

ARBITRATION

OHIO VETERANS CHILDRENS' HOME

and

OCSEA/AFSCME

(Grievance of Eunice Rickman)

ARBITRATOR: Andrew J. Love

APPEARANCES: For OVCH - Sally Miller
For OCSEA/AFSCME - Michael Muenchen

DECISION AND AWARD

The issues presented in this proceeding on April 5, 1990, are whether the employer violated the contract between the State of Ohio and OCSEA/AFSCME in suspending the grievant for five days for insubordination; and if so, what shall the remedy be? The underlying facts are as follows:

The grievant has been employed at OVCH for three years as a Child Care Worker, wherein she works the midnight to eight o'clock a.m. shift on Mondays through Wednesdays and works rotating shifts on Saturdays and Sundays. On July 26, 1989, at midnight, Gregory Meux, Assistant Dean at OVCH, advised the grievant to go to Roosevelt Cottage to relieve another Child Care Worker, because that employee had finished his shift and was not replaced by the next shift employee. It should be noted that the grievant was initially assigned to Taft Cottage at OVCH when she received the telephone call from Mr. Meux. Because Mr. Meux has supervisory authority over the grievant, he was in position to make that request to her. When the grievant told Mr. Meux that she would not

go to Roosevelt Cottage, he then have the grievant a direct order to do so.

Subsequently, Mr. Meux spoke with Sharon Mangin, a security officer at OVCH, who advised him that the grievant refused to go to Roosevelt Hall. Ms. Mangin then sent a more senior employee, Sandy Neal, to relieve the Child Care Worker at Roosevelt Cottage. Mr. Meux then recommended to his supervisor, Anthony Stevens, that the grievant should be disciplined for insubordination.

At approximately 12:30 a.m. on July 26, 1989, Sharon Mangin observed the grievant at a soda pop machine. The grievant appeared upset and stated "I am not going to go to Roosevelt Cottage." The grievant followed Ms. Mangin to the office, where Ms. Mangin called Sandy Neal to fill in as house parent at Roosevelt Cottage. She then sent the grievant back to Taft Cottage. Ms. Mangin testified that she called Mr. Meux and explained what she did to relieve the house parent at Roosevelt Cottage.

Ronald Camic, Assistant Superintendent and Labor Relations Coordinator, conducts predisciplinary hearings as part of his duties. This hearing was originally scheduled for August 16, 1989, although the grievant received notice only two days before the scheduled hearing date. Mr. Camick proceeded with the hearing on August 16, 1989 and denied the request for a continuance by the union. Section 24 of the Contract states in pertinent part:

"An employee has the right to a meeting prior to the imposition of suspension or termination. The employee may waive this meeting, which shall be scheduled no earlier than three (3) days following the notification to the employee . . ."

As stated above, the hearing was held. However, after further discussions with Ms. Connie Oliver, Chief Steward, Mr. Camic realized that a "procedural error" needed to be corrected. Thereafter, he provided written notice to the grievant to reschedule the predisciplinary hearing to August 21, 1989.

Mr. Camic identified Management Exhibit No. 2, which is a memorandum from Connie Oliver, which states that the predisciplinary meeting was held on August 16, 1989 over the objection of the union. Nevertheless, the union and the grievant presented their case. This memorandum also pointed out that no employer representative recommending discipline was present at this hearing. The memorandum further stated that the rescheduling of this predisciplinary conference was unnecessary.

On August 21, another predisciplinary hearing was scheduled; however, the union refused to appear. In the opinion of Mr. Camic, the grievant therefore waived her predisciplinary hearing.

Mr. Camic further pointed out that work rules applicable to employees at OVCH were in effect at the time of the grievant's alleged offense of insubordination. It was further pointed out through Management Exhibit No. 5 that the grievant acknowledged receipt of said work rules on January 20, 1988.

Connie Oliver, a secretary at OVCH, testified that she received the predisciplinary notice and made a copy for the steward handling the grievant's case. This notice was received by her on July 15, 1989. On the morning of July 16, Jerry Woodruff, steward, said that he could not attend this disciplinary conference, nor could he be prepared. After the hearing was held over Ms. Oliver's

objections, Mr. Camic tried to reschedule. However, Ms. Oliver felt that, absent any additional documentation, there was no need to require the grievant to go through another conference.

The grievant testified that she was not a rover on July 26, 1989, because this was on a Wednesday. She is a rover on Saturdays and Sundays only. However, the grievant acknowledged that she could be assigned to other cottages on Wednesday. The grievant stated that she advised Mr. Meux that there were other employees with less seniority than she. She denied that she advised Sharon Mangin that she was not going to go to Roosevelt. She further stated that she never refused Mr. Meux's order to go to Roosevelt Cottage.

Turning to the issue as to whether OVCH violated the Contract, this arbitrator determines that the grievant waived the requirement of a minimum of three (3) days notice of predisciplinary hearing. This determination is made with the knowledge by this arbitrator that neither management nor the grievant were prepared to go forward with evidence. OVCH had no employer representative at such a hearing, and, therefore the hearing examiner had nothing more than documentation from Mr. Meux to consider on behalf of management. Furthermore, the grievant's steward stated that he was unprepared to go forward because of the lack of sufficient notice to prepare for this hearing. Nevertheless, the grievant proceeded with evidence deemed to be in her favor. Realizing this procedural error, management subsequently gave written notice to reschedule said hearing on August 21, 1989, to which the grievant refused to appear. In this arbitrator's view, had the grievant refused to

appear at the initial predisciplinary hearing, and therefore, had not presented evidence she would stand on strong grounds that a violation of "due process" would have occurred. Because she presented evidence at the improperly scheduled disciplinary conference on July 16, 1989, she effectively waived the three day notice requirement. Having made this determination, this arbitrator has done so with great reluctance. Again, if the grievant had refused to participate in the earlier conference, this arbitrator would have ruled in favor of the grievant.

As to the evidence of insubordination, this arbitrator is convinced by the evidence that the grievant was insubordinate in that she clearly refused to obey the order of Mr. Meux. Whether there were less senior employees than the grievant available to be transferred from one cottage to another is not the subject matter of this hearing. The issue of the availability of less senior employees is the subject matter of another grievance. The evidence presented by the witnesses in this proceeding clearly demonstrate that the grievant, by words and actions, refused a direct order to replace the Child Care Worker at Roosevelt Cottage. As to the disciplinary action of five day's suspension, this arbitrator finds that such action was appropriate. The grievant had previously received a verbal reprimand for tardiness and five days suspension for falsification of documents. Such measures provided the grievant with ample notice of the need to correct inappropriate behavior. Therefore, OVCH has followed the principles of progressive discipline as outlined in Section 24.02 of the contract.

Accordingly, the grievance is DENIED.



ANDREW J. LOVE
ARBITRATOR

May 16, 1990