

ARBITRATION AWARD SUMMARY

OCB Award Number: 280

OCB Grievance Number: 27-13-880211-0109 Jack Bastian

Union: 1199

Department: R&C

Arbitrator: Howard Silver

Management Advocate: Joe Shaver

Union Advocate: Kathy Kraemer

Arbitration Date: 4-7-89

Decision Date: 5-19-89

Decision: Denied

Howard D. Silver
Arbitrator
Columbus, Ohio

In the Matter of Arbitration
Between

The State of Ohio

Grievant:
Jack R. Bastian

and

Ohio Health Care Employees Union
District 1199, WV/KY/OH
National Union of Hospital and
Health Care Employees, AFL-CIO

APPEARANCES

For The State of Ohio

Joseph B. Shaver, Management Representative
Ohio Department of
Rehabilitation and Correction

Felicia Bernardini, Management Representative
Office of Collective Bargaining

For The Ohio Health Care Employees Union,
District 1199, WV/KY/OH
National Union of Hospital and
Health Care Employees, AFL-CIO

Kathy Kraemer, Labor Representative
Ohio Health Care Employees Union
District 1199

ISSUE

Was the grievant, Jack Bastian, removed from employment with the Department of Rehabilitation and Correction for just cause, and if not, what should the remedy be?

The hearing in this matter was held on April 7, 1989 within the offices of the Ohio Department of Administrative Services's Office of Collective Bargaining, 65 East State Street, Columbus, Ohio. The parties were afforded a full and fair opportunity to present testimonial and documentary evidence, examine and cross-examine witnesses, and make arguments supporting their positions. The record in this matter was closed on April 7, 1989.

ARBITRABILITY OF FIFTEEN DAY SUSPENSION ISSUED TO GRIEVANT JACK R. BASTIAN.

The first issue raised before the arbitrator involved a fifteen day suspension issued to the grievant in mid-November, 1987. The grievant contends that he was denied an opportunity to grieve this suspension under the terms of the collective bargaining agreement between the parties, an agreement which appears in the record as Joint Exhibit 1. Management contends that a grievance on behalf of Mr. Bastian as to this fifteen day suspension was not timely filed within the time period permitted by the collective bargaining agreement.

At the hearing herein the Employer offered the testimony of Joseph B. Shaver, the Assistant Chief of Labor Relations for the Adult Parole Authority. Mr. Shaver testified that a fifteen day suspension had been issued to Mr. Bastian in November, 1987, and no grievance had been received by Management as to this suspension by mid-to late April, at which time Mr. Bastian telephoned and asked for the date he was to receive his step three hearing as to this suspension. Mr. Shaver testified that when he received this inquiry from Mr. Bastian he informed the grievant that he, Mr. Shaver, had no recollection of a grievance being filed as to the suspension, but said he would check. Mr. Shaver testified that he made inquiry and found no grievance filed as to this suspension within Management's files. Mr. Shaver testified that he then informed Mr. Bastian of this fact.

Mr. Shaver said that a grievance form as to the fifteen day suspension issued to Mr. Bastian in mid-November, 1987 was received by Management on a grievance form time stamped May 25, 1988. Mr. Shaver testified that he talked to Otis D. Crusoe, a delegate of the Union since June, 1986, and was informed by Mr. Crusoe that Mr. Crusoe had run out of grievance forms, had whitened out a form previously used, and had then submitted a completed grievance form on behalf of Mr. Bastian in November, 1987. Mr. Shaver pointed out that a step three grievance meeting was held by Charles R. Adams, Labor Relations Specialist, wherein Mr. Adams found that the grievance was untimely filed.

Under cross-examination Mr. Shaver testified that in 1988 the Ohio Department of Rehabilitation and Correction received approximately one thousand two hundred (1,200) step three grievance filings.

Also testifying at hearing as to the arbitrability of the fifteen day suspension received by the grievant was Otis D. Crusoe. Mr. Crusoe is a parole officer employed within the Adult Parole Authority of the Ohio Department of Rehabilitation and Correction, and since June, 1986 has served as a delegate of the Ohio Health Care Employees Union, District 1199. Mr. Crusoe testified that he had been aware in 1987 of the fifteen day suspension issued to Mr. Bastian immediately after Mr. Bastian had received notice of the suspension in November of that year. Mr. Crusoe explained that he had run out of forms and only had had one form left, had whitened out information on that form and then had used it to grieve the suspension issued to Mr. Bastian. Mr. Crusoe said he mailed the form.

Under cross-examination Mr. Crusoe stated that he had given the completed grievance form to Mr. Bastian, along with an envelope bearing the address of the Office of Collective Bargaining. Mr. Crusoe explained that Mr. Bastian had subsequently transferred from the Adult Parole Authority to a position at the London Correctional Institution.

Also testifying as to the fifteen day suspension received by Mr. Bastian was the grievant, who explained that he had received notice of the suspension, had contacted Mr. Crusoe, and had

participated in the completion of a form in order to grieve the suspension. Mr. Bastian could not recall what he had done with the form and could not recall Mr. Crusoe giving the form to him. Mr. Bastian testified, however, that if Mr. Crusoe had given Mr. Bastian the form Mr. Bastian would have mailed it. Mr. Bastian testified that following his fifteen day suspension he had transferred to a position at the London Correctional Institution. Mr. Bastian also pointed out that during the suspension, but prior to December 16, 1987, he had met with Mr. Crusoe and another organizer of the Union, a Mr. Henshaw.

Under cross-examination the grievant stated that he had made no mental note of mailing the grievance form to Management.

Following the submission of evidence as to the fifteen day suspension issued to the grievant in November, 1987, this arbitrator determined that there was no evidence presented that showed Management had received, within the time period specified by the collective bargaining agreement between the parties, a grievance on behalf of Mr. Bastian. The arbitrator informed the parties at the hearing herein that the burden of persuasion as to the filing of the grievance had to be borne by the Union, and further held that the Union had failed to carry this burden of proof in showing that the grievance had been filed in a timely manner under the contract.

It is therefore the decision of the arbitrator that the grievance as to Mr. Bastian's November, 1987 fifteen day suspension was not filed in a timely manner under the requirements of Article

7 of the contract between the parties, the article which sets out the grievance procedure to be utilized by the parties. Mr. Bastian's fifteen day suspension, issued to him in November, 1987, is therefore not an arbitrable matter.

BACKGROUND AS TO DISCHARGE OF GRIEVANT JACK R. BASTIAN

The parties entered into a number of stipulations of fact as to the employment history of the grievant. It was agreed that on September 16, 1985 Jack Bastian was appointed as a correctional officer at the London Correctional Institution. It was further agreed that on May 25, 1986 Mr. Bastian was promoted to Social Service Worker. The parties also agreed that on June 21, 1987 Mr. Bastian transferred to the position of Parole Officer 1 in the Dayton district office of the Adult Parole Authority. It was further agreed that on December 16, 1987 Mr. Bastian transferred back to the London Correctional Institution as a Correctional Program Specialist. Finally, the parties agreed that on October 27, 1988 Mr. Bastian was removed from his employment with the Ohio Department of Rehabilitation and Correction. It is the removal of Mr. Bastian which gives rise to this review and both parties agreed that Mr. Bastian's discharge is properly before the arbitrator. See Joint Exhibits 2, 5 and 6.

TESTIMONY OF WITNESSES

Betty Jane Perkins

The first witness called by the Employer in this matter was Betty Jane Perkins, a registered nurse employed at the Children's Medical Center in Dayton, Ohio. Ms. Perkins has been certified as a registered nurse since July, 1988. Ms. Perkins has a brother, Berman Albright, who was an inmate at the London Correctional Institution from October, 1987 through February, 1989.

Ms. Perkins testified at hearing that she has known Mr. Bastian since meeting him in the fall of 1983. Ms. Perkins explained that they met while each was enrolled in a class at Edison State Community College and a close personal relationship developed between them thereafter. Ms. Perkins testified that she had been told originally by Mr. Bastian that he was then divorced and showed Ms. Perkins papers in support of his statement. Ms. Perkins testified that she subsequently found out that Mr. Bastian had not been divorced, and when she confronted Mr. Bastian with this information Mr. Bastian admitted that he was in fact still married. Ms. Perkins stated that after this conversation, however, she continued to see Mr. Bastian socially. Ms. Perkins testified that the relationship eventually ended through mutual agreement in May, 1986.

Ms. Perkins testified that toward the end of November, 1987 she directed a letter to Mr. Bastian as a result of prompting by her brother who was then incarcerated, and who had informed her that

he was afraid because of threats made against him. Ms. Perkins explained that her brother wanted her to ask Mr. Bastian to find out the location of another inmate who had been convicted, in part, on the basis of testimony provided by Ms. Perkins's brother. Ms. Perkins directed a letter to Mr. Bastian requesting assistance in this regard.

Ms. Perkins explained at hearing that within a week she received a telephone call from Mr. Bastian agreeing to assist her. She stated that they met at a public square in Troy, Ohio, where they exchanged information and talked casually. Ms. Perkins stated that approximately a week later she was again contacted by Mr. Bastian by telephone and thereafter was contacted by Mr. Bastian on a regular basis by telephone while Ms. Perkins was at home and at work.

Ms. Perkins testified that Mr. Bastian expressed the desire to see Ms. Perkins on a regular basis again and began visiting her. She stated that Mr. Bastian began inquiring about her brother's circumstances and the two began discussing the maintenance of a continuing friendship. Ms. Perkins testified that over the ensuing few months she went on three to four dates with Mr. Bastian, including one date upon which she and Mr. Bastian had dinner at the Wine Cellar Restaurant in Columbus, Ohio. Ms. Perkins said this dinner occurred on or about February 1, 1988. Ms. Perkins testified that at this dinner Mr. Bastian informed her that one of the inmates at the London Correctional Institution was a part owner of the restaurant and had told Mr. Bastian that he and his date

could have dinner there at the expense of the inmate. Ms. Perkins stated that at the conclusion of their meal Mr. Bastian suggested that she write a thank you note to the inmate in gratitude for the dinner the inmate provided.

Ms. Perkins stated that following this dinner she received no contact from Mr. Bastian for a number of weeks. Ms. Perkins testified that on March 15, 1988 she was at her home when a telephone operator interrupted a telephone call and announced that there was an emergency call for Ms. Perkins from Mr. Bastian. Ms. Perkins stated that at the time she was upset with Mr. Bastian as he had not contacted her for a number of weeks. When she talked to Mr. Bastian that evening over the telephone she said that she was informed by Mr. Bastian that he was attempting to get his life together and intended to secure a divorce from his wife. Ms. Perkins stated that Mr. Bastian also told her that his automobile had just broken down and requested that Ms. Perkins pick him up.

Ms. Perkins testified that she and her mother drove to pick up Mr. Bastian and upon arrival at his location found Mr. Bastian being frisked by two state troopers. Ms. Perkins stated that she and her mother transported Mr. Bastian back to the Perkins's household and Mr. Bastian stayed there that night.

While located at the Perkins's house, according to Ms. Perkins, Mr. Bastian asked if a van located at the house was still operable. The van belonged to Ms. Perkins's brother, the brother located at the London Correctional Institution. When Mr. Bastian was told that the van did run, according to Ms. Perkins, Mr. Bastian asked

if he could use the van as he needed it to drive to his next scheduled shift at the London Correctional Institution. Ms. Perkins testified that Mr. Bastian made mention of the fact that Ms. Perkins's brother was coming up for a parole hearing soon and further stated that he would return the van at the end of the week. Mr. Bastian was permitted the use of the van, but Ms. Perkins pointed out that Mr. Bastian continued to drive the van well into the month of April. Ms. Perkins also stated that she visited her brother at the London Correctional Institution on a particular occasion and had been told by her brother that he had seen the van parked on the grounds of the facility.

Ms. Perkins stated that the last time she saw Mr. Bastian during that period of time was during the third week of May, 1988. She stated that on June 19, 1988, the van borrowed by Mr. Bastian had still not been returned and she left a message for Mr. Bastian, informing him that if the van were not returned immediately she would file charges against Mr. Bastian. Ms. Perkins, in July, 1988, did file criminal charges against Mr. Bastian because the van had not been returned.

Ms. Perkins testified that following the filing of these charges the van was located at Sandy's Wrecking Yard but said the van was in bad condition. Ms. Perkins stated that the van had dents she had not previously seen, had been sprayed painted, had a flat tire and a bent rim, stated that the van had been trashed, and said that personal items were missing from within the van. Ms. Perkins further stated that as a result of a criminal court case

Mr. Bastian pled guilty to criminal damaging in reference to the van, was ordered to make restitution, and received a jail sentence that was suspended by the court. In this regard Ms. Perkins identified Employer's Exhibit 1 as the entry of the court, noting a finding of guilt based on a plea of guilty and also reflecting the sentence resulting from this conviction.

Ms. Perkins testified that Mr. Bastian had made comments to Ms. Perkins's mother to the effect that her son would be coming home soon. Ms. Perkins stated that Mr. Bastian had told her, Betty Jane Perkins, that it was the policy of his employer that he was not supposed to have contact with an inmate's family. Ms. Perkins stated that this comment had been made by Mr. Bastian within the kitchen of the Perkins's home toward the end of 1987.

Under cross-examination Ms. Perkins testified that the letter she directed to Mr. Bastian in November, 1987 was a request for assistance to find out where an inmate, who her brother was afraid of, was located within the Department of Rehabilitation and Correction. Ms. Perkins pointed out that because of her brother's testimony, her brother was to be kept in a facility separate from this inmate but there were rumors that they were to end up at the same facility. Ms. Perkins pointed out that she had been unaware of the legal procedures necessary to find out this information and stated at hearing that when she directed her letter to Mr. Bastian she had not been looking to resume their previous relationship.

Ms. Perkins testified that Mr. Bastian had volunteered to intervene with the parole board on behalf of Ms. Perkins's brother

and had made this statement a number of times to Ms. Perkins's mother. Ms. Perkins further stated that on July 1, 1988, Mr. Bastian had told Ms. Perkins's mother that her son had better stop "flapping his jaws" or Mr. Bastian would not be able to write a letter on behalf of her son. Ms. Perkins testified that Mr. Bastian had made this comment following the threat of filing criminal charges against him because of his use of the brother's van.

Ms. Perkins testified under cross-examination that Mr. Bastian had told her and her mother that he had needed to borrow the van so that he could be at the London Correctional Institution for Ms. Perkins's brother's parole hearing, even though Mr. Bastian was not the parole officer for her brother. Ms. Perkins admitted that she was angry Mr. Bastian had called her when his car had broken down because Mr. Bastian had not called her for weeks and then called her out of the blue claiming an emergency. Ms. Perkins stated that the third week in May, 1988 was the last time she had seen Mr. Bastian, a day upon which she had received a telephone call from Mr. Bastian asking to meet her. She stated that she did meet with him and found him to be intoxicated and unkempt. Ms. Perkins stated that she had been angry at Mr. Bastian for being in this state and for not taking care of himself. Ms. Perkins stated that during this meeting the van was not discussed.

Margaret Funderburg

The next witness called by Management was Margaret Funderburg, the mother of Berman Albright, Ms. Perkins's brother. Ms. Funderburg testified that she had known Mr. Bastian for six years. Ms. Funderburg explained that Mr. Bastian had been at her home when he had told Ms. Funderburg that "we" have to get Ms. Funderburg's son home, and had made general comments to that effect. Ms. Funderburg stated that Mr. Bastian had wanted to use her son's van, telling Ms. Funderburg that he needed to travel to the London Correctional Institution for a parole hearing involving Ms. Funderburg's son. Ms. Funderburg stated that Mr. Bastian had told her that he had to get to the institution to "help his boys", including Ms. Funderburg's son.

Ms. Funderburg testified that on July 1, 1988 Mr. Bastian called her and told her that her son was "flapping his gums" and that Mr. Bastian would be unable to help him if he didn't stop. Ms. Funderburg stated that she was told by Mr. Bastian that he would be unable to write a letter in support of her son to the parole board.

Ms. Funderburg testified that she had asked Mr. Bastian on July 1, 1988, over the telephone, when he planned on returning her son's van. She stated that Mr. Bastian told her that the van would be returned during the evening hours of the following day, but Ms. Funderburg testified that she had waited up past midnight on the following day and the van had not been returned. Ms. Funderburg stated that it was her understanding at the time that Mr. Bastian

was a counselor at the London Correctional Institution and she was under the belief that Mr. Bastian could effect the release of her son.

Under cross-examination Ms. Funderburg stated that Mr. Bastian had told her subsequently that he would be unable to help her son.

Terry Collins

The next witness called by Management was the Deputy Warden of the London Correctional Institution, Terry Collins. Mr. Collins is the Deputy Warden of Programs, responsible for social services, religion, security forces and recreational activities at the London Correctional Institution. Mr. Collins has been employed by the Ohio Department of Rehabilitation and Correction since August 1, 1977. In 1980 Mr. Collins became the Director of Social Services at the London Correctional Institution, was then promoted to Administrative Assistant to the Superintendent of the facility, and subsequently was promoted to his present position as Deputy Warden.

Mr. Collins testified that in his opinion Mr. Bastian has the intelligence and abilities to perform well at the London Correctional Institution, but has not evidenced the desire to do so and has given rise to disciplinary problems at the facility. In this regard Deputy Warden Collins pointed to Employer's Exhibit 2 which is a two day suspension, effective April 11, 1986, issued to Mr. Bastian for neglect of duty. Within this suspension it was alleged that Mr. Bastian, on April 6, 1986, at approximately 4:04

a.m., while located in number two tower at the London Correctional Institution, was asleep while on duty and therefore guilty of neglect of duty.

Deputy Warden Collins then identified Employer's Exhibit 3 as a three day suspension issued to Mr. Bastian, effective June 6, 1986, wherein it was alleged that on May 18, 1986, at approximately 4:05 a.m., Mr. Bastian had not made a required call from the cage within which he was located. It was alleged that an officer approached the tower wherein Mr. Bastian was located, stood there for approximately two minutes and shined his flashlight into the window of the tower, and was not acknowledged until 4:09 a.m. Mr. Bastian was suspended for three days under these allegations under a charge of neglect of duty.

Deputy Warden Collins then identified Employer's Exhibit 4 which is a letter of reprimand issued March 18, 1987 to Mr. Bastian for violation of Department Code of Conduct Rule 3(B), for parking his car in the parking lot of the London Correctional Institution when six cans of beer were within his vehicle. Deputy Warden Collins explained that signs are posted at the institution prohibiting bringing alcohol onto the premises. Deputy Warden Collins stated that following the letter of reprimand issued to Mr. Bastian on March 26, 1987, Mr. Bastian transferred to the Adult Parole Authority.

Deputy Warden Collins then identified Employer's Exhibit 5 which is a written reprimand directed to Mr. Bastian effective September 14, 1987. This written reprimand complains of the fact

that Mr. Bastian was absent from entrance training at the Corrections Training Academy without permission, and for providing a number of questionable and in some cases conflicting explanations to administrative superiors within the Adult Parole Authority when questioned about this absence.

Mr. Collins then identified Employer's Exhibit 6 as a fifteen day suspension issued to Mr. Bastian effective November 24, 1987. This suspension alleged violation of standards of employee conduct including being absent for a period of one full shift without proper notification; insubordination in refusing to carry out a work assignment; and failure to follow post orders, administrative regulations or other written procedures. Within this suspension it was specifically alleged that despite prior training on proper call off procedures on September 17, 1987, Mr. Bastian failed to notify his unit supervisor or any APA employee that he would not be working that day, resulting in an unauthorized absence. Further, this suspension alleged that on September 18, 1987 Mr. Bastian failed to terminate employment as a police officer with the Mechanicsburg Police Department. The suspension went on to state that on September 21, 1987 Mr. Bastian deceived his employer by telling his unit supervisor that he had resigned from the Mechanicsburg Police Department. It was further alleged within this suspension that despite prior training on proper procedures and administrative regulations, and after direct orders from his supervisor, Mr. Bastian failed to properly handle paperwork required of a parole officer. It was alleged within this

suspension that this resulted in numerous instances of neglect and failure to follow procedures.

Deputy Warden Collins stated that Mr. Bastian transferred back to the London Correctional Institution from the Adult Parole Authority effective September 16, 1987. Deputy Warden Collins again explained that while Mr. Bastian had the ability and the intelligence necessary to carry out his duties properly at the London Correctional Institution, Mr. Bastian failed to follow departmental rules while employed therein.

Deputy Warden Collins then identified Employer's Exhibit 7 as a letter of reprimand issued to Mr. Bastian dated June 22, 1988. Within this letter of reprimand Mr. Bastian was informed that he had given an inmate a pack of cigarettes in exchange for information. Mr. Bastian was informed within this letter that this conduct represented a violation of Standard of Conduct Rule 39, which prohibits giving preferential treatment to an inmate. Mr. Bastian was reminded within this letter of reprimand of the consequences of this type of action and the breach of security to the institution that it represented, and stated that such incidents would not be tolerated. Mr. Bastian was further informed within the last paragraph of this letter of reprimand that should Mr. Bastian make any more "deals" with inmates, he would be further disciplined. Deputy Warden Collins explained that the pack of cigarettes given to the inmate for which the June 22, 1988 letter of reprimand resulted, was a pack of Pall Malls bearing a state seal. Mr. Collins stated that cigarettes sold at the institution

do not have state seals upon them and explained that the provision of the cigarettes to the inmate was observed by another employee. Mr. Collins stated that Mr. Bastian admitted to Mr. Collins that he had provided the cigarettes to the inmate and Deputy Warden Collins claimed that this represented a serious violation, a security violation, and explained that such small transactions give rise eventually to larger favors.

Mr. Collins explained that while investigating Mr. Bastian he received information from an inmate informant that Mr. Bastian was then driving the van of another inmate. Deputy Warden Collins stated that he had met with Ms. Funderburg as part of this investigation while Ms. Funderburg was visiting her son in July, 1988. Based on his investigation Mr. Collins concluded that Mr. Bastian was driving a van owned by Inmate Albright, Ms. Funderburg's son. Mr. Collins said he secured a written statement from Ms. Funderburg to this effect two weeks later.

Deputy Warden Collins stated that during this same time period it came to his attention that there were telephone bills emanating from the institution that were larger than normal and that there were a number of calls directed to Piqua, Ohio, to the telephone number of Ms. Funderburg's residence. Deputy Warden Collins stated that these calls occurred while Mr. Bastian was on duty at the London Correctional Institution. In this regard Deputy Warden Collins identified Employer's Exhibit 8 as a letter of reprimand issued to Mr. Bastian informing him that a check of the institution's telephone bills from January to August, 1988,

revealed that he had made personal telephone calls and charged them to the institution. Mr. Bastian was informed within this letter of reprimand that this represented a violation of Standard Employee Conduct Rule Number 6(c), failure to follow post orders, administrative regulations and/or written policies and procedures. Mr. Bastian was directed to make restitution for the cost of the calls and was further informed that he would be further disciplined if an incident of this type were to be repeated.

Mr. Collins then identified Employer's Exhibits 9, 10 and 11, a notice of predisciplinary conference, a waiver of the seventy-two hour notice of the predisciplinary conference, and notice of disciplinary action, respectively. All of these exhibits arose from the intention of the Employer to discharge Mr. Bastian effective October 27, 1988. Employer's Exhibit 11, the notice of disciplinary action against Mr. Bastian notified him of his removal and alleged the following infractions:

Standard of Employee Conduct Rule #36, Any act or commission not otherwise set forth herein which constitutes a threat to security of the Institution, its staff or inmates, and Rule #40, Engaging in unauthorized personal relationship(s) with inmates, ex-inmates, furloughees, parolees, probationers, or family friends of same (nexus required), i.e., tied to employment.

You did admit that you borrowed an automobile (van) from the sister of an inmate incarcerated at this Institution and that you knew her in college in 1983. You said that you did have a relationship with her and as late as March, 1988, had spent the night in her home.

Deputy Warden Collins then identified Employer's Exhibit 12 as the Ohio Department of Rehabilitation and Correction's Standards of Employee Conduct. These standards were promulgated by the Ohio Department of Rehabilitation and Correction effective October 23, 1987. Article 36 within this code of conduct prohibits any act or commission not otherwise set forth which constitutes a threat to the security of the institution, its staff or inmates. The Standards of Employee Conduct provide that violation of Article 36 may be punished by a written reprimand or other disciplinary action up to and including removal for a first offense, and is punishable by discharge for a second offense. Article 40 within the Standards of Employee Conduct prohibit engaging in unauthorized personal relationships with inmates, ex-inmates, furloughees, parolees, probationers, or family or friends of same (nexus required), i.e., tied to employment. A first offense under Article 40 calls for a suspension of five to ten days or other disciplinary action up to and including removal, and a second offense under Article 40 calls for discharge.

Deputy Warden Collins then identified Employer's Exhibit 13 as a receipt signed by Jack R. Bastian, effective April 12, 1988, wherein he acknowledged receipt of the Revised Standards of Employee Conduct for the Department of Rehabilitation and Correction, which became effective October 23, 1987, and stated within this receipt that he would read these Revised Standards of Employee Conduct.

Deputy Warden Collins then identified Employer's Exhibit 14 which is a lesson plan for inservice training on employee conduct and responsibility. On the sixth page of this exhibit there appears section IV(D) which addresses conduct with inmates, former inmates, their families and friends, under rules 39 and 40. Deputy Warden Collins stated that the information appearing within this section is emphasized within inservice training as violation of these rules, in the words of Deputy Warden Collins, gives inmates a "leg up" on correctional staff, and further stated that once an employee begins to provide preferential treatment to an inmate the employee is hooked.

Deputy Warden Collins concluded his direct testimony by identifying Employer's Exhibit 15 which is a sign-in sheet dated March 9, 1988. This sign-in sheet bears the name of Mr. Bastian and his initials which appear by instruction entitled Conduct and Responsibility. Deputy Warden Collins testified that Mr. Bastian's initials on this sign-in sheet reflect that Mr. Bastian received training as to conduct and responsibility on March 9, 1988.

Under cross-examination Deputy Warden Collins stated that he was not aware that it was an accepted practice at institutions within the Department of Rehabilitation and Correction to give cigarettes to inmates for drug information. Deputy Warden Collins stated that it was approximately the first of July, 1988 when he was informed by an inmate that Mr. Bastian was driving the van of an inmate. Mr. Collins stated that he talked to Berman Albright, Ms. Perkins's brother, and was told by Mr. Albright that he, Mr.

Albright, had seen his van on the premises of the institution and while he had not known at that time who had been driving the van, he did tell Mr. Collins that his people had not been there the day that he had seen the van. Mr. Collins also stated that Mr. Albright had not been an informant for Mr. Collins.

Mr. Collins also testified that six to ten other employees at the London Correctional Institution had been disciplined for making private telephone calls while on duty and charging them to the institution. He pointed out, however, that the institution has two hundred to three hundred employees and that most do not have access to a telephone within the institution.

Deputy Warden Collins further explained that even though Mr. Bastian signed a waiver for a predisciplinary hearing, a predisciplinary hearing was held nonetheless because of the seriousness of the charges. Deputy Warden Collins also admitted that Employer's Exhibit 14, the lesson plan submitted by the Employer, is dated February 24, 1989, a date subsequent to Mr. Bastian's removal.

Raymond Brown

The next witness called by Management was Raymond Brown, a Correctional Specialist 2, who serves as a unit manager at the London Correctional Institution Camp. Mr. Brown is responsible for security and inmates' welfare in his role as unit manager and has been employed by the Ohio Department of Rehabilitation and Correction for the past twenty-six years. Mr. Brown testified that

he has known Mr. Bastian as a coworker and supervised Mr. Bastian when Mr. Bastian served as a case manager at the London Correctional Institution. Mr. Brown stated that at the time of Mr. Bastian's removal, Mr. Brown was the supervisor of Mr. Bastian.

Mr. Brown testified that Mr. Bastian had told Mr. Brown that Mr. Bastian knew the sister of an inmate. Mr. Brown stated that he had been informed by Mr. Bastian of this circumstance a couple of months prior to Mr. Bastian's removal. Mr. Brown stated that this information was provided to him in Mr. Brown's office during a general conversation with Mr. Bastian and stated that Mr. Bastian had told him that he had gone to school with this woman who was the sister of an inmate then housed at the London Correctional Institution. Mr. Brown could not recall whether Mr. Bastian identified the inmate, but did remember that Mr. Bastian did not say he was seeing the sister regularly, nor did Mr. Bastian state that he was using the van of the inmate. Mr. Brown stated that he had thought at the time that Mr. Bastian was breaking a rule of the institution and said that he did not give permission to Mr. Bastian to see the sister of the inmate.

Under cross-examination Mr. Brown's attention was directed to Employer's Exhibit 12, section 2(c). This section reads as follows:

(c) An employee who becomes involved in a set of circumstances as described above must advise his supervisor, who is responsible for informing the appointing authority or personnel officer.

Mr. Brown stated that he could not say he was aware of that language but had had some idea of it. He stated that he had not questioned Mr. Bastian further when Mr. Brown was informed by Mr. Bastian that Mr. Bastian was seeing the sister of an inmate. Mr. Brown stated that if he had thought at the time that there was a relationship between the two he would have reported it. Mr. Brown agreed that he had not reported the information received from Mr. Bastian to higher authorities. Mr. Brown said that he had told Mr. Bastian at the time that he, Mr. Brown, had known families of inmates who came through and stated that this was his only response.

Under redirect examination Mr. Brown testified that at the time that Mr. Bastian provided him with this information Mr. Brown had not believed that Mr. Bastian was describing a serious relationship.

Arnold R. Jago

The next witness called by Management was Arnold R. Jago, the Warden of the London Correctional Institution. Mr. Jago has served as a warden within the Ohio Department of Rehabilitation and Correction since 1975 and has been employed by the Department for thirty-seven years. Mr. Jago described his responsibilities as Warden of the London Correctional Institution as including the safe containment of inmates, overall responsibility for operation of the facility, and supervision and oversight of control of inmates and employees within the institution.

Warden Jago testified at hearing that he had decided to remove Mr. Bastian because Mr. Bastian had been guilty of violating a cardinal rule within the London Correctional Institution regarding association with inmates and/or their families. Warden Jago stated such associations give rise to pressures on the operation of the institution which seriously jeopardize the security of the institution. Warden Jago stated that Mr. Bastian's previous conduct in providing a pack of cigarettes to an inmate for which Mr. Bastian received previous disciplinary action was further evidence of a continuing pattern of misconduct on the part of Mr. Bastian in this general area of prohibited activity.

Under cross-examination Warden Jago was asked about the language appearing within the Department's Standards of Employee Conduct which appears within Section 2(c) which directs an employee to notify a supervisor if the employee becomes involved in a set of circumstances involving an inmate or the inmate's family members. Warden Jago stated that supervisors at the institution are aware that such information is to be passed along and stated that he had talked to Supervisor Brown about this situation and had been informed by Mr. Brown that he, Mr. Brown, considered it a passing situation. Warden Jago stated that the rule cited refers to a relationship with a family member that is beyond a normal situation.

Warden Jago was then asked about circumstances under which an employee of a facility of the Department could give a favor or property to an inmate. Warden Jago stated that an employee of any

institution within the Department of Rehabilitation and Correction was not to give a convict anything under any circumstances.

At this point, following the admission of the Employer's exhibits, Management rested.

Donald Wright

The first witness called by the Union in this matter was Donald Wright, a Psychology Assistant employed within the Psychology Department of the London Correctional Institution. Mr. Wright is a delegate to the Union and has served as an employee of the London Correctional Institution for the past ten years. Mr. Wright has known Mr. Bastian since Mr. Bastian came to work at the London Correctional Institution.

Mr. Wright testified that he was at a meeting with Deputy Warden Collins and Mr. Bastian on October 25, 1987 wherein Mr. Bastian signed Employer's Exhibit 10, a seventy-two hour waiver of a predisciplinary conference, an acknowledgement and waiver of a right to representation at said conference, and an acknowledgment of notice of waiver of disciplinary hearing. Mr. Collins testified that as to the last document signed by Mr. Bastian, the acknowledgement of notice of waiver of disciplinary hearing, Mr. Wright had not been aware that by having Mr. Bastian sign this document Mr. Bastian was waiving his predisciplinary hearing. Mr. Wright pointed out that even though Mr. Bastian signed this document a predisciplinary conference was conducted.

Under cross-examination Mr. Wright stated that Mr. Collins had called Mr. Wright in and asked Mr. Wright if he wished to be there, to which Mr. Wright said that he did. Mr. Wright stated that during the predisciplinary conference Mr. Bastian was presented with the allegations giving rise to his discharge and was asked to sign a number of forms. Mr. Wright stated that Mr. Bastian was provided with the version of events under which the Employer was proceeding, and said Mr. Bastian left and came back and presented his rebuttal. Mr. Wright reiterated that the predisciplinary conference in this matter was held by the Employer.

Jack R. Bastian

The next witness to testify in this matter was the grievant, Jack Bastian. Mr. Bastian explained that at the time of his removal he was employed as a Correctional Program Specialist at the London Correctional Institution. Mr. Bastian explained that his position at the London Correctional Institution at the time of his removal was similar to that of a social worker, requiring him to provide counseling, process new admissions, and take histories of newly admitted inmates. Mr. Bastian stated that he was assigned to a unit, and that at the time of his discharge he was working at the facility's honor camp. Mr. Bastian stressed that his work performance at the London Correctional Institution was never questioned.

Mr. Bastian explained that since 1983 he has known Betty Perkins as a result of their meeting within a sociology class in

1983 at Edison State Community College. He stated that a relationship developed between them and that the relationship continued for a couple of years. Mr. Bastian pointed out that at one time he and Ms. Perkins had traveled to Europe together and that following that he had matriculated to Indiana University and Ms. Perkins had attended Wright State University.

Mr. Bastian testified that he received a letter from Ms. Perkins concerning her brother who had testified against another. Mr. Bastian said Ms. Perkins was afraid that this individual would place Ms. Perkins's brother's life in jeopardy. Mr. Bastian stated that he made some inquiries and recontacted Ms. Perkins, telling her that he had located where the inmate was located and the inmate was not within the same institution as Ms. Perkins's brother. Mr. Bastian stated that this conversation occurred in the fall of 1987 at a time Mr. Bastian was employed by the Adult Parole Authority. Mr. Bastian testified that as a result of Ms. Perkins's contact with him, their relationship was renewed and they began seeing each other regularly. He stated that he not only saw Ms. Perkins but also saw Ms. Perkins's mother as well on a regular basis.

Mr. Bastian explained that during this period of time he was driving his automobile when his vehicle suffered a punctured oil pan. He stated that he called Ms. Perkins and asked her to come and get him, which she did. He said he was returned to the home of Ms. Perkins and the next day was given the keys to a van owned by Ms. Perkins's brother. Mr. Bastian claimed that Ms. Perkins told him that he could use the van as long as he wished.

Mr. Bastian testified that he had talked to Ms. Perkins about her brother a lot, beginning at their meeting at a public square in Troy, Ohio. He stated that Ms. Perkins had pressed him to make recommendations to the parole board on her brother's behalf and asked him what they could do to assist her brother. Mr. Bastian testified that he informed Ms. Perkins that any recommendation would help and said he examined a letter from the Salvation Army which he told Ms. Perkins would be of assistance to her brother.

Mr. Bastian testified at hearing that he had told Ms. Perkins that he could not personally help her brother as her brother was not within the caseload assigned to him. He further stated that he would not be able to speak on his behalf as Mr. Bastian was then assigned to the London Correctional Institution's honor camp, while her brother was located within the stockade of the institution. Mr. Bastian stated that Ms. Perkins pressed him to write a letter to the parole board but he said he told Ms. Perkins that he could not do so, pointing to his previous suspension for preferential treatment of an inmate.

Mr. Bastian testified that Ms. Perkins then threatened Mr. Bastian, claiming that she would contact his wife if he did not write a letter in support of her brother to the parole board. Mr. Bastian stated that he refused to be blackmailed and simply called her bluff.

Mr. Bastian testified that at some point after he had been driving Ms. Perkins's brother's van he received a telephone call from Ms. Perkins inquiring about the location of the van. Mr.

Bastian stated that he informed Ms. Perkins that the van was located at McNaulty Motors, the place where he had picked up his repaired automobile. Mr. Bastian stated that Ms. Perkins had said okay to this. Mr. Bastian then stated that in August he received a letter from Ms. Perkins telling him that he was no longer authorized to use the van and that the van was to be returned to the Troy Police Department. Mr. Bastian stated that in response he wrote a letter to the Troy Police Department informing the Department that the van was located at McNaulty Motors. Mr. Bastian testified that he had not returned the van but had stayed away from Ms. Perkins because of the coercion she had attempted to use upon him. He stated that Ms. Perkins had wanted to continue their relationship but Mr. Bastian had not. He said that Ms. Perkins had then become angry, threatened to call his house, and on one occasion did call his house. Mr. Bastian stated that he subsequently received notice in the mail about taking the van.

Mr. Bastian explained at hearing that he had pled guilty to a second degree misdemeanor involving the use of Ms. Perkins's brother's van because he had not had a job at the time and did not possess \$750.00 with which to pay a lawyer. He stated that because of his financial situation he had no choice but to plead guilty, but stated that if he had had sufficient funds he would have fought the charge.

Mr. Bastian then turned his attention to Employer's Exhibit 7, the letter of reprimand issued to Mr. Bastian on June 22, 1988, wherein it was alleged that Mr. Bastian had given a pack of

cigarettes to an inmate in exchange for information. Mr. Bastian stated that he had given the cigarettes to an inmate for information as to drug smuggling within the London Correctional Institution and stated that he had told his unit manager at the time, Otto Kramer, of this circumstance. Mr. Bastian pointed out that inmates expect something in return for information and that cigarettes are commonly used as money within such a facility to secure information from informants.

As to Employer's Exhibit 10, the documents related to the predisciplinary conference provided to Mr. Bastian, Mr. Bastian explained that he had been called to Mr. Collins's office but had not known why at the time. He stated that Mr. Wright was present as well. According to Mr. Bastian, upon arrival at Mr. Collins's office he was told that disciplinary action was contemplated against him and charges were read. Mr. Bastian stated that he was asked to respond to the charges but explained that he had been told by counsel prior to this meeting not to talk about the van. He stated that Deputy Warden Collins became angry and issued a direct order to Mr. Bastian to respond to the charges or face further charges. Mr. Bastian stated that he and Mr. Wright left Mr. Collins's office, wrote a statement, then turned in the statement to Mr. Collins. Mr. Bastian stated that he received Employer's Exhibit 10 only after he had provided the statement to Deputy Warden Collins. Mr. Bastian pointed out that he had relied on Mr. Wright, that he had been under a lot of stress at the time, and

that he had presumed that everything was okay and so signed the documents proffered to him by Deputy Warden Collins.

Under cross-examination Mr. Bastian stated that his relationship with Ms. Perkins had fizzled out after his graduation from Edison State Community College. Mr. Bastian claimed that he had never told Ms. Perkins that he was divorced but may have told her that he was considering divorce. Mr. Bastian testified that he had never shown divorce papers to Ms. Perkins and said that Ms. Perkins had been looking for a serious relationship leading to marriage. Mr. Bastian stated that his affair with Ms. Perkins lasted two and one-half years and that it provided him with the best of both worlds. He pointed out, however, that Ms. Perkins was aware that he was married, and had known who Mr. Bastian's wife was at the time. Mr. Bastian pointed out that both he and his wife and Ms. Perkins had been present at commencement exercises at Edison State Community College. Mr. Bastian reiterated that Ms. Perkins was well aware during the affair with Mr. Bastian that Mr. Bastian was married.

Mr. Bastian stated that his car had broken down on March 15, 1988, and that he had called Ms. Perkins for assistance. Mr. Bastian admitted that he had been drinking that evening though he stated that his abilities to drive were not impaired. That evening he stayed at Ms. Perkins's home and said that he probably talked about the van that night. Mr. Bastian pointed out, however, that the van had been offered to him by Ms. Perkins and he stated that there was a discussion about his need to use the van to get to the

London Correctional Institution. He further stated that the parole board was meeting at the London Correctional Institution that day on inmates assigned to Mr. Bastian and that he was expected to provide information as to these inmates to the parole board on that day.

Mr. Bastian stated that following the recontact of him by Ms. Perkins in the fall of 1987, he and Ms. Perkins had entered into a casual dating relationship. He stated that they had had dinner at the Wine Cellar Restaurant in Columbus in February, 1988, in celebration of Mr. Bastian's birthday, but testified that he, Mr. Bastian, had paid for the dinner and said that he had never told Ms. Perkins that an inmate was paying for the dinner.

Mr. Bastian explained that when he and Ms. Perkins parted company following the use of Ms. Perkins's brother's van, Mr. Bastian was still driving the van. He explained that his automobile took three weeks to fix and took longer than he had expected as a new engine from Germany was required to fix it. Mr. Bastian stated that he was asked to write letters to the parole board on behalf of Ms. Perkins's brother, but pointed out that by mid-May his relationship with Ms. Perkins had ended. Mr. Bastian stated that he had received pressure from Ms. Perkins to write a letter to the parole board and that is why he did not return the van in person to her, but left it at his car dealer. Mr. Bastian emphasized that he had never provided preferential treatment to Ms. Perkins's brother.

Mr. Bastian stated that he had told his then unit manager, Otto Kramer, about the cigarettes he had provided to an informant in exchange for information as to illegal drug smuggling. Mr. Bastian stated that this was a common practice and that a snitch system was commonly employed at the institution. Mr. Bastian testified that he was told by Mr. Kramer to be more clandestine in providing favors to inmates for information in the future. Mr. Bastian also stated that he had never grieved the written reprimands issued to him as he had been guilty of the offenses listed within them.

When asked whether he had called Margaret Funderburg on July 1, 1988, Mr. Bastian stated that it was very possible that he made such a call. However, he denied that he had told Ms. Funderburg that her son was "flapping his jaws" about the van and said that he had never said that he was going to write a letter on behalf of Ms. Funderburg's son.

Mr. Bastian then testified that while he had received Rules of Conduct issued by the Department of Rehabilitation and Correction, he had never really read them until he received his reprimand concerning the provision of cigarettes to an inmate. He stated that he had told Supervisor Brown about his relationship with an inmate's sister and had been told by Mr. Brown not to worry about it. Mr. Bastian stated that his acceptance of the use of the inmate's van, in his opinion, was not a violation of the Code of Conduct under which he worked as he had been friends with Ms. Perkins since 1983 and had told Mr. Brown about the relationship, and had been told that there was no problem. Mr. Bastian stated

that while he had told Mr. Brown about his relationship with the sister, he did not recall telling Mr. Brown about the use of the van.

Under redirect examination Mr. Bastian denied that he had ever indicated that he was going to help Berman Albright. He pointed out that in March, 1988, Mr. Albright had not been up for parole but had been up for shock probation. Mr. Bastian further pointed out that shock probation had been denied to Mr. Albright at that time.

At this point the Union rested.

Terry Collins

Deputy Warden Terry Collins was recalled by Management as a rebuttal witness and Mr. Collins testified that Mr. Bastian had never been told to be more clandestine at the institution in providing favors to inmates.

ANALYSIS

The collective bargaining agreement under which this arbitration proceeds reserves to Management, in Article 5, inherent rights and authority to manage and operate its facilities and programs. In this case the particular facility operated by Management is the London Correctional Institution, a medium security prison housing adult male felons. Specifically reserved

to Management in operating the London Correctional Institution within Article 5 is the determination and promulgation of the standards of quality and work performance to be maintained. In exchange for these powers, Management promises within Article 5 not to exercise its management rights in a discriminatory fashion against any employee or for the purpose of invalidating any contract provision.

Article 8 of the collective bargaining agreement between the parties refers to disciplinary action and requires that such action may only be imposed on an employee for just cause. Section 2 of Article 8 provides that in disciplining an employee, principles of progressive discipline shall be followed. This section provides that the progressive steps usually employed are verbal reprimand, written reprimand, suspension, and demotion or removal. Section 2 of Article 8 specifically recognizes that the application of progressive disciplinary steps is contingent upon the type and occurrence of various offenses for which discipline is to be imposed. The third section of Article 8 requires that prior to termination an employee is to be afforded an opportunity to be confronted with the charges against him and to offer his side of the story.

In the matter herein the appointing authority of the London Correctional Institution executed the grievant's removal and provided to the grievant an opportunity, before Deputy Warden Terry Collins, to know what charges were raised in effecting the discharge and to give Mr. Bastian an opportunity to rebut those

charges if he wished. While a waiver of such a hearing was signed by Mr. Bastian in the presence of a Union steward, and though there may have been some confusion on Mr. Bastian's part and the steward's part as to the effect of signing the waiver document, the evidence presented in this matter clearly shows that a so called Loudermill predisciplinary hearing was conducted in satisfaction of Section 3 of Article 8 of the contract between the parties.

Article 7 of the collective bargaining agreement between the parties grants to the Union the power to file a grievance on behalf of a discharged bargaining unit member and sets out the procedures necessary for invoking the grievance procedure contained within Article 7. The evidence presented in this case clearly reflects that for purposes of Mr. Bastian's discharge the Union executed all procedures necessary to placing Mr. Bastian's removal before the arbitrator under the authority of the collective bargaining agreement between the parties. As it is also determined that Management has satisfied its procedural requirements under the contract, it is found herein that this matter, the issue of Mr. Bastian's discharge, is properly before the arbitrator and fully arbitrable.

In gauging the nature of the misconduct ascribed to the grievant for purposes of his discharge, it is important to keep in mind the environment in which the alleged misconduct occurred. In this particular matter the grievant was employed within the confines and along the perimeter of a medium security prison operated by the State of Ohio for the control and housing of

hundreds of adult male felony convicts. Management's claim as to the importance it places on security at such a facility was credible and persuasive on its face. A facility housing so many serious offenders presents security problems on three levels. First, the inmates must be controlled so that staff members within the prison are not harmed. Second, it is important that inmates not be permitted to harm each other. Third, the inmates must be secure in terms of their exclusion from surrounding communities and remaining within the control of the facility and the employees of the Ohio Department of Rehabilitation and Correction who work within and around the facility.

Though during the time in question the grievant was not employed as a correctional officer within the London Correctional Facility, even a social worker working within such a facility is rightfully charged with the responsibility of, at the very least, not diluting the level of security attained generally within the facility. In Mr. Bastian's particular case he had served previously as a correctional officer within the London Correctional Institution and had sufficient experience and training to understand Management's legitimate aims of operating the facility at high levels of security and control.

The grievant is also chargeable with knowledge of the promulgated rules of the Department of Rehabilitation and Correction as to how employees at the facility are to conduct themselves in matters related to the operation of the facility and control of inmates. The evidence presented in this case reflects

a receipt signed by Mr. Bastian noting his receipt of the rules and regulations which were expected of him as an employee of the Department at the London Correction Institution, and whether or not Mr. Bastian took the time to read them they are rules which are nonetheless enforceable as to him.

It should also be noted that after a close examination of the rules at issue in this case, specifically rules directed to conduct with or affecting inmates or inmates' family members, the rules are viewed by the arbitrator as not unreasonable, unconstitutionally intrusive, or violative of language within the collective bargaining agreement between the parties.

The two rules specifically at issue may be found in Employer's Exhibit 12 which is entitled Ohio Department of Rehabilitation and Correction Standards of Employee Conduct. This particular set of rules has attached to it a cover letter dated September 22, 1987. Rule 39 of the Department's Standards of Employee Conduct prohibits an employee from giving preferential treatment to an inmate, and prohibits the offering, receiving or giving of a favor or anything of value to an inmate without the express authorization of the Department. Rule 40 within the same Standards of Conduct prohibits an employee from engaging in unauthorized personal relationships with inmates or family members of inmates. The Standards of Employee Conduct promulgated by the Ohio Department of Rehabilitation and Correction also holds that a first violation of Rule 39 or 40 calls for a suspension of five to ten days or other disciplinary action up to and including removal; and provides, for

a second offense under either rule, that an employee warrants discharge.

In determining whether Mr. Bastian has violated either rule it is important to keep in mind that while much of the testimony presented in this case was in dispute, much of it was not. All of the witnesses were in agreement that Mr. Bastian and Ms. Perkins met in 1983, while enrolled in classes at Edison State Community College. Ms. Perkins's brother at that time was not an inmate at the London Correctional Institution and the relationship which developed between Mr. Bastian and Ms. Perkins at that time had no connection to any facet of the operation of the London Correctional Institution.

It is also undisputed by all of the witnesses who presented evidence in this matter that after an initial relationship lasting two to three years, the relationship between Mr. Bastian and Ms. Perkins ended and they did not see each other for a period of years. It is further undisputed that contact between Mr. Bastian and Ms. Perkins was instigated by Ms. Perkins in 1987 for the sole reason that Ms. Perkins's brother, and Ms. Funderburg's son, Berman Albright, inmate number 199-529, was an inmate at the London Correctional Institution. All of the witnesses agreed that Ms. Perkins requested that Mr. Bastian, through his connection to the Adult Parole Authority, the London Correctional Institution and the Ohio Department of Rehabilitation and Correction, use his position to secure information which bore on the physical safety of Ms. Perkins's brother. Ms. Perkins wanted to know whether an

inmate who her brother had helped to convict and send to prison was to be placed in the same institution which housed her brother. Both inmate Albright's mother, Margaret Funderburg, and his sister, Betty Perkins, were concerned about Mr. Albright's safety and well being and turned to Mr. Bastian for assistance. Mr. Bastian checked on the whereabouts of the other inmate and provided this information to Ms. Perkins and Ms. Funderburg.

After providing this favor, however, Ms. Perkins and Mr. Bastian did not go back to their previous parallel lives, but began to see one another on a regular basis once again. The beginnings of a second relationship between these two individuals arose, but unlike the first relationship, the latter relationship between Mr. Bastian and Ms. Perkins was connected to the operation of the London Correctional Institution due to the fact that Ms. Perkins and her mother, Ms. Funderburg, were both blood relatives of an inmate then residing within the London Correctional Institution.

Under the Standards of Employee Conduct of the Ohio Department of Rehabilitation and Correction there appears the following language:

Employees shall not, without authorization from the Appointing Authority, allow themselves to show partiality toward or become emotionally, physically, or financially involved with inmates, parolees, probationers, furloughees or their families or establish a pattern of social fraternization with same.

An employee shall not offer or give to an inmate, parolee, probationer, furlougher, or a member of his family, or to any person known to be associated with him, any article, favor, or service which is not authorized in the performance of the employee's duties and which conflicts or appears to conflict with the employee's duties. Neither shall an employee accept any gift, personal service or favor from an inmate, parolee, probationer, furlougher or his family, or person known to be associated with him which is not authorized in the performance of the employee's duties and which conflict or appears to conflict with the employee's duties.

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An employee who becomes involved in a set of circumstances as described above must advise his supervisor, who is responsible for informing the appointing authority or personnel officer.

Mr. Bastian was recontacted by Ms. Perkins in November, 1987, one month after Berman Albright became incarcerated within the London Correctional Institution. Mr. Bastian, beginning at that time, was entitled under constitutional guarantees of freedom of association to maintain contact with Ms. Perkins, but in the event he did so was required under Standards of Conduct promulgated by the Ohio Department of Rehabilitation and Correction to notify his supervisor of this unusual circumstance, unusual to the extent that he was seeing regularly a woman who was the sister of an inmate then incarcerated at the London Correctional Institution. As stated previously, the arbitrator does not view this rule as unreasonably intrusive or violative of the collective bargaining agreement between the parties. Management's interest in maintaining security supports the requirement that a relationship

with a family member of an inmate at least be made known to the administrators of the London Correctional Institution.

Raymond Brown, the Correctional Specialist 2 and Unit Manager of the London Correctional Institution Honor Camp, was the supervisor of Mr. Bastian during all relevant times. Mr. Brown testified that Mr. Bastian informed him that he was seeing the sister of an inmate and Mr. Brown testified that this information was provided to him by Mr. Bastian two or three months prior to Mr. Bastian's removal. As Mr. Bastian was removed on October 27, 1988, Mr. Brown's testimony places notification by Mr. Bastian to Mr. Brown of Mr. Bastian's relationship with a family member of an inmate at the London Correctional Institution in either July or August, 1988. No explanation was offered at hearing as to why Mr. Bastian waited from November, 1987 until July or August, 1988 to apprise his supervisor of his relationship with Ms. Perkins. The seven or eight month lag between the beginning of the second relationship between Mr. Bastian and Ms. Perkins, and the date upon which Mr. Bastian notified his supervisor as required by the rules of the Department's Standards of Conduct, is viewed by the arbitrator as a violation of the rule.

Mr. Bastian has also violated the Standards of Conduct promulgated by the Ohio Department of Rehabilitation and Correction due to his use of a van over which family members of an inmate at the London Correctional Institution had possession and control. The fact that the van was owned by an inmate at the Correctional Institution only heightens the serious nature of the favor received

by Mr. Bastian from a family member of an inmate, and more closely associates such a favor with the inmate himself.

The use of the van by Mr. Bastian is also viewed as serious misconduct by the arbitrator because the inmate viewed the van on the premises of the institution, recognized it as his vehicle, was aware that none of his family members had visited him that day, and became excited because of the fact his personal property was being used by persons unknown to him.¹

The most egregious conduct, however, for which Mr. Bastian is rightfully charged is the allegation that he ordered Ms. Funderburg, the mother of Inmate Albright, to intercede with her son so as to quiet him about the use of his van. Mr. Bastian's command to Ms. Funderburg was premised on Mr. Bastian's claim that he, through his official capacity, could assist in the release of Mr. Albright from incarceration. While Mr. Bastian disputes that he made such a claim to Ms. Funderburg, the arbitrator is not persuaded on this point by the testimony of the grievant. The testimony of Ms. Funderburg and Ms. Perkins was far more credible on this issue and it is found herein that Mr. Bastian did direct Ms. Funderburg to quiet her son or suffer the consequences.

¹ The evidence does not reflect whether Ms. Perkins, Ms. Funderburg or Mr. Bastian told Inmate Albright that his van was being used over a number of months in 1988 by Mr. Bastian. The evidence does reflect that Inmate Albright must have talked about the fact that his van was being used because Mr. Bastian told Ms. Perkins and Ms. Funderburg to have Inmate Albright to stop "flapping his jaws".

Mr. Bastian's testimony to the effect that Mr. Albright was not within a caseload assigned to Mr. Bastian was found by the arbitrator to be credible. Under the aforementioned circumstances, therefore, Mr. Bastian was an official of the Ohio Department of Rehabilitation and Correction who claimed to have some authority affecting whether Ms. Funderburg's son and Ms. Perkins's brother would remain incarcerated within a prison or would be released in the near future to his family. It is hard to imagine a more precious goal on the part of a mother or sister than to have a family member released from the confines of a penitentiary.

It is also found by the arbitrator herein that Mr. Bastian employed his offers of assistance to and threats of withholding such assistance from Ms. Funderburg and Ms. Perkins in securing permission to use Inmate Albright's van and retaining its use. The evidence presented reflects Mr. Bastian's retention of the van and his extreme negligence in returning the van to Ms. Funderburg and Ms. Perkins were based upon claims as to his power to effect the freedom of Mr. Albright. The use of his official position to construct such a perception within an inmate's family was coercive and clearly violative of promulgated rules of the Department as to standards of conduct expected of departmental employees.

The actions of Mr. Bastian as alleged by Management are also proven to be connected to the security of the London Correctional Institution. The stress resulting from Mr. Bastian's actions on Inmate Albright are directly related to the security of the institution. Mr. Bastian's actions toward the family of Inmate


Albright are violative of rules previously broken by Mr. Bastian and for which he received prior discipline. The grievant has received the full panoply of progressive discipline specified by the contract between the parties, including written reprimands and suspensions. The disciplinary action previously directed to Mr. Bastian complained of neglect of duty, including sleeping while on duty; and providing unauthorized favors to inmates. Mr. Bastian has now added to his disciplinary record improper and unreported activities involving an inmate of the London Correctional Institution and family members of that inmate.

Based on a careful consideration of the evidence presented as to serious misconduct on the part of the grievant; and after a careful review of the language within the collective bargaining agreement between the parties and the properly promulgated rules and regulations under which the grievant was employed; and after a close analysis of the severity of the misconduct proven to have been participated in by the grievant; it is the decision of the arbitrator that Management removed the grievant from employment for just cause and in accordance with the requirements of the collective bargaining agreement between the parties.

AWARD

1. The grievant, Jack Bastian, was removed from employment with the Department of Rehabilitation and Correction for just cause.

2. The grievance is denied.


Howard D. Silver
Arbitrator

May 19, 1989
Columbus, Ohio

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ATTORNEY
GENERAL