ARBITRATION

OHIO DEPARTMENT OF MENTAL RETARDATION AND MENTAL DISABILITIES
AND
O.C.S.E.A. LOCAL 11 A.F.S.C.M.E. AFS-CIO (MARY KAY BELL GRIEVANCE)

ARBITRATOR: Andrew J. Love

APPEARANCES: For Ohio M.R.D.D.-MICHAEL FUSCARDO AND MICHAEL DUCO
For O.C.S.E.A./A.F.S.C.M.E.-CAROL BOWSHIER AND JOHN T. PORTER, ESQ.

DECISION AND AWARD

The issue presented in this proceeding is whether the five (5) day suspension of the Grievant by CDC for October 20, 23, 24, 25, and 26, 1986 was without "just cause" and therefore in violation of applicable sections of the parties' collective bargaining agreement. The facts as presented are as follows:

Deborah Sue Chandler, Hospital Aide Supervisor II and a first shift supervisor, arrived for duty in an area of CDC known as R & D-3. Ms. Chandler arrived at 6:15 A.M., fifteen (15) minutes before the close of the third shift. This particular location houses fifteen (15) or sixteen (16) severely and profoundly retarded residents. The responsibilities for the resident's maintenance and care are those of the Grievant while she is on duty during her third shift tour. Because staff was shorthanded and because no one was willing to work overtime, Ms. Chandler was required to make rounds to determine whether the residents of this area were properly cared for. She stated that, upon her arrival at R & D-3, she observed the Grievant sitting in the office area. She stated that she then observed several sleeping quarters where she found feces smeared on lockers and furniture. She further observed one resident who had urinated on himself. One of the residents was not in his bedroom where Ms. Chandler observed the soiled bed and smeared feces. Ms. Chandler further stated that she required the Grievant to assist her in cleaning up the applicable areas. When the clean up was done, Ms. Chandler accepted the living area. The clean up was concluded at approximately 6:40 A.M., some ten minutes after the end of the third shift. She further stated that the Grievant was allowed to clean one of the residents while she cleaned two of the four bedrooms occupying the fifteen (15) or sixteen (16) residents.

On August 8, 1986 (the date of this incident) Ms. Chandler verbally reported to Robert Basinger, Mental Health Administrator II and the unit manager, of her observations in respect to the Grievant's activities. Ms. Chandler's written incident report was made on August 18, 1986.

Robert Basinger testified that the Grievant, a Hospital Aide, is responsible for maintaining a safe and clean environment for the residents during her third shift. He testified further that a "float" has similar responsibilities, but primary responsibility rests with the Hospital Aide on duty inasmuch as the "float" has general clean up duties throughout a much

larger area. Mr. Basinger stated that the incident report on the Grievant demonstrated negligence on the part of the Grievant and was considered a major offense. He stated on cross-examination that he did not speak to the Grievant regarding the allegations of negligent conduct alledged in the incident report, rather he spoke only to Deborah Chandler, who was directly working with the Grievant and also relieved her. A pre-disciplinary hearing was held and a recommendation was made for the five (5) day suspension of the Grievant. Subsequently, the Grievant was notified on October 3, 1986 that she would be suspended for five (5) consecutive work days beginning on October 20, 1986.

The Grievant is a Hospital Aide on R & D-3, third shift. She has been employed with CDC approximately fifteen (15) years. The Grievant acknowledged that her duties included cleaning the unit, washing clothes of the residents, and general care for the profoundly retarded clients in her unit. She cited three of the fifteen clients who are rectal diggers. These three residents regularly smear feces on walls, furniture, their faces and hair. She further stated that some of the residents will eat feces. Grievant that some of the residents fight and kick and stay up through the night. Generally, however, the majority of the residents sleep fairly well during the night.

The Grievant stated that the earliest time that she is allowed to dress and groom the residents is 5:30 A.M. Five of such residents are awakened at 5:30 A.M. to be dressed and groomed for school. Customarily she checks their rooms first, since they are the first to be awakened. She stated that there are a total of six (6) rooms, all of which are separated from each other. They include four separate bedrooms and two day rooms.

The Grievant stated that, at approximately 5:25 A.M. on August 8, 1986, she approached one of the residents to prepare him for school and discovered that he had urinated on himself. She stated that she cleaned up this resident and changed his bed. As she took the dirty linen out, another patient had got up and smeared feces on himself. The Grievant stated that she is required to take care of the immediate problems of the patients who are awake and engaging in this type of behavior before she can engage in the other matters of care and maintenance for the remaining residents. She stated that she took the second patient, who had smeared feces on himself, to the shower. She stated that it was at this point that Deborah Chandler approached her and notified her that the patient who she had previously cleaned had made a bowel movement. While both were attending the needs of one of the residents, that resident began urinating. It should be noted that the "floater" had already removed the linen from this bed.

The Grievant stated that, because of her diabetic condition, she was unwilling to work overtime. This, she said, prompted Ms. Chandler to walk the rounds in her unit. On cross-examination, the Grievant stated that she did not make rounds with Ms. Chandler, because she was involved with the cleaning up of those residents who had to be ready for school.

Turning to the issue of whether Grievant's suspension was without just cause, this Arbitrator must examine from the evidence presented as to whether the Grievant was acting negligently in the maintenance and care of the unit during her tour of duty. There is no argument that the unit in question comprises residents who require a great deal of care, owing to their degree of

retardation. The testimony presented demonstrated that these residents are self abusive and are behaviorial problems on occasion. Furthermore several of the residents are rectal diggers. The testimony presented further reveals that while the residents were asleep during the Grievant's third shift, she was engaged in the cleaning of furniture, appliances, and all other appropriate areas of the unit. Because of the restrictions on when the residents could be awakened, the Grievant made the necessary preparations to take care of those five residents who were to be readied for school by 6:30 A.M.

This Arbitrator is persuaded by the testimony of the Grievant that she took steps to take care of those residents who had to be awakened the earliest and to attend to their immediate needs. Those needs included rectal diggers who had soiled their underwear. She testified that she began cleaning their underwear by washing it out (albeit not completely) and moving on to the next most immediate problem. She stated that while she was in the shower cleaning one of the residents, she observed Ms. Chandler. There is no dispute that one of the bedrooms contained feces smeared on furniture and lockers. Certainly, the cleaning up of this area, as well as other residents was required by the Grievant to complete. However, this Arbitrator notes that the third shift tour of duty was not yet over. The Grievant would have been required to clean up before she could leave.

The evidence is also compelling that Ms. Chandler ultimately accepted the status of the unit as cleaned once the clean up had been completed. It is further noted that the Grievant remained on duty beyond her shift.

This Arbitrator must weigh the creditability of each witness who testified at this hearing and give appropriate weight to the truthfulness of each. The testimony presented at this hearing has conflicted, particularly where Ms. Chandler has stated that she observed the Grievant sitting in an office and the Grievant stated that Ms. Chandler observed her in the shower area with one of the residents. Both witnesses, in this Arbitrator's view have testified honestly and in good faith. In no way does this decision intend to cast the slightest doubt on the veracity for good faith of these witnesses. Cf Coordinating Committee Steel Companies, 70 LA442, 454 (1978). However considering the exigent circumstances in which the Grievant found herself in providing for the immediate needs of more than one client at the same time, this Arbitrator finds that the Grievant properly prioritized her duties in accordance with those exigencies.

Accordingly, the grievance is UPHELD and CDC is hereby ordered to recompence the Grievant for back pay.

August 19, 1987
DATE

Andrew J. Love
ANDREW J. LOVE, ARBITRATOR

COUNTY OF FRANKLIN
STATE OF OHIO