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In the Matter of Arbitration

Between

Fraternal Order of Police-  
Ohio Labor Council

and

The State of Ohio, Department  
of Mental Health

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Case No.:

23-10-89-11-03-0066-05-02

Before: Harry Graham

Appearances: For Fraternal Order of Police:

Paul Cox  
Fraternal Order of Police-Ohio Labor Council  
3360 East Livingston Ave.  
Columbus, OH. 43227

For Department of Mental Health:

John Rauch  
Labor Relations Coordinator  
Department of Mental Health  
State Office Tower  
30 East Broad St.  
Columbus, OH. 43215

Introduction: Pursuant to the procedures of the parties a hearing was held in this matter on April 12, 1990 before Harry Graham. At the hearing the parties were provided complete opportunity to present testimony and evidence. Post hearing briefs were not filed in this dispute and the record was closed at the conclusion of oral argument. This decision is issued under Section 20.10 of the Agreement which provides that a decision shall be submitted to the parties within five (5) days of the close of the hearing.

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

Did the Employer have just cause to suspend Mark Hill?  
If not, what shall the remedy be?

Background: The events that give rise to this proceeding are not a matter of dispute between the parties. The Grievant, Mark Hill, has been employed as a Police Officer at the Massillon State Hospital in Massillon, OH. for somewhat over three years. On October 30, 1989 Officer Hill received a six (6) day suspension. That suspension was given to Officer Hill for three offenses he had allegedly committed. These involved payment to an patient for information while he was on duty on August 22, 1989; submitting a report to Management which displayed disrespect towards Management; and reporting off duty in an untimely fashion on September 2, 1989 together with an alleged failure to inform his supervisor of the reason for his absence which continued beyond that date.

In order to protest the suspension administered to Officer Hill a grievance was filed. It was processed through the procedure of the parties without resolution and they agree it is properly before the Arbitrator for determination on its merits.

Position of the Employer: On August 1, 1989 while on his rounds with his colleague, Officer Gary Waldrop, Officer Hill found the door to a laundry room open. They investigated this incident and found nothing amiss. Their actions were noted on

the log maintained by the Department. ((Employer Exhibit 6). Upon review by higher authority questions were directed at the Officers. In response to those questions a supplementary report was completed by Officer Hill on August 30, 1989. (Employer Exhibit 7). That report indicated in part that "As a sergeant on a outside agency a B&E or burglary warrants my subordinates to notify me immediately upon finding the same. This officer does'nt expect a non-police functioning administration to understand the routine operation of a police agency." Administration of the Massillon facility regarded that language to be intemperate and indicative of disrespect.

According to the State on August 22, 1989 a patient approached Officer Hill with some coffee. He told Hill from whom he had secured the coffee. In exchange Officer Hill gave the patient \$1.00. Coffee is regarded as a contraband substance at the Massillon facility due to the mental state of patients and the fact that drugs are administered to them from time to time. Payment by Hill to the patient for the coffee and the information associated with it is not in accord with hospital policy. Accordingly, discipline for this action is appropriate in the Employer's view.

On September 2, 1989 Officer Hill did not report for his scheduled shift. His wife called into the hospital at 8:00AM which was his scheduled starting time. The Agreement provides

that employees who will not arrive at work are to call-in one-half (1/2) hour before their scheduled starting time. There is no dispute Mr. Hill's wife called in late. Discipline for this offense is warranted in the State's view.

In fact, Mr. Hill was absent until September 11, 1989. During that period he did not call-in. Mr. Hill's supervisor was left wondering about his whereabouts. His failure to notify the Hospital of the reason for his absence and his plans, if any, to return to work justify discipline according to the State.

It is necessary to place these events in context according to the Employer. Mr. Hill has a history of receipt of discipline. In fact, he has had a discharge which was subsequently reduced to a suspension. When that history is viewed together with the several events that prompted the six day suspension at issue in this proceeding the discipline is justified the State asserts. It urges that the Grievance be denied.

Position of the Union: The Union asserts that this dispute must be viewed in what it claims is the proper context. Several years ago Officer Hill determined that the son of an administrator at the Massillon facility, himself employed there, was selling drugs. That individual was not prosecuted but was permitted to resign. Since that time, Officer Hill has been subject to a vendetta according to the Union. It is

against that background of harassment that the events of this proceeding must be viewed the Union insists.

When the open laundry room door was discovered it was a serious occurrence as that facility is a secure area. In fact, the door had apparently been open for at least part of the prior shift and the officers on that shift did not discover it. They were not disciplined. Furthermore, as indicated in Officer Hill's report, the Administration at Massillon is not trained in the nuances of police work. They do not know what police officers in general, or at the Hospital in particular, do on a daily basis. He was pointing that out in his memo. Discipline for that observation is surely inappropriate according to the Union.

When Hill gave the dollar to the patient it was nothing unusual. Testimony was received indicating that patients routinely solicit money or goods from Hospital staff. Staff regularly respond to those request with funds. Furthermore, the patient gave Hill the coffee and then asked for the dollar. He did not offer the coffee in exchange for money. He gave the coffee to Hill and subsequently sought the dollar. This sequence of events is conceptually different from the purchase of information in the Union's view.

The Union acknowledges that Hill was called-in late by his wife on September 2, 1989. The Agreement had changed with respect to call-in. The prior Agreement provided that call-in

could occur one-half hour after the start of the shift. The present Agreement, in effect for approximately five months at September 2, 1989 effected a change. His wife was unaware of it. This is not a major offense warranting discipline according to the Union.

At Article 40.05, Section 2 a and b notice is required to be made to the Employer of hospitalization and convalescence. No time period is specified for that notice to be made. Hill gave the Employer notice as required by the Agreement. Employer Exhibit 10 is a doctor's note, dated September 4, 1989. It indicates that Hill was under his care and hospitalized from September 1 to September 4, 1989. He was cleared to return to work on September 11, 1989. On September 5, 1989 Hill brought that note to the Hospital. In the absence of his supervisor, Sergeant Pappas at that time, he placed it on Pappas' desk. The Employer was notified. No discipline may occur in these circumstances the Union insists.

Discussion: When on August 1, 1989 Officers Hill and Waldrop discovered the open door it is acknowledged by all concerned that it had been open for some time. It most likely should have been discovered by the officers on the previous shift. They did not receive discipline for their failure to see the open door. In fact, as testimony at the hearing indicated, the Administration of the Hospital is not familiar with the

operation of a police department. Hill made that observation in his supplemental memo discussing the discovery of the open door. Administration of discipline for setting forth the truth, unpalatable though it may be, is insupportable. There was nothing improper about Officer Hill's action in connection with the open door. His supplemental memo explained it. He indicated that his superiors would not understand the workings of the police department. Such an observation, even if it were to be incorrect which it was not, does not warrant discipline of the sort at issue in this proceeding.

Testimony was received at the hearing which indicated beyond doubt that the giving of small amounts of money to patients is done on a routine basis. It has been occurring for many, many years. Nothing is on the record to refute Officer Hill's account of the coffee and dollar giving incident. Of course he doubtless felt that he had a moral debt to the patient for the coffee and information associated with it. Nonetheless, there is nothing at all on the record to indicate that Mr. Hill's behavior was at all improper or in contravention of Hospital rules. Accordingly discipline for this incident is improper.

Hill's wife notified the Hospital after the contractually mandated time on the morning of September 2, 1989. Notwithstanding that fact, Hill was in compliance with

the notice provisions concerning extended absence when he provided the Employer which his doctor's note, Employer Exhibit 10. Viewed in the context of these events Mrs. Hill's error is a minor one. The functions of the Hospital did not cease because of her mistake. To impose a six day suspension for the late call-in is inappropriate.

Award: The grievance is SUSTAINED. All record of this six day suspension is to be removed from the Grievant's personnel file. He is to receive all pay and benefits he would have earned but for his improper suspension.

Signed and dated this 13<sup>th</sup> day of April, 1990 at South Russell, OH.

Harry Graham  
Harry Graham  
Arbitrator