

**ARBITRATION DECISION NO.:**

339

**UNION:**

OCSEA, Local 11, AFSCME, AFL-CIO

**EMPLOYER:**

Department of Rehabilitation and Correction

London Correctional Inst.

**DATE OF ARBITRATION:**

March 22, 1991

**DATE OF DECISION:**

May 2, 1991

**GRIEVANT:**

Merril David Munyon

**OCB GRIEVANCE NO.:**

27-13-(90-09-18)-0326-01-03

**ARBITRATOR:**

Hyman Cohen

**FOR THE UNION:**

Sharon Vanmeter Bailey

**FOR THE EMPLOYER:**

Louis Kitchen

**KEY WORDS:**

Removal

Unauthorized Relationship with an Inmate's Family

Circumstantial Evidence

**ARTICLES:**

Article 24 - Discipline

§ 24.01 - Standard

**FACTS:**

The grievant had been employed as a Corrections officer by the Department of Rehabilitation and Corrections for several years. The grievant's home telephone number was found in the personal belongings of an inmate who had escaped. The institution conducted an investigation which allegedly showed that the grievant had met with the inmate's mother and sister, visited the sister, and that several telephone calls had been made between the grievant and the inmate's sister. This information was discovered by conducting interviews and obtaining telephone records. The grievant stated during the investigation that he did not know how the inmate obtained his telephone number and that he had met the inmate's family by coincidence. The grievant was removed for engaging in an unauthorized relationship with an inmate's family.

**EMPLOYER'S POSITION:**

There was just cause for the grievant's removal. Credible evidence exists that the grievant, a Corrections Officer, engaged in an unauthorized relationship with the inmate's sister. Telephone records show that several calls were made from the inmate's mother's home and from the neighbor of the inmate's sister to the grievant. His sister did not have a telephone and would call from the neighbor's home. Calls were also made from the grievant to the neighbor of the inmate's sister, after which calls would be returned to the grievant with the charges being reversed. Although telephone records are circumstantial evidence they lead to the conclusion that the grievant was guilty.

The grievant met the inmate's mother and sister at a doughnut shop and afterwards the grievant left with the inmate's sister and went to her neighbor's house. There were credible statements attesting to this made by the inmate's mother. There was also to be another meeting, however the grievant did not show up. The inmate's mother stated that the grievant did not show due to a back injury. The grievant did in fact injure his back and that the inmate's mother knew this fact further indicates that he was engaged in an unauthorized relationship.

The grievant admitted to another Correction officer that he knew an inmate's family and that he had dated the inmate's sister. The other officer submitted a statement during the investigation and testified to this fact in this hearing.

**UNION'S POSITION:**

There was no just cause for removal of the grievant. The grievant was not engaged in an unauthorized relationship with an inmate's sister. The grievant did not give the inmate his telephone number and did not know how it was obtained. Telephone records did show calls made to the grievant from the inmate's mother's home and his sister's neighbors home, however, the calls did not concern a relationship with the inmate's sister. The grievant did not make or receive any calls to or from the inmate's mother's home or the inmate's sister. Either the grievant's son or his son's friend who lived with them made and accepted the calls. The grievant's son's friend called the inmate's sister's neighbor because he would get car parts for him.

The grievant did meet the inmate's mother and sister at a doughnut shop, however, it was not a pre-planned meeting and he left with his son, not the inmate's sister.

The other Corrections Officer who made statements concerning the grievant's alleged relationship was not truthful. He had stolen property from the employer which the grievant was aware of. The other officer wanted to silence the grievant concerning the theft.

**ARBITRATOR'S OPINION:**

There was just cause for the grievant's removal as a Corrections Officer for engaging in an unauthorized relationship with an inmate's family. The grievant denied any relationship with the inmate's family, however, credible, circumstantial evidence indicates that there was a relationship between the grievant and an inmate's sister.

Telephone company records evidence calls made between the inmate's mother, the neighbor of the inmate's sister and the grievant. The grievant's explanation that his son, or his son's friend who had lived with the grievant made the calls, was not credible. It was not believable that the grievant would not check his bills for long distance and collect calls. The sequence of calls and return calls indicate that the grievant would contact the sister's neighbor, after which she would call him back. Therefore, the telephone records indicate that the grievant was calling the inmate's sister and mother.

There is also credible evidence that the grievant set up a meeting with the inmate's sister at a doughnut shop. The inmate's mother was able to accurately describe the grievant's car and it is unlikely that she would remember this fact if this was a chance meeting. The inmate's mother also stated that the grievant "stood her daughter up" due to a back injury. The grievant in fact had injured his back and that the mother knew this indicates the fact that it was a pre-arranged meeting. The grievant's explanation that the meeting occurred by chance was not credible. His story changed according to how much he realized the employer knew about the incidents.

The statements of the other corrections officer also are credible evidence of a relationship. if the grievant knew that the other officer had stolen employer property, and the other officer knew of the grievant's relationship and was using that information to keep the grievant silent, then the other officer would not have disclosed the relationship to the employer.

It was also proven that the grievant had engaged in unauthorized personal business with inmates before and had received warnings not to do so again, yet he did. The reason for the employer's rule is reasonable. The security of a corrections facility is critical and a relationship with an inmate's family may lead to breaches of that security.

The grievant had no prior discipline in his personnel file, however, his seven years of service did not outweigh the seriousness of the offense.

**AWARD:**

The grievance was denied.

**TEXT OF THE OPINION:**

**VOLUNTARY LABOR ARBITRATION**

-----  
In the Matter of the Arbitration

-between-

**THE STATE OF OHIO, DEPARTMENT OF  
REHABILITATION AND CORRECTION,  
LONDON CORRECTIONAL INSTITUTION**

-and-

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

-----  
**ARBITRATOR'S  
OPINION**

**GRIEVANT:  
MERRIL DAVID MUNYON**

**FOR THE STATE:**  
LOUIS KITCHEN  
Labor Relations Specialist  
Ohio Department of  
Administrative Services  
Office of Collective Bargaining  
65 East State Street, 16th Floor  
Columbus, Ohio 43215

**FOR THE UNION:**

SHARON VANMETER BAILEY  
Staff Representative  
Ohio Civil Service Employees  
Association, Local 11,  
AFSCME, AFL-CIO  
1680 Watermark Drive  
Columbus, Ohio 43215

**DATE OF THE HEARING:**

March 22, 1991

**PLACE OF THE HEARING:**

State of Ohio, Office of  
Collective Bargaining  
Columbus, Ohio

**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 March 22, 1991 at State of Ohio, Office of Collective Bargaining, Columbus, Ohio before HYMAN COHEN, Esq., the Impartial Arbitrator selected by the parties.

The hearing began at 9:30 a.m. and was concluded at 5:30 p.m.

\* \* \* \* \*

On or about September 17, 1990, MERRILL D. MUNYON filed a grievance with the OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, LONDON CORRECTIONAL INSTITUTION, London, Ohio, the "State" in which he protested his discharge for engaging in an unauthorized personal relationship with an inmate's family.

The grievance was denied by the State after which it was eventually carried to arbitration under the Agreement between the State and OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, LOCAL 11, AFSCME, AFL-CIO, the "Union".

**FACTUAL DISCUSSION**

The London Correctional Institution is a minimum security facility with a population of approximately 2,200 inmates, some of whom live in a camp located outside of the facility. The Correctional Institution provides essentially agricultural work to the inmates. There are approximately 346 employees who staff the Correctional Institution, 183 of whom are correctional officers.

The Grievant was employed by the State as a Correctional Officer at the London Correctional Institution from 1983 until he was removed on August 28, 1990.

As I have already indicated, the Grievant was discharged for engaging in an unauthorized personal relationship with an inmate's family, primarily Bertha Cox who is the sister of Michael Waddell. This offense constitutes a violation of Rule 46e. of the Employee Standards of Conduct which in relevant part prohibits engaging in an unauthorized personal or business relationship with inmates or family of inmates.

Inmate Waddell escaped from the London Correctional Institution in June or July, 1990 and was captured on August 25, 1990. Subsequent to Inmate Waddell's escape, the Grievant's home telephone number was found in the personal property which he had left behind. This prompted the State to launch an investigation which included interviewing Wilma Waddell and Bertha Cox, the mother and sister of Inmate Waddell. On August 3, 1990 Inmate Waddell's mother, Ms. Waddell submitted a statement to Terry J. Collins, Deputy Warden of the London Correctional Institution. In summarizing Ms. Waddell's statement she indicated that on one (1) occasion she took her daughter, Ms. Cox to Jolly Pirate Donuts in Lancaster, Ohio to meet the Grievant. After doing so, the Grievant and her daughter left together in the Grievant's automobile and traveled to Logan, Ohio where her daughter resides. She further indicated that the Grievant would call Ms. Cox's neighbors, Chuck and Betty Dye, and leave messages for her daughter. Her daughter would then call the Grievant at his home by using the telephone at the Dye's home and reverse the charges. Ms. Cox did not have a telephone.

On August 14, 1990 Bertha Cox gave a statement to Collins and Major Kelly which is summarized as follows: She had a relationship with the Grievant from approximately June 1, 1989 to September 1989. Ms. Cox said she met the Grievant at Jolly Pirate Donuts in Lancaster, after which she left with him. He drove to her neighbor's home where they stayed for approximately one hour. Ms. Cox also indicated that she called the Grievant at home collect and that they had arranged to meet three (3) or four (4) times but during those occasions, the Grievant failed to show up. Furthermore she had actually seen him on two (2) occasions; once in the visiting room at the Correctional Institution and the second occasion was, as I have already mentioned, at Jolly Pirate Donuts.

On August 16, 1990 Sgt. J. R. Stanforth, Correctional Counselor, submitted a statement to Collins in which he indicated that approximately two (2) weeks previously, while riding with the Second Shift Farm Patrol, the Grievant told him that he knew Inmate Waddell's family and had dated Inmate Waddell's sister.

An investigatory interview was then conducted of the Grievant on August 16, 1990. In summarizing the Grievant's statement, he said that he did not know how Inmate Waddell obtained his home telephone number. He stated that he had met Inmate Waddell's family in the Correctional Institution's visiting room and did not remember their names because he "wasn't interested". The Grievant went on to state that while he did not know the Inmate Waddell's sister, Ms. Cox. Inmate Waddell had mentioned her to him while at the Institution. He went on to indicate that he had only met Ms. Cox twice, once in the visiting room for about one minute and approximately three to four months later at Value City and Jolly Pirate Donuts in Lancaster around February or March, 1989. The Grievant went on to indicate that he was with his son, Michael, who, at the time was approximately 12 or 13 years of age. The Grievant disclosed that at Jolly Pirate Donuts he spoke to both Inmate Waddell's sister and mother briefly, ate some donuts with his son and then left with his son.

The State also obtained documentation consisting of telephone bills for the telephone number at the Grievant's residence in Washington Court House, Ohio. Such statements indicate that telephone calls were made from the residence of Ms. Waddell and Chuck and Betty Dye. Further calls were made to those telephone numbers from the Grievant's residence. In light of this sketch of the facts, the instant grievance was filed.

## **DISCUSSION**

The parties stipulated at the hearing that the issue to be resolved by this arbitration is whether the Grievant was discharged for just cause; if not, what shall the remedy be?

The State's case is sharply disputed by the Union. The Grievant's credibility is a matter of paramount importance. Since the various aspects of the State's case are vigorously contested by the Union, I will first consider the telephone statements which establish that telephone calls were made from the Grievant's residence to Ms. Waddell and the Dyes; and from their homes to the Grievant.

### **1. GRIEVANT'S TELEPHONE STATEMENTS**

Before discussing the Grievant's telephone statements, it should be pointed out that in her statement to Collins on August 3, 1990, Ms. Waddell said that she "knew" that the Grievant would call Betty and Chuck Dye and leave messages for her daughter, Ms. Cox. Her daughter would then call the Grievant at his home and "reverse the charges".

Turning to the statement given by Ms. Cox, she indicated that her brother, Inmate Waddell gave her the Grievant's telephone number. She went on to state that he did so because he wanted to "hook [her] and him up together". Ms. Cox said that she called the Grievant at his home "[L]ots of times". Since she did not have a telephone, she said that she would call from the Dye's home. She described Chuck and Betty Dye as "[F]riends of mine". Ms. Cox added that the Grievant would also try to reach her by calling her mother, Ms. Waddell.

Pursuant to a subpoena from the State, Ohio Bell provided the Grievant's telephone statements between January 1, 1989 to August 1, 1990. His telephone number at the time was (614) 335-7381. It is undisputed that the telephone number of Ms. Waddell was 385-3630. When Inmate Waddell escaped from the London Correctional Institution, Collins called his mother at 385-3630 to report her son's escape. Moreover, the telephone number of the Dye's was 385-9576.

The telephone calls that were made from the telephones of Ms. Waddell and the Dyes to the Grievant's home and from his home to their homes occurred in late December, 1966 and January 1989. On December 26, 1988 a six (6) minute call was made from the Grievant's home to Ms. Waddell's home, beginning at 10:53 p.m. ("2253"). At 11:10 p.m. that same evening, a one (1) minute call from Ms. Waddell's telephone was made to the Grievant's home. A few minutes later at 11:13 p.m. a call which lasted six (6) minutes was made from the Grievant's home to the Dye's telephone. On January 1, 1989 at 10:45 p.m. a call was made on the Grievant's telephone to Ms. Waddell which lasted for six (6) minutes. On January 11, 1989, at 10:35 p.m. a thirteen (13) minute call was made from the Dye's telephone to the Grievant. On January 27, 1989 at 9:35 p.m. a five (5) minute call was made from the Dyes to the Grievant's home. Later that evening at 10:54, a call was made from the Grievant's home to the Dye's home. The length of the telephone call was twelve (12) minutes. On January 29, 1989 at 11:49 p.m. a six (6) minute call from the Grievant's home was made to the Dyes. Finally, on January 30, 1989, a call was made from the Grievant's home to the Dye's home at 12:04 a.m. The length of the call was one (1) minute.

The telephone statements constitute "circumstantial evidence" which tends to establish the "principal fact" by proving one or more other facts from which the principal fact can rationally be inferred. Circumstantial evidence establishes a connection between the known and proved facts and the facts sought to be proved. Direct evidence, in other words, which consists of the "He did it" and "I did not do it" kind, may easily be falsified because of perjury by witnesses. In contrast, circumstantial evidence may be more reliable than direct evidence because it is less subject to falsification.

In this connection, the telephone statements constitute reliable and probative circumstantial evidence in supporting the principal fact that the Grievant called Ms. Waddell and her daughter, Ms. Cox, and that they called him. Moreover the telephone statement, support material aspects of the statements given to the State by Ms. Waddell and Ms. Cox.

To begin with, the Grievant denied making calls to Ms. Waddell. He never explained the telephone calls from his home to Ms. Waddell and from Ms. Waddell to him. Based upon the telephone statement along with the statements given to the State by Ms. Waddell and Ms. Cox, I have inferred that the Grievant called Ms. Waddell and she called him for the purpose of making arrangements from Ms. Cox to talk to the Grievant by telephone. Indeed, the telephone calls of December 26, 1988, which are reflected on the telephone statement are consistent with Ms. Cox's statement on how she was able to "get hold of him." She said that the Grievant would call her "Mom" and she got "hold of him up" at Chuck and Betty Dye, friends of mine." It is more than coincidence that the Grievant called Ms. Waddell at 10:53 p.m. on December 26. The telephone call lasted six (6) minutes after which Ms. Waddell called the Grievant at 11:10 p.m. and one (1) minute was spent during their telephone conversation. At 11:13 p.m. three (3) minutes after Ms. Waddell contacted the Grievant, and approximately two (2) minutes after she got off the telephone with the Grievant a call was made from the Dye's home. The sequence of telephone calls supports Ms. Cox's statement that her

mother was an intermediary for the Grievant and Ms. Cox to talk to each other by telephone. Moreover, the telephone statement supports Ms. Cox's statement which was corroborated by her mother's statement that she did not have a telephone and calls the Grievant from the Dye's home. To conclude otherwise would be contrary to a common sense appraisal of the circumstantial evidence and the statements by Ms. Cox and her mother. Accordingly, between December 26, 1988 and January 30, 1989, the Grievant was in personal contact with Inmate Waddell's sister and his mother.

At the time of the "Logan" calls, the Grievant said that he worked the 2:00 p.m. to 10:00 p.m. shift. He said that sometimes he worked overtime and there were times when he would travel from the Correctional Institution to Airborne Express where he also worked, without first going home. The Grievant estimated that it took him about 45 minutes to one (1) hour to get home; and if the weather was "real bad" he would "take longer to get home". The Grievant went on to state that he was "not home at lot" when the calls were made from and to his home and from Ms. Waddell and the Dyes.

In light of the reasonable inference to be drawn from the telephone statements which is supported by the statements supplied by Ms. Waddell and Ms. Cox, it is incumbent upon the Grievant to indicate by evidence other than Grievant's testimony that he "would not come home sometimes" and that he worked overtime and did not come home. To adequately refute the State's case, it would be necessary for the Grievant to submit documentary evidence from Airborne Express and the State that he could not have been home on the various occasions (nine (9) times) that the phone calls to and from Logan were made in late December 1988 and January 1989. Such evidence was lacking. The bare testimony that, in effect, "I was not home" on the occasions shown on the telephone statement is hardly enough to overtime the State's case.

Having testified in effect, that he "was not home", the Grievant then was required to indicate the persons who were at his home would have made the calls. He said that his son, Michael, and Shawn R. Barton, a friend lived with him, during late December, 1988 and January, 1989 when the calls to and from "Logan" were recorded on his telephone statements. The Grievant went on to state that "other people use the telephone--all kinds of calls--some people make long distance calls and collect calls". The Grievant testified that he "had no idea who accepted the long distance calls--my boy said that three (3) or four (4) times he had accepted long distance calls from a woman named "Bertha". He added that his son and Barton never tell him about every call that "comes in."

The Grievant indicated that his monthly telephone bills average \$28 to \$35 a month. He "never notices" the charges; he "just pays them" [the bills]. He then indicated that he could not say whether anyone at his home knows Ms. Waddell. The Grievant continued with his testimony by indicating that he did not know if anyone knows Barton. He quickly added that Barton "says he gets parts (automobile) from this Dye guy--I guess he calls him".

I am unpersuaded by the Grievant's explanation of the phone calls to and from Logan from and to his home. The Grievant's testimony that he "just pays" the telephone bills, that he "never noticed" the long distance calls and that he does not look at the various charges on the bill, is too cavalier, and unreasonably indifferent to the monthly telephone expenses which he incurred. I am persuaded by Barton's testimony that when the Grievant received the phone bill, he asked him [Barton] "what it was about and he explained it to him". Barton's testimony that the Grievant questioned him about a long distance telephone charge is more realistic than the Grievant's indifference to long distance charges, and that "other people use the telephone for all kinds of calls"; and that some people make collect calls and some people make long distance calls but he "just pays" the bills without looking at the various charges which he never noticed. Clearly, the Grievant's testimony is not credible.

In support of the Grievant's testimony Barton testified that occasionally he called and received long distance calls. Among such calls, he said that occasionally he would telephone Chuck Dye about "engine parts" and various parts for vehicles. He said that Dye has a connection with a junkyard since he was employed at a junkyard. By Barton's account, he did not know Dye but it is through "an acquaintance" named "Eric Smith" that he knew Dye. Barton went on to state that he would give his 'friend' money, and he would get auto parts from Dye. The occasions on which he called Dye, Barton said that he needed parts for a "84 Laser and 72 Buick Skylark". Barton went on to state that he called Dye at "all times", and "anytime" and whenever they said that "he would be back".

In order to resolve the reasonable inference that the statements given by Ms. Cox and Ms. Waddell are trustworthy concerning the telephone calls to and from the Grievant, it was incumbent upon the Union to produce telephone statements for periods of time other than December, 1988 and January, 1989 to indicate that during the period of time Barton lived at the Grievant's home, telephone calls were made by Barton to Chuck Dye and from Dye to him.

Barton's testimony was offered to persuade the Arbitrator that on five (5) occasions between December 26, 1988 and January 30, 1989, he called Chuck Dye "for parts" between 10:35 p.m. and 12:04 a.m.; and on one (1) occasion Dye called him (January 27, 1989). Barton's testimony is hardly convincing in light of the sequence of telephone calls on December 26 when a call was made from the Grievant's home to the Dyes a few minutes after a call was received at the Grievant's home from Ms. Waddell's home. Moreover, I find that Barton's testimony lacks the ring of credibility in stating that he calls Chuck Dye because Dye has connections at a junkyard and that he knows Dye, through "an acquaintance" who received the parts from Dye and pays for the parts with money provided by Barton. In adding to the "believe it or not" nature of the story, Barton indicated that he was not sure where Chuck Dye lived and that he called him at "all times" and "anytime" and "whenever they said he would be back". Clearly, the story by Barton is not supported by the evidentiary record.

Barton was not only uncertain about where Chuck Dye lived he was also uncertain about the period of them that he lived with the Grievant. Barton initially said that he did not know when he resided in the Grievant's home. He then stated that "last year" he lived with him. He continued his testimony by indicating that he lived with the Grievant in 1989; and part of 1988 he lived with the Grievant beginning in September or October. Barton testified that he lived with the Grievant "1 or 2, 2 1/2 years".

There is not one (1) shred of evidence in the record that Chuck Dye sells auto parts or works in a junkyard or has connections with a junkyard. I find Barton's reasons for calling Chuck Dye nothing less than astonishing. Whatever glimmer of credibility Barton evinced in his testimony completely vanished, when he denied that he had been arrested for robbery. In fact, Barton had been arrested and indicted for robbery and using force against a person with the intent of depriving the victim of his "wallet containing cards and cash money\*\*." I cannot attribute any weight to Barton's testimony.

Michael Munyon, the Grievant's son who was 14 years old, indicated that he used the telephone at his father's home to call his friends. He said that he accepts collect calls if his father is not at home. He does so in case his father is hurt. If his father is at home, he asks him if he wants to accept the collect call.

Michael acknowledged that he accepted calls from a woman named "Bertha", who never disclosed her last name. He indicated that he and his father "ran into" her when they were shopping at Value City. He "guessed" that her mother was with her at the time. When he and his father left Value City, they went to Jolly Pirate Donuts, when they ran into "Bertha and her mom again". In any event, Michael said that "at least three (3) or four (4) times, he had 'accepted calls' from a woman named Bertha" The Grievant testified that his "boy said that three (3) or four (4) times", he [Michael] had "accepted calls from Bertha."

Michael's testimony cannot be given any weight. The telephone statement indicates that between December 26, 1988 and through January, 1983 three (3) calls were made from Logan, Ohio to the Grievant's home. On December 26, 1988 the call was from Ms. Waddell's home; the other two (2) calls were made from the Dye's telephone on January 11 and 27, 1989. On the Ohio Bell statements that were subpoenaed by the State the three (3) occasions were the only occasions when calls were made from Logan to the Grievant's residence in Washington Court House. If these were the three (3) occasions when Michael accepted collect telephone calls from Bertha, [I assume it is Ms. Cox] then it must be inferred that Ms. Cox called from her mother's home on December 26, 1988 and from the Dye's home on January 11 and 27, 1989. If Ms. Cox called from the Dye's home on January 11, and 27, 1989, Michael's testimony seriously impairs the testimony of another witness for the Grievant namely, Barton who dealt with Chuck Dye with regard to auto parts. Indeed, Michael's testimony leads to the inference that Ms. Cox called from the Dye's home which is in support of the State's case. The only telephone records produced at the hearing indicate that two (2) telephone calls were made from the Dye's home. If Michael's testimony is trustworthy, those two (2) calls came from "Bertha", which is Ms. Cox's first name. Moreover, the January 11 and 27, 1989 calls from Dye's home were thirteen (13) and five (5) minutes in length. Michael said that sometimes he forgets to



leave his father telephone messages. It is unreasonable to believe that Michael would have accepted two (2) collect calls from Bertha, with one (1) call lasting thirteen (13) minutes, and that he would have forgotten to tell his father about the nature of the lengthy collect call. It is enough to state that Michael's testimony is not credible. As I have already established, if there were telephone calls from Ms. Cox, which were accepted by Michael at times other than the times recorded on the telephone statements submitted by the State, it is incumbent upon the Union to produce those telephone statements which can be obtained in the same manner that such statements were obtained by the State. In the absence of such statements, I cannot attribute any weight to Michael's testimony on accepting telephone calls from a "Bertha" on "three or four (4) occasions".

In summary, the telephone statements warrant the reasonable inference that on nine (9) different occasions there were telephone discussions between the Grievant and Ms. Waddell and Ms. Cox. I have concluded that these discussions were of a personal and social nature.

### **JOLLY PIRATE DONUTS**

It is undisputed that the Grievant and Ms. Waddell and Ms. Cox met at the Jolly Pirate Donuts, located in Lancaster, Ohio. The State claims that both the Grievant and Ms. Cox planned to meet at the Jolly Pirate; the Union contends that they met by chance.

In the August 3, 1990 statement given by Ms. Waddell, she stated that after she and her daughter visited her son at the Correctional Institution, they were "to meet a man" at Kentucky Fried Chicken in London but "he never showed". She said that afterwards she found out that the "man" was the Grievant. Sometime later, she and her daughter went to the Jolly Pirate "to meet someone". In her statement to Collins which was written by Collins and signed by Ms. Waddell on August 3, 1990, she indicated that "a large man walked in and over to us and introduced himself as David". Ms. Waddell went on to state that her daughter "and this man left and went to Logan". The following day, her daughter identified the "man" as the Grievant who was from the Correctional Institution and "he was an officer."

In her August 14., 1990 statement to the State, Ms. Cox indicated that she was at the Jolly Pirate Donuts with her mother and her daughter 'Missy', when she met the Grievant. They had coffee and donuts after which the Grievant drove her and Missy "home" in his "little blue" car. Ms. Cox said that they went to a neighbor's house where they remained for "an hour watching TV". When he got ready to leave, "we shook hands". Ms. Cox indicated that the meeting at the Jolly Pirate was their "one date because he kept standing [her] up". She added during her interview by the State, that "[W]e were supposed to meet at Kentucky Fried Chicken and then he said that he hurt his back and didn't show up".

Ms. Waddell indicated that the meeting at Jolly Pirate took place in the "last part of 88 or early 89". It should be pointed out that both Ms. Waddell and her daughter indicated that they had seen the Grievant when they visited the Correctional Institution. Inmate Waddell introduced them to the Grievant.

While admitting that he met Ms. Waddell and Ms. Cox at the Jolly Pirate, the Grievant said that he did not arrange to meet Ms. Cox. He indicated that he and his son, Michael, went to Value City in Lancaster to buy school clothes, when they "ran into" Ms. Waddell and Ms. Cox. According to the Grievant they said "ain't you Munyon" to which he said "yes". He indicated that Ms. Cox asked about her brother to which he said "I guess he's O.K.". He and his son then went to the Jolly Pirate in Lancaster. While at the donut shop, "they [Ms. Waddell and Ms. Cox] came in". The Grievant denied that he made arrangements to leave with Ms. Cox. The Grievant's son, Michael, corroborated the testimony of the Grievant.

I am persuaded that the Grievant and Ms. Cox arranged to meet at the Jolly Pirate. In her statement to the State, Ms. Cox described the Grievant's car in which he drove her to Logan as "a little blue one". The Grievant confirmed that he had a dark blue, middle sized Nissan Maxim. The Grievant sought to explain how Ms. Cox was able to accurately describe his car. He said that his vehicle was parked in front of the restaurant. The inference to be drawn from the Grievant's testimony is that Ms. Cox saw him drive away after he left the restaurant. I cannot believe that it was by mere chance that the Grievant met Ms. Cox at the Jolly Pirate and that Ms. Cox accurately described his automobile. In light of the telephone statement, it would require evidence of a more compelling nature than the Union presented in this case to reach a different conclusion.

Furthermore, Ms. Cox indicated to Collins that the Grievant "was supposed to meet [her] at Kentucky Fried Chicken." However, he said that he hurt his back and didn't show up." On January 12, 1989, the Grievant strained his back at work and filed an application for Workers' Compensation. It is significant that in his investigatory interview, the Grievant said that he "ran into Ms. Cox and Ms. Waddell at Value City and Jolly Pirate Donuts in February-March, 1989." The date of the Grievant's injury was within the time frame that the telephone calls were made from Logan to the Grievant's home and the Grievant's home to Logan. The statement by Ms. Cox that the Grievant was either unable to meet Ms. Cox due to his back injury or kept "standing [her] up" occurred prior to the Jolly Pirate meeting. As an isolated event, the inability of the Grievant to meet Ms. Cox because of his back injury, is just one (1) of various factors that implicate the Grievant in an unauthorized personal relationship with Inmate Waddell's family. It is true that Ms. Waddell told the State that the Grievant did not meet her daughter at Kentucky Fried Chicken due to a "hurt leg". However, the factor entitled to great weight is the injury to the Grievant which caused him not to show up at the Kentucky Fried Chicken Restaurant rather than the precise nature of the injury. It is sufficient to state that the Grievant's injury is merely one (1) of many factors which create a mosaic of the Grievant's unauthorized relationship with members of Inmate Waddell's family which is supported by the evidentiary record.

In arriving at the conclusion that the Grievant and Ms. Cox planned to meet at the Jolly Pirate, I have also taken into account the Grievant's responses to the interview conducted by Collins on August 16, 1990. As the interview developed the Grievant modified previous answers to questions about Inmate Waddell and Ms. Cox. The investigatory interview of the Grievant is a classic demonstration of the person questioned taking cues from questions and responding by embellishing, modifying and contradicting earlier responses. He did so, I have inferred because as the interview progressed, the Grievant was alerted to the information known to the State. At the outset of the interview, the Grievant denied that he gave Inmate Waddell his telephone number; nor did he know how he obtained his number. The Grievant disclosed that he talked to Inmate Waddell "just" "about different things here, about him working the calf barn". The Grievant said that he did not know why Inmate Waddell introduced him to his family in the visiting room of the Correctional facility. He indicated that he did not remember the names of Inmate Waddell's family and that he "wasn't interested" in knowing their names. As the interview progressed and questions were asked about Inmate Waddell's sister, the Grievant said that Inmate Waddell wanted him to meet his sister. Thus, "different things here" including the calf barn were not the only matters discussed between the Grievant and Inmate Waddell. Moreover, since Inmate Waddell wanted the Grievant to meet his sister, there was a reason for Inmate Waddell to introduce the Grievant to his family, including his sister, in the visiting room. Moreover, the Grievant was well aware of the name of Inmate Waddell's sister. Thus, modifying his earlier response that he did not recall the names of Inmate Waddell's family and that he was not interested in their names, he acknowledged that Inmate Waddell mentioned his sister's name to him at the Correctional Institution. Indeed, he further acknowledged in answer to the question of whether he ever met Ms. Cox outside the Institution that he talked to her and her mother at Value City after which, he and his son met them afterwards at Jolly Pirate. Although he indicated that he first met Ms. Waddell and Ms. Cox in the visiting room of the Correctional Institution for one (1) minute, he said that in Value City, they (Ms. Cox and Ms. Waddell) asked him if he worked at London Correctional Institution, and was his name "Dave Munyon". It should be underscored that the Grievant said that in effect, their "chance" meeting at Value City took place three (3) to four (4) months after their initial one (1) minute meeting in the Institution's visiting room. The Grievant then indicated that "they didn't call me by name" after which he said, "I cannot recall"- I have inferred that Ms. Waddell and Ms. Cox knew the Grievant's name because they had personal and social contacts with the Grievant in telephone discussions with him.

Early in the interview, as I have already indicated, the Grievant said that Inmate Waddell wanted him to meet his sister. He further stated that he did not know Inmate Waddell's reason for wanting him to do so. The Grievant knew only too well the reason Inmate Waddell wanted him to meet his sister. It became apparent later during the interview. When asked by Collins if he ever made arrangements to meet with Ms. Cox, the Grievant said, "I told you she is too dirty for me. I would not want her. I know better than that anyway." The Grievant's revealing reply which was not responsive to Collins' query, that he "would not want

her" [Ms. Cox] and that she was "too dirty" for him is generally consistent with Ms. Cox's statement to Collins on August 14, 1990. She said that her brother gave her the Grievant's home telephone number, because he "wanted to hook me and him up together." Ms. Cox then stated that telephone discussions between her and the Grievant ended because the Grievant "didn't want me." It should be pointed out that the Grievant has been divorced about five (5) to six (6) years. Clearly, the investigatory interview of the Grievant constitutes probative evidence that he and Ms. Cox planned to meet at the Jolly Pirate for personal or social reasons.

### **SGT. J. R. STANFORTH**

Approximately two (2) weeks before August 16, 1990 Sgt. Stanforth "worked farm patrol" during "the late shift" with the Grievant. According to Sgt. Stanforth, the Grievant told him that he had known Inmate Waddell's family and had dated his sister. This discussion took place during the time that Inmate Waddell had escaped from the Correctional facility. Sgt. Stanforth said he "took" the Grievant's statement "with a grain of salt, and did not believe him". A few weeks later, Sgt. Stanforth had lunch with Major Kelly and the "topic" of the Grievant's involvement with the Waddell family "came up". Pursuant to Major Kelly's instruction, Sgt. Stanforth submitted a report on the Grievant's admission.

The Grievant indicated that Sgt. Stanforth lied about his discussion with him and admission that he dated Inmate Waddell's sister because of a "little theft of potatoes by Sgt. Stanforth" The Grievant's conclusion was based upon an occasion when he noticed the rear of Sgt. Stanforth's car "sitting far in the back". According to the Grievant, Sgt. Stanforth said that he had potatoes in the trunk. The Grievant went on to state that Sgt. Stanforth asked him if he wanted potatoes, and the Grievant indicated that he "did not want any hot potatoes". In the Grievant's view, Sgt. Stanforth "could have lied to set me up." He went on to state that "he could be fired because of the potatoes" and he [the Grievant] "would be out of his way."

I am persuaded by Sgt. Stanforth's testimony. He had known the Grievant since 1976 and he indicated that they were the best of friends. Sgt. Stanforth said that to this day [the hearing] they "never had a cross day." The Grievant had been a character witness for him in a divorce proceeding against his former wife.

From approximately October 1988 to approximately February, 1989, Sgt. Stanforth said that he frequently visited the Grievant at his home. He "killed time" at the Grievant's home; he took care of some of his farm animals and did "some odds and ends". On September 22, 1989, the Grievant accompanied Sgt. Stanforth, and his father and mother to Marion, Indiana, to help bring furniture back to his home, which had been taken by his former wife. Sgt. Stanforth denied that he had a conversation with the Grievant over potatoes that had been removed from the Institution's farm. His father, he said, had a "whole load of them."

The Grievant acknowledged that although Sgt. Stanforth had been to his home "plenty of times", they "were not thick buddies." The Grievant said that Sgt. Stanforth wanted him to tell the court during Sgt. Stanforth's divorce proceeding "about his wife" but he refused, which annoyed and angered Sgt. Stanforth. Subsequent to Sgt. Stanforth's divorce the Grievant said that he [Sgt. Stanforth] visited his home on many occasions until December 31, 1989 when Sgt. Stanforth moved to Columbus.

In light of the evidentiary record, and the close relationship of the Grievant and Sgt. Stanforth until December 31, 1989, I am persuaded that the Grievant told Sgt. Stanforth in early August that he knew Inmate Waddell's family and had dated his sister. I find that the Grievant's reason that Sgt. Stanforth "could lie" about his [Sgt. Stanforth's] disclosure to the authorities concerning Inmate Waddell's family, does not have the ring of credibility. I cannot believe that Sgt. Stanforth would fabricate the Grievant's admission to him in order to get him "out of his way." By doing so, the implication is that the State would never find out about the removal of the potatoes. Assuming that the theft of potatoes by Sgt. Stanforth is true then Sgt. Stanforth should not do anything to provoke the Grievant into disclosing such a serious infraction of the Rules. He did just the opposite when he disclosed to his supervisor the Grievant's statement that he knew the Waddell family and dated Inmate Waddell's sister; and thus made it impossible to get the Grievant "out of the way". By his disclosure of the Grievant's statement, Sgt. Stanforth would have reason to believe that the Grievant would retaliate by disclosing Sgt. Stanforth's infraction of the Rules. In any event, the Grievant's story about the theft of the potatoes cannot be given any weight.

## CONCLUSION

The Union points out that there are deficiencies or "problems" with the State's case. They include the following: The State did not accurately set forth the dates of Inmate Waddell's escape from the Correctional Institution and his capture by the authorities; the State relied upon statements given by Ms. Waddell and Ms. Cox who were indicted for helping Inmate Waddell after he escaped; the State failed to prove an intimate relationship between the Grievant and Ms. Cox [Rule 46e of the Revised Standards of Employee Conduct however prohibits "unauthorized personal or business relationship(s)" with an inmate's family]. Ms. Cox indicated that her daughter "Missy" was with her and her mother at the Jolly Pirate and on the trip back to Logan with the Grievant, but Ms. Waddell failed to mention Missy in her statement of August 3, 1990; Inmate Waddell could have obtained the Grievant's home telephone number from telephone directories to which he had access at the Correctional facility; Ms. Cox indicated that she received the Grievant's home telephone number from her brother and not from the Grievant, Ms. Cox said that the Grievant was 6'2" tall but he is in fact 5'11" tall; she said that his haircut was short, but in fact he is bald in front of his head; Ms. Waddell said that the Grievant had a leg injury which prevented him from meeting Ms. Cox at the Kentucky Fried Chicken Restaurant, while Ms. Cox indicated that he had a back injury, and finally, the dates referred to by Ms. Cox when she engaged in a relationship with the Grievant are not within the time frame of December, 1988 through March, 1989. These deficiencies or "problems" in the aggregate are not sufficient to subtract from the clear and convincing evidence established by the State to prove that the Grievant was discharged for just cause.

It must be underscored that the Grievant's telephone statements for late December, 1988 and through January, 1989 constitute reliable and probative circumstantial evidence which substantially affects and reinforces the support to be given to the various aspects of the State's case. For example, the Grievant failed to explain telephone calls to and from Ms. Waddell; and the telephone statements support the statements provided by Ms. Waddell and Ms. Cox for Collins. There are other factors which have been given great weight: The meeting of the Grievant and Ms. Waddell and Ms. Cox at the Jolly Pirate; the statements by Ms. Cox and Ms. Waddell that the Grievant suffered an injury which prevented him from meeting them at Kentucky Fried Chicken; Ms. Cox described the Grievant's small blue car in which he had driven her to Logan; the Grievant's admission to Sgt. Stanforth that he knew the Waddell family and dated Ms. Cox, the admission by Michael Munyon that he received collect telephone calls from "Bertha" [since the State produced the telephone statements of late December 1988 and January, 1989 the only relevant calls that can be disputed by the Union are the calls reflected on these statements] which indicate that as Ms. Cox stated she made the calls to the Grievant from the Dye's home; and finally, Barton's testimony that he dealt with Chuck Dye by telephone which was seriously impeached by Michael Munyon who accepted collect calls from Bertha (such calls were made from the Dye's home) that he had dealings with the Dyes over car parts and his denial that he was arrested for armed robbery. In addition, the Grievant's investigatory interview revealed modifications and contradictions to his answers at the outset of the interview. The inference to be drawn is that the Grievant's answers during the investigatory interview were not reliable and credible.

The Grievant denied that he gave Inmate Waddell his home telephone number. However, although the parties stipulated that the Grievant had no prior discipline, he was familiar with the State's Revised Standards of Employee Conduct, Rule 46e. which in relevant part prohibits engaging in an "unauthorized personal or business relationship" with inmates or family of the inmate. On January 30, 1984 the Grievant was counseled by Captain Swyers because the Grievant was found talking to an inmate because the inmate knew the Grievant's "sister on the street". The Grievant was informed that his conversation with the inmate in the dormitory "was wrong" and that "he should have no dealings with the inmates except on Institution business". The Grievant indicated that "it will not happen any more." However, "it" happened again. While conducting a search and pack-up of an inmate's personal property on January 4, 1990, a correctional officer discovered the Grievant's address written on a "piece of paper". The Grievant who was interviewed by Collins on January 8, 1990 acknowledged that he talked to the inmate in question "over one year ago" about the trucking business. The inmate confirmed that he and the Grievant had a conversation about trucking "when he was going to the parole board". The inmate indicated that he wrote the address down after the

Grievant disclosed his address during the conversation. The Grievant did not recall whether he gave his address to the inmate. The Grievant was counseled again. It should be noted that approximately one year before January, 1990 the telephone statements of December, 1988 and January, 1989 indicated that the Grievant and Ms. Cox were engaged in telephone discussions for social purposes.

There are several reasons behind Rule 46e. of the Revised Standards of Employee Conduct. An unauthorized relationship between a Correctional Officer and a member of an inmate's family creates a potential threat to the security of the Correctional facility by placing in jeopardy its officers and inmates. Such a relationship might lead to providing an Inmate with drugs, weapons or other contraband. It also leads to favoritism or the appearance of favoritism which seriously impairs the morale of the inmates and correctional officers.

The Grievant has had no prior discipline in the seven (7) years that he has worked for the State. His record however does not outweigh the gravity of the offense which he has committed. As I have previously established, the Grievant had been counseled twice for committing an infraction of Rule 46e. In light of the particular facts and circumstances of this case, I have concluded that the State has proved by clear and convincing evidence that the Grievant engaged in an unauthorized personal relationship with Inmate Waddell's sister and mother in violation of Rule 46e. I find no mitigating circumstances which persuade me that the State abused its discretion under Rule 46e. by removing the Grievant. As a result, the Grievant has been discharged for just cause as required by Article 24, § 24.01 of the Agreement between the parties.

### **AWARD**

In light of the aforementioned considerations, the grievance is denied.

Dated: May 2, 1991  
Cuyahoga County  
Cleveland, Ohio

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