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 In the Matter of Arbitration \*  
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 Between \*  
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 OCSEA/AFSCME Local 11 \* Case No. G87-0940  
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 and \*  
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 The State of Ohio, Department of \*  
 Industrial Relations \*  
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Appearances: For OCSEA/AFSCME Local 11:

John Porter  
 Associate General Counsel  
 OCSEA/AFSCME Local 11  
 995 Goodale Blvd.  
 Columbus, OH. 43212

For The State of Ohio:

David Norris  
 Office of Collective Bargaining  
 65 East State St.  
 Columbus, OH. 43215

Introduction: Pursuant to the procedures of the parties a hearing was held in this matter on November 23, 1987 before Harry Graham under the expedited arbitration procedure of the parties. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record was closed at the conclusion of oral argument.

Issue: At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Was the Grievant suspended for just cause and if not, what shall the remedy be?

Facts: There is no controversy concerning the facts that give

rise to this proceeding. The Grievant, William Strahl, was hired as a Mine Safety Inspector on January 11, 1981. During the first six years of his employment with the State he compiled a good work record.

Commencing July 14, 1986 Warren Ellis became Director of the Ohio Bureau of Mines. As Director, he is responsible for supervision of Mine Safety Inspectors, including the Grievant.

The Grievant has a well documented history of mental illness. His illness is biological and is known as Bipolar Disease. That condition is characterized by wide fluctuations in mood. These range from extreme depression to euphoria. He has been undergoing treatment for this condition. While Bipolar Disease cannot be cured, it can be controlled with medication.

In the period February 2, 1987 through February 18, 1987 the Grievant was ill with a severe upper respiratory condition characterized as borderline pneumonia. Each day with one exception he telephoned the Columbus office of the Division of Mines to report he would not be at work. On every occasion but one the telephone call was made before 8:30AM. The Agreement of the parties at Article 29, Section 29.02, provides that when an employee is sick he must notify the relevant authority no later than one half (1/2) hour after his starting time. That requirement was also communicated to employees of the Division of Mines by inter-office

communication on August 25, 1986 and November 25, 1986. The Grievant was aware of the call-in requirement.

On February 11, 1987, during the course of his illness, the Grievant did not call-in until 9:30AM. As a result of this late call-in the Employer administered a two day suspension without pay.

A grievance protesting the two day suspension was filed. It was processed through the procedures of the parties. As no resolution was had it is before the Arbitrator for determination on its merits.

Position of the Employer: The State points out that both the Agreement and the various directives issued to employees of the Division of Mines specify that employees who intend to use a sick day must call-in within one-half hour of their scheduled starting time. The Grievant was aware of this rule. He managed to comply with it regularly with the one exception under scrutiny in this proceeding. No reason exists to make an exception to the call-in procedure for his failure to call-in on February 11, 1987.

The Employer does not question the medical basis for the absence in February, 1987. No discipline was imposed for his time off. The record indicates that the Grievant could have called in properly. His failure to do so subjects him to discipline in the State's opinion.

This is especially true in Strahl's case according to the Employer. The Grievant had accumulated both oral and

written reprimands for his failure to call-in properly. He was well aware of the call-in requirement and the record indicates he had made efforts to comply with it. As it is essential for operation of the Division of Mines that it be aware of those Inspectors who will not be work the discipline under scrutiny in this proceeding is proper according to the State. Consequently, it urges that the two day suspension administered to William Strahl be upheld.

Position of the Union: The Union points out that the Grievant's mental condition involves periods of depression and exhilaration. When depressed, people with Bipolar Disease tend to sleep a great deal. This must be considered when evaluating the Grievant's failure to call-in on February 11, 1987.

No question exists concerning Strahl's mental illness or his respiratory condition. Recognizing the existence of those physical infirmities attention must be directed to the full text of Article 29, Section 29.02 of the Agreement. That section of the Agreement provides that employees must call-in no later than one-half (1/2) hour from their starting time "unless unusual circumstances preclude this notification." Those "unusual circumstances" are present in this case. They are Strahl's physical and mental condition. Given those physical and mental illnesses and the fact that the Grievant properly called in from February 2 through February 18, 1987, the two day suspension is improper the Union insists.

The Grievant recognized his obligation to call-in promptly. Upon awakening on February 11, 1987 he immediately telephoned the office to report he would not be in to work. His conscientious attitude towards his work is demonstrated by the consistent record of calling in he compiled during February, 1987 in the Union's view. His one failure to do so falls within the exception provided for in the Agreement given his physical and mental condition at the time. As this is the case, the Union seeks removal of the two day suspension from Strahl's work record and payment of two day's back pay.

Discussion: A two day suspension seems overly severe given the circumstances of this case. No doubt exists but that the Grievant has a biologically induced mental illness. Similarly, no doubt exists that he had a severe upper respiratory infection in February, 1987. He called-in each day of his absence in timely fashion with the exception of February 11, 1987. Given the depression associated with Bipolar Disease and the sleeping attendant upon such depression, administration of a two day suspension is of such magnitude as to be considered impermissible.

The parties contemplated that exceptions could occur in the call-in obligation. This is indicated in the Agreement at Article 29, Section 29.02. Appended to the call-in requirement is the modification "unless circumstances preclude this notification." That phrase indicates that the

parties were aware that in some situations exceptions to the call-in rule were necessary. This is such a situation. The circumstances of this case serve to excuse the Grievant's failure to call-in in timely fashion. William Strahl's mental illness and respiratory infection in February, 1987 require implementation of the flexibility in the call-in procedure negotiated by the parties in their Agreement.

Award: Based upon the preceding discussion the grievance must be SUSTAINED. The Grievant is to be awarded two days back pay. All record of this incident is to be expunged from his personnel record.

Signed and dated this 30th day of November, 1987  
at Chagrin Falls, OH.

Harry Graham  
Harry Graham  
Arbitrator