

#167

IN THE MATTER OF THE
ARBITRATION BETWEEN

Ohio Department of Rehabilitation
and Corrections

Grievance No. G-87-1562

and

(Grievant: Eleutherio
Olivo)

OCSEA, Local 11, AFSCME,
AFL-CIO

Hearing Date:
March 10, 1988

For ODRC: Nick Menedis, Advocate

For the Union: Dan Smith, Esq.

Present: Nick Menedis (Advocate, ODRC), Freddie Sharp (OCB),
Harry K. Russell (Superintendent, Lima Correctional Institution,
Witness), Elaine Mayberry (Personnel Office, LIMA, Witness), Capt.
Jerry Hunt (ODRC, Witness), Dan Smith (OCSEA, Advocate), Robert
Rowland (OCSEA, Staff Representative), Eleutherio Olivo
(Grievant), John Blansett (Chief Steward, Witness).

Preliminary Matters

The Arbitrator received permission to record the hearing for
the sole purpose of refreshing her memory and on the condition
that the tapes shall be destroyed when the award is made. The
Arbitrator also received permission to submit the opinion for
publication. The Parties stipulated that the matter was properly

before the Arbitrator. No witnesses were sequestered and all witnesses were sworn.

Issue

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

Relevant Contract Sections

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.

§ 24.08 - Employee Assistance Program

In cases where disciplinary action is contemplated and the affected employee elects to participate in an Employee Assistance Program, the disciplinary action may be delayed until completion of the program. Upon successful completion of the program, the Employer will give serious consideration to modifying the contemplated disciplinary action.

Arbitrator's Preliminary Remarks

This Grievance was heard for 6 hours. The basic facts with regard to the consistent absenteeism and tardiness of the Grievant were not in dispute. The central issue was the proper application and use of the EAP program under the contract (See Article

24.08.)

The Arbitrator found the good faith of both Capt. Hunt and Superintendent Russell to be evident. However, equally evident was that neither official had received adequate training in the use of EAP nor were adequate procedures in place to guarantee a consistent and confidential program.

In light of the foregoing, the Arbitrator finds the settlement reached by the parties to be fair and reasonable.

Agreed Settlement

1. The Grievant's removal is modified to a 10 day (working days) suspension.

2. The period of time from the end of the suspension to the beginning of the work period starting March 27, 1988 shall be recorded as approved leave without pay.

3. The Grievant shall retain his seniority without any break-in-service.

4. The Grievant shall be treated equally to his co-workers upon his return with the exception that he shall serve a 90 day probationary period for the sole purpose of monitoring his attendance and timeliness. Such monitoring is to ascertain if a similar pattern of tardiness or absenteeism will reoccur. The Grievant is on notice that this reinstatement is a "last chance" reinstatement with regard to the issues of tardiness and/or

absenteeism.

5. The Grievant shall furnish a letter from his Counselor, Mr. Jacobs; to the EAP Coordinator Ida Nissen once a month for the 90 day period.

March 14, 1988
Date

Rhonda R. Rivera
Arbitrator