

OCB-SCOPE VOLUNTARY GRIEVANCE PROCEEDINGS
ARBITRATION OPINION AND AWARD

In The Matter of Arbitration
Between:

THE STATE OF OHIO
Department of Rehabilitation
and Correction
London Correctional Institution
London, Ohio

-and-

STATE COUNCIL OF PROFESSIONAL
EDUCATORS
OEA/NEA, UniServ
State Unit 10

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* Case No 27-13-(3/30/93)-640-06-10
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* Decision Issued:
* September 13, 1993
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APPEARANCES

FOR THE STATE

David Burrus
Steve Dorsey
Mike Potter
Coleen Wyse

FOR THE ASSOCIATION

Henry L. Stevens
Joseph Burgess
Nancy Sturgis

ISSUE Article 13: Claim that one-day suspension for giving key
to inmate did not meet contractual requirements.

Charles H. Showell, Jr., Arbitrator
2287 Jacavanda Drive
Dayton, Ohio 45431

STATEMENT OF FACTS

The Union represents a bargaining unit that is comprised of teachers employed by the London Correctional Institution. The Union and the State of Ohio entered into the current agreement in 1992. The grievance protests the one-day disciplinary suspension of a teacher employed by the Ohio Department of Rehabilitation and Correction.

The Department's facility, the London Correctional Institutional is located in London, Ohio. This facility houses approximately 2460 security inmates. The Teacher who is the grievant shares the Department's responsibility for the proper and lawful execution of its mission; specifically, the safety and security of other inmates and employees. To this end, each employee receives a copy of the Standards of Employee Conduct.

Employees acknowledge receipt of these Standards by signature and date. One of the rules included in the Standards is Rule 30 which addresses the "Lost of control of any instrument that could result in a breach of security and/or jeopardize the safety of others; e.g., to include, but not limited to class "A" tools, keys, communication devices, etc." The discipline, the one-day suspension was imposed upon the Grievant when he admitted that he willingly gave his keys to an inmate.

POSITIONS OF THE PARTIES

The Union: The Union case is built on the premise that the State violated the contract, specifically, Article 13, by invoking a one-day suspension on the Grievant. The Union cites Sections

13.01, 13.02, 13.03 and 13.04 as having been violated by the employer. The article and its applicable Sections follows:

ARTICLE 13 - PROGRESSIVE DISCIPLINE

13.01 - Standard

Employees shall only be disciplined for just cause.

13.02 - Investigatory Meeting

An employee shall, upon request, have an Association representative present during a meeting with representatives of the employing agency held for the purpose of obtaining information which might reasonably lead to disciplinary action against that employee. The employee shall be required to respond to the allegations unless he/she is subject to criminal penalties. The right to representation does not extend to day-to-day communications which occur between an employee and the Employer, such as: performance evaluations, training, job audits, counseling sessions, work-related instructions, or to inform an employee of the disciplinary action.

13.03 - Pre-Suspension or Pre-Termination Conference

The pre-disciplinary conference will be conducted by a designee of the Appointing Authority who was not directly associated with the incident(s) which led to contemplated disciplinary action against the employee. At the conference, the employee will be provided with documents used to support the possible disciplinary action which are known of and available at that time.

13.04 - Progressive Discipline

The Employer shall follow the principles of progressive discipline. Disciplinary action shall include:

1. Oral reprimand (with appropriate notation in the employee's official personnel file);
2. Written reprimand;
3. Suspension without pay.
4. Demotion or discharge.

With respect to Section 13.01, the Union stated that the discipline was not for just cause since the Standards were unilaterally derived and Rule 30 especially was unreasonable. The Union further argued that Section 13.02 was not followed in accordance with the contract since the Union representative was not contacted by the Employer. The Union further alleged that Section 13.03 was violated since the pre-suspension conference was conducted by an individual who could prejudice the disciplinary action. Last, but not least, the Union asserted that Section 13.04 was violated since steps one and two of the Progressive Discipline grid were skipped and a one-day suspension without pay was invoked.

The Employer: The Employer's main argument centered around the point that the Grievant willingly admitted he gave his key to an inmate. Further, the Employer asserted that the Grievant was knowledgeable of the Standards of Employee Conduct and that the Grievant had received training on the provision of Rule 30 as evidenced by a receipt of acknowledgement of the Standards and an initialed attendance sheet for the training. The employer contends that a thorough investigation had been conducted, that the contract

provision of Section 13.02 had been followed when the warden appointed a deputy warden to conduct the pre-suspension conference and that the Grievant was advised of his right to have a Union representative present to satisfy the provision of Section 13.02.

The Employer further felt that just cause had been followed with respect to the discipline based on the report of the investigation official and by the Grievant's admission of surrendering his keys to an inmate. The Employer also felt that the discipline followed the spirit of progressive discipline since under Rule 30 the penalty could have been more severe. Lastly, the Employer felt the discipline was corrective in nature and that the Grievant's record (no prior discipline) was taken into consideration.

OPINION

The Union contends that the penalty grid under Rule 30 of the Standards of Employee Conduct is not consistent with the Progressive Discipline Principle spelled out in the negotiated Agreement. That particular argument could be viewed as flawless; however, upon an examination of the Rules delineated in the Standards of Employee Conduct, it can be found that the Principle of Progressive Discipline is evident in the majority of them. It is definitely evident in Rule 30.

Given the nature of the work site (a correctional institution), the work rules with the flexible accompanying penalties capture the spirit of progressive discipline and are essential to the accomplishments of the goals in support of the

mission of the Department. While the Rules, along with the penalty grid, do not always coincide specifically with the penalty grid of the contract, there are within the Rules' grid, provisions (for the less serious offenses) for progressive discipline that may or may not coincide exactly with the contract grid. The spirit of such is keeping within the Progressive Discipline Principle. In the instant case, the Employer had the flexibility (for the first offense) a range of options from written reprimand to removal. The Employer opted to invoke a one-day suspension without pay, an option between the two extremes of the written reprimand and removal.

According to the Employer's testimony, removal was not considered an option because of the good work record of the Grievant; however, the one-day suspension was invoked to bring attention to the severity of the offense and the potential danger that could stem from such a violation. With respect to the Union claim that inadequate pre-arbitration proceedings had taken place, the Grievant under cross-examination indicated that he was made aware of his rights with respect to representation from the Union. Concerning the Union's claim of an inappropriate Hearing Officer during the Pre-Disciplinary Conference, this was accomplished by a designee of the warden (a deputy warden) who was not directly associated with the incident. Again, this was brought out during the Employer's testimony and in cross-examination by the Union. These particular arguments by the Union were nullified during the Arbitration Hearing.

In the much referenced text How Arbitration Works by Elkouri and Elkouri (4th Edition, Page 661), the authors state that "There are two areas of proof in the arbitration of discharge and discipline cases. The first involves proof of wrong doing; the second assuming that guilt of wrongdoing is established and that the arbitrator is empowered to modify penalties, concerns the question of whether the punishment assessed by management should be upheld or modified." This is precisely the concern of the instant case. By the Grievant's own admission, the proof of wrongdoing is established.

It is for this reason that discipline is in order. The Arbitrator cannot suggest that the Employer acted unreasonably when it considered the Rule 30 violation and invoked the one-day suspension. As mentioned above, the one-day suspension falls between a range of two extremes - a written reprimand and removal. The penalty invoked by the Employer is designed to be corrective while it considers the Grievant's previous record and captures the spirit of the Principle of Progressive Discipline.

The award that follows is based upon the above analysis.

AWARD

Grievance Denied.