

ARBITRATION DECISION NO.:

320

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Rehabilitation
and Corrections,
NEPRC; Commissary

DATE OF ARBITRATION:

November 15, 1990

DATE OF DECISION:

February 11, 1991

GRIEVANT:

Virginia M. Marcum

OCB GRIEVANCE NO.:

27-17-(90-05-29)-0094-01-09

ARBITRATOR:

Jonathan Dworkin

FOR THE UNION:

Steven W. Lieber

FOR THE EMPLOYER:

Robert Thornton,
Labor Relations Specialist
Tim D. Wagner,
OCB Representative

KEYWORDS:

Removal
Improper Relationship
With an Inmate

ARTICLES:

Article 24 - Discipline
 § 24.01 - Standard
 § 24.02 - Progressive
Discipline
 § 24.05 - Imposition
of Discipline
Article 25 - Grievance
Procedure
 § 25.03 - Arbitration

Procedures

FACTS:

The grievant had been an employee of the Ohio Department of Rehabilitation and Correction for eighteen months. She was transferred to her present position in the commissary after receiving discipline for carelessness in her former position. Her duties in the commissary included contact with inmates; helping them buy items and supervising those who worked in the commissary.

One inmate who worked in the commissary was an old acquaintance of the grievant. He was interviewed by the facility's warden and stated that the grievant had given him gifts, stated her love for him and demanded that he call her each night. The inmate also produced a Valentine card from the grievant. From telephone records the employer also discovered that thirty collect calls were made from the facility to the grievant's home.

The grievant was interviewed and denied that she loved the inmate but admitted that a special friendship existed. She also admitted that inmates teased her and made suggestive remarks which she would respond to herself, without reporting the incidents. The grievant also admitted that she knew she was violating the employer's rules. She was then removed based upon her admissions.

EMPLOYER'S POSITION:

There was just cause for removal. In spite of the grievant's denial, there is evidence of an unauthorized relationship between herself and an inmate. The inmate's admissions to the warden, a Valentine card from the grievant to the inmate, and the telephone record of collect calls to the grievant's home from the facility clearly demonstrate that there was a relationship. Additionally, while the grievant denied the relationship, she did admit to other serious rule violations concerning contact with inmates.

The employer's rules concerning unauthorized relationships with inmates are reasonable. Relationships with inmates are always aimed toward gaining an advantage for the inmate. The grievant sacrificed the facility's security and its employees, safety by engaging in a relationship with the inmate.

UNION'S POSITION:

There is no just cause for removal. The grievant was only a friend of the inmate; there was no love affair. The statements of the inmate cannot be believed as inmates are very likely to lie. Her actions were a result of depression caused by her prior discipline and transfer from her prior job. The grievant is genuinely sorry for what she has done and is not likely to act in this way again.

The employer acted purposefully to remove the grievant. The rules violated posed no security threat to the facility. The penalty imposed here was punitive and retaliatory, not corrective, and was in response to the prior grievance filed by the grievant concerning previous discipline. The grievant was subject to disparate treatment. Another employee received a written reprimand recently for forming an unauthorized relationship with an inmate. Lastly, the employer's removal of the grievant is improper due to its unclean hands. The employer transferred the grievant to her present position thereby placing her in contact with the inmates.

ARBITRATOR'S OPINION:

The statements of the inmate that he was involved in a love affair with the grievant were not credible. No party involved believed the allegations because of the knowledge that inmates will lie to achieve their own goals. However, the assertion that the grievant's own admissions of rule violations are sufficient to support removal has arbitral support. Safety and security of corrections facilities are primary functions and the responsibility of all employees.

This grievant's case was distinguished from others because of the lack of willfulness and the showing of remorse by the grievant. She was found to be a social person lacking the detached coolness toward others necessary to work in corrections facilities. For this reason the fact that the facility has been converted to a women's facility is irrelevant. In the future the grievant could similarly befriend a woman. Therefore, based upon the admitted rule violations, there was just cause for discipline.

AWARD:

The grievance is denied. However, the grievant will be allowed to voluntarily resign effective the date of her removal. If the grievant does so within ten days of receipt of this award, the employer will accept the resignation and expunge her record of all indications of the incident. The employer is further ordered to give no less than a neutral recommendation to potential employers of the grievant.

TEXT OF THE OPINION:

**OCB-OCSEA VOLUNTARY
GRIEVANCE PROCEEDING
ARBITRATION OPINION AND AWARD**

In the Matter of Arbitration Between:

**THE STATE OF OHIO
Department of Rehabilitation
and Corrections**

-and-

**OHIO CIVIL SERVICE EMPLOYEES
ASSOCIATION, OCSEA/AFSCME
Local Union 11, State Unit 9**

Marcum Removal

Case No.:

27-17-(90-05-29)-00094-01-09

Decision Issued:

February 11, 1991

REPRESENTING THE EMPLOYER

Robert Thornton,
Labor Relations Specialist
Tim D. Wagner,
OCB Representative
Thomas R. Israel,
Deputy Warden

REPRESENTING THE GRIEVANT

Steven W. Lieber,
OCSEA Staff Representative
Virginia M. Marcum, Grievant

ISSUE

Article 24: Whether or not just cause existed for removing prison employee charged with violating regulations prohibiting personal relationships with inmates.

Jonathan Dworkin, Arbitrator

P.O. Box 236

9461 Vermillion Road
Amherst, Ohio 44001
SUMMARY OF DISPUTE:

This controversy stems from the removal of an eighteen-month employee of the Ohio Department of Rehabilitation and Corrections. Grievant was hired on October 24, 1988. She was assigned initially to the business office of the Northeast Pre-Release Center (NEPRC), a male prison in Cleveland. Several months later, she was transferred to the commissary under a cloud. She had been accused of extreme carelessness in the performance of duty and had received a four-day disciplinary suspension.^[1]

The commissary is a kind of cage. Grievant worked inside, helping inmates outside purchase merchandise. There were also inmates assigned to work in the commissary whom she supervised. This brought her into closer contact with prisoners than was possible in the business office. One of the inmates she supervised was a neighborhood acquaintance with whom she eventually formed a close personal relationship. On March 21, 1990, the inmate was interviewed by the NEPRC Warden about his contacts with Grievant. The interview was taped and later transcribed. The seventeen typewritten pages accuse the Employee of a variety of improprieties. It is a sordid account, charging Grievant with making unsolicited professions of love, giving gifts of money, cigarettes, miscellaneous commissary items, drugs and whiskey. The inmate's sworn statement told of Grievant kissing and fondling him, expressing (unconsummated) promises of sexual inter-course, demanding that he telephone her regularly at night, and making several clandestine visits to him in his dormitory. He further alleged that Grievant permitted him to steal from the commissary.

The accusations were not entirely uncorroborated. The inmate produced a Valentine card (with the envelope) he claimed to have received from Grievant. It was signed, "Love Me." Enclosed was an undeniably incriminating note which stated:

"Dear Pat, (Big Honkie)

Just a few lines to say hello and ask how things are going? I pray every night that you learn to curb that temper of yours (HA HA) well I hope you have a good Valentines and will see you soon.

Love Me"

Beneath the message was a lipstick imprint inside a hand-drawn heart and the words, "P.S. Here's my Part the rest is up to you!" A handwriting expert was called upon to analyze the note and envelope. In his opinion, they were the "known writing of [Grievant]."

Next, Management subpoenaed Grievant's telephone records from Ohio Bell. They, too, were incriminating. In January and February, 1990, the Employee accepted thirty collect calls from the prison. With one or two exceptions, all were long -- most exceeded an hour, one lasted ninety-nine minutes.

On April 11, 1990, Grievant was subjected to a thorough investigatory interview by the Deputy Warden. She attended it, accompanied by a Union Representative. The session was taped and transcribed; it consisted of seventy-three typed pages. The interview was most revealing. While the Employee vigorously denied carrying on a love affair with the inmate and most of the other accusations, she did admit that she had formed a special friendship with him on a purely platonic basis. She said that they fell into the friendship naturally; they had many mutual acquaintances, and it happened "just because we were together in the Commissary and we would sit and talk about everything."^[2] Although the Deputy Warden subjected her to energetic cross-examination, she stuck to her denials and tried to explain her admissions. The following excerpt is characteristic of the dialogue:

Q. [by the Deputy Warden] Why did you send the inmate a Valentine's card?

A. [Grievant] We were close friends and he knows everyone I know, I know everyone he knows, and when he started working for me we talked, and we just knew everybody and became close friends.

Q. What is your definition, when you say we became close friends, what does that mean to you?

A. I was like, I listened to him talk, I was like a sister kind of thing or you know, would talk to him about his family and how he was going to get out and get a job, just you know, how he was going to straighten his life up and wasn't coming back to prison and things like that. A friendship.

Q. Why did you develop this friendship with an inmate?

A. Probably because we all, he knew everyone I knew and I knew everyone he knew, we would sit and talk about everybody, like he knows all my nephews, my nephews all know him, and he knew one of the guys that I was going with on the west side, I didn't care for him, you know just back and forth talking like you do with a friend. We became close like, you know, I always talked with him about all his problems and how he was going to straighten himself out and things like that.

The Deputy Warden closely interrogated Grievant about the peculiar Valentine card with the lipstick imprint. It appeared sexually suggestive; if it wasn't, what was its purpose? The Employee stated that the lip print was a joke. She said that inmates frequently teased her about her mouth, telling her she had "perfect lips." They made other provocative remarks as well, but she never reported them (contrary to specific Departmental Rules). She felt that reporting such occurrences might cause unnecessary tension between her and the inmates -- perhaps placing her in danger of retaliation. Besides, she felt well able to keep those making the remarks in line with her own brand of snappy retorts. For example, if an inmate made a sexually loaded comment to her, she might respond, "Yeah, in your wildest dreams."

Grievant admitted accepting the collect telephone calls. But stated that they were neither for her or from the inmate in question. She had befriended another inmate and, at his request, had arranged a long-distance (telephone) liaison with one of her "girlfriends." The calls were between the "girlfriend" and the other inmate. Grievant insisted that the inmate who had been her friend and became her accuser never telephoned her at home.

Of all Grievant's admissions, the most damaging was that she understood at the time she was carrying on these relationships that her actions violated fundamental rules governing her employment. The inmate reported that the Employee cautioned him not to reveal their friendship because her job could hang in the balance. Grievant candidly conceded making the statement.

After reviewing the evidence, NEPRC Management concluded that even if all Grievant's denials were authentic, her admissions were enough to support charges that she had violated critical employee conduct regulations. The Department of Rehabilitation and Correction has compiled a cogent, comprehensive document entitled, "Standards of Employee Conduct." Each employee receives a copy and training on conduct that is permitted and prohibited. Grievant's violations fell under the following provisions of the Standards:

Personal Conduct

2. Employees shall not, without authorization from the Appointing authority, allow themselves to show partiality toward or become emotionally, physically, or financially involved with inmates . . . or establish a pattern of social fraternization with same.

b. An employee shall not visit an inmate . . . while such an individual is under the custody and control of the Department, unless such a visit is given prior authorization by the employee's Appointing Authority, or the visit is part of the employee's job duties.

c. An employee who becomes involved in a set of circumstances as described above must advise his supervisor, who is responsible for informing the Appointing Authority or personnel officer.

3. No employee shall show favoritism or give preferential treatment to one or more inmates

Accompanying the Rules is a section entitled, "Schedule of Rule Violations and Penalties." It is a list of misconduct categories with potential penalties. In a preface, the Department clarifies that the penalties are intended as guidelines, not dictates; that consistent with the Agreement and sound managerial philosophy, careful investigation, full consideration of mitigating and intensifying factors, and recognition of the individual nature of each offense should be used to decide what constitutes commensurate discipline.

The principal charges against Grievant are "Giving preferential treatment to an inmate" and "Engaging in unauthorized personal relationships with inmates." Each carries the suggested penalty range of a five-day suspension to removal for a first offense. The evidence confirms that, except in compelling circumstances, the Department imposes removal in these cases.

Article 24, §24.04 grants every employee facing suspension or discharge the right to a preliminary hearing. Grievant's hearing took place on April 16, 1990. The Hearing Officer issued findings authorizing discipline the following day and, the day after that (April 18), the Removal Notice was drafted by the Institution Warden. It was signed on behalf of the Department on May 5. As of May 15, 1990, Grievant's employment was terminated.

A timely grievance challenging the removal was initiated and processed to arbitration. It was heard in Columbus, Ohio on November 15, 1990. The parties' Advocates stipulated that the grievance was arbitrable and the Arbitrator was authorized to issue a conclusive award on its merits. It should be observed that the scope of arbitral authority is carefully circumscribed by the following language in Article 25, §25.03 of the Agreement:

"Only disputes involving the interpretation, application or alleged violation of a provision of the Agreement shall be subject to arbitration. The arbitrator shall have no power to add to, subtract from or modify any of the terms of this Agreement, nor shall he/she impose on either party a limitation or obligation not specifically required by the expressed language of this Agreement."

THE ISSUES:

The Representatives stipulated the broad issues to be decided: "Is the removal of grievantfor just cause? If not, what shall be the remedy?"

The principles of just cause are firmly implanted in the Agreement between these parties as exacting limitations on the State's disciplinary authority and Management Rights. Article 24 sets forth the just cause mandate in both general and specific terms. Sections 24.01, 24.02, and 24.05 are pertinent to this dispute. They state in relevant 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

§24.05 - Imposition of Discipline

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

ADDITIONAL FACTS AND CONTENTIONS:

The penalty was most severe. Grievant was only an eighteen-month employee with a good record. Her actions, while admittedly in violation of Departmental Rules, seem innocuous. They caused no breach of security, jeopardized no one, and did not compromise Grievant's effectiveness as an employee. The Union points out that every inmate who was housed at NEPRC has since been released or transferred. The facility is now a women's prison. Thus, reinstating this Employee to her job as an Account Clerk could have no adverse effect.

The Union finds it hard to believe that there was not some undisclosed, discriminatory purpose behind what it views as the Employer's knee-jerk dismissal of this Employee. It sees a link between this removal and a previous disciplinary action. In March, 1990, Grievant was suspended for allegedly mishandling accounts and causing overpayments to vendors. While that discipline was being processed, she was transferred from the business office to the commissary. As stated, if the transfer had not occurred, she would not have come into contact with the inmate and would still have a job today. Moreover, the former discipline was unjustified, and a grievance protesting it was pending when the removal was processed. The Union strongly suspects that the decision to remove Grievant rather than impose one of the more moderate penalties authorized by the Employer's own rules was retaliatory.

The Union can conceive of only one other explanation for the relentlessness of the Agency's response to the infraction -- that it actually believed the inmate's slanderous, unauthenticated attack on Grievant's reputation. If Supervision placed credence in the inmate's statement, the Union contends it acted with irresponsible gullibility. Convicts are characteristically manipulative and untrustworthy; they lie whenever it suits their purposes, and no one knows this fact of prison life better than managers and supervisors of the State's penal institutions. The Union charges that NEPRC Supervision gave the inmate a valuable reason to make defamatory, outrageous accusations against Grievant (who had innocently befriended him). It promised him early release in exchange. [3]

In its closing remarks, the Union raised the possibility that Grievant was the victim of disparate treatment. It introduced a document, dated November 13, 1990 (several months after Grievant's removal), which confirmed that a female Corrections Officer formed an unsanctioned relationship with an inmate's husband and made repeated telephone calls to the inmate's home. The penalty was a verbal reprimand.

The Employer's Advocate did not try to explain or justify the difference between Grievant's removal and the Correction Officer's verbal reprimand. He did not know the circumstances of the other incident and was not prepared to respond to it. The Union's submission was a surprise. He did, however, call attention to the fact that Grievant was a short-term, employee without the length and quality of service which customarily plays a part in disciplinary mitigation. He also produced significant proof that removal was the penalty normally imposed for illicit interactions between employees and inmates. His evidence consisted of six recent examples of misconduct similar to what is at issue in this dispute. [4] All the employees were removed, even though some had service records five times longer than Grievant's. The discharges were uniformly affirmed in arbitration.

The Employer made many of the same arguments in this dispute as in those that went before. Personal relationships between prisoners and employees are always regarded by the Department as intolerable. They can easily jeopardize the principal mission of a penal institution -- security. In his opening statement, the Employer's Representative explained why the Department is so forceful in its disciplinary responses to misconduct such as Grievant's:

"This issue of an unauthorized relationship with an inmate is not new. Ever since there were inmates confined to prisons and ever since there were prison employees, this problem has existed. The relationship may seem, at first, innocuous. However, in all cases it becomes motivated by desire to manipulate [the employee] by the inmate for special treatment; whether it be sex, food, cigarettes, or any other difficult-to-secure items and conveniences, alcohol, drugs, or even perfume and sunglasses."

The Representative concluded by pointing out that these relationships are always designed to gain an advantage for the inmate at the expense of the employee. He stated: "Most start in tiny beginnings -- break just a little rule -- testing the water. Almost without exception, there is a hook at the end of the line."

The Employer tacitly agrees that Grievant was a victim; but the inmate, not the Institution was the oppressor. Somehow she was drawn into forming a relationship in violation of explicit, well known prohibitions. She voluntarily compromised her position as an employee, risking her safety as well as her co-workers'. In the Agency's view, she was the one who made herself unacceptable for continued employment. She forfeited her job long before she was removed from it.

When the Employer ended its presentation, it was the Union's turn to provide the Arbitrator with a rational foundation for second-guessing the Department and ordering the Employee's reinstatement. Attempting to meet this burden, the Union called upon Grievant who gave sensitive, genuinely remorseful testimony in her own behalf. She straightforwardly acknowledged forming an impermissible friendship with an inmate, sending him a humorous Valentine card, and giving her telephone number to another inmate. She knew at the time that her conduct was wrong; she also knew it placed her job in jeopardy. She is at a loss to give a concrete explanation for her actions. She believes it would not have happened if she had not been humiliated by the forced transfer from the business office to the commissary. She became depressed and suffered a low self-image as a result. As she explained at the end of her testimony, "I made a mistake; I know it was wrong. But at the time I was down and didn't care what happened to me."

The Union pleads for understanding and forgiveness of Grievant's plight. It notes that the employment relationship is composed of human beings, and an institution cannot be human without compassion. Arbitrators have denied grievances such as this because the employee was unremorseful -- Grievant is obviously filled with remorse. They have denied similar grievances because the employee's action was willful -- Grievant was not willful, she was depressed. The Agency would not be harmed if this Employee were reinstated, and the Union urges that she be given a second chance.

OPINION:

One matter should be disposed of at the outset. Part of the Employer's case consisted of the inmate's written statement implicating Grievant in transporting contraband into the prison, sanctioning thefts from the commissary, and carrying on an intimate physical relationship with him. The Union does not believe it; the Arbitrator does not believe it; nor, for that matter, does the Employer actually believe it. The Agency tacitly concedes that the statement is unreliable even though the inmate allegedly passed a polygraph test. As Management knows all too well, prisoners are as likely to lie as tell the truth. Their exclusive motivations are their self-interests, and their unsupported statements, whether or not they are given under oath, cannot be considered valid. If there is one common strain among prison inmates, it is their contempt for truth.

Nevertheless, the Employer maintains that the misconduct admitted by Grievant, without the other accusations, was sufficient just cause for her removal. In its Step 3 Answer to the grievance, the Agency wrote:

"While there is nothing but the inmate's word in a polygraph that the grievant fondled him in his room, kissed him at other places in the institution, brought and gave him Valium and reefer, and bought and gave him alcohol, that which has been undisputably proven and admitted, is sufficient to find that just cause existed for discipline. Removal from her position is commensurate with the offense. There can be little speculation to how far this employee might go for this inmate that would seriously jeopardize the security of the institution."

Obviously, the Department's opinion is that if Grievant's admissions were the only evidence in this case, it would be sufficient for the removal to meet just-cause requirements. This concept finds support in the arbitral decisions submitted by the Employer. Several of them merit special comment.

In one of the cases, a Corrections Officer was charged with accepting money (and expressing willingness to accept marijuana) in exchange for granting an inmate choice work assignments. The Officer was discharged, and the resulting grievance was appealed to arbitration. Arbitrator Frank Keenan denied the grievance, noting:

"[I]t is simply self-evident that such dealings with inmates . . . jeopardizes not only the officer himself but others working with him as well, and in this manner adversely affects the safety and security of the entire staff."^[5]

More recently, a Food Service Coordinator at Lima Correctional Institution was discharged for engaging in an intense relationship with an inmate which continued after the inmate's parole. The State's contention that such relationships are always manipulative was confirmed when the parolee burglarized the employee's home. One of the Union's contentions in arbitration was that the State's action against the Employee was without just cause because it contemplated off-duty behavior. Arbitrator David Pincus disagreed. He held:

"Although the activities engaged in did not directly impact the employment relationship, the 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 employee 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."^[6]

A Corrections Officer in a women's pre-release center was charged with carrying on a torrid sexual affair with an inmate, and asking her to move in with him when she was released. His discharge was grieved and presented to arbitration before Rhonda R. Rivera. The grievant denied the sexual allegations, testifying that the evidence against him, including a telephone record of collect calls from the institution to his home, did not detract from his denials. He said that his relationship with the inmate was altruistic and his only interest in her was to aid her rehabilitation. Arbitrator Rivera accepted the grievant's statements as true, but still upheld the removal. She noted that helping inmates individually and personally was not in the employee's job description, and that his violations were deliberate.^[7]

Willful misconduct caused Arbitrator Rivera to deny a similar grievance involving a seven-year workshop supervisor who was discharged for conspiring with an inmate to barter a pair of sunglasses for a carton of cigarettes. The penalty was demonstrably harsh, yet Arbitrator Rivera declined to rule that it was not commensurate with the misconduct. She held:

"However, the question of commensurate punishment remains. The job of the Arbitrator is not to substitute her judgment for management's. The Grievant violated a clearly stated and reasonable work rule which he admitted under oath to understand. The stated possible discipline was dismissal. The Superintendent had the duty to determine whether any circumstances mitigated the violation. Reading the transcript and hearing from the Grievant himself, the Arbitrator cannot say that the Superintendent's judgment was unreasonable, capricious, or arbitrary. Reading and hearing the Grievant's words, the Superintendent could reasonably have found an intentional, unremorseful, willful action on the part of the Grievant justifying dismissal."^[8]

The Arbitrator has little argument with the prior cases, but finds only tangential connections to Grievant's circumstances. This Employee does not appear to be willful or resistant to supervisory authority. Her job evaluations confirm that she is a dedicated individual, willing to work hard. She would be a valuable asset to

most employers. But she has a personality which is inconsistent with employment in a prison -- especially in the prison located in her neighborhood (NEPRC). She is a social person who apparently knew several of the inmates at the Center. As she testified, "It seemed everyone we knew was either in jail! or had been in jail."

Her friendliness and native compassion for fellow human beings, including inmates, puts her out of place as an employee of a prison. She seems to lack the gloss of coolness and detachment that permits Corrections employees to distance themselves from their charges. Her own statement in the interview with the Deputy Warden was a profound admission of this characteristic. She was asked whether she Communicated liking inmates, or how they would know that she liked them (as friends). Her response: "The way I am, I treat everybody nice."

The Arbitrator is compelled to agree with the Agency that Grievant's rule violations -- just the ones she admitted -- rendered her ineligible for reinstatement. In arriving at this conclusion, he takes special note of the Union's evidence that NEPRC has been converted to a women's prison, but finds curious the argument that reinstating Grievant would not pose the same problems. The contention is inconsistent with Grievant's testimony. She absolutely denied the inmate's sworn statement that he and she had a sexual relationship. The Union's argument seems to assume that the inmate's allegations were accurate -- that Grievant's violation was a response to heterosexual temptation which no longer can exist at this facility. But Grievant testified, under oath, that the relationship was social, not sexual, and the Arbitrator believes her. Grievant is a social being with demonstrated warmth and a marked capacity for forming friendships. In choosing friends, she does not discriminate against the lowest echelon of society -- prison convicts -- and there is no reason to suspect that she would not be capable of as close a friendship with a woman inmate as with a man.

The Arbitrator agrees that Grievant is entitled to compassion, but finds that the removal was for just cause. For that reason, he is powerless to overturn the discipline. Once just cause is established, an arbitrator has no authority to embellish job security by interposing his personal sympathies. The most this Arbitrator can do for Grievant is give her an opportunity to leave the Institution with a clean record. The Award will permit her to resign voluntarily and, if she does, the Employer will be required to expunge her record of the discipline and give no less than a neutral recommendation to potential future employers.

AWARD

The grievance is substantively denied. However, Grievant shall be permitted to write a backdated note to the Agency voluntarily resigning from her job as of May 15, 1990. If she chooses to do so, the State shall accept her resignation in lieu of the removal, and shall thereupon expunge her records of all indications of this discipline. Thereafter, the employer shall give no less than a neutral recommendation should one be requested by potential future employers concerning Grievant.

If Grievant elects not to resign within ten days of the Union's receipt of this Award, the grievance shall stand denied.

Jonathan Dworkin, Arbitrator

[1] See this Arbitrator's decision in companion case no. 27-17(90-04-11)0086-01-08 (issued February 10, 1991), in which the grievance resulting from the discipline was sustained. The ruling was based on the Employer's failure to prove just cause.

[2] Grievant's testimony

[3] This is a serious allegation, but a naked one. It stands unsupported by any evidence. It was raised only in argument, and no witness attested to or even mentioned the alleged bribe.

[4] The evidence was in the form of arbitral decisions. Actually the Employer introduced seven, not six, but one was premised on attendance violations. The Arbitrator judged it to be irrelevant and dismissed it from consideration.

- [5] Case No. G87-2438, page 20. Decision issued, November 11, 1990.
- [6] Case No. 27-12-89-02-0030-01-03, page 21; emphasis added. Decision issued, February 20, 1990.
- [7] Case No. 27-08(06-14-89)-0014-01-03. Decision issued, January 16, 1990.
- [8] Case No. G87-2389, pages 13-14. Decision issued, November 3, 1988.