

**ARBITRATION DECISION NO.:**

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**UNION:**

OCSEA, Local 11, AFSCME, AFL-CIO

**EMPLOYER:**

Ohio Department of Rehabilitation and Correction

**DATE OF ARBITRATION:**

December 8, 1997

**DATE OF DECISION:**

February 12, 1998

**GRIEVANT:**

Regina Harris

**OCB GRIEVANCE NO.:**

27 03 (97 02 18) 0690 01 03

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**ARBITRATOR:**

David Pincus

**FOR THE UNION:**

David Justice, Advocate

Jim Mustard, Steward

**FOR THE EMPLOYER:**

Gabriel J. Jiran, Advocate

Lou Kitchen, Second Chair

**KEY WORDS:**

Correction Officer

Progressive Discipline

Removal

Unauthorized Relationship With an Inmate

**ARTICLES:**

Article – 24 Discipline

§24.01 - Standard

§24.02 – Progressive Discipline

**FACTS:**

The grievant had been employed as a Correction Officer (CO) for five years at the time of her removal. In December, 1996, an inmate at Ross Correctional Institution (RCI) informed the grievant's supervisor that the grievant had given greeting cards to him and another inmate. The inmate also accused the grievant of passing items between another inmate and another CO.

The Employer inspected the cell of the inmate who made the claim. Several cards, letters, and notes were confiscated; a necklace that had a ring attached was also confiscated. When asked, the inmate stated that he had not received the items from the grievant, but that the grievant had delivered the items to him. The inmate did state that the grievant had given him a Christmas card, and had signed the card as "Messenger." The Employer interviewed the other CO, and she admitted that she had sent the inmate cards and jewelry via the grievant. The CO also stated that the grievant had given her poems and notes authored by the inmate for about one month. As a result, the grievant was removed and this grievance was filed.

### **EMPLOYER'S POSITION:**

The Employer argued that it had just cause to remove the grievant. That the actions in question were a violation of Agency Rules. She received training regarding the dangers surrounding inmate/employee relationships, and the grievant signed a copy of the Standards of Employee Conduct. The nature of the grievant's misconduct did not warrant any progressive discipline. If returned to work, the grievant would not be able to perform her duties because inmates would use her prior misbehavior to harass her. Her own co workers would be wary of working with her because their own safety and health could be placed in jeopardy.

The available evidence supported the removal. She admitted to aiding and abetting an unauthorized, relationship between an inmate and another CO. She also gave an inmate a Christmas card which she herself had signed, as "Messenger." The grievant admitted that she wrote and delivered a Christmas card to an inmate because he had provided her with religious materials which she read while at her post.

### **UNION'S POSITION:**

The Union argued that the Employer did not have just cause to remove the grievant. The Union argued that the Employer "stacked" the charges against the grievant in order to justify her removal.

The Union also claimed that removal was inappropriate in this case. The grievant's prior disciplinary history, work record, and cooperation during the investigation should have triggered some lesser form of discipline. The, grievant did not plot or plan any of the misconduct reflected in the record. Rather, she found herself in the middle of a relationship. The grievant attempted to handle the situation on her own by telling the other participants she would no longer be involved.

### **ARBITRATOR'S POSITION:**

The Arbitrator held that the Employer had Just cause to remove the grievant. The due process violations proposed by the Union were not supported by the record. Submitted proofs, including the grievant's own admissions, supported the removal order. The record supported the conclusion that the grievant acted as an intermediary on several occasions. The Arbitrator did not view her as a mere bystander who was somehow oblivious to the relationship. She played an ongoing role which aided and abetted a clearly unauthorized relationship. This was a clear violation of Work Rule 46(g) which could have compromised or impaired her ability to carry out her duties as a CO.

The Arbitrator found the most egregious part. of the entire episode to be the grievant's delivery of a parcel to an inmate. The grievant attempted to modify the perceptions surrounding, the incident by stating that she followed the instructions of another CO, and did not look in the bag. She merely left the bag on her desk and the inmate picked it up later. The grievant's failure to look in the bag was not a legitimate defense. The grievant should not have delivered the bag, regardless of the contents.

The grievant's predilection toward this type of misconduct was further Supported by her involvement with another inmate. The grievant violated Work Rule 45(a) when she gave him a Christmas card in return for religious materials. This action further supports the notion that she disregarded the risks placed on herself and her co workers through relationships like this. The number of times that she abetted the previously mentioned relationship raised a strong inference that she was the messenger on one of the cards the Employer found in an inmate's cell.

The grievant acknowledged that she was placed on notice and knew the severe consequences associated with the misconduct in question Yet, she violated Rule 25 by failing to immediately report the unauthorized relationship once it came to her attention She attempted to thwart the relationship and her involvement by telling the participants that they "were putting me in the middle of everything," and that she wasn't going to do it anymore. The grievant understood the implications attached to her actions. By the time she wished to end her involvement in the relationship, it was too late.

The Arbitrator also found that the Employer had not stacked charges against the grievant. The number of violations contained in the removal order merely reflected the offenses within a web of related acts of misconduct. The violations did not represent a situation where progressively more severe penalties were administered for a particular act of misconduct.

**AWARD:**

The Arbitrator denied the grievance, and as a result, upheld the removal.

**TEXT OF THE OPIONION:**

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The State of Ohio and Ohio Civil  
Service Employees Voluntary Labor  
Arbitration Proceeding

In the Matter of the Arbitration Between:

The State of Ohio, Department of Rehabilitation and Correction

and

Ohio Civil Service Employees Association,  
Local 11, AFSCME, AFL CIO

Grievant: Regina Harris  
Grievance No.: 27 03 970218 0690 01 03 TX

Arbitrator's Opinion and Award  
Arbitrator: David M. Pincus  
Date: February 12, 1998

APPEARANCES

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For The Employer

Gary Mohr	Warden
Michael A. Lansing	Lieutenant
John R. Branham	Investigator
Barb Denton	Observer
Lou Kitchen	Second Chair
Gabriel J. Jiran	Advocate

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For The Union

Regina Harris	Grievant
Jim Mustard	Stewart
David Justice	Advocate

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Introduction

This is a proceeding under Article 25 entitled Grievance Procedure, Section 25.03 Arbitration Procedures, Section 25.04 Arbitration/Mediation Panels of the Agreement between The State of Ohio, The Department of Rehabilitation and Correction, hereinafter referred to as the "Employer," and Ohio Civil Service Employees Association, AFSCME, Local 11, hereinafter referred to as the "Union." for the period March 1, 1997 February 29, 2000 (Joint Exhibit 1). The arbitration hearing was held on December 8, 1997. The parties had selected David M. Pincus as the Arbitrator.

At the hearing, the parties were given the opportunity to present their respective positions on the grievance, to offer evidence, to present witnesses and to cross examine witnesses. At the conclusion of the hearing, the parties were asked by the Arbitrator if they planned to submit post hearing briefs. The parties did not desire to submit briefs.

Stipulated Issue

Was the Grievant removed for just cause? If not, what shall the remedy be?

Stipulated Facts

1. The removal order contained violation of Rule(s) #1, 7, 25, 37, 38, 45a, 46a, and 46g of the Standards of Employee Conduct.

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2. As a consequence of a Step 3 Hearing Officer Response, the Employer and the Union concurred that the following Rules would apply to this particular removal: #7, 25, 88, 46a and 46g.

Pertinent Contract Provisions

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. In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have authority to modify the termination of an employee committing such abuse. Abuse cases which are processed through the Arbitration step of Article 25 shall be heard by an arbitrator selected from the separate panel of abuse case arbitrators established pursuant to Section 25.04. Employees of the Lottery Commission shall be governed by O.R.C. Section 3770.02(1).

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 reprimand(s) (with appropriate notation in employee's file);
- B. one or more written reprimand(s);
- C. a fine in an amount not to exceed two (2) days pay for discipline related to attendance only; to be implemented only after approval from OCB;
- D. one or more day(s) suspension(s);
- E. termination.                                       \*\*3\*\*

Disciplinary action taken may not be referred to in an employee's performance evaluation record. The event or action giving rise to the disciplinary action may be referred to in a performance evaluation report without indicating the fact that disciplinary action was taken. Disciplinary action shall be initiated as soon as reasonably possible consistent with the requirements of the other provisions of the Article. An arbitrator deciding a discipline grievance, must consider the timeliness of the Employer's decision to begin the disciplinary process.

The deduction of fines from an employee's wages shall not require the employee's authorization for withholding of fines.

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(Joint Exhibit 1, Pgs. 81 82)

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Case History

Regina Harris, the Grievant, has been employed by the State of Ohio for five years at the time of the removal. She worked as a Correction Officer throughout this time period.

On December 26, 1996, Lieutenant M. Lansing conversed with an inmate Harvel. Inmate Harvel informed him that the Grievant had given cards to himself and an Inmate Imler. Inmate Harvel also accused the Grievant of passing items between inmate Imler and Correctional Officer Natalie Hutchinson.

Inmate Harvel provided the card he alleged the Grievant had mailed into the facility. The card contained the following message:

Harvel may your Christmas be the merriest, your new year the happiest!  
I appreciate the biblical material you let me read and even the material  
I kept. You are a (sic) good friend good luck in life.

(Joint Exhibit 8, Attachment #9)

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On December 26, 1996, Inmate Brian Imler's cell was shaken down. Several cards, letters, and notes were confiscated from the cell. Lieutenant Lansing also asked Inmate Imler to remove a silver necklace which had a ring attached. Further interrogation indicated that he had received the card, ring, and necklace from Correctional Officer Natalie Hutchinson. He stated, however, that these items were personally delivered by the Grievant. The card from Hutchinson contained the following message:

. . . can't bear it when we're apart!

Love Ya

The ring means a lot to me and so do ytu. Please take care of yourself and the ring. I'm giving it to you so you don't forget that I'll always be here for you! I can't wait till we see each other again. You are such a sweetheart! I have the picture you gave me. As soon as I looked at it, I couldn't stop smiling. I hope and pray you do get out. When you do get out, we are going to have some fun.

I never stop thinking about you. Don't forget that I will always be here for you and also

I LOVE YOU!

TAKE CARE!

(Joint Exhibit 8)

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Inmate Imler also accused the Grievant of giving him a Christmas card. This specially created card said Best Wishes, Messenger. (Joint Exhibit 8).

In the evening of December 26, 1996, John R. Branham, Institute Investigator, interviewed Correctional Officer Natalie Hutchinson. She admitted that she was the author of the previously mentioned card, sent him the card, ring, and silver necklace, (Joint Exhibit 8) via the Grievant. Officer Hutchinson also stated that the Grievant

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had given her poems and notes authored by Inmate Imler for approximately one month.

On January 15, 1997, the Grievant was removed from office. The Notice of Disciplinary Action contained the following relevant particulars:

You are to be removed for the following infractions:

You admit to giving Inmate Harvel #209 131 a card which read " Harvel may your Christmas be the merriest, your new year the happiest! I appreciate the biblical material you let me read and even the material I kept. You are a good friend good luck in life."

Furthermore, you admit to taking a bag,with items in it to Inmate Imler #235 860 from Natalie Hutchinson. You admit to Inmate Imler talking to you about crushes he had on employees of this facility, which you failed to report to your supervisor.

You admit to reading various material during your scheduled work time. Although you state that you realize that this is against the rules of this institution.

Your actions constitute a violation of rules 1, 7, 25, 37, 38, 46a, 46a, and 46g of the Employee Standards of Conduct. Accordingly, I am removing you from your position with the Chillicothe Correctional Institution.

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(Joint Exhibit 2)

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On February 7, 1997, the Grievant formally tested her removal. The Grievance contained the following Statement of Facts:

Sir, the investigatory interview tape and transcript is badly broken up you can't fully identify the questions and answers. Officer Harris admits from the beginning she gave an inmate a Christmas card, but is not guilty of any other conduct rules.

Neither party raised substantive nor procedural arbitrability concerns. As such, the grievance is properly before the Arbitrator.

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## THE MERITS OF THE CASE

### The Employer's Position

The Employer opined that it had just cause to remove the Grievant. It argued no due process violations were committed in the imposition of discipline. The record more than adequately supports the determination surrounding the disputed matter.

The removal order does not disclose any attempt to "stack' the charges and the related offenses. Each penalty is well linked with the record used in support of the imposed removal.

The Grievant was placed on clear and unambiguous notice that the actions in question were clearly a violation of the Standards of Employee Conduct. She received training regarding the dangers surrounding inmate/employee relationships, and signed a copy of the Standards of Employee Conduct. The Standards.

and related training, provide clear warnings of the negative consequences associated with this type of misbehavior.

The nature of this misconduct fails to warrant any form of progressive discipline. If returned to work, the Grievant would be hard pressed to perform her duties as inmates could use her prior misbehavior as leverage or harassment. Her own co workers could be wary of her conduct because their safety and health could be placed in jeopardy.

The conduct which placed the Grievant in harms way was viewed as quite abhorrent and unsusceptible to corrective action. It took place on more than one occasion, evidenced deception and egregious poor judgement. The potential for harm,

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in terms of safety and security, was quite substantial if the matter had not come to the Employer's attention. Inmates could have used the available information to manipulate the Grievant. She could have been forced to provide additional favors, involving items of a more serious nature; and blackmailed to do so under the threat of disclosure.

The Grievant's own admissions and other testimony and evidence support the removal order. She acted as a "messenger" between Inmate Imler and Officer Hutchinson, which caused her to aid and abet an unauthorized relationship. She acknowledged that she delivered a bag to inmate Imler. A bag later discovered as containing a card and a ring. The Grievant also admitted that on another occasion she had delivered a necklace and a note. The Grievant, moreover, acknowledged she had taken a note from Inmate Imler which she delivered to Officer Hutchinson.

These various transactions, notwithstanding the Grievant's denials, raise a strong inference that the Grievant did send Inmate Imler a Christmas card. The card readily acknowledges the critical role played by the Grievant as the "messenger."

The Grievant not only engaged in serious transgressions dealing with Inmate Imler and Officer Hutchinson, but also engaged in misconduct in her dealings with Inmate Harvel. The Grievant admitted she had authored and delivered a Christmas card because he provided her with religious material which she read at her post. Her message, moreover, contained a representation of "friendship." This exchange provided an independent justification in support of the imposed removal decision.

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### The Union's Position

The Union posited that the Employer did not have just cause to remove the Grievant. Several due process issues were raised, as well as the propriety of the imposed penalty.

The Union argued that the Employer "stacked" the charges against the Grievant. It intentionally engaged in this activity to justify her removal.



Removal was inappropriate in this instance. The Grievant's prior disciplinary history, work record and cooperation during the investigatory phase of the process should have triggered some form of corrective action. She did not plot or plan any of the misconduct reflected in the record. Rather, the Grievant found herself in the middle of a relationship; which she "tried to handle on her own" by telling the other participants she would no longer be involved.

### The Arbitrator's Opinion And Award

From the evidence and testimony introduced at the hearing, a complete review of the record including pertinent contract provisions, it is this Arbitrator's opinion that the Employer had just cause to remove the Grievant. The due process violations proposed by the Union were not supported by the record. Submitted proofs, including the Grievant's own admissions, support the removal decision.

The record supports the conclusion that the Grievant acted as an intermediary on several admitted occasions. As such, I do not view her as a mere bystander who somehow got duped by Inmate Imler and Officer Hutchinson. She played a critical ongoing role which aided and abetted a clearly unauthorized relationship. A clear

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violation of Rule 46(g), which could have compromised or impaired her ability to carry out her duties which violates Rule 38.

Probably the most egregious portion of this entire episode is the delivery of a parcel to Inmate Imler. The Grievant attempted to modify the perceptions surrounding the incident by stating she followed Officer Hutchinson's instructions and did not look in the bag. She merely left it on her desk and Inmate Imler picked the bag up during the course of the shift. Failure to look inside the bag does not serve as a legitimate defense. The bag should not have been delivered regardless of the contents. That bag could have contained any known contraband up to and including weapons.

The Grievant's predilection toward this type of misconduct is further supported by her involvement with Inmate Harvel. Her actions violated Rule 45(a) when she admittedly gave him a Christmas card in exchange for religious material he left at her disposal. This action further supports the notion that she disregarded the risks placed on herself and her co workers by these types of relationships.

The frequent number of times she abetted the previously mentioned relationship raises a strong inference that she, indeed, was the "messenger" on the card found in Inmate Imler's cell. The record, and the Grievant's admissions, indicate the bag incident was not an independent incident. Cards, notes and poems seemed to freely flow between Officer Hutchinson and Inmate Imler. None of this activity could have taken place without the Grievant's involvement.

The Grievant acknowledged she was previously placed on notice and knew of the severe consequences associated with the misconduct in question. Yet, she

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violated Rule 25 by failing to immediately report the unauthorized relationship once it came to her attention.

She attempted to thwart the relationship and her involvement by telling the participants that they "(were) putting me in the middle of everything, back off, (she) wasn't going to do it anymore." The Grievant clearly understood the implications attached to her actions. By the time she wished to extricate herself from the devious triangle, it was too late. Still, she failed to notify the Employer even after the most recent episode.

The previous review of the various proven allegations clearly establishes that "stacking" of offenses was not realized in this instance. The number of violations contained in the removal order merely reflect offenses nested within an intricate web of related acts of misconduct. They do not represent a situation where multiple progressively more severe penalties are administered for a particular act of misconduct.

Award

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Grievance Denied

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February 12, 1998

Date

Moreland Hills, Ohio

Arbitrator

Dr. David M. Pincus

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