

ARBITRATION DECISION NO.:

293

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Rehabilitation
and Correction,
Chillicothe Correctional Institute

DATE OF ARBITRATION:

August 7, 1990

DATE OF DECISION:

September 21, 1990

GRIEVANT:

Ruth A. Krafthefer

OCB GRIEVANCE NO.:

27-03-(90-02-05)-0029-01-03

ARBITRATOR:

Hyman Cohen

FOR THE UNION:

Richard Sycks

FOR THE EMPLOYER:

Louis Kitchen

KEY WORDS:

Inmate Relationship
Rebuttable Presumption
Removal

ARTICLES:

Article 24 - Discipline
§24.01-Standard

FACTS:

The grievant was employed by the Chillicothe Correctional Institution. The facility houses 2,300 adult male convicted felons. The grievant, a female Corrections Officer, was removed for violating Rule 40 of the Standards of Employee Conduct, "engaging in an unauthorized personal relationship(s) with inmates." Another Corrections Officer noted that the grievant and an inmate would frequently go into a rest room together and the door would be closed. The rest room was 25 feet by 10 or 12 feet with a sloped roof that made it difficult to stand erect in the room. The grievant also wrote notes to the inmate. The grievant explained that these notes were meant as jokes and were not an example of inappropriate behavior.

It was also alleged from testimony that the grievant, by her relationship with the inmate, created jealousy

among the other prisoners. It is charged that when a jealous inmate threatened the grievant with exposure for her personal relationship with him, she responded that "she could have him killed if she wanted to."

The grievant allegedly entered the rest room with the keys and a man down alarm. She also allegedly allowed the inmates to help her with a pack up. All these actions are against the policy of the facility. All three supposed violations threaten the security of the facility by allowing the inmates access to contraband or the means to escape. It also does not allow the grievant to properly supervise and look out for the welfare of the other employees. For these stated reasons the grievant was removed from her employment with the State of Ohio.

EMPLOYER'S POSITION:

The employee violated a serious work rule which could lead to an unsafe situation in the prison. Having an unauthorized personal relationship with prisoners creates dissension and, as in this case, may lead to fighting. There is uncontroverted evidence that she did have a relationship with at least one inmate. There is no reason for her to frequently enter the rest room with the inmate. There was no counseling going on. She also allowed prisoners access to the items in a pack-up. There must be a professional distance between the officers and the inmates. The removal was for just cause. The grievant was notified of the consequences of an unauthorized relationship.

UNION'S POSITION:

The charges are totally unfounded. The only reason that the grievant is being removed is that she is a woman. The other employees who testified against her resent her. The grievant was merely counseling the inmate and trying to secure information from the prisoner. This is a frequent and accepted practice of male guards. The only reason the rest room door sometimes was closed was because of the air flow in the facility. It is essential that there be privacy when a Corrections Officer attempts to secure confidential information from an inmate. The grievant was merely counseling the two inmates. She did not violate any work rule and the only reason she is being removed is that she is a woman. The prison facility is a male-dominated environment and women are not treated the same as male correctional officers. It is detrimental to seek information or to counsel inmates in the presence of others; if a male officer would have done the same thing it would never be questioned.

ARBITRATOR'S OPINION:

The arbitrator found that the employer had provided enough evidence to shift the presumption of wrongdoing to the grievant. The close dimensions of the rest room, the frequency of the inmate and the grievant being in that room with the door closed, the fact that the grievant allowed the inmate to help in pack-ups and the written notes are all factors which create a rebuttable presumption. The Union did not successfully rebut the presumption that the grievant was engaging in an unauthorized personal relationship with an inmate. The reasonable inference to be drawn from the grievant's actions is that the grievant violated Rule 40 of the Standards of Employee Conduct.

The Union's argument that the grievant was merely counseling the two inmates does not explain the periods of time she secluded herself with the inmates. The fact that grievant is a woman was not sufficient evidence on which to base a claim of disparate treatment by the Union,

AWARD:

The grievance is denied.

TEXT OF THE OPINION:

VOLUNTARY LABOR ARBITRATION

In the Matter of the Arbitration

-between-

**STATE OF OHIO, DEPARTMENT OF
REHABILITATION AND CORRECTION
CHILLICOTHE CORRECTIONAL INSTITUTE**

-and-

**OHIO CIVIL SERVICE EMPLOYEES
ASSOCIATION, LOCAL 11,
AFSCME, AFL-CIO**

ARBITRATOR'S OPINION

Grievant:

RUTH A. KRAFTHEFER

FOR THE STATE:

LOUIS KITCHEN
Labor Relations Specialist
Ohio Department of
Administrative Services
Office of Collective Bargaining
65 East State Street
Columbus, Ohio 43215

FOR THE UNION:

RICHARD SYCKS
Staff Representative
Ohio Civil Service Employees
Association, Local 11, AFSCME,
AFL-CIO
8 Triangle Park, Suite 801
Cincinnati, Ohio 45246

DATE OF THE HEARING:

August 7, 1990

PLACE OF THE HEARING:

OCSEA, Local 11
1680 Watermark Drive
Columbus, Ohio 43215

ARBITRATOR:

HYMAN COHEN, Esq.
Impartial Arbitrator
Office and P. O. Address:
Post Office Box 22360
Beachwood, Ohio 44122
Telephone: 216-442-9295

* * * * *

The hearing was held on August 7, 1990 at OCSEA, Local 11, 1680 Watermark Drive, Columbus, Ohio before HYMAN COHEN, Esq., the Impartial Arbitrator selected by the parties.

The hearing began at 10:00 a.m. and was concluded at 8: 30 p.m.

* * * * *

On January 25, 1990 **RUTH A. KRAFTHEFER** was removed from her position of Correction Officer II at the Chillicothe Correctional Institute for violating the following Rules of the Revised Employee Standards of Conduct which were dated October 23, 1987: Rule 6c-Insubordination * * * Failure to follow post orders * * and/or written policies or procedures; Rule 36-Any act * * which constitutes a threat to the security of the institution, its staff or inmates; Rule 39-Giving preferential treatment to an inmate, the offering, receiving or giving of a favor or anything of value to an inmate * *; and Rule 40-Engaging in unauthorized, personal relationship(s) with inmates * *".

On January 31, 1990 a grievance was filed with the **STATE OF OHIO, DEPARTMENT OF REHABILITATION and CORRECTION, CHILLICOTHE CORRECTIONAL INSTITUTE**, the "State", protesting the removal of the Grievant. The grievance was denied and after it was processed at the various steps and procedures of the grievance procedure contained in the Agreement between the "State" and **OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, Local 11, AFSCME, AFL-CIO**, the "Union", it was carried to arbitration.

FACTUAL DISCUSSION

The Chillicothe Correctional Institute was described at the hearing as a "large medium security facility". It houses 2,300 adult male convicted felons. In fact, the facility houses the largest number of inmates in Ohio. At the hearing the Chillicothe facility was described as a "large open facility".

The Grievant was first employed at the Correctional Institute on June 6, 1988. At the time of the events which led to her removal from employment, she worked the second shift at 7 House.

The Grievant was removed in part from violating Rule 40 of the Employees Standards of Conduct which provides "engaging in unauthorized personal relationship(s) with inmates * *." The inmate that the Grievant is alleged to have had an unauthorized personal relationship with is James Brown. Inmate Brown was convicted for aggravated robbery and carrying a concealed weapon. He also had committed a violation of the terms of his parole.

Inmate Brown was first incarcerated at the Chillicothe Institute on January 2, 1989. He said that he was the "head porter" of 7 House during the period of time that the events took place which led up to the termination of the Grievant. According to the Grievant, Inmate Brown was a "regular porter and a clerk". In these jobs he "helped with the laundry" and performed other clerical duties. According to the Grievant he "did a lot of work" for Correctional Officer Diane Walker.

Based upon the evidence the Grievant and Inmate Brown spent a lot of time in the Officers' Rest Room in 7 House. At this point, it would be useful to set forth the physical dimensions of the rest room and a description of the room. Deputy Warden Jeff Matthew indicated that the rest room was 25 feet by 10 or 12 feet wide. The room had a sloped roof which made it difficult to stand erect in the room. Deputy Warden Matthew went on to state there was a commode in the rest room along with cabinets; the room was also used for storage. According to the Grievant, the rest room could be locked from the outside as well as the inside. The Grievant also indicated that from her desk she could see the Officers' rest room. She went on to indicate that Inmate Brown's duties called for him to be in the area which also included the rest room.

David Bower, is a Correctional Officer at the Chillicothe Correctional Institute. He first started working with the Grievant in August, 1989. After working with her for a brief period of time, he noticed that she and Inmate Brown would go into the rest room together and shut the door behind them. He indicated that this occurred "more and more often every day". Bower said that when he and the Grievant would get to their post at 7 House, Inmate Brown would be waiting at the desk and he would be constantly around the Grievant until she left at the end of her shift. On one (1) occasion when both the Grievant and Inmate Brown were in the rest room with the door shut, Bower pushed the door open and in doing so, he found that the Grievant was standing against the door and that the door had hit Brown in the head. Bower indicated that

“apparently” both the Grievant and Inmate Brown were standing against the door.

Bower also noticed that the Grievant was spending some time with Inmate Stubbs who was from 5 House, which was another dorm. Since Bower would not permit Inmate Stubbs into 7 House, the Grievant and Stubbs would stand outside of the door of 7 House and talk to each other. Bower related an episode on November 24, 1989 which involved the Grievant and Inmates Brown and Stubbs. While the Grievant was talking to Inmate Brown, Inmate Stubbs appeared at the door at approximately 6:25 p.m. Inmate Brown then went downstairs, after which the Grievant talked to Inmate Stubbs. She then called downstairs and asked if Brown was there. When Brown appeared, he asked her why she had called downstairs, and according to Bowers, she said to him that she did not call him and that it was he [Bower] who was “playing around”. Bower added that on that particular occasion the Grievant was outside of the door with Inmate Stubbs until about 8:25 p.m., which was approximately two (2) hours after he first showed up 7 House.

On the following day, November 25, Bower indicated that Inmate Johnson told him that he “tried to talk” to the Grievant in order to tell her that Inmate Brown told him that if she kept making him “mad” because of the time that she spent with Inmate Stubbs “he would have her job”. According to Bower, Inmate Johnson told him that the Grievant said that “she could have him killed if she wanted to”.

The following day, on Sunday, November 26, Bower related that Inmate Stubbs came around to 7 House. After the Grievant talked to him about twenty (20) minutes, the Grievant returned, and was angry. According to Bower, she said to him that she told Inmate Stubbs to stay away, and if he came back she would give him a ticket for being out of place and that he was only to come back if it was really important. Bower indicated that when the Grievant went into the rest room with Inmate Brown, she would be in possession of the man-down alarm and the keys although the unit had not been yet locked down. By having the man-down in her possession in the rest room, Bowers said that the Grievant jeopardized his security, because if some one jumped on him, she would not hear or see anything. Bower acknowledged that he had never asked the Grievant for the man-down alarm when she went into the rest room with Brown. Moreover, he first brought the Grievant's involvement with Brown to his supervisor's attention when Inmate Johnson said to him that she could have Inmate Brown killed. Had Bower not disclosed this information to his supervisor, he said that he would be in trouble if his supervisor ever found out that Johnson had made such a statement to him. It should be noted that Bower worked as a Second Officer at 7 House from August 1989 to November 1989.

Robert Cutright, is a Correctional Officer at the Chillicothe Correctional Institute. Cutright indicated that he worked at 7 House with the Grievant on approximately four (4) occasions between August 1989 and December 1, 1989. Cutright said that within thirty (30) seconds of the beginning of the shift the Grievant would enter the rest room with Inmate Brown and shut the door. She would then leave after three (3) to six (6) minutes. They would go into the rest room on several occasions during the course of the eight (8) hour shift. On each occasion the door of the rest room was closed or locked. Cutright indicated that on one (1) occasion after leaving the area, he returned but had to wait to enter the office because the Grievant was in the rest room with Inmate Brown while the rest room door was shut. At the end of the shift on another occasion, the Grievant said to Inmate Brown, “come on Shorty, help me with my coffee cup, pop and magazines I want to lock them up in my locker”. [Inmate Brown was also known as “Shorty” at the institution.] They would go into the rest room for a period of time and the door would be shut.

At this point it would be useful to explain the phrase “pack-up”. As inmates are transported from one (1) house to another or from one (1) dorm to another unit, the inmate does not bring his personal belongings to his new location. As Deputy Warden Matthew indicated the officer of the unit is responsible for securing his property and taking an inventory of his belongings. He said that there are inventory sheets which are “pack up sheets” that provide independent documentation of the various items of property that the inmate had in his possession up to the point of his departure from the unit. Cutright [as well as Bower] indicated that Inmate Brown would be requested to help the Grievant with the “pack up”.

As Cutright described one (1) episode, involving the “pack up” Inmate Brown stood in front of the Grievant's face and as she would place the inmate's belongings into the laundry bag, her arm would brush against “the crotch” of Inmate Brown. Both Cutright and Bower said that an inmate is prohibited from helping a Correctional Officer perform a “pack up”. Cutright said that pursuant to post orders, the Correctional

Officers perform the "pack up". Cutright added that since the person who performs the pack up is accountable for the items that belong to the inmate who is being transferred, or being placed elsewhere in the facility, the inmate is prohibited from helping a Correctional Officer to perform this particular task.

Cutright acknowledged that most officer do not like to wear the man-down. Furthermore, most first officers would "make" the second officers wear the man-down because they do not like to wear it.

Tamra J. Lowe, [at the time of the hearing her second name was Hitchings], is a Correctional Officer who worked with the Grievant on approximately four (4) occasions. On the occasions that she worked with the Grievant, Lowe said that she observed the Grievant enter the rest room with Inmate Brown. She estimated that the period of time that they were in the rest room with the door shut was anywhere between one (1) minute up to ten (10) minutes on each occasion. Brown said that she was told by the Grievant and Inmate Brown that the rest room was the "Inmate Clerk's office".

On one (1) occasion Lowe observed the Grievant engaged in a conversation with Inmate Stubbs "on the landing" outside of the gate of 7 House. She said that the conversation took approximately twenty (20) minutes. Believing that Inmate Stubbs was a resident of 7 House, she did not think much of their meeting on the landing. However, a few days later, while working at 5 House, she observed that Inmate Stubbs was housed in that particular unit. She asked Inmate Stubbs why he went to visit the Grievant and he told her that they were "good friends". Lowe noticed Stubbs at 7 House on each occasion when she worked with the Grievant. She said that he would "whisper" or talk with the Grievant on the occasions that she saw him "on the landing".

On another occasion, Lowe inadvertently saw Inmate Brown standing nude in the doorway of the shower room directly in front of the Officer's desk where the Grievant was seated. Inmate Brown did not see her. According to Lowe, a few days later, the Grievant called her at 5 House and asked her a question about the size of Inmate Brown's sexual organ which Lowe refused to answer.

Richard Winfield is a Correctional Officer at the Chillicothe Institute. He had worked with the Grievant on several occasions. On one (1) occasion he observed the Grievant enter the rest room with Inmate Brown. According to Winfield, both the Grievant and Inmate Brown would remain in the rest room for a period of time with the door locked. After the rest room door was opened, Winfield noticed that a make shift bed had been created in the rest room consisting of 4 foot lockers which were placed on the floor next to each other. A mattress was placed on top of the lockers and according to Winfield the "top" of the make shift bed was messed up.

As the other Correctional Officers testified, Winfield said that a security risk was caused by the Grievant when she went into the rest room with Inmate Brown because she had the man down alarm in her possession and she could not observe the dormitory from the landing". Winfield estimated that there were about 700 inmates at 7 House.

Tammy Wilt is also a Correctional Officer at the Chillicothe Correctional Institute. She said that she worked with the Grievant at 7 House several times. During those occasions she observed that the Grievant and Inmate Brown would go into the rest room and remain there with the door shut. She said that Inmate Brown would spend eight (8) hours next to the Grievant during the shift. He was constantly around her desk and the area where she worked. Immediately before the shift change and towards the end of the shift, the Grievant would enter the rest room with Inmate Brown and spend ten (10) minutes in the room with him.

Wilt also noticed on one (1) occasion that the Grievant was on the landing to 7 House talking to Inmate Stubbs for forty-five (45) minutes to an hour.

During the State's investigation which led to the Grievant's termination, Bower, Cutright, Lowe, Winfield and Wilt provided detailed written statements to Deputy Warden Matthew of the Grievant's involvement with Inmates Lowe and Stubbs.

DISCUSSION

Before evaluating the testimony of the witnesses who provided testimony on behalf of the State and the Union, it would be helpful at the outset of this discussion to consider both the results of the polygraph test taken by Inmate Brown and his testimony on his "relationship" with the Grievant.

In *United States Steel Corp.*, 70 LA 146 (Powell, 1977) it was stated that "[T]he results of polygraph

examinations are generally not accepted as reliable evidence of truthfulness". Furthermore, in their well-recognized treatise on labor arbitration, *How Arbitration Works*, Fourth Edition (BNA, 1985) Elkouri and Elkouri have observed:

"Under the overwhelming weight arbitral authority * * where an employee does submit to lie detector testing, the test results should be given little or no weight in arbitration * *." At page 315.

In this case, Inmate Brown submitted to a polygraph examination which was arranged by the State to be given by John G. Carroll who operates a polygraph firm in Columbus, Ohio. Deputy Warden indicated that Inmate Brown consented to take the polygraph test on December 27, 1989 as part of the investigation that was conducted concerning his "relationship" with the Grievant. Deputy Warden Matthew indicated that he requested Inmate Brown to take the polygraph test inasmuch as it would be "used as a tool to enforce his credibility". Furthermore, it is a "standard" technique that has been employed when inmates make accusations against staff members. Deputy Warden Matthew added that the polygraph test is especially useful where there are no witnesses who have observed the events which are disputed.

Although I can understand the polygraph test being used by the State to aid its investigation concerning the Grievant, I have decided to give the results of the test little weight. There is no need to utilize the results of the test in light of Inmate Brown's testimony at the hearing. Moreover, Inmate Brown indicated that he provided a statement to Deputy Warden Matthew on December 1, 1989 on his relationship with the Grievant beginning in May or June, 1989. Deputy Warden Matthew set forth Inmate Brown's statement in writing which he signed. Inmate Brown said that at the time that he gave the statement, his hands "were not free". After Matthew read the statement to him, he signed it. However, Inmate Brown was unable to read the statement at the hearing, because the hand writing of Deputy Warden Matthew was illegible. Accordingly, the statement which he provided Deputy Warden Matthew is not entitled to any weight.

I turn to Inmate Brown's testimony. He said that he and the Grievant were "good friends". He said that in August 1989, he and the Grievant would enter the rest room and "play around a lot"--I mean she might be standing by the sink or locker and I might grab her and hug her". He indicated that he touched the Grievant's breasts and "felt her rear end" but he "did not touch her vaginal area". Inmate Brown went on to state that the Grievant "came in all of the time" while he would be in the rest room.

In September or October, 1989 Inmate Brown observed the Grievant talking to Inmate Stubbs "on the steps". He said that the "other inmates were telling him" that Inmate Stubbs was standing so close to her that "you cannot get a thread between them". There were occasions when Inmate Brown saw the Grievant and Inmate Stubbs standing very close to each other.

Inmate Brown said that Inmate Stubbs gave "another guy at the Lebanon Correctional Institute "two (2) boxes of cigarettes to beat [him] up." He acknowledged that on a few occasions he and Inmate Stubbs "had words" and that he [Inmate Stubbs] "pissed [him] off".

Inmate Brown referred to an occasion when Inmate Stubbs went "into isolation" and the Grievant asked him "why he went to the hole". Since he did not know the reason, the Grievant "asked him to go downstairs and find out why he was in the hole."

Inmate Brown estimated that he helped the Grievant do about ten (10) to fifteen (15) "pack ups" of inmates. In helping the Grievant, he would be the holder of the laundry bag. While doing the "pack ups", Inmate Brown acknowledged that while the Grievant placed the inmates' items in the bag, she would touch him "in [his] private area".

Inmate Brown also provided testimony on four (4) notes which he had received. He said that he found a handwritten note on his pad which was located on his desk in the rest room. The note stated "Hi. How are you today, see you Friday". Inmate Brown said that the Grievant wrote the note because he was familiar with her handwriting. Another note indicated: "My son James Brown can watch any video he wants to". The note was signed "Mrs. Brown". Inmate Brown said that he requested the Grievant to write this note because he wanted to watch the "VCR" but the person who was in charge of this activity told him that he "could not watch the VCR unless his mother writes to us". The third note contained two (2) imprints of lips which were covered by lipstick. Above the imprints was the handwritten note:

"Dear Shorty

We know you miss us when we're not here. So we'll leave this little kiss."

Inmate Brown said that the lipstick imprints were left by the Grievant and another female officer whose first name is "Carmen". He added that they were the only two (2) officers that he worked with at 7 House. The final note that he found in his pad stated:

"Good night, see you later, I will be back. Don't forget about_____"

Inmate Brown said that this note was written by the Grievant and "was supposed to be a joke". He went on to state that he "made up the joke" and told the Grievant that he would see her when she came back * *."

Inmate Brown said that Deputy Warden did not promise him anything for providing the statement about his relationship with the Grievant. He also indicated that he was not treated by the Grievant better than anyone else. Inmate Brown added that the Grievant "may have given him pop and crackers".

The Grievant did not deny or even refer to Inmate Brown's testimony that he touched her intimately and kissed and hugged her on various occasions in the rest room. There was no testimony that any of the correctional officers observed the Grievant and Inmate Brown intimately touching each other or that Inmate Brown intimately touched the Grievant. Thus, the record includes undisputed testimony by Inmate Brown that on various occasions he was permitted to intimately touch the Grievant and that he and the Grievant hugged and kissed each other in the rest room. Such acts by Inmate Brown and the Grievant, if they took place at all, occurred behind the closed or locked door of the rest room of 7 House. In my judgment I believe it unwise to rely solely upon the undisputed testimony of Inmate Brown, a convicted felon, as to whether the Grievant has violated Rule 40 which under the category of "Inmate Relations Offenses" prohibits "unauthorized personal relationship(s) with inmates * *." However, this does not mean that Inmate Brown's testimony is not to be given any weight. The truthfulness or unreliability which is to be given to his testimony depends on the evidence in the record. In doing so, I have drawn the inference that the Grievant was engaged in an unauthorized personal relationship with Inmate Brown in violation of Rule 40 of the Revised Standards of Employee Conduct.

Based upon the testimony of correctional officers Bower, Cutright, Lowe, Winfield and Wilt, all of whom worked with the Grievant at 7 House, I have concluded that the Grievant spent an inordinate amount of time with Inmate Brown in the rest room while its door was shut or locked. The Grievant indicated that he was a "snitch". Assuming that Inmate Brown was a "snitch", does not adequately explain the numerous occasions that the Grievant was in the rest room with Inmate Brown while the door was shut or locked. The State's witnesses indicated that the Grievant and Inmate Brown were in the rest room for ten (10) minutes or less on each occasion during the shifts when the State's witnesses worked with her. Cutright said that when the Grievant and Inmate Brown went into the rest room, it was "never in and out". Assuming that Inmate Brown was a "snitch", it is unreasonable to believe he was disclosing information about the violations of the rules of the institution by other inmates during various times of the day while he was at 7 House hanging around the desk of the Grievant or while he was in the rest room. It is of great weight that the Grievant never explained the reason that the door of the rest room was closed or locked on the many occasions that she went into the rest room with the Grievant. The performance of clerical duties by Inmate Brown does not require that the rest room door be closed or locked on each and every occasion that the Grievant was in the room with him.

The physical dimensions of the rest room are significant. As Deputy Warden Matthew stated, the rest room is small, inasmuch as it is 25 feet by 10 or 12 feet wide with a wide sloped roof. The presence of cabinets, a desk and the use of the room for storage causes a small room to be extremely cramped. The close quarters created when the Grievant a female and Inmate Brown, a male are frequently in the room with the door closed or locked, causes the reasonable inference to be made that they are participating in improper conduct. This conclusion is reinforced by Winfield's testimony that on one (1) occasion he noticed that there was a bed made up of four (4) foot lockers with a mattress in the corner of the rest room after the Grievant and Inmate Brown left the room. He added that the "top" of the make-shift bed was "messed up"

after they left the room.

The Union attempted to indicate on its cross-examination of the State's witnesses that the rest room door was shut because of the force of the air flow generated by the fan in the room. It is unreasonable to conclude that on each and every occasion that the Grievant and Inmate Brown went into the rest room, the fan caused the door to be shut. Indeed, if that were the case, it was incumbent upon the Grievant to keep the door open with a prop so that the appearance of any impropriety between her and Inmate Brown would not be created in the view of the other correctional officers.

I am persuaded that some of the inmates talked to Bower and Wilt about the Grievant's involvement with both Inmates Brown and Stubbs. The Grievant made it quite obvious that she had an unusual interest in Inmate Stubbs. The record discloses that Inmate Stubbs who locked in at 5 House was at 7 House frequently to be with the Grievant. I have concluded they talked and whispered to each other for considerable lengths of time. I have further concluded that the Grievant called 5 House for Inmate Stubbs and based upon Lowe's testimony, Inmate Stubbs told her that "Ruth", in other words, the Grievant, was a "special friend" and he went to talk to her at 7 House. I have inferred that the attention focused on either Inmate Brown or Inmate Stubbs caused jealousy among them and the effect of such brazen conduct by the Grievant was to cause jealousy among the inmates who were aware of the interest that the Grievant focused on both Inmates Brown and Stubbs. In an all male adult correctional facility, the Grievant's behavior is provocative and provides the basis if not the cause for intense rivalries among the inmates for her attention. It is a blue print for extraordinary frustration and potential violence in a facility housing male adults.

Moreover, I have concluded that the Grievant violated her post orders which provides that if an inmate from "other dorms and units" are in a unit other than the unit in which they are locked down, and "have no legitimate reason for being there, they are out of place". [Security Policy 500, at page 20]. I believe it is unreasonable to believe that on the numerous occasions that Inmate Stubbs was located at 7 House with the Grievant, he was there for legitimate reasons. It is unreasonable to conclude that he was functioning as a "snitch" on all of these occasions that he was with the Grievant or that it was necessary for him to require counseling and for her to furnish it. The seclusion of both the Grievant and Inmate Stubbs and the length of time that they remained out on the landing creates the appearance of improper conduct between them. Both the male and female correctional officers found that the Grievant's frequent and lengthy meetings with Inmate Stubbs to be unusual and reflected an involvement which was improper. Indeed, John Lynch, Jr., a Correctional Officer who was also a Steward, indicated that he would have sent Inmate Stubbs back to his dorm had he showed up at another unit visiting a correctional officer.

There are also the episodes involving Inmate Brown assisting the Grievant in the "pack ups" that must be considered. As I have previously indicated, the "pack up" involves placing the belongings of an inmate in a laundry bag when the inmate has been assigned "outside" of the dorm. The State's witnesses indicated that because the persons who perform the "pack up" are responsible for the belongings of the inmate who has "left the unit", correctional officers are required to perform this activity. Nevertheless, the Grievant would have Inmate Brown assist her in doing the "pack up". In addition, I have concluded that as Cutright stated, he observed the Grievant deliberately touch Inmate Brown's "crotch" as she placed items in the laundry bag held by Inmate Brown.

The notes which the Grievant found in his "pack up" merely reinforce the conclusion that the Grievant and Inmate Brown had a familiar personal relationship which clearly went beyond the bounds of a relationship authorized between a female correctional officer and a male inmate.

I turn to consider two (2) of the four (4) notes which Inmate Brown found in his pack up. First, there is the note which states that Inmate Brown "can watch any video he wants to". By signing the note "Mrs. Brown the Grievant is resorting to a misrepresentation on Inmate Brown's behalf which would cause a person in charge of the VCR to do something he or she would not have done absent the note. The Grievant knew that the note would be presented to someone in charge of the VCR. Granting such favors to an inmate by resorting to a misrepresentation indicates conduct by a correctional officer which is highly improper. It shows Inmate Brown that the Grievant would resort to deceit to exact a benefit for him.

I have concluded that the imprint of her lips left by the Grievant [and another female officer] touching a paper sheet with the note is also improper. Given the evidence in the record the imprint on the note is highly

suggestive and indicates a familiarity which is highly inappropriate in a correctional facility consisting of male adults. The note demonstrates a "playfulness" or "teasing" of a highly suggestive nature which demonstrates extremely bad judgment. It should be noted that the Grievant did not deny writing the notes or having the imprint of her lips on the note.

There is also the undisputed testimony of Lowe, who on one (1) occasion had inadvertently seen Inmate Brown nude in the doorway of the shower room in front of the officer's desk where the Grievant was seated. A few days later the Grievant called Lowe and asked "her a question about the size of Inmate Brown's sexual organ, which Lowe did not answer".

In light of the evidence in the record, I cannot conclude to a moral certainty that the Grievant, in fact, permitted Inmate Brown to touch her breasts and her "rear end". Nor can I conclude as a fact that she engaged in the acts of hugging and kissing Inmate Brown. However, in light of the evidence in the record, I have concluded that after the State's evidence was placed in the record, the burden shifted to the Grievant to satisfactorily explain the frequent occasions of being with Inmate Brown behind the closed or locked door of the rest room, the frequent isolated meetings with Inmate Stubbs "on the landing" at 7 House, the familiarity of Inmates Brown and Stubbs with the Grievant, the undisputed testimony of Cutright on the assistance provided by Inmate Brown with the pack ups, his observation that she touched him in the crotch while performing the pack up, the notes left for Inmate Brown and her question to Lowe about Inmate Brown's "sexual organ". It is not enough for the Grievant to state that Inmate Brown was a snitch or that she counseled Inmate Stubbs in the frequent meetings that she had with him or as the Grievant believed that Bower felt a woman should not be a first officer. In light of the failure of the Grievant to satisfactorily explain the evidence presented by the State or even to rebut the testimony of Inmate Brown, leads me to infer that the Grievant carried on an "unauthorized personal relationship" with Inmate Brown. The reasonable inference to be drawn is that the Grievant permitted and encouraged a relationship which was of an intimate and physical nature that was unauthorized under Rule 40 of the Revised Standards of Employee Conduct which was issued on October 23, 1987.

DISPARATE TREATMENT

The Union claimed that the State was guilty of disparate treatment in terminating the Grievant. The basis for its claim is that male correctional officers frequently counseled the inmates on a "one to one basis". As Lynch stated he does not counsel inmates in public because "inmates have ears" and it is "humiliating to the inmate" when he is observed by other inmates.

I have inferred that when the Grievant frequently secluded herself in the rest room with Inmate Brown for periods of one (1) minute, three (3) minutes, six (6) minutes and less than ten (10) minutes, she was not counseling Inmate Brown. Since the evidence in the record warrants the inference that an unauthorized personal relationship existed between the Grievant and Inmate Brown, I cannot conclude that the State was guilty of disparate conduct against the Grievant. Except to state that Inmate Brown was a snitch, the Grievant did not indicate that she counseled Inmate Brown. Furthermore, even assuming that his duties as a porter and clerk required Inmate Brown to be in the rest room on frequent occasions during her shift, the Grievant failed to adequately explain the reason that the rest room door was shut or locked when she and Inmate Brown went into the rest room and remained there for various periods of time.

The Grievant said that had she been a male officer, she would not have been removed from employment. The point is that the correctional facility houses male adults. The inference that she consented to, and even encouraged, an unauthorized personal relationship with Inmate Brown in seclusion behind the closed or locked door of the rest room on frequent occasions, constitutes a violation of Rule 40 of the Revised Standards of Employee Conduct. This inference was shared by at least five (5) other correctional officers (Bower, Cutright, Lowe, Winfield and Wilt) and even some inmates who were aware or inferred that a relationship existed between the Grievant and Inmates Lowe and Stubbs. Such awareness or inference by other correctional officers and inmates is highly damaging to the credibility of the institution and carries the potential of impairing the morale of correctional officers and the inmates, and given the confinement of male adults it is extremely divisive and destroys the corrective purposes of the institution. Had the Grievant been

a male correctional officer and Inmate Brown, a female inmate, the same inference would be reached.

There was testimony that male correctional officers do not like to be on duty with female officers. Furthermore, Lynch said that it was a "male dominated institution". After carefully examining the evidence in the record, I cannot conclude that the fact that the Grievant was female caused her to be removed from employment.

It is not as if the Grievant was unaware that an adverse inference would be drawn by her actions in dealing with Inmates Brown and Stubbs. 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 male adults. Thus, during the Grievant's orientation at the time that she was first employed as a Correction Officer, she was given reading material, which included a document entitled "Instructions to Female Officers." The document refers to the constant danger that a female employee "may be taken as a hostage by an inmate". It also provides that the female employee "may be the recipient of rash notes and phone calls". The female employee is instructed to report such incidents promptly to the supervisor to end the problem. As the document states: "To ignore it invites the offender to make repeated efforts". Furthermore, the document provides:

"Along with common sense, dress, goes good personal contact. If your relations with inmate and staff are businesslike, the chance of misunderstanding is minimized. Never discuss personal problems with inmates or within their range of hearing. Do not discuss your activities. Use normal good manners in your contact with inmates but exercise care so that interest and enthusiasm are not misunderstood. Sometimes excessive expressions of thanks for minor courtesies are interpreted as personal interest by inmates. Do not permit yourself to become emotionally involved in the problems or personal interests of inmates. Some may play on the native sympathies or motherly instincts of women for their personal advantage or gain."

The evidence warrants the conclusion that the Grievant acted contrary to the common sense contained in the "instructions". Furthermore, Officer Lowe was asked how she would counsel a male inmate. She replied that she would not counsel a male inmate behind a closed door; she would do so only if another officer was present. I have concluded that the Grievant was well aware of such prudent and cautious behavior. Nevertheless, the Grievant chose a course of conduct which she should have known would eventually lead to her removal as a Correction Officer.

"FAVORITES"

The Union's witnesses provided testimony on the preferential treatment given to some inmates by supervisors. As Lynch and Edward Lynch, another Correctional Officer, stated: "some inmates are untouchable". He added that "tickets" for violations of the rules cannot be issued against some inmates because they are protected by their supervisors.

This case is not only about a "favorite" inmate of the Grievant but an inmate with whom she had a personal, unauthorized relationship. There was no evidence presented of a "favorite" inmate of a supervisor who engaged in a personal unauthorized relationship with their supervisor. As a result, the Union's evidence on "favorite" inmates has no bearing on the instant case.

"MAN-DOWN ALARM"

The record disclosed that during the frequent periods of time that the Grievant and Inmate Brown were in the rest room and during her isolated meetings with Inmate Stubbs, the Grievant was in possession of the "man-down alarm". This alarm sends a signal to alert the staff and supervisors when a correctional officer is in a horizontal position. The State's witnesses indicated that they felt that their personal security was jeopardized by the Grievant's possession of the man-down alarm during the frequent occasions when she was in the rest room with Inmate Brown and "on the landing" with Inmate Stubbs.

Bower indicated that if an inmate jumped him, the Grievant would not hear or see what was going on. Bower went on to state that on the occasions when she would talk to Stubbs on the landing, she had no

chance to see him. Lowe added, that "out on the landing", the Grievant could not see the entire dorm. Cutright said that the Grievant caused a security risk by being in the rest room behind closed doors with the door shut or locked.

It is undisputed that a majority of the correctional officers do not like to wear the man -down alarm. Cutright said most first officers require the second officer to wear it. Lowe acknowledged that she never asked the Grievant for the "man-down alarm" on those occasions when she went into the rest room with Inmate Brown or was located on the landing with Inmate Stubbs. The important point to underscore is that there is no evidence that the Grievant who was a first officer, volunteered to give the man-down alarm to the second officer while she spent some time in the closed or locked rest room. It is far more appropriate for the first officer to provide for security of the area by offering to give it to the second officer when entering the rest room. As Lowe testified, it is customary for the first officer to give the man-down alarm to the second officer when going into the rest room. Lynch said that the older officers do not like wearing the man-down alarm. In this case, the "older officer", was the Grievant who did not offer to give the man-down alarm to the second officer at any time. John Lynch added that the man-down alarm would not be effective behind a locked door.

Based on the aforementioned considerations, I have concluded that the grievant acted in such a manner so as to constitute a threat to the security of the institution, its staff, or inmates" when she spent time with Inmates Brown in the rest room behind a locked or closed door and on the landing with Inmate Stubbs.

CONCLUSION

At the outset, it should be noted that the failure of the Grievant to submit to a polygraph examination was of no weight.

The Grievant said that she was "singled out" by the State for removal because, unlike the other correctional officers she does "not kick ass" or call inmates "scum bags". She said that she walked into the institution with a smile and treated the inmates with respect. The Grievant said that she believed in setting an example. This case, is not about the Grievant's respect for inmates. This case involved acts by the Grievant which are extremely serious and affect the manner in which the State operates the Chillicothe Correctional Facility.

a. BURDEN OF PROOF

As I have established, after the State's case had been presented the burden shifted to the Grievant to explain away the adverse inference that she was engaged in an unauthorized personal relationship with Inmate Brown. Rather than rely on the undisputed testimony of Inmate Brown that he was permitted to physically touch the Grievant in an intimate manner, I believe that the Grievant should not defend herself merely by failing to comment on the testimony of Inmate Brown. Whether in fact the Grievant engaged in an unauthorized personal relationship with Inmate Brown is known only by them. Inmate Brown has provided testimony concerning their relationship; the Grievant has failed to do so. In light of the State's case, the Union and the Grievant has not adequately explained away the adverse inference that the Grievant has engaged in an unauthorized personal relationship with Inmate Brown.

b. PENALTY

The Grievant was not a long term employee. She was hired in June, 1989 and was removed from employment some eighteen (18) months later in January 1990.

Based upon the evidentiary record, I have concluded that the Grievant violated Rule 6 C of the Revised Standards of Employee Conduct in encouraging and permitting Inmate Stubbs to be present at 7 House which was not his regular dorm. The evidence warrants the conclusion that the frequent presence of Inmate Stubbs at 7 House to be with the Grievant was not for legitimate reasons" and was "out of place". Accordingly, the Grievant violated her Post Orders (Security Policy 500, page 20) and in turn she violated Rule 6 C of the Revised Standards because she failed to follow post orders * * and/or written policies and

procedures.

I have also concluded that by possessing the man-down alarm while remaining in the rest room behind closed or locked doors on frequent occasions with Inmate Brown; and the frequent occasions that she was with Inmate Stubbs "on the landing", the Grievant acted in such a manner so as to "constitute a threat to the security of the institution, its staff, or inmates". Accordingly, the Grievant violated Rule 36 of the Revised Standards.

Finally, the evidentiary record warrants the reasonable inference that the Grievant engaged in an unauthorized personal relationship with Inmate Brown, in violation of Rule 40 of the Revised Standards.

The Grievant previously received a three (3) day suspension in March, 1989 for violations of Rules 6C and 36. She has repeated violations of Rules 6C and 36. A second violation under Rule 36 calls for removal. The Grievant's violation of Rule 40 warrants "5-10" days suspension or "removal" for a first offense.

I have concluded that under the facts of this case the specific offense of "Giving preferential treatment to an inmate" which is contained in Rule 39, is subsumed within Rule 40. It is sufficient to state that the violation of Rule 40 is serious enough, given the facts of this case, that there is no reason to disturb the penalty of removal by the State.

In light of the entire evidentiary record, the Grievant was discharged for just cause as required under Article 24, Section 24.01.

AWARD

In light of the aforementioned considerations, the Grievant was discharged for just cause as required under Article 24, Section 24.01.

Dated: September 21, 1990
Cuyahoga County
Cleveland, Ohio

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