

CONTRACTUAL GRIEVANCE PROCEEDINGS  
STIPULATED AWARD

In The Matter of Arbitration  
Between:

THE STATE OF OHIO  
Department of Mental Health  
Cleveland Psychiatric Institute

-and-

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION  
OSCEA/AFSCME, AFL-CIO  
State Unit No. 4, Local Union 11

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\* Case No. AFSCME JD 87-2  
\* Grievance No. G87-0867  
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\* Decision Issued  
\* June 16, 1987  
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APPEARANCES

FOR THE EMPLOYER

Marlaina Eblin  
Ruth E. Spencer  
Austin Morehouse  
Joanne Stewart  
William Carlin

Labor Relations Specialist  
Director of Personnel  
Area Program Administrator  
Psychiatric Nurse  
Assistant Security Chief

FOR THE UNION

John T. Porter  
Maxine Hicks  
Michael Harris  
Charles Brabson

Associate General Counsel  
Local President  
Grievant  
Witness

Jonathan Dworkin, Arbitrator  
16828 Chagrin Boulevard  
Shaker Heights, Ohio 44120

BACKGROUND OF DISPUTE

Grievant is a Therapeutic Program Worker at Cleveland Psychiatric Institute. His seniority date is July 20, 1981.

He was charged with two acts of misconduct -- sleeping on the job on December 12, 1986; menacing and threatening an Administration Officer on December 26, 1986. These violations of employment responsibilities, coupled with a previous fifteen-day suspension for abuse, threats, and profanity towards a supervisor, led the Administration to recommend Grievant's removal. Each of the charges was submitted to the contractually required pre-discipline hearing. When the proceedings ended, the Hearing Officer approved the removal.

The Union appealed to arbitration. A hearing was convened in Columbus, Ohio on June 15, 1987. At the outset, the parties stipulated that the appeal was procedurally correct and the Arbitrator was authorized to issue a conclusive award on the merits of the dispute.

One of the issues presented was whether the State complied with contractual due-process requirements. Of particular importance was Section 24.05 of the Agreement which requires the Agency Head (or the Acting Agency Head) to make a final decision on discipline no later than forty-five days after the pre-discipline meeting.

The Union presented a strong argument that the Agency missed the deadline for one of the charges against Grievant. At the conclusion of the State's case and Grievant's testimony, the Arbitrator recessed the hearing to confer with the Representatives concerning the procedural issue. He expressed some preliminary conclusions -- that the State had presented persuasive evidence of Grievant's violations, but its apparent failure to comply with contractual time limitations for issuing discipline severely detracted from its position. The discussions between the parties and the Arbitrator developed into active mediation, and the effort proved successful. The parties reconsidered their stands and fashioned a resolution acceptable to the State, the Union, and Grievant. By direction of the parties, the specifics of their settlement are hereinafter set forth as an arbitral award, to have the same binding effect as any other award on the merits.

#### STIPULATED AWARD

1. The grievance is sustained in part and denied in part. The removal is modified to a forty-day disciplinary suspension without pay.

2. Grievant shall be restored to active employment no later than ten days after the date of this award.

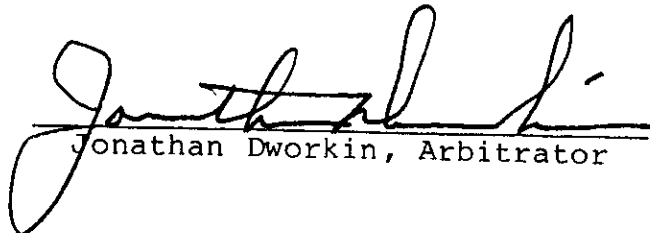
3. The State is directed to reimburse Grievant a lump-sum amount of money equivalent to one-half of the total straight-time

earnings he would have received had he not been removed, less straight-time wages forfeited by the forty-day disciplinary suspension.

4. Grievant applied for unemployment compensation and his claim is pending. The State filed objections to his application. The State is directed to withdraw its objections and make no further attempt to intervene for disapproval of Grievant's claim.

5. Grievant's reinstatement shall be with full, unbroken seniority.

Decision Issued:  
June 16, 1987

  
Jonathan Dworkin, Arbitrator