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Howard D. Silver  
Arbitrator  
Columbus, Ohio

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In the Matter of Arbitration  
Between

The State of Ohio

and

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

Grievant:  
Otis Crusoe

Grievance Number:  
28-02-891211-07-02-12

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APPEARANCES

For The State of Ohio

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

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

Tommie Lee Suber, Labor Representative  
Ohio Health Care Employees Union,  
District 1199

ISSUE

Was grievance 28-02-(12/11/89)-07-02-12 filed timely at Step  
3, and, if not, is the grievance arbitrable?

Cost: \$400<sup>00</sup>

This matter came on for hearing on June 20, 1990, within the offices of the Ohio Department of Administrative Services's Office of Collective Bargaining, 65 East State Street, 15th Floor, 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. Following the submission of written closing statements, the record in this matter was closed, effective July 13, 1990.

#### STATEMENT OF THE CASE

The Grievant is a parole officer employed by the Ohio Department of Rehabilitation and Correction's Adult Parole Authority, stationed in Dayton, Ohio. On Saturday, May 6, 1989, Grievant performed parole field work from approximately 9:30 a.m. until noon. Grievant then reported to a second job, a security position with a halfway house for felons called COPE House. This facility is located in Dayton, Ohio.

Upon reporting to work at COPE House, Grievant left in his vehicle, a 1983 Ford Van, Adult Parole Authority business papers inside his attache case, and Grievant's service revolver, a .357 caliber handgun.

At the conclusion of Grievant's tour of duty at COPE House, shortly after midnight, the Grievant returned to his van and found a door's wing window pried open and the van burglarized. The

perpetrator made off with Grievant's attache case and the official Adult Parole Authority documents within it. Also stolen was Grievant's service revolver and two speed loaders filled with twelve rounds of live ammunition.

Upon discovery of the theft, Grievant immediately filed a report with the Dayton Police Department and notified his immediate, direct supervisor. On May 8, 1989, Grievant notified the Ohio State Highway Patrol. The Ohio State Highway Patrol determined that the matter was not within its jurisdiction.

Effective October 16, 1989, Grievant was suspended five days by the Employer for insubordination and neglect of duty upon allegations associated with the theft of Grievant's firearm and ammunition on May 6-7, 1989. The final paragraph of the notice received by the Grievant informing him of the suspension, Joint Exhibit 3, reads as follows:

Pursuant to the 1199 contract, Article 7.06, you may choose to grieve this disciplinary action. You must file a grievance through your Union representative within ten calendar days of notification of this action.

At the time Grievant received the suspension notification, on or about October 10, 1989, Grievant had been serving as a Union delegate since June, 1986. While serving as a delegate, in April, 1989, Grievant participated in an arbitral proceeding which

addressed the timeliness of a grievance filed due to a suspension.<sup>1</sup> The April, 1989 arbitration resulted in a decision and award finding a grievance to a suspension untimely filed and therefore not arbitrable.

With the above as background, on October 12, 1989, a grievance on behalf of the Grievant was filed with the Grievant's immediate supervisor, a Step 1 procedure within Article 7.06 of the collective bargaining agreement between the parties.<sup>2</sup> Later the same day, Grievant received written notification from his supervisor that the grievance could not be addressed at Step 1, as the grievance could only be resolved at a different level of the grievance procedure authorized by the collective bargaining agreement between the parties.

Joint Exhibit 2, the paper trail produced by this grievance, reflects a grievance received by the Employer on behalf of the Grievant, at level three of the collective bargaining agreement's grievance procedure, on December 11, 1989.

The Grievant testified at hearing that on October 12, 1989 he placed the grievance in the Adult Parole Authority Dayton Office's

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<sup>1</sup> The April, 1989 arbitration hearing proceeded under a collective bargaining agreement in effect prior to the collective bargaining agreement under which the grievance herein is to be determined.

<sup>2</sup> The collective bargaining agreement to be employed in determining this matter, a contract in effect from June 12, 1989 through June 11, 1992, was agreed by the parties to be the contract used in determining the grievance raised by this case. This collective bargaining agreement appears in the record as Joint Exhibit 1.

mail system, intending to file this grievance at Step 3 of the grievance procedure. The Employer provided testimony to the effect that the grievance was not received by the Employer until mid-December, 1989, following a contact from the Union about the grievance in December, 1989. After notice was given that the grievance had not been received, a grievance was filed with the Employer on December 11, 1989.

#### APPLICABLE CONTRACT PROVISIONS

##### Article 7.01 Purpose

The State of Ohio and the Union recognize that in the interest of harmonious relations, a procedure is necessary whereby employees can be assured of prompt, impartial and fair processing of their grievance. Such procedure shall be available to all bargaining unit employees and no reprisals of any kind shall be taken against any employee initiating or participating in the grievance procedure. Since this Agreement provides for final and binding arbitration of grievances, pursuant to Section 4117.10 of the Ohio Revised Code, the State Personnel Board of Review shall have no jurisdiction to receive and determine any appeals relating to matters that are the subject of this grievance procedure.

#### Article 7.02 Definitions

A. Grievance as used in this Agreement refers to an alleged violation, misinterpretation, or misapplication of specific article(s) or section(s) of the Agreement.

B. Disciplinary grievance refers to a grievance involving a suspension, a discharge, or a reduction in pay or position. Probationary employees shall not have access to the disciplinary grievance procedure.

C. Day as used in this article means a calendar day, and time shall be computed by excluding the first and including the last day, except when the last day falls on a Saturday, a Sunday, or a legal holiday, the act may be done on the next succeeding day which is not a Saturday, Sunday, or holiday.

#### Article 7.04 Grievant

A grievance under this procedure may be brought by any bargaining unit member who believes himself/herself to be aggrieved by a specific violation of this Agreement. When a group of bargaining unit employees desires to file a grievance involving an alleged violation that affects more than one (1) employee in the same way, the grievance may be filed by the Union. A grievance so initiated shall be called a Class Grievance. A Class Grievance shall be filed by the Union within ten (10) days of the date on which the grievant(s) knew or reasonably could have known of the event giving rise to the Class Grievance. Class Grievances shall be initiated directly at Step 2 of the grievance procedure if the

entire class is under the jurisdiction of the Step 2 management representative, or at Step 3 of the grievance procedure if the class is under the jurisdiction of more than one (1) Step 2 management representative. The Union shall identify the class involved, including the names if necessary, if requested by the agency head or designee.

Union representatives, officers or bargaining unit members shall not attempt to process as grievances matters which do not constitute an alleged violation of this Agreement.

#### Article 7.06 Grievance Steps

##### Step 1 - Immediate Supervisor or Agency Designee

A member having a grievance shall present it to the immediate supervisor or agency designee within ten (10) days of the date on which the grievant knew or reasonably should have had knowledge of the event. Grievances submitted beyond the ten (10) day limit will not be honored. The grievance at this step shall be submitted to the immediate supervisor or designee on the grievance form. The immediate supervisor or designee shall indicate the date and time of receipt of the form. Within seven (7) days of the receipt of the form the immediate supervisor or designee shall hold a meeting with the grievant to discuss the grievance. At such meeting, the grievant may bring with him/her the appropriate delegate. The immediate supervisor or designee shall respond to this grievance by writing the answer on the form or attaching it thereto, and by returning a copy to the grievant and delegate within seven (7) days

of the meeting. The answer shall be consistent with the terms of this Agreement. Once the grievance has been submitted at Step 1 of the grievance procedure, the grievance form may not be altered except by mutual written agreement of the parties. Meetings will ordinarily be held at the work site in as far as practical.

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Step 3 - Agency Head or Agency Designee

Should the grievant not be satisfied with the written answer received in Step 2, within seven (7) days after the receipt thereof, the grievance shall be filed with the agency head or designee. Upon receipt of the grievance, the agency head or designee shall hold a meeting and render a decision within thirty (30) days. The grievant may be accompanied at this meeting by a delegate and/or an organizer. The agency head or designee shall render the decision in writing and return a copy to the grievant and the Union. Meetings will ordinarily be held at the worksite in as far as practical. By mutual agreement the parties may waive the meeting and the agency head or designee shall render a decision within ten (10) days of the agreement. In this case the agency head's decision shall be based on documents only.

By mutual agreement, the Union and agency may waive any preceding step of the grievance procedure.



## Article 7.07 Arbitration

### E. Arbitrator Limitations

1. Only disputes involving the interpretation, application or alleged violation of a provision of this Agreement shall be subject to arbitration. The arbitrator shall have no power to add to, subtract from, or modify any of the terms of this Agreement, nor shall he/she impose on either party a limitation or obligation not specifically required by the express language of this Agreement.

### G. Issues

Prior to the start of an arbitration hearing under this Agreement, the Employer and the Union shall attempt to reduce to writing the issue or issues to be placed before the arbitrator. The arbitrator's decision shall address itself solely to the issue or issues presented and shall not impose upon either party any restriction or obligation pertaining to any matter raised in the dispute which is not specifically related to the submitted issue or issues.

## Article 7.08 Disciplinary Grievances and Arbitrations

An employee with a grievance involving a suspension, a discharge, or reduction in pay and/or position shall be subject to an expedited grievance/arbitration procedure and shall be excluded from the regular procedure outlined in Section 7.07. In this expedited procedure the grievance is filed directly at Step 3, except that probationary employees shall not have the right or

ability to file disciplinary grievances under this Agreement. If the employee is not satisfied with the answer at Step 3, he/she may appeal to Step 4 (Steps 3 and 4 in this expedited process are identical to the same steps in Section 7.07)...

## POSITIONS OF THE PARTIES

### Position of the Union

It is the Union's position that the grievance filed by the Grievant in this matter was timely filed at Step 3 and is arbitrable. In support of this position the Union points to Article 7.08 of the collective bargaining agreement which provides for an expedited grievance procedure for suspensions. The Union contends that this section specifically excludes disciplinary grievances from the regular grievance procedure, as well as the time frames associated with the regular grievance procedure.

The Union points out that under the expedited grievance procedure within Article 7.08, a disciplinary grievance filed due to a suspension must be filed directly at Step 3 of the grievance procedure. The Union contends that while the contract sets out time frames for initial filings of grievances at other steps, no time limit is expressed in the contract for disciplinary grievances filed initially at Step 3.

The Union reminds the arbitrator that Article 7.07(E)(1) of the collective bargaining agreement between the parties prohibits

the arbitrator from imposing on either party a time frame limitation or obligation not specifically expressed within the contract.

Within its written closing argument the Union has provided to the arbitrator a number of arbitral decisions relating to the timeliness of grievance filings. These cases address contracts which do not contain specific grievance filing time limits, and discuss how, in the absence of express language, filing time limits have been construed by arbitrators.

In International Shoe Company, 45 LA 1055 (McCoy 1966), the contract interpreted by Arbitrator McCoy required that in cases of discharge a grievance must be filed within seven days. The grievant in this case had been laid off and not recalled, even though work was available. Arbitrator McCoy held that as this was an employment action not in the nature of discharge, layoff, or transfer, the grievance did not fall under the time limits required for discharges, layoffs, or transfers. Within this decision Arbitrator McCoy held that time limitations for the filing of grievances should be strictly construed because arbitration is favored by national policy.

The Union also urges that the delay in the receipt of the Grievant's grievance, that is, from October 12, 1989 to December 11, 1989, caused no undue hardship on or prejudice to the Employer. The Union points out that at no time during the proceedings herein has the Employer complained of prejudice in preparing its case or raised the defense of laches.

The Union contends that in the event the arbitrator should be torn between two alternative interpretations of the applicable articles used to determine this matter, the arbitrator should adopt the interpretation that sustains the arbitrability of Grievant's grievance. In support of this argument the Union points to the Steelworkers Trilogy, an enunciation of national policy by the United States Supreme Court in favor of arbitration for the resolution of industrial disputes. The Union also points to Garvin's Jersey Farms, Inc., 41 LA 927 (Stoffer 1963), wherein Arbitrator Stoffer held:

...that consideration of the merits of legitimate grievances should not be denied unless it is manifest that to do so would violate the terms of the Agreement.

The Union contends that the collective bargaining agreement to be construed by the arbitrator in this matter contains no express time limits for the filing of disciplinary grievances initially at the grievance procedure's third step.

Based on the aforementioned arguments as to how the language of the collective bargaining agreement between the parties should be construed, and based as well upon the authority cited by the Union in its closing statement, the Union urges that the arbitrator find Grievant's grievance timely filed and therefore arbitrable.

## Position of the Employer

The Employer emphasizes that the grievance in question arises from a disciplinary action imposed upon the Grievant. The Employer points out that disciplinary grievances are to be filed directly at Step 3 of the grievance procedure, as required by Article 7.08 of the collective bargaining agreement between the parties. The Employer contends that the parenthetical note within Article 7.08 reflects that time frames required by Article 7.08 are identical to the process cited in a previous section of Article 7. Thus, the Employer argues, the grievance must be filed within seven days of the event giving rise to the grievance.

The Employer stresses that the Grievant herein was aware of the disciplinary grievance process as he has been a Union delegate for some years and was involved in a disciplinary grievance involving another grievant only six months previous to the incident giving rise to the grievance herein. The Employer argues that the time lines expressly set out within Article 7 under which disciplinary grievances are to be filed are grounded in language that was negotiated and agreed by the parties to the collective bargaining agreement presently in effect.

The Employer, like the Union, reminds the arbitrator that Article 7.07(E) prohibits the arbitrator from adding to, subtracting from, or modifying any of the terms of the collective bargaining agreement between the parties. This article also prohibits the arbitrator from imposing upon either party a

limitation or obligation not specifically required by the express language of the contract between the parties. The Employer points out that to find no deadline applicable to the Grievant's grievance would render Article 7.06 null and void. The Employer urges that to find that disciplinary grievances have no time lines under which they must be filed would allow disciplinary grievances whenever filed. The Employer points out that months and years could go by and the Employer would have no assurance that an incident occurring in 1990 would not give rise to an active grievance in 1992. The Employer expresses its concern about huge back pay liabilities and the lack of any certainty as to when a potential grievance no longer threatens. The Employer also points out that grievances filed months or years after the incident result in missing witnesses and clouded memories when the time comes to determine facts under the grievance.

The Employer points to the logs it produced at the hearing in this matter, evidence supporting the fact that a Step 3 grievance as to the Grievant's suspension, a suspension received by the Grievant on October 12, 1989, was not received by an appropriate Step 3 management representative until December 11, 1989. The Employer contends that the language of Article 7.08 specifies that Steps 3 and 4, under the expedited disciplinary grievance process required by Article 7.08, are identical to the same steps in Section 7.07. The Employer reasons that these identical steps each require that a grievance be filed within seven calendar days at the Step 3 level. The Employer concludes its argument by pointing out

that a Step 3 grievance was not filed as required by this language and therefore, unless the arbitrator is prepared to redraft the contract, the facts and contractual language in this matter require that the grievance be found untimely and not arbitrable.

#### ANALYSIS

The grievance in this matter arises from a five day suspension, effective October 16, 1989, issued to the Grievant on October 10, 1989. Disciplinary action by the Employer is authorized by the collective bargaining agreement between the parties, specifically by Article 8, which empowers the Employer to impose disciplinary action upon an employee for just cause; and Article 5, a management rights article which reserves to the Employer inherent rights and authority to manage and operate its facilities and programs. This authority includes the enforcement of standards of quality and work performance through disciplinary action.

The events giving rise to the suspension of the Grievant date back to early May, 1989, but it is the imposition of the suspension which makes available to a suspended employee the grievance procedure within the contract between the parties. When the Employer exercised its authority to impose a suspension upon the Grievant, the Employer was acting within its rights. The arbitrator may order relief from the action taken by the Employer if the action taken violates the collective bargaining agreement

under which the discipline was imposed. The suspension of the Grievant violates the contract between the parties if it was discriminatory, or if the suspension was not imposed for just cause, requirements found within Articles 5 and 8, respectively.

Before an arbitrator can determine whether a grievance is not based on just cause or is discriminatory, the arbitrator must possess the authority, under the contract between the parties, to consider the grievance. Whether or not there is contractual authority for the arbitrator to consider and determine a grievance is a matter of contract language. If a contract sets a time limit under which a grievance must be filed in an appropriate manner, and if a grievance filing does not comply with such a requirement, the grievance process is not triggered, and the grievance process, formerly accessible, would no longer be available. An arbitrator under these facts would have no source of authority to act.

On the other hand, if a contract is silent as to time limits for the filing of a grievance, the arbitrator would be free to consider the grievance as timely filed and the arbitrator's authority would be triggered whenever the grievance was filed. The absence of a time limitation for filing a grievance would make a grievance procedure forever available to a potential grievant, limited only by collateral considerations of prejudice or laches.

In the event no time limit is located within the language to be employed by the arbitrator, the imposition of such a limit could only take form through the initiative of the arbitrator. The arbitrator in this case works under express limitations found



within Article 7.07(E) and this language does not empower the arbitrator to impose a time limitation where none exists. Article 7.07(E) specifically prohibits this arbitrator from adding to or modifying any of the terms of the collective bargaining agreement between the parties.

In order to determine whether such a time limit exists, most of Article 7 of the contract between the parties, an article containing ten sections, must be considered.

Article 7.01 defines the purpose of the grievance procedure set out within Article 7. The purpose of this grievance procedure is to promote harmonious relations between the Employer and the Union through procedures whereby employees can be assured of prompt, impartial, and fair processing of grievances. This first section of Article 7 holds that this grievance procedure is available to all bargaining unit members, and is the exclusive remedy for grievances raised by bargaining unit members.

Section 7.02 of Article 7 provides definitions essential to understanding Article 7. Paragraph A of Article 7.02 defines grievance as an alleged violation, misinterpretation, or misapplication of specific articles or sections of the collective bargaining agreement between the parties. The grievance in the matter herein alleges that a suspension was imposed not for just cause and therefore violates Article 8 of the contract between the parties. The grievance herein comports with the definition of grievance contained within Article 7.02(A) as it alleges a

violation of a specific article within the contract between the parties.

Paragraph B of Article 7.02 defines disciplinary grievance as one involving a suspension. The grievance in this matter involves a suspension and therefore satisfies the definition of disciplinary grievance within Article 7.02(B).

Paragraph C of Article 7.02 defines day as a calendar day, and directs that time shall be computed by excluding the first and including the last day, except when the last day falls on a Saturday, a Sunday, or a legal holiday. Under the language of Article 7.02(C), if the last day falls on a Saturday, a Sunday, or a legal holiday, the act may be done on the next succeeding day which is not a Saturday, Sunday, or holiday.

Article 7.04 provides that a grievance under Article 7 may be brought by any bargaining unit member who believes himself to be aggrieved by a specific violation of the collective bargaining agreement between the parties.

Article 7.06 is entitled Grievance Steps. These steps are prefaced by a preliminary step, during which a bargaining unit member is encouraged to determine whether the grievance may be resolved informally with an immediate supervisor. The preliminary step is followed by Step 1 which is handled by an immediate supervisor or agency designee. Step 1 is followed by Step 2, which is to be handled by the next level supervisor or agency designee; followed by Step 3, which is to be handled by an agency head or

agency designee. Step 4 is entitled Office of Collective Bargaining Review, and Step 5 is entitled Arbitration.

Step 3 of Article 7.06 provides that should the Grievant not be satisfied with a written answer received in Step 2, the grievance shall be filed with an appropriate agency head or agency designee within seven days after receipt of the written answer provided by Management at Step 2 of the grievance procedure. Step 3 then requires a meeting, and a decision on the grievance within thirty days.

Article 7.07 is entitled Arbitration and addresses such topics as an arbitration panel, witnesses, expenses, arbitration decisions, the final and binding nature of arbitrators' decisions under this collective bargaining agreement, and issues raised through arbitration and how they are to be presented to an arbitrator. It should be noted that Article 7.07 does not refer to steps within the grievance or arbitration process, as steps are only found within Article 7.06.

Article 7.08 is entitled Disciplinary Grievances and Arbitrations. As stated above, the suspension giving rise to the grievance herein fits the definition of disciplinary grievance found within Article 7.02(B). This brings the grievance herein under the authority of Article 7.08, and the first line of Article 7.08 refers to an employee with a grievance involving a suspension. Article 7.08 provides that a disciplinary grievance raised by a suspension is subject to an expedited grievance/arbitration procedure and shall be excluded from the regular procedure outlined

in Section 7.07. Article 7.08 directs that under this expedited procedure, a grievance arising from a suspension is filed directly at Step 3. Article 7.08 holds that if a Grievant is not satisfied with Management's answer at Step 3, he may appeal to Step 4. Article 7.08 provides that Steps 3 and 4 in this expedited process are identical to the same steps in Article 7.07. Article 7.08 empowers the Union, if not satisfied with Management's decision at Step 4, to submit the disciplinary grievance to an expedited arbitration through the sending of written notice to the Director of the Office of Collective Bargaining, with a copy to the agency head or designee, within ten days of the receipt of the Step 4 answer.

The Grievant's grievance in this matter clearly falls under the purview of Article 7 of the contract between the parties, the article containing the grievance procedure employed by the parties to resolve grievances. The Grievant's grievance also triggers the effect of language within Article 7.08, a section of Article 7 specifically addressing disciplinary grievances, including grievances arising from suspension.

Article 7.08 imposes upon disciplinary grievances extra requirements in addition to other general grievance requirements found within Article 7. While the general set of grievances processed under Article 7 begin with a preliminary step and Step 1 found within Article 7.06, disciplinary grievances are a subset of the general set of grievances addressed by Article 7, a subset

which is, for specific aspects of the grievance procedure, treated differently.

The express language within Article 7.08 directs that a disciplinary grievance be handled in an expedited way. This language directs that rather than addressing the grievance initially at a preliminary step or at Step 1, or at Step 2, a disciplinary grievance shall be filed directly at Step 3. This language is expressly set out within Article 7.08, is agreed language, and is mandatory.

Article 7.08 also provides that grievances arising from a suspension are excluded from the regular procedure outlined in Section 7.07. Section 7.07 contains such things as selecting a panel of arbitrators, agreeing to a reasonable number of witnesses at arbitration hearings, how the expenses and fees of an arbitrator are to be shared, how arbitration decisions are to be issued, arbitrator limitations, the binding and final nature of an arbitrator's decision, and how issues are to be presented to an arbitrator. The arbitrator herein is unclear as to what regular procedure outlined in Section 7.07 is excluded from the expedited process mandated by Article 7.08.

The arbitrator would have a clear understanding of the intention of the exclusion of the regular procedure mandated by Article 7.08 if the exclusion referred to the regular procedure set out in Article 7.06. Article 7.06, entitled Grievance Steps, contains a preliminary step, Step 1, Step 2, Step 3, Step 4, and Step 5 of the grievance process authorized by Article 7.

However, the express language of Article 7.08 does not exclude the regular procedure within Article 7.06; it excludes the regular procedure within Section 7.07, a section wherein no regular procedure involving grievance steps is found.

The arbitrator finds it difficult to believe that the parties really intended, under an expedited procedure, to exclude such things as the procedure used to select an arbitration panel, arbitrator limitations, and the final and binding nature of the arbitrator's decision. This, however, is what is expressed within Article 7.08. There is no mention of excluding any of the steps or procedures contained within Article 7.06 from the expedited grievance procedure required by Article 7.08. For the arbitrator in this case to find that Article 7.08 intended to exclude an article different from the article expressly excluded within the language of Article 7.08, would violate the arbitrator limitations set out in Article 7.07(E) prohibiting an arbitrator from modifying or adding to any of the terms of the collective bargaining agreement between the parties. Ironically, by giving effect to the language as expressly written within Article 7.08, the arbitrator limitations within Article 7.07(E) are excluded from the expedited grievance process mandated by Article 7.08.

The arbitrator does not believe that the parties intended, in bargaining the language in Article 7.08, that under an expedited procedure the arbitration limitations contained within Article 7.07(E)(1) should be excluded. The arbitrator is therefore not empowered to find that Section 7.07 as mentioned within Article

7.08 of the contract between the parties was intended to read Section 7.06. This would be an alteration of an express provision within the Agreement of the parties and the arbitrator clearly has no authority to make such an alteration.<sup>3</sup>

The parenthetical note within Article 7.08 provides that steps three and four in the expedited process are identical to the same steps in Section 7.07. Once again, Steps 3 and 4 do not appear within Section 7.07 of Article 7; Steps 3 and 4 appear within Section 7.06. The arbitrator cannot change what is written within Article 7.08, but he can find that when the parties agreed on the language of Article 7.08, and referred to Steps 3 and 4 in the expedited process being identical to other steps, the parties must have intended that Steps 3 and 4 in the expedited process be compared to another set of Steps 3 and 4. If the Steps 3 and 4 in the expedited process are to be defined by other Steps 3 and 4, and are defined as identical to these other Steps 3 and 4, there must be Steps 3 and 4 somewhere within the contract so that Steps 3 and 4 of the expedited process can be compared to them. While the arbitrator is cognizant of the fact that this language refers to Steps 3 and 4 as being included within Section 7.07, he is unable to find anything within Article 7.07 which even approximates Steps 3 and 4 of some procedure. Article 7.06 specifically and expressly

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<sup>3</sup> The arbitrator took the liberty of examining the collective bargaining agreement in effect between the parties prior to the collective bargaining agreement presently in effect, and found that Section 7.07 is also mentioned twice within Article 7.08 within the previous contract, rather than Section 7.06.

provides Steps 3 and 4 and the arbitrator therefore finds that Steps 3 and 4 of the expedited process are in fact identical to the same steps located within Article 7.06. The arbitrator does not intend to change the express language contained within Article 7.08 as it relates to defining identical steps within Section 7.07, but without this conclusion Steps 3 and 4 of the expedited process cannot be known, and the arbitrator is not persuaded that such confusion and such an omission really formed the intention of the parties when they agreed to the language of Article 7.08.

If the expedited process is required for grievances raised by suspensions, and if disciplinary grievances are to enter the grievance procedure at Step 3 as required by Article 7.08, and if Step 3 under the expedited procedure is identical to Step 3 within Article 7.06, the language of Step 3 within Article 7.06 must be examined to determine if any time limits are present for purposes of an expedited disciplinary procedure.

Article 7.08, as construed by the arbitrator in this matter, requires that Step 3 of the expedited process be identical to Step 3 within Article 7.06. Step 3 of Article 7.06 provides that if a grievant is not satisfied with a written answer received in Step 2, within seven days after the receipt of the written answer the grievance shall be filed with the agency head or designee. Upon receipt of the grievance, the agency head or designee shall hold a meeting and render a decision within thirty days.

Step 3 begins with a time limitation that is not associated with the imposition of discipline. This time limitation, according



to the express language of Step 3, language that is identical to the Step 3 used within the expedited disciplinary process, is triggered by a written answer received at Step 2 of the grievance procedure. Disciplinary grievances are not triggered by written answers from Step 2 of the grievance procedure as disciplinary grievances must be filed at Step 3. There is no Step 2 under the expedited disciplinary grievance process and therefore a written response at Step 2 can never occur under the expedited disciplinary procedure required by Article 7.08. The only time limit set out within Step 3 concerning filing a grievance is triggered by a written answer received in Step 2. Nothing within this section refers to any other grievance filing time limit triggering mechanism, and nothing in this section refers to disciplinary grievances, even though this language is identical to the Step 3 language to be used for the expedited disciplinary grievance procedure.

The above analysis as to the applicability of a time limit for filing a grievance at Step 3, under the expedited disciplinary grievance procedure, is based more on inartfully drawn language than it is upon the arbitrator's conclusions about what the parties intended when they carved out an expedited disciplinary grievance procedure within Article 7. Finding that Step 3 contains no time limit for the filing of a grievance resulting from disciplinary action imposed by the Employer, requires the arbitrator to find that when language establishing the expedited disciplinary process was agreed by the parties, the parties intended that a suspended

employee have an unlimited amount of time within which to file a grievance. The arbitrator must find, if he is to find that no time limit for filing a grievance as to disciplinary action was intended by the parties, that the Employer and the Union intended to install an expedited grievance procedure without time limits. An open-ended, limitless expedited procedure is an oxymoron. The arbitrator is not persuaded that either the Employer or the Union, in negotiating the language of Article 7, even with all of the article's inherent curiosities, intended that an expedited disciplinary grievance process should have no time limit for the filing of a disciplinary grievance. The fact that this process is referred to as an expedited process, and the fact that it is required to be filed at Step 3 rather than at a more preliminary step, supports this view. It seems incongruous and illogical to construct something called an expedited process and intend that this hurried process not be subject to time limits.

The Grievant in this matter was involved in an arbitral proceeding only six months prior to the time he received his suspension, and in the previous arbitral proceeding he became aware that a suspension grievance was ruled untimely. This entailed notice to the Grievant that such a time limit existed.

Also unexplained is why a Union delegate of many years who has been suspended would attempt to file a grievance at Step 1 of Article 7.06, when the contract specifically provides under the expedited procedure that such a grievance be filed at Step 3. The testimony of the Grievant in this matter, to the effect that he was confused and followed a filing procedure used under a previous

contract, is unpersuasive because the earlier contract between the parties also required disciplinary grievances to be filed initially at Step 3.

There is only a single time limit involving the filing of a grievance within Step 3 and that time period is seven days after the occurrence of a triggering event. While a ten day time limit for filing a grievance is provided within Step 1 of Article 7.06, Article 7.08 expressly provides that the expedited procedure for disciplinary actions is to begin at Step 3, and it is therefore the view of the arbitrator that the time limit within Step 1 is not applicable.

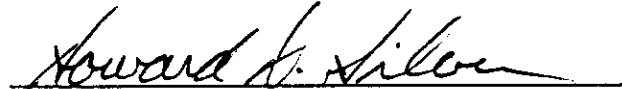
The arbitrator finds that it was the intention of the parties in constructing the language within Step 3 of Article 7.06 that a time limit be imposed upon the expedited disciplinary process mandated by Article 7.08. The arbitrator finds that the parties intended that the grievance be filed within seven days of the triggering event giving rise to the grievance. The arbitrator finds that the Grievant in this case failed to timely file a grievance with an appropriate management representative under the grievance procedure authorized by Article 7, and therefore failed to meet the time requirements mandated by the expedited disciplinary process agreed by the parties and expressed within Article 7 of the contract between the parties.<sup>4</sup>

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<sup>4</sup> Due to an unexplained reason, the suspension issued to the Grievant set a ten day time limit for filing a grievance. The extra three days are moot as the grievance was not filed within the extended ten day limit communicated to the Grievant on the face of the suspension.

AWARD

Grievance 28-02-(12/11/89)-07-02-12 was not filed timely at Step 3, and is not arbitrable.

  
Howard D. Silver  
Arbitrator

August 8, 1990  
Columbus, Ohio