

**ARBITRATION DECISION NO.:**

289

**UNION:**

OCSEA, Local 11, AFSCME, AFL-CIO

**EMPLOYER:**

Department of Youth Services  
Cuyahoga Hills Boys School  
Warrensville Township, Ohio

**DATE OF ARBITRATION:**

**DATE OF DECISION:**

August 1, 1990

**GRIEVANT:**

Leroy Payton

**OCB GRIEVANCE NO.:**

35-03-(89-09-01)-0056-01-03

**ARBITRATOR:**

Jonathan Dworkin

**FOR THE UNION:**

Tim Miller

**FOR THE EMPLOYER:**

Tim Wagner

**KEY WORDS:**

Stipulated Award  
Removal  
Sleeping On Duty  
Remedy

**ARTICLES:**

Article 24 - Discipline  
    §24.01-Standard  
    §24.02-Progressive  
Discipline  
Article 25 - Grievance  
Procedure

**FACTS:**

The grievant was a Youth Leader 2 at the Cuyahoga Hills Boys School. He had twenty-nine years of service and a recent record of discipline which included a four day, a ten day and a twenty day suspension for neglect of duty. On June 10, 1989, grievant was found sleeping on the job. The Employer determined that removal was the appropriate penalty in view of grievant's past record and the seriousness of the offense.

**STIPULATED AWARD:**

The grievance is sustained in part and denied in part. The Employer shall reinstate grievant to the position of Youth Leader 2 without back pay or compensation for lost benefits, and the interim between grievant's discharge and reinstatement shall be recorded as a disciplinary suspension for sleeping on the job. Provided he performs his work as required and commits no serious misconduct, grievant shall be permitted to continue working until he accrues thirty years' service credit with Public Employment Retirement System. He shall thereupon apply for retirement benefits and resign. In the event grievant does not resign, this Award shall be automatically amended to require his voluntary quit as of the last day of the pay period in which he accrues thirty years of service. The parties and grievant are hereby advised that nothing in this award shall prevent grievant's disciplinary termination before he obtains thirty years of accrued service if he commits misconduct such as sleeping on the job after his reinstatement.

**TEXT OF THE OPINION:**

**OCB-OCSEA CONTRACTUAL  
GRIEVANCE PROCEEDINGS  
ARBITRATION OPINION AND AWARD**

In The Matter of Arbitration  
Between:

**THE STATE OF OHIO**  
Department of Youth Services  
Cuyahoga Hills Boys School  
Warrensville Township, Ohio

-and-

**OHIO CIVIL SERVICE EMPLOYEES  
ASSOCIATION OCSEA/AFSCME, AFL-CIO**  
Local 11, State Unit 3

**Case No.:**  
35-03-(890901)-0056-01-03

**Decision Issued:**  
August 1, 1990

**APPEARANCES**

**REPRESENTING THE STATE:**  
TIM WAGNER  
CHIEF OF ARBITRATION SERVICES

**REPRESENTING THE UNION:**  
TIM MILLER  
STAFF REPRESENTATIVE

## **STIPULATED AWARD**

The dispute stems from a discharge. The Grievant, Leroy Payton, was a Youth Leader 2 at the Cuyahoga Hills Boys School in Warrensville Township, Ohio. He had twenty-nine years of service, and a recent record of discipline which included:

11/26/87 - four-day suspension for neglect of duty

01/25/88 - ten-day suspension for neglect of duty/AWOL

03/01/88 - twenty-day suspension for neglect of duty

On June 10, 1989, Grievant was found sleeping on the job. In view of his past record and the seriousness of the offense, the Employer determined that removal was the appropriate penalty. Grievant's discharge was finalized on September 1, 1989.

A grievance was initiated. It was processed through the contractual grievance steps and scheduled for arbitration. The dispute centered on whether or not Grievant's discharge was in keeping with the disciplinary standards set forth in Article 24, §§24.01 and 24.02 of the Collective Bargaining Agreement. Those provisions restrict Management's disciplinary authority by requiring just cause and progressive discipline. They state in pertinent part:

### **ARTICLE 24 - DISCIPLINE**

#### **§24.01 - Standard**

Disciplinary action shall not be imposed upon an employee except for just cause. The Employer has the burden of proof to establish just cause for any disciplinary action.

. . .

#### **§24.02 - Progressive Discipline**

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

- A. One or more verbal reprimand(s) (with appropriate notation in employee's file);
- B. One or more written reprimand(s);
- C. One or more suspension(s);
- D. Termination.

The parties consulted one last time before the arbitration hearing to attempt to resolve their differences. Although the Employer was convinced that its cause for removal was sound and consistent with just cause and progressive discipline, it also recognized that there were unusual aspects of the case which suggested a possible basis for mitigating the penalty. The most obvious factor was that Grievant had nearly thirty years of service and would have been eligible for retirement if he had managed to hold onto his job one more year.

The Employer decided to give Grievant his chance for retirement. A settlement was worked out with approval of the Union and Grievant. The settlement called for the Employee's reinstatement with full seniority, but without compensation for lost wages or benefits. He was to be permitted to continue working until his retirement eligibility vested, and then was to retire voluntarily. In the event he declined to apply for retirement on his eligibility date, the settlement reached in that regard was to be amended automatically to specify Grievant's removal from pay status by a voluntary quit.

In no event was the settlement to be a guarantee of employment for the year if Grievant continued on his course of misconduct. In the event that he were to commit another offense of sufficient severity to warrant dismissal in view of his record, the Employer would implement the appropriate disciplinary action without regard to the time remaining before the Employees retirement. Grievant is hereby cautioned that should he commit serious misconduct during the year of employment left to him, he will undoubtedly be subjected to

another removal.

The parties jointly requested that the terms of their settlement be set forth as an arbitration award and, despite the format of the award and its lack of supporting rationale, it is intended to be as final and binding as any other arbitral decision issued pursuant to Article 25 of the Agreement. The award that follows is in compliance with the request. It incorporates the settlement and, upon execution by the Arbitrator and approval by the Representatives of the parties and Grievant, it shall constitute a conclusive resolution of this dispute.

### **STIPULATED AWARD**

The grievance is sustained in part and denied in part.

Beginning four weeks after the pay period ending July 29, 1990, the Employer shall reinstate Grievant to the position of Youth Leader 2 at the Cuyahoga Hills Boys School, an Agency of the Department of Youth Services. Said reinstatement shall be without back pay or compensation for lost benefits, and the interim between Grievant's discharge and reinstatement shall be recorded as a disciplinary suspension for sleeping on the job.

Provided that he performs his work as required and commits no serious misconduct, Grievant shall be permitted to continue working until he accrues thirty years' service credit with the Public Employment Retirement System (PERS). He shall thereupon apply for retirement benefits and resign as of the end of the pay period which includes his thirty-year accrual. In the event Grievant does not resign, this Award shall be automatically amended to require his voluntary quit as of the last day of the pay period in which he accrues thirty years of service.

The parties and Grievant are hereby advised that nothing in this Award shall prevent Grievant's disciplinary termination before he obtains thirty years of accrued service if he commits misconduct such as sleeping on the job after his reinstatement.

At the request of the parties, the Arbitrator retains jurisdiction of this matter for the purpose of monitoring Grievant's resignation and retirement as required. Either party may invoke the retained jurisdiction by providing appropriate notice of its intent to do so to the Arbitrator and the adverse party. Upon receipt of said notice, the Arbitrator will schedule a hearing.

This Award shall be effective when approved by signatures of the Representatives of the parties, Grievant, and execution by the Arbitrator.

Decision issued at Lorain County Ohio:  
August 1, 1990

### **APPROVED**

Tim Wagner, Employer Representative, 8/13/90

Tim Miller, Union Representative, 8/2/90

Leroy Payton, Grievant, 8/5/90

Deneen Donough, DYS, 8/13/90

Jonathan Dworkin, Arbitrator

**OCB-OCSEA CONTRACTUAL  
GRIEVANCE PROCEEDINGS**

## ARBITRATION OPINION AND AWARD

In the Matter of Arbitration  
Between:

**THE STATE OF OHIO**  
**Department of Youth Services**  
**Cuyahoga Hills Boys School**  
**Warrensville Township, Ohio**

-and-

**OHIO CIVIL SERVICE EMPLOYEES**  
**ASSOCIATION OCSEA/AFSCME,**  
**AFL-CIO Local 11, State Unit 3**

**Case Number:**

35-03-890901-0056-01-03

**Decision Issued**

September 6, 1991

**APPEARANCES**

**Representing the State:**

Rodney Sampson, Asst. Chief  
of Arbitration Services, OCB  
Don Elder, Deputy Director,  
Department of Youth Services

**Representing the Union:**

Tim Miller, OCSEA/AFSCME  
Staff Representative  
Dorothy Brown, OCSEA  
Chapter President, Cuyahoga Hills

**VOLUNTARY and STIPULATED EXTENSION OF AWARD**

The representatives of the parties, the Agency, and the Grievant himself met with the Arbitrator this date to discuss and attempt to resolve a latent ambiguity in the Award which came to light when it was discovered that Grievant's 30-year PERS retirement eligibility would not vest one year from his conditional reinstatement. When the original Award was executed, all individuals who signed it believed and had cause to believe that the employee would obtain 30 years' service credits under PERS on or about September 1, 1991. It now appears that the Employee will not attain fully vested retirement eligibility status until on or about February 28, 1993.

To settle the dispute which has emerged from the mistake of fact, and without intending to waive either party's position as to the meaning and intent of the initial Award or the rights and liability thereunder, parties agree to extend the initial Award and permit Grievant to retain his employment until he first attains 30 years' service credits under PERS. This extension is specifically based upon the following conditions agreed to by

the Agency, Union, and Grievant:

- 1) The Department of Youth Services will continue to exercise good faith in its treatment of grievant and its commitment to allow his continued employment so long as the Employee continues to fully meet the obligations of that employment. It will continue to deal with him without capriciousness or arbitrariness.
- 2) Grievant's continued employment under this extension shall be secure only so long as he performs his job in accordance with the rules governing his status as an employee and commits no substantive violation of those rules. If he does commit a substantive violation his employment shall, at the option of the Agency, be forfeited whether or not he has attained vested retirement rights. In this regard, this agreement shall be equivalent to a last chance even though it is conceded that Grievant's record has been virtually untainted for the last year.
- 3) As soon as Grievant attains 30 years' service credits with PERS, he shall retire.
- 4) In all other respects, the initial Award is incorporated and carried forward.

Jonathan Dworkin, Arbitrator

**FOR THE EMPLOYER:**

Donald Elder, Deputy Director  
Department of Youth Services

Rodney Sampson, Asst. Chief  
Arbitration Services  
Office of Collective Bargaining

**FOR THE UNION:**

Tim Miller, Staff Representative  
OCSEA/AFSCME, Local 11

Leroy Payton, Grievant

September 6, 1991