ARBITRATION DECISION NO.:
410

UNION:
OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:
Department of Youth Services
Scioto Village/Riverview Complex

DATE OF ARBITRATION:
November 26, 1991

DATE OF DECISION:
January 2, 1992

GRIEVANT:
Luther L. Jones

OCB GRIEVANCE NO.:
35-07-(91-07-30)-0034-01-03

ARBITRATOR:
Hyman Cohen

FOR THE UNION:
Robert W. Steele, Sr.
Dane Braddy

FOR THE EMPLOYER:
Bradley E. Rahr

KEY WORDS:
Removal
Off-Duty Conduct
Possession of Controlled
Substance
Nexus

ARTICLES:
Article 24-Discipline
§24.01-Standard
§24.05-Imposition of Discipline
§24.08-Employee Assistance Program

FACTS:

The grievant had been a Youth Leader employed by the Department of Youth Services at Scioto Village. While on disability leave, on October 10, 1990, the grievant was arrested in Texas for possession of cocaine. The agency was informed of the grievant's arrest by the State Highway Patrol. The grievant returned to work from disability leave in December 1990. He pleaded guilty and was sentenced to four years

unadjudicated probation and a $2,000 fine in June 1991. He was also arrested for drug-related domestic violence in Ohio. He accepted treatment in lieu of conviction upon his guilty plea for drug abuse in June 1991. The grievant was removed for failure of good behavior for his off-duty conduct in July 1991.

EMPLOYER'S POSITION:

The employer may remove an employee for off-duty conduct which affects the work environment. The grievant's arrest and guilty plea, as an admission of guilt, affects his ability to act as a Youth Leader at a girls facility. The grievant was also charged with domestic violence, which was drug related, in Ohio in June 1991. The employer's primary function is to provide a safe secure environment and medical, psychological and counseling services to the youths under its care. Additionally, Youth Leaders act as role models for the youths under their care. The grievant was allowed to continue working until his guilty plea was entered in Texas due to the costs associated with placing an employee on administrative leave pending conviction or acquittal. Therefore, just cause existed because the grievant's off-duty conduct does impair his ability to perform his job duties.

UNION'S POSITION:

The employer may remove an employee for off-duty conduct, however, removal was not justified in this case. While the grievant did plead guilty to possession of cocaine in Texas, and was found guilty of drug related domestic violence in Ohio, the youths in his care do not know of either incident. The grievant was prejudiced by the employer's delay in imposing discipline until ten months after the grievant's arrest and also in that the employer did not inform him that he was being investigated. Additionally, the grievant performed his job from his arrest in October 1990 until his removal in July 1991. The employer also should have allowed the grievant to complete an EAP prior to imposing discipline as had been done for other employees. Lastly, the grievant received disparate treatment when compared to other employees charged with alcohol or drug infractions.

ARBITRATOR'S OPINION:

The grievant was arrested and pleaded guilty to possession of cocaine in Texas. This acts as an admission of his guilt as the Texas court warned him.. His guilty plea was accepted as an admission of guilt by the Texas court and accepted at arbitration as an admission against interest. He was also found guilty of domestic violence involving drug use in Ohio for which he chose treatment in lieu of conviction. An employee may be removed for off-duty conduct if it affects his ability to effectively perform his job. The grievant is a Youth Leader who is entrusted with the care of , and acts as a role model for young girls who have broken the law and often have been involved with drugs. The grievant's off-duty conduct, while not known to the youths, was known to his co-workers and, as such, affected his ability to perform his job. His position, and ability to work with co-workers, thus provides a connection to the off-duty conduct.

The grievant was not prejudiced, nor was section 24.05 violated because the employer waited until the grievant's conviction in Texas, rather than disciplining him upon his arrest. Under Section 24.05 of the contract the 45 day limit is not applicable when the employer does not make a decision to discipline until the conclusion of criminal proceedings. Similarly, the grievant was not prejudiced because the employer did not inform him of an investigation of his off-duty conduct. The union failed to prove that there existed a practice to allow employees to enroll in an EAP instead of receiving discipline. Lastly, the union failed to prove that the grievant received disparate treatment. Employees have received suspensions for intoxication, however drug related offenses do not place the grievant in a similarly situated position.

AWARD:

The grievance was denied.

TEXT OF THE OPINION:

VOLUNTARY LABOR ARBITRATION

In the Matter of the Arbitration

-between-

**OHIO DEPARTMENT OF YOUTH SERVICES,
SCIOTO VILLAGE/RIVERVIEW COMPLEX,
DELAWARE, OHIO**

-and-

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

ARBITRATOR'S OPINION

GRIEVANT:
Luther L. Jones
#35-07 (07-30-91) 34-01-03

FOR THE STATE:
BRADLEY E. RAHR
Labor Relations Officer
Ohio Department of Youth Services
BYC/TCY/TICO
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FOR THE UNION:
ROBERT W. STEELE, Sr.
Dane Braddy
Staff Representatives
1680 Watermark Drive
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DATE OF THE HEARING:
November 26, 1991

PLACE OF THE HEARING:
State of Ohio, Office of
Collective Bargaining
65 E. State Street
Columbus, Ohio

ARBITRATOR:
HYMAN COHEN, Esq.
Impartial Arbitrator
Office and P. O. Address:
Post Office Box 22360
Beachwood, Ohio 44122
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*** * * ***

The hearing was held on November 26, 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 9:10 a.m. and was concluded at 4:40 p.m.

*** * * ***

On or about July 15, 1991 **JANE MACKEY**, Chief Steward of the **OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, Local 11, AFSCME, AFL-CIO**, the "**Union**", filed a Grievance with the **OHIO DEPARTMENT OF YOUTH SERVICES, SCIOTO VILLAGE/RIVERVIEW COMPLEX**, Delaware, Ohio, the "**State**", protesting the discharge of Luther L. Jones, effective July 12, 1991. The grievance was processed through the grievance procedure contained in the Agreement between the parties after which it was submitted to arbitration.

FACTUAL DISCUSSION

The Grievant was hired by the State as a Youth Leader. The State facility where the Grievant was employed is comprised of two (2) separate institutions. One institution houses adjudicated delinquents who are girls and the other institution houses adjudicated delinquent boys.

The Grievant's primary post was located at the Scioto Village Institution, which is a minimum security facility for girls ages 12 through 21. These girls have been adjudicated and committed by Ohio's county juvenile courts. The felonies that they have committed range from felonies 1 through 4. According, to Superintendent Gwen Shealey, the offenses vary "from homicide to escape."

Before considering the events which led to the Grievant's discharge on July 11, 1991 the Grievant went on approved disability leave in early July 1990. He was expected to return to work on or about October 21, 1990. Shortly after October 11, 1990, Yvette M. McGhee, the General Counsel of the Department, was contacted by Deputy Director Marilee Chinnici-Zuercher who told her that she was advised by the State Highway Patrol that on October 10, 1990 the Grievant was arrested in Texas for possession of a controlled substance (cocaine).

According to McGhee, Chinnici-Zuercher asked her for advice concerning the Grievant's employment status at Scioto Village. They discussed placing the Grievant on administrative leave until there was a disposition of the criminal charge against the Grievant. However, McGhee advised that it was not in the best interest of the State to place the Grievant on paid leave since there might be a delay of six (6) to eighteen (18) months before a decision on the Grievant is reached by the court. McGhee also impressed upon Chinnici- Zuercher, that the Grievant is presumed to be innocent until proven guilty. Until such proof is presented or guilt is admitted, she advised Chinnici-Zuercher that no action should be taken against the Grievant.

Chinnici-Zuercher discussed the Grievant's situation with Shealey. When Shealey learned of the Grievant's arrest in Texas, she sent a letter to the "disability unit" questioning his disability leave status, because he was on the payroll while he was in Texas. There was no additional evidence presented at the hearing on this matter. The Grievant was able to extend his disability leave until December 25,1990 when he returned to work.

On June 17, 1991, the Grievant entered a plea of guilty in the District Court of Panola County, Texas to the criminal offense of "Possession of a Controlled Substance" which is a second degree felony. As a result he received a "4 year unadjudicated probation" and was required to pay a $2,000 fine. On July 11, 1991 Superintendent Shealey sent a "letter of removal/failure of good behavior" to the Grievant, which stated as follows:

"On or about June 17, 1991, you pleaded guilty to possession of a controlled substance.

Your actions constitute Failure of Good Behavior in violation of Section 124.34 of the Ohio Revised Code, Rule #46, and Department of Youth Services Directive B-19, Work Rule #5.

As a result of your actions, you are hereby Removed from your position of a Youth Leader effective July

12, 1991.

A copy of this letter will be placed in your personnel file.* *"

In light of this overview of events, the instant grievance was filed with the State.

DISCUSSION

The parties agreed that the following issue is to be resolved by this arbitration: "Was the Grievant, Luther L. Jones removed for just cause, if not, what shall the remedy be?'

ORDER DEFERRING ADJUDICATION

A threshold issue is raised at the outset of this discussion which concerns the nature of the guilty plea by the Grievant in the Texas Court. The Grievant said that he was not convicted. He went on to state that his lawyer in Texas said to him that entering a plea of guilty is simply "a plea"--there "was no adjudication and the charges were dismissed".

Thus the starting point of the inquiry is the Order Deferring Adjudication which was issued on June 17, 1991 from the 123rd District Court of Panola County, Texas. The Order indicates that the Grievant entered a plea of guilty to the offense of "Possession of a Controlled Substance". After the State's Attorney read the indictment or information charging the Grievant with the offense, the Grievant elected to enter his plea of guilty. The Order indicates that the Grievant was warned about "the consequences" of his plea and the Defendant [the Grievant] persisted in entering said plea. According to the Order the Grievant, in writing, waived the presentation of his case, and the trial proceeded before the Court. After evidence was submitted and the State's Attorney presented argument, the Order provides that:

"* * the Court found that such evidence substantiates the Defendant's guilt in this cause and further found that the best interests of society and the Defendant would be served by placing the Defendant on probation and by "DEFERRING PROCEEDINGS WITHOUT ENTERING AN ADJUDICATION OF GUILTY IN THE CAUSE."

The terms of the Order Deferring Adjudication indicates that the punishment assessed is "4 yrs., unadjudicated probation and a $2,000 fine." At the time that the Grievant entered his plea, he was represented by Eric McPherson, an attorney licensed to practice law in the State of Texas.

Based upon the terms of the Order, by entering a plea of guilty, the Grievant admits to having committed the offense of "Possession of a Controlled Substance," which is a second degree felony in Texas. Furthermore, the Order indicates the failure of the Grievant to contest anything that the State of Texas has brought up against him. Since it is a most serious step for the Grievant to take the Order indicates that the Grievant "was admonished by the Court of the consequences of the said plea, and the Defendant persisted in entering said plea; and it plainly appearing to the Court that the Defendant was sane and that he was uninfluenced by any consideration of fear or persuasion of delusive hope of pardon prompting him to confess his guilt, the said plea was accepted by the Court * *." [Emphasis added]. This passage from the Order indicates the safeguards that were satisfied in order for the Court to accept the Grievant's plea of guilty. However, as Rick Wilkinson, Chief Adult Probation Officer stated in his letter dated November 21, 1991 to Brad Rahr, the State's Advocate, even though the Court found the evidence substantiated a finding of guilt, the Court also found that it would be in the best interest of society and the Grievant to place him on probation and to defer proceedings without entering an adjudication of guilt. It is true that the Grievant was not convicted of the offense of Possession of Controlled Substance which was cocaine. Moreover, if he successfully completes probation, the indictment will be dismissed. It must be underscored that the Order sets forth the "punishment" of "4 yrs. unadjudicated probation and a $2,000 fine". The Grievant's placement on probation is valid only so long as he complies with its terms. Clearly, the Grievant's plea of guilty constitutes a confession of guilt to the criminal offense of "Possession of a Controlled Substance" which is considered to be a felony under Texas law. I have attributed great weight to the Grievant's plea of guilty.

Indeed, the Grievant's confession of guilt, is an admission against interest.

OFF DUTY CONDUCT

Clearly, “[t]he right of management to discharge an employee for conduct away from the plant depends upon the effect of that conduct upon plant operations.” Elkouri and Elkouri, *How Arbitration Works,* Fourth Edition, (BNA, 1985) at pages 656-657. In explaining this nexus, in *Inland Container Corp.,* 28 LA 312 (Ferguson, 1957) the Arbitrator stated:

“The connection between the facts which occur and the extent to which the business is affected must be reasonable and discernible. They must be such as could logically be expected to cause some result in the employer's affairs. Each case must be measured on its own merits.” At page 314

After carefully evaluating the evidentiary record, I have concluded that there is a connection between the Grievant's plea of guilty in Texas and the mission of the Agency which is “reasonable and discernable". Moreover, the Grievant's plea of guilty to the offense of possession of a controlled substance, namely, cocaine, bears substantial relationship to his job duties. In considering the merits of the instant case the mission of the State agency is relevant to the central query raised by the instant dispute. In pertinent part, the mission statement of the Agency requires it to provide “Safe secure, humane and industrious environments in each of its institutions and is committed to the delivery of appropriate medical, educational, psychological, vocation, employment readiness and counseling services based on the needs of its adjudicated delinquents.” The Agency's “primary mission is the confinement of the high-risk, violent, serious juvenile offender in secure facilities for public safety and offender rehabilitation.”

Special recognition must be given to the Youth Leader's work. As a Youth Leader, the Grievant provides for the security and control of the felony offenders and sees to it that the offenders are in their assigned locations throughout the day. The Youth Leader provides for clothing, shelter, food and as necessary, the additional needs of the adjudicated delinquents. Furthermore, the Youth Leader provides supervision around the clock, seven (7) days a week.

As Shealey indicated, the Youth Leader serves as a role model to the felony offenders. Shealey estimated that “about 85% of the 156 female felony offenders who have been adjudicated and committed by Ohio's County juvenile courts to Scioto Village where the Grievant performed his job duties, “have problems with drugs". There is a residential treatment program on drugs at the State's facility. In addition every juvenile offender is required to attend a 40 hour “drug education program.”

It should be underscored that the felony offenders at Scioto are 12 to 21 years of age. They are young and highly impressionable. The interest of the State is particularly great in setting forth the image of employing law abiding personnel. By pleading guilty to the Texas second degree felony of Possession of a Controlled Substance, namely cocaine, in an amount less than 28 grams the Grievant committed an act incompatible with his employment as a Youth Leader, especially given the nature of the offense and the pervasive drug or drug related problems of the juvenile offenders. As a Youth Leader, the Grievant was given a high degree of responsibility and trust. The Grievant's criminal conduct in Texas involving Possession of Cocaine renders the Grievant particularly unsuited for the job of Youth Leader. This conclusion is reinforced, by a judgment entry of the Court of Common Pleas of Marion County, Ohio on June 11, 1991. According to the Grievant he was charged with domestic violence. However, upon his request, the Grievant received treatment in lieu of conviction. Pursuant to the Court Order, the Grievant was ordered to serve a period of rehabilitation of one (1) year and he was placed under the control and supervision of the County Probation Department. It should be underscored that the Grievant entered a plea of guilty to the charge of Drug Abuse which is a felony of the fourth degree in Ohio. Pursuant to the Court Order, in relevant part, the Grievant was required to comply with the following terms:

“* * 15. You shall not use or possess illegal drugs. You may be required by the Probation Department to submit to urinalysis and/or blood test to test for the presence of illegal drugs in your system.

16. You shall enter a treatment facility approved by the Probation Department for drug/alcohol evaluation and treatment. You shall remain in the treatment program prescribed by the treatment facility as long as the treatment facility determines this to be necessary. You shall sign any releases or other forms which are necessary to authorize the Probation Department to obtain information and records regarding your evaluation and treatment.

17. You shall also abide by the terms of probation of Marion County.

18. You shall attend the Prison Awareness Program at the Marion Correctional Institution at the direction of the Probation Department.

19. If you violate any of the terms of your probation, you may be sent to prison, and your sentence may be increased * *."

At the hearing, the Grievant indicated that he continued to be on probation "at this point in time." He further testified that he satisfied the urine screens and he has completed a drug rehabilitation program.

It is of great weight that despite his arrest in Texas on October 10, 1990, for cocaine possession, the Grievant continued to use drugs which he indicated led to criminal charges in Ohio of domestic violence. Given the youthful offenders that would be under his charge, I find that the Agency would be placed at great risk should he be reinstated to the position of Youth Leader. I am mindful of the Mission Statement for the Agency which contains principles of vital importance to the State of Ohio in dealing with a highly vulnerable constituency, the youthful offenders who have been adjudicated and committed by the Ohio County juvenile courts. The Grievant's guilty pleas to the second degree felony in Texas of Possession of Controlled Substance and the fourth degree felony in Ohio of drug abuse outweighs the personal benefit to the Grievant, were he reinstated. The Grievant admitted to a "court order to take a urine screen" for a "domestic violence" charge in Ohio after he tested positive for cocaine use. In light of the risks which to the Grievant's family were caused by the use of drugs, the risks are greater given the special nature of the Grievant's job duties concerning his supervision and responsibility over a highly vulnerable troubled constituency such as female felony offenders twelve (12) through twenty-one (21) years of age.

The Union indicates that the felony offenders do not know of the Grievant's guilty pleas in Texas and Ohio. However, the Grievant was AWOL on April 23,1991. Upon his returning to Scioto Village the following day, the Grievant indicated that there were "rumors" among his co-workers that he was arrested on charges of assault, carrying a concealed weapon, drug use and burglary. He admitted that since his co-workers "were worried," they talked "about it" to Supervisors Gerald Jenkins and Patrick J. McLaughlin. According to the Grievant he said that he informed them of the "domestic violence case" which was the only case that [he] was involved in". It should be noted that the Common Pleas Court of Marion County, Ohio order does not refer to a charge of "domestic violence." It sets forth the Grievant's guilty plea to the charge of Drug Abuse, which is a felony of the fourth degree under Ohio law. In any event, although the youthful offenders may not have known of the Grievant's guilty pleas in Texas and Ohio to criminal conduct involving possession of and abuse of drugs, the Grievant's co-workers were "worried about" the "rumors" that they heard among which included a drug charge against him. It is enough to state, that in light of the Grievant's job duties, I do not find it of great weight that the adjudicated delinquents, who are described in the Agency's Mission Statement as "high-risk violent, serious juvenile offenders" did not know of the Grievant's guilty pleas to second and fourth degree felonies involving the possession of and abuse of drugs in Texas and Ohio, respectively.

DECEMBER 26, 1990 to JULY 11, 1991

The Union indicates that the State received notice of the Grievant's arrest in Texas on October 12, 1990. However, it was not until July 11, 1991 that the State discharged the Grievant. The Union points out that the State permitted the Grievant to work as a Youth Leader at Scioto Village for roughly ten (10) months before

terminating him. The delay by the State between his arrest and discharge “exceeded all boundaries of reasonableness” according to the Union. In pertinent part, Article 24.05 of the Agreement provides as follows:

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

The language of Article 24.05 indicates that the parties intended that a final decision on recommended disciplinary action is to be made no later than forty-five (45) days after the conclusion of the pre-discipline meeting. However, this requirement is not applicable in criminal cases where the State decides not to make a decision on the discipline until after disposition of the criminal charges. Thus, Article 24.05 recognizes that the disposition of criminal charges might weigh heavily in determining the discipline to be issued by the State. Moreover, Article 24.05 recognizes that the issuance of discipline after the disposition of the criminal charges is supported by valid considerations. For example, on the one hand, a delay in imposing discipline is useful to the Grievant who may invoke the fifth amendment where the conduct in question results in both the proposed discipline and the criminal charges. On the other hand, the presumption of innocence will stay the imposition of discipline by the State until the disposition of the criminal charges.

Accordingly, although the State was aware of the arrest of the Grievant in Texas in October, 1990, it permitted him to be employed as a Youth Leader because of the presumption that the Grievant was innocent. When the State was informed of the Grievant's plea of guilty on or about June 17, 1991, the State took the action of discharge. I find that the State did not violate any provision of the Agreement in terminating the Grievant roughly ten (10) months after being informed that he had been arrested in Texas.

A collateral issue has been raised by the Union concerning the period of time that the State was informed of the Grievant's arrest and his plea of guilty to the second degree felony in Texas of Possession of a Controlled Substance. The Union points out that between December 25, 1990 when the Grievant returned from disability leave to July 11, 1991, he performed his duties as a Youth Leader in a satisfactory manner. It should be noted that there was no proof offered that the Grievant ever reported for work under the influence of drugs.

The discharge of the Grievant is based upon his off-duty conduct. He was not discharged because of his arrest in Texas; rather it was due to his plea of guilty to a second degree felony in Texas on June 19. I have previously determined that there is a direct relationship between the Grievant's off-duty conduct, namely his guilty plea in the Texas Court on June 17, 1991 and his employment as a Youth Leader.

Although the Grievant performed his duties in a satisfactory manner between December 25, 1990 and July 11, 1991 when he was terminated the Grievant was AWOL on April 23 because of what he characterized as a “charge of domestic violence,” which stemmed from Drug Abuse.

Another issue related to the period of time between December 25, 1990 and July 11, 1991 when the Grievant worked as a Youth Leader arises from the Union's claim that he was not placed on notice that he was being "investigated” by the State due to his arrest in Texas, and that the investigation would lead to termination.

Based upon the evidentiary record, I cannot conclude that the Grievant was prejudiced because the State did not inform him that it was aware of his arrest in Texas. There was no “investigation” by the State; the State was waiting for the outcome of the criminal proceeding against the Grievant. There is no evidence in the record to indicate that when the State was informed of the Grievant's arrest on October 11, 1990, he would have acted differently. I find that the Grievant was not adversely affected by the State's failure to notify him that it was aware of his arrest in Texas in October, 1990.

Furthermore, there was a dispute over whether the Grievant disclosed to Jenkins and McClaughlin that he had been arrested in Texas. Contrary to the Grievant's testimony, both Jenkins and McClaughlin denied that his arrest in Texas was discussed on December 26,1990 and April 24, 1991. The Grievant's testimony

was supported by Chief Steward Jane Mackey. I find the evidence concerning this aspect of the dispute between the parties is not relevant. Whether or not the Grievant's supervisors knew or discussed the Grievant's arrest in Texas on December 26,1990, or in April, 1991 is of no relevance to the major issues in this case. Whether the supervisors knew or discussed with the Grievant his arrest in Texas, did not adversely affect his rights.

EAP

Mackey indicated on direct examination that there was a “practice” for the State to permit employees to participate in an Employee Assistance Program (EAP) in lieu of discipline. Her testimony, in support of the “practice" referred to an employee who “recently" went through the program. She said that he was “off for two (2) weeks” and is “back to work". Mackey then referred to a Youth Leader who was offered the opportunity to participate in the EAP because of an alcohol related offense. On cross-examination Mackey indicated that she was unaware of the offense committed by “Geneva Smith", and that she did no recall whether “Gasmeir” was given EAP in lieu of discipline.

Based upon Mackey's testimony, I cannot conclude that there was a "practice” of permitting employees to participate in EAP in lieu of discipline. I found her testimony vague on detail and inadequate to support a "practice". Furthermore, under Article 24.08 of the Agreement "disciplinary actions may be delayed until completion of the program.” Whether disciplinary action is to be delayed until the program is completed is within the State's discretion according to Article 24.08. The evidentiary record warrants the conclusion that the State did not violate the Agreement by not offering the Grievant the option of participating in an EAP.

DISPARATE TREATMENT

Chip Jones, a bargaining unit employee was transferred from Buckeye Youth Center to Scioto Village in July, 1991. Jones is employed “on the" RT Unit” which was characterized as a “substance abuse unit.” According to Mackey, Jones was “charged” with being "intoxicated on the job and was suspended for fifteen (15) days. She added that it was not the first time that Jones has been “charged” with intoxication. Mackey said that although Jones was offered the opportunity to participate in EAP, she did not know whether he was offered the EAP “in lieu of discipline".

The Union contends that the State treated the Grievant in a disparate manner since Jones was suspended for fifteen (15) days for intoxication on the job while the Grievant was discharged. The episode involving Jones is not similar to the facts of the instant case. Intoxication is not considered as socially reprehensible as the use of drugs. Indeed, Jones’ offense does no constitute a felony; however, the Grievant entered a plea of guilty to the second degree felony of Possession of a Controlled Substance in the Texas Court. The designation of an offense as a felony by the State of Texas indicates an offense of considerable gravity. Also, it cannot be ignored that the Grievant entered a plea of guilty to Drug Abuse, a felony in the fourth degree, in the Ohio Court in May, 1991 which was a month before he entered his guilty plea in Texas. Since the offense by Jones of being under the influence of alcohol is factually different than the offense committed by the Grievant, the State has not treated them in a disparate manner.

CONCLUSION

As of November 18, 1991, the Adult Probation Officer of Panola and Shelby Counties in Texas indicated in writing that “to our knowledge", the Grievant has abided by the terms of his probation satisfactorily.” Parenthetically, the Grievant's probation is for a period of four (4) year from June 17, 1991. In addition, as of November 20, 1991, the Probation Officer of Marion County Adult Probation Department indicated in writing that the Grievant has submitted to random drug screens for various drugs which have resulted in negative results. The Probation Officer also stated that he had received a letter on November 18, 1991 from the Grievant's counselor which indicated that "he felt” that the Grievant has successfully completed outpatient evaluation and urinalysis” required by the drug rehabilitation program in which he had participated.

Moreover, it was further noted that the Grievant has not violated any of the terms of his “Treatment in Lieu” of Probation which began on June 11, 1991. Since his discharge on July 11, 1991, the Grievant has been involved on a voluntary basis in various community programs for youth. Moreover, the Grievant has satisfactorily performed his duties as a Youth Leader at Scioto Village.

Despite these considerations, the Grievant had a brief tenure as a Youth Leader. He had been hired on January 16, 1990 and was removed from his position some eighteen (18) months later, on July 11, 1991. During this brief period of time, the Grievant was on approved disability leave from July 1990 to December 26, 1990. Thus, the Grievant actually performed his job duties as a Youth Leader in a satisfactory manner for approximately thirteen (13) months. The Grievant's brief tenure with the Agency and the short period of time that he actually performed his job duties as a Youth Leader has been given great weight in determining that the State's decision of removal should be sustained.

Moreover, the very nature of the Grievant's job which includes supervision over adjudicated delinquent females, ages 12 through 21, the majority of whom have drug or drug related problems renders the Grievant particularly unsuitable as a Youth Leader at Scioto Village. The Grievant's plea of guilty to a second degree felony in Texas constitutes a reflection upon the integrity of the Agency and its ability to maintain the respect of the community which is an important factor in the successful completion of its mission in meeting the critical needs of adjudicated female delinquents.

By entering a plea of guilty to a felony in the second degree of Possession of a Controlled Substance, namely, cocaine, “in an amount less than 28 grams”, the Grievant violated the moral code which is contained in the criminal law of Texas. As a result the Grievant has committed the offense of "immoral conduct" which is set forth in Rules 5 and 46 of Chapter B-19 of the State's General Work Rules. Under Rule 46 of the General Work Rules, the Grievant's guilty plea in Texas constitutes “immoral conduct” and a “failure of good behavior.”

The State proved by clear and convincing evidence that the Grievant was removed for just cause.

AWARD

In light of the aforementioned considerations, the State proved by clear and convincing evidence that the Grievant was removed for just cause.

The grievance is denied.

Dated: January 2,1992
Cuyahoga County
Cleveland, Ohio

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