory or other proscribed motive, have described in their testimony conversation between the Grievant and inmate Rees which acknowledge having exchanged money with Rees for more

favorable assignments and/or a willingness to do so. I discredit the Grievant's denials. In my judgment, this latter willingness, standing alone, warrants discharge, and the Grievant's removal order in essence states such. Moreover, given the fungibility of money, I am unwilling to draw any adverse inferences from the Agency's failure to provide the corpus delecti, i.e., the actual monies purportedly given to Rees by the Grievant. Still further in this regard, while to be sure an inmate's testimony is subject to the closest of scrutiny for credibility, subjecting Rees's testimony to the effect that he had indeed in fact received money from the Grievant in exchange for favorable assignments to such scrutiny, it passes muster. Thus it is in effect corroborated by the otherwise credible witness Bowman, who overheard Rees's reference to such payments in a conversation with Rees the Grievant, and the Grievant's failure to deny the existence of such payments in that same conversation. But it is simply self-evident that such dealings with inmates compromises an officer's effectiveness and thereby jeopardizes not only the officer himself but others working with him as well, and in this manner adversely affects the safety and security of the entire staff. For these reasons I am constrained to agree with Chief of Labor Relations Nicholas Menedis' observation in his 3rd step answer to the grievance that in the absence of the most extraordinary mitigating circumstances, clearly not present here, "dealing with inmates and the introduction of contraband into the prison is so serious that the only commensurate penalty is removal." This being so, the grievance must be denied.

Award

For the reasons more fully set forth above, the grievance is denied. The Grievant was discharged for just cause.

Dated: November 11, 1988

Frank A. Keenan
Arbitrator

[1] Accordingly the allegations to the effect that Article 24, Sections 24.02; 24.03; 24.04; and Article 25, Section 25.08 are out of the case. What remains is the contention that the Grievant's discharge is violative of Article 2, Sections 2.01, 2.02, and 2.03, and Article 24, Section 24.01.

[2] These devices consisted of a radio transmitter on the person of Rees, a radio receiver and the tape recording of conversations between Rees and the Grievant.

[3] The Union was given access to the tapes and furnished transcriptions thereof prior to the pre-disciplinary hearings which took place prior to the Grievant's discharge. It appears that the quality of the tape recordings was poor.