

**ARBITRATION DECISION NO.:**

231

**UNION:**

OCSEA, Local 11, AFSCME, AFL-CIO

**EMPLOYER:**

Department of Rehabilitation and Correction  
Lima Correctional Institute

**DATE OF ARBITRATION:**

November 20, 1989

**DATE OF DECISION:**

February 20, 1990

**GRIEVANT:**

Melissa L. Morgan

**OCB GRIEVANCE NO.:**

27-12-(89-02-24)-0030-01-03

**ARBITRATOR:**

David M. Pincus

**FOR THE UNION:**

B.J. Rowland

**FOR THE EMPLOYER:**

L. Kitchen

**KEY WORDS:**

Removal  
Improper Relationship with Inmate  
Progressive Discipline  
Just Cause

**ARTICLES:**

Article 24 - Discipline  
    § 24.01 - Standard  
    § 24.02 - Progressive Discipline  
    § 24.04 - Pre-Discipline  
    § 24.05 - Imposition of Discipline  
Article 43 - Duration  
    § 43.03 - Work Rules

**FACTS:**

The grievant is a Food Service Coordinator I employed by the Ohio Department of Rehabilitation and Corrections. A parolee who worked under the grievant while an inmate, requested a transfer, giving the grievant's address and the telephone number. He stated he was living with Melissa Bailey. Bailey is the grievant's maiden name. The parolee was present and gave information to police concerning a burglary of the grievant's residence. During the burglary investigation the grievant stated that the parolee had keys to her car and residence. Based on this evidence the grievant was removed for violating the Standard of Employee Conduct rule #40, "engaging in unauthorized relationships with... ex-inmates."

**EMPLOYER'S POSITION:**

There is just cause for removal. The grievant had notice of rule 40 prohibiting unauthorized relationships and the penalties for violations. Evidence of the relationship is the parolee's requested transfer to the grievant's address, the grievant's admitted contacts with the parolee and the parolee's possession of keys to the grievant's residence and car.

Engaging in unauthorized relationships is serious. It erodes public confidence, affects the grievant's work relationship and security for which all employees are responsible. The punishment is commensurate with the offense.

**UNION'S POSITION:**

There is no just cause for removal. The grievant did not violate rule 40 by engaging in an unauthorized relationship with an ex-inmate. The grievant had insufficient notice of Rule 40 and had not been trained on the rule. The removal order was defective because on-duty misconduct was not raised until Step 3. No on-duty or off-duty misconduct was sufficiently proven. Employer's claims that the misconduct affects job performance are speculative. The punishment is punitive and thus violates Section 24.05 of the contract.

**ARBITRATOR'S OPINION:**

The employer had just cause for removal. The grievant engaged in an unauthorized relationship with an ex-inmate, violating rule 40. The grievant had sufficient notice and training of rule 40 and its penalties. There is sufficient notice of the on-duty misconduct issue and the removal order is not based solely on on-duty misconduct. The grievant was proven to be involved in a non-casual relationship with an ex-inmate. The connection between the misconduct and job performance was proven. Security concerns in a corrections facility are serious. Therefore, the discipline imposed is not excessive.

**AWARD:**

Grievance denied.

**TEXT OF THE OPINION:**

STATE OF OHIO AND OHIO CIVIL SERVICE  
EMPLOYEES ASSOCIATION LABOR  
ARBITRATION PROCEEDING

IN THE MATTER OF THE ARBITRATION BETWEEN

THE STATE OF OHIO, OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION, LIMA  
CORRECTIONAL INSTITUTION

-and-

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION,  
Local 11, AFSCME, AFL-CIO

GRIEVANCE:  
Melissa L. Morgan (Discharge)

OCB Case No.:  
27-12-89-02-0030-01-03

ARBITRATOR'S OPINION AND AWARD  
Arbitrator: David M. Pincus  
Date: February 20, 1990

APPEARANCES

For the Employer

H. K. Russell, Warden  
A. E. Dunnigan, Labor Relations Officer  
T. G. Mackley, Training Officer  
R. F. Smith, Patrolman  
J. D. Lucas, Food Service Manager II  
J. Dworkin, Staff Representative  
L. Kitchen, Advocate

For the Union

M. Morgan, Grievant  
E. E. Conner, Local President  
K. T. Hawk, Chief Steward  
B. J. Rowland, Staff Representative

INTRODUCTION

This is a proceeding under Article 25, Sections 25.03 and 25.04 entitled Arbitration Procedures and Arbitration Panel of the Agreement between the State of Ohio, the Ohio Department of Rehabilitative Services, Lima Correctional Institution, hereinafter referred to as the Employer, and the Ohio Civil Service Employees Association, Local 11, AFSCME, AFL-CIO, hereinafter referred to as the Union for July 1, 1986 - July 1, 1989 (Joint Exhibit 1).

The arbitration hearing was held on November 20, 1989 at the office of Collective Bargaining, Columbus, Ohio. The Parties had selected David M. Pincus as the Arbitrator.

At the hearing the Parties were given the opportunity to present their respective positions on the grievance, to offer evidence, to present witnesses and to cross examine witnesses. At the conclusion of the hearing, the Parties were asked by the Arbitrator if they planned to submit post hearing briefs. Both Parties indicated that they would not submit briefs.

### STIPULATED ISSUE

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

### STIPULATED FACTS

1. The matter is properly before the arbitrator and the procedures of the contract have been complied with.
2. Melissa Morgan was hired September 28, 1987 as a Food Service Coordinator I.
3. Melissa Morgan was removed, February 17, 1989.
4. Melissa Morgan had no prior discipline.

For the Employer: Lou Kitchen

For the Union: Bob J. Rowland

11/20/89

### PERTINENT CONTRACT PROVISIONS

#### ARTICLE 24 - DISCIPLINE

##### Section 24.01 - Standard

Disciplinary action shall not be imposed upon an employee except for just cause. The Employer has the burden of proof to establish just cause for any disciplinary action. In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have authority to modify the termination of an employee committing such abuse.

##### Section 24.02 - Progressive Discipline

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense. Disciplinary action shall include:

- A. Verbal reprimand (with appropriate notation in employee's file);
- B. Written reprimand;
- C. Suspension;
- D. Termination.

Disciplinary action taken may not be referred to in an employee's performance evaluation

report. The event or action giving rise to the disciplinary action may be referred to in an employee's performance evaluation report without indicating the fact that disciplinary action was taken.

Disciplinary action shall be initiated as soon as reasonably possible consistent with the requirements of the other provisions of this Article. An arbitrator deciding a discipline grievance must consider the timeliness of the Employer's decision to begin the disciplinary process.

...

#### Section 24.04 - Pre-Discipline

An employee shall be entitled to the presence of a union steward at an investigatory interview upon request and if he/she has reasonable grounds to believe that the interview may be used to support disciplinary action against him/her.

An employee has the right to a meeting prior to the imposition of a suspension or termination. Prior to the meeting, the employee and his/her representative shall be informed in writing of the reasons for the contemplated discipline and the possible form of discipline. No later than at the meeting, the Employer will provide a list of witnesses to the event or act known of at that time and documents known of at that time used to support the possible disciplinary action. If the Employer becomes aware of additional witnesses or documents that will be relied upon in imposing discipline, they shall also be provided to the Union and the employee. The employer representative recommending discipline shall be present at the meeting unless inappropriate or if he/she is legitimately unable to attend. The Appointing Authority's designee shall conduct the meeting. The Union and/or the employee shall be given the opportunity to comment, refute or rebut.

At the discretion of the Employer, in cases where a criminal investigation may occur, the pre-discipline meeting may be delayed until after disposition of the criminal charges.

#### Section 24.05 - Imposition of Discipline

The Agency Head or, in the absence of the Agency Head, the Acting Agency Head shall make a final decision on the recommended disciplinary action as soon as reasonably possible but no more than forty-five (45) days after the conclusion of the pre-disciplinary meeting. At the discretion of the Employer, the forty-five (45) days requirement will not apply in cases where a criminal investigation may occur and the Employer decides not to make a decision on the discipline until after disposition of the criminal charges.

The employee and/or union representative may submit a written presentation to the Agency head or Acting Agency Head.

If a final decision is made to impose discipline, the employee and Union shall be notified in writing. Once the employee has received written notification of the final decision to impose discipline, the disciplinary action shall not be increased.

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

The Employer will not impose discipline in the presence of other employees, clients, residents, inmates or the public except in extraordinary situations which pose a serious, immediate threat to the safety, health or well-being of others.

An employee may be placed on administrative leave or reassigned while an investigation is being conducted, except in cases of alleged abuse of patients or others in the care or custody of the State of Ohio the employee may be reassigned only if he/she agrees to the reassignment. (Joint Exhibit 11, Pgs. 34-37)

## ARTICLE 43 - DURATION

### Section 43.03 - Work Rules

After the effective date of this Agreement, agency work rules or institutional rules and directives must not be in violation of this Agreement. such work rules shall be reasonable. The Union shall be notified prior to the implementation of any new work rules and shall have the opportunity to discuss them.

Likewise, after the effective date of this Agreement, all past practices and precedents may not be considered as binding authority in any proceeding arising under this Agreement.

...

(Joint Exhibit 1, Pg. 62)

## CASE HISTORY

Melissa Morgan, the Grievant, was employed as a Food Service Coordinator I, at the Lima Correctional Institution, the Employer, for approximately one and one-half years prior to her removal. The Grievant served her entire tenure in the cafe performing food service related duties, such as: slicing of meats to be roasted; portion control of foods; working in the kitchen as a cook; and supervising assigned inmates. The Employer primarily houses 1,720 medium-security inmates. it performs its custodial responsibilities by employing a staff of 450 individuals.

Melvin "Rusty" Mayo, an inmate, served a significant portion of his time performing a variety of activities in the cafe (Employer Exhibits 3 and 4). During this period, the Grievant appears to have extensively supervised Mayo. Mayo, moreover, was paroled on or about October 7, 1988 (Employer Exhibit 4).

James D. Lucas, a Food Manager 2 and the Grievant's Supervisor, testified that certain suspicions were raised when Margaret E. Miller, a State Probation/Parole Officer, contacted the facility concerning Mayo's transfer request<sup>[1]</sup> he allegedly indicated that he was living with Melissa Bailey at a specific address, and that he wished to transfer to the same address. Miller further stated that she had initiated several unsuccessful attempts to contact the Grievant (i.e., Melissa Bailey) (Joint Exhibit 3). Surprisingly, a number of days after these ill-fated attempts, Mayo contacted Miller.

On December 10, 1988, the Grievant reported a burglary at her residence. She testified that upon arriving at her residence Parolee Mayo was waiting on the stairs leading to her home. He notified her that someone had burglarized her abode by forcible entry. Patrolman Smith, an employee of the Cridersville Police Department, conducted an investigation, information was

purportedly provided by Mayo during this time period. Smith concluded that the rear door of the house showed signs of forced entry into the residence. His report also indicated that a VCR and several rings were also missing (Joint Exhibit 3).

On December 19, 1988, the Grievant once again called the Police Department and amended her initial report. She notified Chief Yoakam that a television set was also missing. Several Police Department representatives interviewed the Grievant at her residence. During this interview, Pam and Michael Barlow, two acquaintances, arrived at the residence. Mr. Barlow acknowledged that a few weeks earlier he had taken Mayo to a pawn shop to sell some jewelry. One of the items reported as missing was described by Barlow as one of the pawned items. On December 20, 1988 the Grievant was transported by the Police Department to check the records at the pawn shop. A receipt for a pearl ring dated November 29, 1988 was found to be made out to Mayo. The ring was identified by the Grievant as an item previously reported as missing (Joint Exhibit 3).

On December 20, 1988, the Grievant authored a detailed account of the above incidents. She testified that Chief Yoakam solicited this document as a precondition to the formal filing of an arrest warrant. In this report, the Grievant noted that she had certain suspicions regarding Mayo's involvement. She, moreover, specified that Mayo had a spare set of keys to her home and car (Employer Exhibit 3). It appears that an arrest warrant was issued but that Mayo was still at large at the time of the hearing.

Two investigatory meetings were held by Lucas on January 17, 1989 and January 20, 1989. He reviewed the incidents with the Grievant which led to a request for further disciplinary action. The following reasons were used in support for the recommended corrective action.

“ . . .

On January 17, 1989 an investigative meeting was held in Mr. Lucas' office with M. Morgan, G. Evans, union representative T. Hawk and James Lucas concerning a possible violation of Article 40 'Engaging in unauthorized personal relationship with . . . parolees' relating to Ms. Morgan and Melvin Mayo 171-300, a recent parolee previously at LCI and assigned to the kitchen. At this meeting a copy of an Adult Parole Authority Supervisory and Transfer Investigation Report was presented indicating that Mayo 171-300 had requested a transfer to #2 Milia Drive, Cridersville which is the address of Ms. Morgan. He also indicated that he was living with Melissa Bailey (Ms. Morgan's maiden name) and the phone number to be (419)-645-5334. Ms. Morgan admitted that her maiden name was Bailey and that her phone number was 645-5334 at one time. She denied that Mayo had stayed at the address or that she had any contact with him.

On January 20, 1989 an investigative meeting was held in Mr. Lucas' office with Ms. Morgan, G. Evans, union representative E. Conner and James Lucas concerning the above personal relationship. At this time a copy of a Cridersville Police Department General Offense Report was presented including a signed and witnessed (Chief Yoakam) statement by Melissa Morgan indicating that Mayo had been at her residence on December 10, 1988 when she returned home from work, and that he had a key to her home and possibly a spare set of keys to her car. The statement also indicates that on December 19, 1989 she began to suspect Mayo was involved in items missing from her residence. The police report also indicates that Mayo had pawned one of Ms. Morgan's rings as early as November 29, 1988.

These statements and reports indicate a violation of Standards of Employee Conduct Article 40 'Engaging in unauthorized personal relationship with . . . ex-inmates . . . parolees.' Also, denial of any contact with Mayo in the January 17, 1989 investigative meeting is a violation of Article 22 'Interfering with . . . or failing to cooperate in any official inquiry or investigation.'

Reports attached.

...”

(Joint Exhibit 3)

On February 3, 1989, Warden H. K. Russell conducted a Pre-disciplinary Conference. The Pre-disciplinary Conference Notice specified a number of alleged violations. One violation dealt with Rule 40 - Engaging in unauthorized personal relationships) with a parolee. Another violation concerned Rule 22 - Interfering with or failing to permit an official search of person or property or failing to cooperate in any official inquiry or investigation (Joint Exhibits 3 and 4).<sup>[2]</sup>

The above conference led to the issuance of a Removal Order on February 6, 1989. The following justifications were offered in support of this action:

“ . . .

. . . violation of DR&C Standards of Employee Conduct, Rule 40 - Engaging in unauthorized personal relationship(s) with inmates, ex-inmates, furloughees, parolees, probationers, or family or friends of same (nexus required) i.e., tied to employment.

Specifically, that you did develop a relationship with Inmate Melvin Mayo 171-300, while he was incarcerated and you were an employee of the Lima Correctional Institution. Further, you did nurture and maintain that relationship after his parole on October 7, 1988.

...”

(Joint Exhibit 3)

In response to the above disciplinary action, the Grievant filed a grievance on February 24, 1989. The grievance contained the following relevant particulars:

“ . . .

Contract Article(s) Section(s) Allegedly Violated:

Article 24, Sections 24.01 and 24.02; Article 43, Section 43.03.

Statement of Facts (for example, who? what? when? where? etc.): AFSCME/OCSEA and Melissa L. Morgan grieves Management is in violation of Article 24, Sections 24.01 and 24.02; Article 43, Section 43.03 and all other pertinent articles and sections of the contract. AFSCME/OCSEA and Melissa L. Morgan makes such claim when on February 17, 1989, Melissa L. Morgan was removed for having a relationship with a parolee.

...”

(Joint Exhibit 2)

On March 30, 1989, a Step 3 grievance hearing was held concerning the above mentioned grievance. The grievance was denied and was forwarded to the Step 4 grievance review stage. Once again the grievance was formally denied on May 25, 1989 (Joint Exhibit 2).

Objections were not raised by either Party regarding procedural or substantive arbitrability. This grievance, therefore, is properly before the Arbitrator.

THE MERITS OF THE CASE



## The Position of the Employer

It is the position of the Employer that it had just cause to remove the Grievant because she engaged in an unauthorized personal relationship with a parolee. Just cause principles were referred to as well as other evidence and testimony in support of this premise.

The Employer argued that the Grievant was given forewarning or foreknowledge of the possible or probable consequences of the Grievant's disciplinary conduct. The Grievant, more specifically, was cognizant of Rule #40, which was contained in the Standards of Employee Conduct (Joint Exhibit 4). The Parties, moreover, jointly submitted a document (Joint Exhibit 5) which clearly evidenced that the Grievant received these Standards. Also, Thomas G. Mackley, a Training Officer, discussed the training received by all newly hired employees. Based upon the Grievant's record, he opined that she received training on the Standards three times in a three-month period. Also, he emphasized that an extensive period of time was spent on Rule #40. Graphic examples dealing with relationship-related misconduct in an institutional setting were reviewed and explained.

The Employer alleged that the Grievant violated Rule #40 by engaging in a prohibited relationship with Mayo. This relationship was purportedly initiated at the institution and nurtured by the Grievant after Mayo's release. Thus, the relationship was not viewed as casual because it was specifically sustained by the Grievant after Mayo's release.

The relationship was purportedly initiated during Mayo's assignment to the food service department. Lucas testified that contacts between the Grievant and Mayo had to occur as a consequence of the Grievant's supervisory responsibilities.

Several factors were considered by the Employer which led to the conclusion that the relationship was indeed nurtured and sustained after Mayo's release. First, Mayo's transfer request (Joint Exhibit 3) specified the Grievant's maiden name, phone number and address. Second, the Grievant admitted to several unreported contacts with Mayo. Third, Patrolman Smith testified that Mayo possessed an intimate knowledge of the Grievant's residence, possessed a key to same residence, and at one time possessed the Grievant's house key.

The Employer maintained that the off-duty misconduct, in this case a prohibited relationship with a parolee, negatively impacted the employment relationship. It was asserted that the image and reputation of the institution would be tarnished if the Grievant was returned to her former position. Such a relationship would erode the public's confidence in an institution whose primary function was the incarceration of convicted felons. The Grievant's credibility with her fellow workers and supervisory staff would also be impacted because the necessary trust level would no longer exist. Security justifications were also provided in support of this premise. All employees, even those performing food service functions, enjoy security responsibilities. Lucas noted that there are no security officers in the preparation area and that food service employees are trained for back-up protection purposes. Some of these duties involve the monitoring of "Class A" weapons and notification dealing with breaches of security. Emotional attachments, moreover, could lead to the introduction of contraband into the facility, and various types of extortion attempts by inmates and parolees.

The Employer emphasized that it applied its rules and penalties evenhandedly and without discrimination. Russell testified that two other employees had been disciplined for similar Rule #40 violations. The Union purportedly failed to present any sufficiently similar cases which supported its claim of unequal treatment.

It was argued that the degree of discipline administered by the Employer was reasonably related to the seriousness of the Grievant's proven offense. Russell acknowledged that Rule #40 violations do provide for a range of potential penalties. The first offense may lead to a five-day to a

ten-day suspension or removal, while the second offense may lead to removal. In this instance, however, the Employer concluded that removal was in order because the relationship appeared to be quite extensive rather than a mere acquaintance.

The Grievant's job responsibilities were not viewed as an appropriate mitigating factor. Her role within the facility did not minimize the import of the Rule #40 violation. Food service and corrections personnel equally share security responsibilities as evidenced by their somewhat similar training formats.

### The Position of the Union

It is the position of the Union that the Employer did not have just cause to remove the Grievant for violating Rule #40. In other words, it was asserted that the Grievant did not engage in an unauthorized relationship with Mayo.

Although the Union agreed that the Grievant received and signed for the Standards of Employee Conduct (Joint Exhibit 4), it questioned the degree of proper orientation. The testimony indicated that the Grievant only participated in a one-hour training session dealing with the Standards.

The Union contended that the Employer violated Section 24.04 because the Removal Order (Joint Exhibit 3) was defective. This administrative action charged the Grievant with developing a relationship with Mayo at the facility. Neither the Grievant nor the Union had any knowledge that the Grievant was charged with on-duty misconduct prior to the third step of the grievance procedure. Thus, the Union alleged that the Removal Order (Joint Exhibit 3) was improperly expanded.

With respect to the on-duty violation, the Union maintained that the Employer failed to establish any semblance of an illegal relationship. The personal contact that did take place did not exceed the bounds of a normal employee-employer relationship. Lucas, the Grievant's supervisor, stated that he never observed any inappropriate interaction between these individuals.

In a like fashion, the off-duty misconduct allegation was also contested by the Union. The Employer purportedly placed too much reliance on Smith's testimony. His perceptions appeared to be exaggerated and veiled with assumptions as to Mayo's presence at the Grievant's residence.

The Union proposed that the Employer failed to support its nexus arguments. All of the examples provided by Russell and other Employer witnesses dealt with possible problems that would be engendered by unauthorized off-duty misconduct. None of these hypotheticals, however, were actually established. Also, the Employer's response to the Grievant's misconduct discredited the nexus claims. If, in fact, the Grievant's presence raised significant security ramifications, then she should not have been retained after the reception of the Adult Parole Authority letter (Joint Exhibit 3). The Employer possessed an additional alternative. The Grievant could have been placed on administrative leave status until the investigatory process was completed.

Section 24.05 and Section 24.01 violations were also raised by the Union. By choosing to administer the most severe penalty, the Employer was attempting to punish the Grievant because the measure imposed was not reasonable nor commensurate with the offense. If the Grievant's actions warranted some form of discipline, a lesser penalty should have been administered.

### THE ARBITRATOR'S OPINION AND AWARD

From the evidence and testimony presented at the hearing, it is this Arbitrator's opinion that the Employer had just cause to remove the Grievant for engaging in an unauthorized relationship with a parolee.

The record does not support the procedural defects raised by the Union. Proper and sufficient

notice was provided by the Employer regarding the Standards of Employee Conduct, and particularly Rule #40 (Joint Exhibit 4). Upon achieving gainful employment, the Grievant received and acknowledged that she would read the Standards of Employee Conduct (Joint Exhibit 4). Also, the Union failed to properly rebut Mackley's testimony regarding the extensive training which took place over a three month time period. Certain specific prohibitions, relating to the violation in question, are thoroughly discussed in the discussion portion of the Standards of Employee Conduct (Joint Exhibit 4, pgs. 4-5). Thus, the Grievant was clearly informed about the consequences associated with unauthorized off-duty relationships.

The Section 24.04 violations alluded to by the Union also seem to be misplaced. This argument focused upon an inappropriate expansion of the Removal Order (Joint Exhibit 3) because a reference was made to an unauthorized on-duty relationship. A charge that was not raised prior to the third step of the grievance procedure. The Grievant, however, admitted at her pre-disciplinary hearing that she met Mayo at the institution. Also, the questions asked of the Grievant during the various hearings should have raised a reasonable inference that on-duty misconduct was anticipated.

It should also be noted that the Removal Order (Joint Exhibit 3) does not solely focus upon on-duty misconduct. In fact, references made to nexus requirements, nurturing and maintaining a relationship clearly indicate that the Employer primarily focused on the off-duty misconduct to justify the removal. Such misconduct, if established, can justify removal even if the on-duty misconduct is not established or totally supported.

It is my judgment that the Grievant violated Rule #40 by engaging in an unauthorized off-duty relationship with a parolee. Different circumstances support the conclusion that a "non-casual" relationship actually existed and that it was nurtured and sustained by the Grievant.

Prior to the reported burglary, the Grievant and the parolee established a relationship. The parolee's transfer request (Joint Exhibit 3) listed the Grievant's maiden name, address and telephone number. Although the Grievant maintained that Mayo could have obtained this information from a local telephone directory, she could not provide any reasonable explanation surrounding the use of her maiden name by Mayo. The entire episode served as a pretext; Mayo must have engaged in a serious relationship with the grievant in order to obtain this information. No other alternative informational source was provided by the Grievant and the Union. Also, Mayo's response to the queries made by the Adult Probation Department support the above premise. Lucas contended that Margaret Miller, a State Probation/Parolee Officer, made several attempts to contact the parolee at the Grievant's residence; these attempts proved unsuccessful. Yet, Mayo contacted Miller a few days after these contact attempts were initiated. His response to these queries had to be triggered by ongoing communication with the Grievant.

The circumstances surrounding the burglary also support the relationship hypothesis. Although the Grievant alleged that the parolee appeared at her residence on the day of the burglary by mere happenstance, the parolee pawned some of her goods on November 29, 1988. Thus, he had access to her residence prior to the burglary; access that was a consequence of an existing relationship. Interestingly, at the time of the "pawning incident" no burglary report was filed by the Grievant.

Patrolman Smith also testified that Mayo took the lead during the burglary investigation. He provided detailed information concerning the break-in and the location of the missing items. The Grievant did not credibly rebut these assertions. Smith's perceptions concerning the manner in which the Grievant and Mayo interacted also support the relationship theory. Smith's testimony seemed unencumbered by any malice and was, therefore, given considerable weight by this Arbitrator.

Statements authored by the Grievant in a report submitted on December 20, 1988 (Joint

Exhibit 3) undermine her acquaintance assertions. She stated:

“I told them what I had found and that I was beginning to suspect that Rusty had something to do with it. I also at this time told the police that Rusty still had a key to my home and possibly a spare set of keys to my car.”

A mere acquaintance, in my judgment, would not have these personal items in his possession unless a serious ongoing relationship existed. The Grievant provided an unpersuasive justification for the inclusion of these statements. She claimed that the urgency surrounding the issuance of a warrant caused her to mistakenly and inadvertently insert this statement. Such justifications totally discredited the Grievant's assertions; and her inadvertent statements heightened rather than diminished the degree of her actual involvement.

In addition to the above circumstances, the Grievant had an inordinate number of contacts with the parolee. She admitted to three specific random and unscheduled occurrences. The frequency of these contacts and the circumstances surrounding same do not appear to support the notion that they were a function of happenstance. On one occasion the Grievant encountered Mayo in a bar/restaurant. On another occasion Mayo and a mutual acquaintance arrived at the Grievant's residence to inquire about her availability for a social engagement. The final encounter took place when Mayo was waiting for the Grievant on the day of the burglary. All of these contacts smack of a deep-seated entanglement that was nurtured and sustained by the Grievant.

These various contacts, moreover, violate Rule #40 because they were unauthorized. The Grievant never reported these contacts to the Employer; she never attempted to acquire proper authorization.

Since the Arbitrator has established that an unauthorized relationship existed, it next must be determined whether a nexus exists between the Grievant's wrongful act and the employment relationship or setting. A variety of factors are often considered by public sector arbitrators in determining whether a nexus exists. Some of these factors include: any actual or potential adverse publicity, its potential to damage an employer's image or product, possible co-employee refusal to work with the offending employee, and an employee's ability and suitability to perform job functions properly.<sup>[3]</sup> For the reasons to be discussed below a nexus was established.

Tragically, the present case provides a clear example of what can happen when one becomes emotionally involved with a paroled felon. In this instance, the Grievant experienced a tangible material loss, as well as an emotional loss. She was manipulated and acted as a quasi-accomplice in support of Mayo's subsequent escape.

Although the activities engaged in did not directly impact the employment relationship, they cast potentially negative implications on the Grievant's ability and suitability in performing job functions properly. One can only surmise the devastating impact on the facility if the parolee had continued to manipulate the Grievant for other purposes. All employees working in a corrections environment are responsible for security. The series of circumstances described above indicate that the Grievant represents a potential security risk. Within this particular job setting, the Employer should not be required to accept such a risk because any negative outcome can devastate the mission of the institution and the safety of inmates and other personnel.

Evidence and testimony clearly indicate that the Grievant's job duties require an enormous amount of time in direct contact with inmates. If reinstatement took place, it is quite likely that the grievant would be subject to manipulation and harassment as a consequence of her known unauthorized relationship. Such a condition would hamper her ability to perform her job efficiently. Her extensive involvement with Mayo might also cause fellow workers to fear and question the

Grievant's trustworthiness. When one is forced to rely so heavily on others for security and safety support, any potential uncertainty must be avoided if at all possible.

In this particular instance, the Arbitrator does not view the penalty administered as excessive. The evidence presented was quite overwhelming, and yet the Grievant never recanted her version of the events. Her credibility was, as a consequence, greatly impeded by a string of inconsistent testimony. Also, the relationship appeared to be quite extensive and something more than an accidental casual acquaintance. These factors were viewed as exacerbating contingencies which bolstered the reasonableness of the administered penalty.

### AWARD

The grievance is denied and dismissed.

Dr. David M. Pincus  
Arbitrator

February 20, 1990

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[1] It should be noted that the Grievant's maiden name was Bailey.

[2] This violation was deleted from the final Removal Order (Joint Exhibit 3). Also, no evidence or testimony supporting this charge was introduced at the hearing.

[3] Commonwealth of Pennsylvania, 65 LA 280 (Stonehouse, 1975); Polk County, Iowa, 80 LA 639 (Madden, 1983); N.Y. Division of Criminal Justice Services, 79 LA 65 (Sabghir, 1982).