

IN THE MATTER OF ARBITRATION BETWEEN:

DISTRICT 1199 WV/KY/OH

**THE HEALTH CARE AND SOCIAL SERVICES UNION
SEIU, AFL-CIO**

AND

THE STATE OF OHIO DEPARTMENT OF YOUTH SERVICES

Before: Robert Stein

Grievance: #35-04-09-15-93-03-02-12

Appearances: For the Union:

Maria Margevicius
Organizer

District 1199 WV/KY/OH
The Healthcare and Social Services Union, SEIU, AFL-CIO
475 East Mound Street
Columbus, OH 43215

and;

Paula Shisler, Grievant, and
Roshelle Sillaman-Crum
Union Delegate

Appearances: For the State of Ohio:

Colleen Wise
Labor Relations Specialist
Department of Administrative Services
Office of Collective Bargaining
106 North High Street
Columbus, OH 43215-3019

and;

Lou Kitchen, 2nd Chair,
Kerry Baker, Deputy Superintendent, TICO,
Robert Maier, Acting Superintendent
Indian River School, and
Terry Snipes

INTRODUCTION

This case came to Arbitration and a one day hearing was held on March 15, 1994 in Massillon, Ohio. The hearing was held before Robert Stein, member of the Arbitration Panel, and selected in accordance with the terms of the Agreement between the parties.

The parties were given full opportunity to examine and cross-examine witnesses and to submit written documents and evidence supporting their respective positions. Oral closing arguments were waived and post-hearing briefs were filed on April 15, 1994. The discussion and award are based solely on the record described above. The written award is to be postmarked by May 16, 1994.

ISSUES

1. Was it a violation of the Collective Bargaining Agreement to have Mr. Robert Maier testify at the Arbitration hearing?
2. Was the Grievant removed for just cause? If not, what should be the remedy?

BACKGROUND

The Grievant is Paula Shisler, a Social Worker II with the Department of Youth Services (DYS). She has been employed at the Indian Run School (IRS) for some 11 years. Ms. Shisler first began her career at Indian River as a Youth Leader before moving to the Social Worker classification.

IRS is a maximum security DYS facility that houses youth offenders who are convicted felons. According to the Employer, the mission of DYS is to maintain the care and custody of youths until they are released.

IRS is divided into Units which bear the names of Indian tribes, such as Navajo and Shawnee. The Grievant was the Social Worker assigned to the Shawnee Unit. The case revolves around the Grievant's involvement with a youth offender by the name of Terry Snipes. Mr. Snipes was convicted of aggravated murder and was serving time at the IRS. Mr. Snipes was assigned to the Shawnee Unit at one time and participated in group therapy sessions conducted by the Grievant. Mr. Snipes was not assigned to the Grievant's caseload.

On June 1, 1993, Mr. Snipes was transferred to the Navajo Unit. The Employer claims the Grievant behaved inappropriately prior to and following this transfer. The Employer claims that the Grievant's conduct with youth Snipes was unprofessional and unethical. The Employer fired the Grievant effective September 7, 1993 (Joint Exhibit 3) for unauthorized communications/contact with a resident youth and for violation of a direct order not to have

any further contact with Mr. Snipes after June 24, 1993. Specifically, the Employer claims the Grievant violated the following rules of DYS Directive B19,

Rule 29.a. "Corresponding with or accepting correspondence from youth under DYS supervision or youth's family, except as part of the employee's job responsibility for official work purposes, unless authorized to do so by the appropriate Deputy or Director" and/or 29.b. "Having contact with or visiting a youth, except as part of the employee's job responsibility for official work purposes, unless authorized to do so by the appropriate Deputy or Director" and/or Rule 6.b. "Willful disobedience of a direct order by a Supervisor."

Issue 1 above, relates to the testimony of Robert Maier, Acting Superintendent of IRS. Mr. Maier was instrumental in conducting the investigation which lead to the charges against the Grievant. Mr. Maier was not present at Step 3 of the grievance procedure or at the pre-disciplinary meeting. However, he did appear to testify at the Arbitration hearing.

Issue 1: Was it a violation of the Collective Bargaining Agreement to have Mr. Robert Maier testify at the Arbitration hearing?

UNION'S POSITION

It is the position of the Union that the testimony of Robert Maier, Acting Superintendent of IRS, should not be considered in this Arbitration proceeding. The admission of his testimony would seriously prejudice the Union. In support of this position, the Union cites the following provisions of the Agreement:

Article 7.06 of the Collective Bargaining Agreement (Joint Exhibit 1) states:

"The parties intend that every effort shall be made to share all relevant and pertinent records, papers, data, and names of witnesses to facilitate the resolution of grievances at the lowest possible level."

Article 7.10 of the Collective Bargaining Agreement further states:

"In each step of the grievance procedure outlined in this Article, certain specific Union representatives are given approval to attend the meetings therein prescribed. It is expected that in the usual grievance these, plus the appropriate employer representatives, will be the only representatives in attendance at such meetings; however, necessary witnesses may attend on paid time."

It is the Union's contention that the failure of Mr. Maier to appear at the pre-disciplinary meeting or at Step 3 of the grievance procedure is a violation of the intent and spirit of Articles 7.06 and 7.10. The parties have contractually agreed that discipline shall be for just cause. The Employer carries the burden of proof to establish clear and convincing evidence to support its corrective action. The Union asserts that just cause for discipline must be established throughout the entire grievance procedure.

The Union succinctly summarizes its position as follows:

The language in 7.06 mandates the parties to share relevant and pertinent records, papers, data, and names of witnesses to facilitate the resolution of grievances at the lowest possible level. The existence of the language serves a very critical purpose. The spirit and intent behind Article 7 would alter significantly without the language in 7.06 and 7.10. The absence of the language would permit the parties to proceed through the grievance procedure without honestly addressing the issues at hand. A proper exchange of information is not only necessary, but courteous, respectful, and required by law. Without the language in Articles 7.06 and 7.10, the grievance procedure would be rendered useless for both parties. All disputes would go straight to Arbitration under this scenario, without the benefit of an open, honest discussion of the grievance.

Parenthetically, the Union cites the 1992 addition of grievance mediation in the grievance procedure of the Collective Bargaining Agreement. This language which encourages grievance settlements also elevates the importance of contract provisions 7.06 and 7.10. Management had an obligation under the Agreement to present the testimony of Mr. Robert Maier at the pre-disciplinary meeting or at least Step 3 of the grievance procedure. It did not. Therefore, it is the position of the Union that the testimony of Mr. Maier should not be considered.

EMPLOYER'S POSITION

It is the position of the Employer that there is no contractual obligation that requires management to physically produce all of its witnesses at the pre-disciplinary conference or at each step of the grievance procedure. Furthermore, the "*Loudermill*" decision only requires the tenured public employee to receive oral or written notice of the charges against him/her, an explanation of the Employer's evidence and an opportunity to present his/her side of the story.

In support of its position, the Employer cites Section 8.03 of the Collective Bargaining Agreement, Pre-discipline which states:

"Prior to the imposition of a suspension of more than three (3) days, demotion or termination, the employee shall be afforded an opportunity to

be confronted with the charges against him/her and to offer his/her side of the story. This opportunity shall be offered in accordance with the "Loudermill Decision" or any subsequent court decisions that shall impact on pre-discipline due process requirements."

The Employer argues it provided the Union with every document used by management in support of the charges against the Grievant. This included correspondence, telephone logs, the transcription of the videotaped interviews, supervisor's statements and the youth's handwritten statements. There were only two (2) exceptions: the transcript of the telephone call and the correspondence sent from the Grievant to the youth, which were not available to management until the evening before the Arbitration. The Employer adds, however, that the telephone tape and the cards were discussed at the pre-disciplinary conference and at Step 3 of the grievance procedure. Additionally, the Union heard the telephone tape along with management and the Highway Patrol before the discipline was imposed.

The Employer argues that in Article 7.06 of the Agreement there is no witness attendance requirement, nor is there any existing arbitration decision requiring the attendance of witnesses. In Article 7.09 there is no witness attendance requirement, but merely language providing for the voluntary exchange of the names of witnesses. Finally, Article 7.10 makes the attendance of witnesses permissive and not mandatory. The word "may" and not shall is used as it refers to witnesses.

In summary, it is the position of the Employer that the Union was aware, from the time of the investigation, that Mr. Maier was intrinsically involved in the instant case. He was seen conducting interviews on videotape and his name appears on documentation. There was no intent to hide this witness in previous steps in order to gain an element of surprise in the Arbitration hearing. In fact, both parties were reluctant to exchange the names of witnesses. Furthermore, the Union used documentation in the hearing that it did not share with the Employer in pre-Arbitration steps of the grievance procedure.

The Employer contends that the Union could have called Mr. Maier at any time to discuss his role in the instant case. For the above reasons, the Employer urges that the grievance be denied in its entirety.

DISCUSSION

The issue is a straightforward one. Was it a violation of the Collective Bargaining Agreement to have Robert Maier testify at the Arbitration hearing?

The Union has cited Articles 7.06 and 7.10 as germane in this matter. It is the Union's contention that Mr. Maier's failure to attend the pre-disciplinary meeting and/or Step 3 of the grievance procedure was a violation of the intent and spirit of Articles 7.06 and 7.10. The subsequent appearance of Mr. Maier at the Arbitration hearing then placed the Union at a disadvantage.

The Union cites Articles 7.06, 7.09, 7.10 and 8.03 and asserts there is no witness attendance requirement in these provisions. The Employer points out that witness attendance in the grievance process is permissive and not mandatory. The Employer asserts it has been diligent in providing all evidence and documentation to the Union. Additionally, the Union was aware of Mr. Maier's involvement.

In as much as the grievance procedure is an extension of the collective bargaining process between the parties, it is important that the process be taken seriously. In a healthy collective bargaining relationship, the parties maximize each step of the grievance process in order to clarify facts and understand each other's point of view. It was evident from the Arbitration hearing in the instant matter, that the relationship between the Union and the Employer is not in perfect health. Both parties were not completely candid about their witness testimony and evidence. The moral high ground in this matter is one in which a party can claim it has been forthright and honest in its dealings with the other party. For whatever the reasons, neither party can claim this lofty position.

The Union and the Employer both produced witnesses at the Arbitration hearing who did not appear at earlier grievance steps. Both parties claim they were not informed about the appearance of these witnesses prior to the Arbitration hearing. The Employer and the Union were in violation of Article 7.06 of the Agreement. Arbitrator Howard in 34LA617,622-623 states, "A party who fails to comply freely with agreed upon procedures may not be permitted to protest non compliance by the other party."

This, of course, raises the central issue of what are the agreed upon procedures of the parties under the Agreement? Article 7.06 appears to create an obligation of intent to identify witnesses. The parties intend that every effort shall be made to share ... names of witnesses to facilitate the resolution of grievances at the lowest possible level. However, the specific steps of the procedure, including Step 3, do not address the mandatory attendance of witnesses. Article 7.10 also lends further support to the contention that witness attendance is permissive and not mandatory under the Agreement.

The Union's objections are very understandable given the central role Mr. Robert Maier played in the gathering of evidence and in witnessing the telephone conversation of July 13, 1993 between the Grievant and Mr. Snipes. However, the language of the Agreement does not obligate the parties to produce witnesses at any step of the grievance procedure. The testimony of Mr. Robert Maier at the Arbitration hearing did not create a violation of the Collective Bargaining Agreement and, therefore, will be considered in the decision regarding the merits of this case.

Issue 2: Was the Grievant removed for just cause? If not, what should be the remedy?

UNION'S POSITION

In written closing arguments, the Union made the following points as they apply to each of the charges made against the Grievant:

Rule 6. Insubordination:

- a.) refusal to carry out a work order***
- b.) willful disobedience of a direct order by a Supervisor***

The Union maintains that the evidence presented and the testimony of Kerry Baker in particular, point to the fact that the Grievant was never given a clearly expressed direct order regarding any further contact with youth on the Navajo Unit. Ms. Baker testified she never warned the Grievant that non compliance with the alleged directives given would result in disciplinary action.

The Union further addressed the accuracy and validity of statements given by Ms. Baker and the Grievant's Supervisor, Acie Singleton. These statements were taken some two months after the incident of the conversation with the Grievant.

The Union asserts that the evidence and testimony provided supports the contention that the Grievant's meeting held with Kerry Baker and Supervisor Acie Singleton was nothing more than a meeting to clarify job duties and how certain tasks should be carried out. No direct order was violated.

Rule 29. Unauthorized Communication with Youth.

- a.) Corresponding with or accepting correspondence from youth under DYS supervision or youth's family, except as part of the employee's job responsibility for office work purposes, unless authorized to do so by the appropriate Deputy or Director.***
- b.) Having contact with or visiting a youth, except as part of the employee's job responsibility for office work purposes, unless authorized to do so by the appropriate Deputy or Director.***

The Rule 29a charge refers to evidence and testimony by the Employer that the Grievant received and sent written correspondence to youth Snipes. The Rule 29b charge relates to the unauthorized telephone contacts the Grievant had with youth Snipes.

Rule 29a

Written correspondence sent from incarcerated youths to DYS employees is a common occurrence. The Grievant testified she posted some of the correspondence sent by youth Snipes on her bulletin board in her office, an office she shared with her Supervisor, Acie Singleton. These cards were in full view of management who took no action against the Grievant.

Witness Sillaman-Crum testified she had received valentines from youths (Union Exhibit 5) in the past. Management was aware of this practice and they never disciplined any employees. Witness Margevicius also testified that Social Workers in the Cleveland Regional Office of DYS repeatedly received written correspondence from youths who were incarcerated. No discipline was ever issued by the DYS.

The Grievant acknowledged receiving most of the letters/cards contained in management Exhibit 13; however, she denies ever receiving a letter from youth Snipes addressed "Hey Love" dated Monday 14. Additionally, the Grievant testified she never sent correspondence to youth Snipes. The Employer did not provide sufficient evidence or testimony to establish that the Grievant sent correspondence to youth Snipes.

The Employer also alleged that the Grievant took photographs of youth Snipes in violation of Rule 29. The Union contends that Rule 29 does not address the practice of taking photographs. Furthermore, these photographs were taken at a management-sanctioned basketball banquet, where the Grievant's Supervisor (Singleton) was present and even appeared in some of the group photos.

Rule 29b

The Pre-disciplinary Hearing Officer's Report (Union Exhibit 2) never addresses the charges under Rule 29b, but only those under Rule 29a. The Union contends that properly charging the Grievant is an important issue. Two previous Arbitration decisions, Goldstein (23-08-900312-0397-02-11) and Fullmer (23-07-89-11-0832-02-11) underscore the fact that a Grievant must be properly charged in order to impose discipline. In the instant case, the Employer made a procedural error, which the Union contends is significant. The Pre-disciplinary Hearing Officer never addressed rule violation 29b in his report. All other initial charges were either addressed, dismissed or pursued.

The Grievant does admit to having 14 telephone conversations with youth Snipes and provided evidence of her telephone bills (Union Exhibit 4). However, the Grievant contends that these conversations were appropriate. Both the Grievant and youth Snipes testified that their discussions revolved around issues on why the youth was incarcerated in the first place and what tactics the youth will utilize to avoid confrontation in the institution as well as in the community in order to avoid recommitment. They also spoke about family issues, substance abuse issues, and other appropriate Social Worker-Client issues.

The Grievant acknowledges that accepting collect telephone calls from the youth was a matter of poor judgment. However, her intentions were good and were for the rehabilitative benefit of youth Snipes.

The Union admits that the Grievant's error in judgment in accepting 14 collect calls from youth Snipes does warrant some type of discipline. However, removal of an 11-year employee is far too severe. Youth Snipes was not harmed by this error in judgment and, in fact, continued his positive adjustment and was returned to the community early. The Union contends that a suspension and/or referral to the Employee Assistance Program is a more appropriate discipline for failure to report the 14 telephone calls.

On the procedural objections, the Union asks that the grievance be granted. On the merits, the Union asks that discipline be modified to a suspension and/or a participatory agreement with the Employee Assistance Program.

EMPLOYER'S POSITION

It is the position of the Employer that the termination of the Grievant from her Social Worker position with Indian River School was commensurate with her offenses. The evidence and testimony of the case clearly shows that Ms. Shisler had a relationship with youth Snipes which was emotional and sexual in nature. The Employer contends this was a relationship which was improper and unfitting for a Social Worker and which could have breached security and placed the lives of other staff in jeopardy. The rules violated which lead to this termination were reasonably related to the Employer's ability to efficiently and safely manage the institution.

The Employer asserts it conducted a fair and objective investigation, questioning all witnesses and obtaining all relevant evidence. The telephone records were probably "the most objective evidence" collected in this investigation. In her testimony, the Grievant admitted to accepting at least 15 of the 40 calls the Employer asserts were made by youth Snipes to the Grievant between May 26 and July 13, 1993. The last telephone call was tape recorded and contained conversation of a vulgar nature exceeding the boundaries of the Social Worker/youth relationship. The calls were in violation of DYS Directive B-19, Rule 29b, "Having contact with or visiting a youth, except as part of the employee's job responsibilities for official work purposes, unless authorized to do so by an appropriate Deputy or Director."

In addition, the Grievant violated DYS Directive B-19, Rule 29a, "Corresponding with or accepting correspondence from youth under DYS supervision or youth's family, except as part of the employee's job responsibilities for official work purposes, unless authorized to do so by the appropriate Deputy or Director."

The evidence and testimony made clear that the context of the correspondence from youth Snipes with messages such as "I miss you", and "I love you" were illustrative of the Grievant's inappropriate relationship with youth Snipes. In particular, the letter dated

Monday 14 from youth Snipes to the Grievant begins with the phrase "Hey Love." This letter goes on with such phrases as "the more we can't see or touch each other and kiss each other, the more I feel for you. I truly do love you and I hope you won't let anything come between that ...Sweetheart thanks for what you have been doing for me ...". According to Employer witness Kerry Baker, this type of correspondence is clearly inappropriate, unprofessional and unseemly and should have been reported.

The Employer also terminated the Grievant for violation of DYS Rule 6b, *Willful Disobedience of a Direct Order by a Supervisor*. Kerry Baker and the Grievant's Supervisor, Mr. Singleton, met with the Grievant during the week of June 10th. At this meeting, the Grievant was instructed by Ms. Baker as follows: "She (the Grievant) should not have contact with any youth on Navajo for any reason other than youths Blanchard, Lowery and Parks (Employer Exhibit 5) after June 24, 1993. The evidence and testimony show that Ms. Shisler maintained contact with youth Snipes after the June 24th date.

The Grievant had telephone contact by accepting collect calls from youth Snipes after June 24th, as well as other contact in the hallways and recreation room in the institution. Furthermore, the Grievant had youth Snipes in her office on July 13, 1993 for 5 to 10 minutes and did not call Security to have him removed.

The Department of Youth Services cannot allow conduct as described above in its institutions and, therefore, the Employer respectfully requests that this grievance be denied in its entirety.

DISCUSSION

To begin with, it is important to establish the undisputed facts in this case. Indian River School is a maximum security facility for youth who are convicted felons. Being such, the issues of safety and security are of considerable importance.

The Grievant is an 11 year employee who has worked her way up from Youth Leader to the position of Social Worker. She's experienced with IRS, has received above average ratings in her yearly evaluations (Union Exhibit 6) and has had no prior discipline. The Grievant knows and understands the rules of DYS and received a revised copy of same in April of 1993.

It is also a fact that incarcerated youth are prone to practice manipulative behavior on anyone, including the staff. In his own unrefuted testimony, both live and on tape, youth Snipes spoke openly about approaching the Grievant and other employees for personal gain and influence. Mr. Snipes, along with other youth, did get transferred from the Shawnee Unit to the Navajo Unit on June 1, 1993. Mr. Snipes participated in group counseling conducted by the Grievant while he was assigned to the Shawnee Unit.

Finally, youth Snipes did obtain the telephone number of the Grievant and made at least 14 collect calls to the Grievant with more frequency on Wednesdays, Saturdays and

Sundays. These calls were made between May 26 and July 13, 1993 and amounted to some 11 hours of time. It is also a fact that youth Snipes corresponded with the Grievant by card and note, some of which were posted on her bulletin board in the Grievant's office.

The charges leading to the termination of the Grievant concern two main areas; insubordination and unauthorized communication with a youth (in writing, by telephone and in person). First, let's examine the charge of insubordination.

RULE 6b - WILLFUL DISOBEDIENCE OF A DIRECT ORDER BY A SUPERVISOR.

The Employer established the fact, which was supported by the testimony of the Grievant, that during the week of June 10th through 15th, 1993 a meeting was held with the Grievant, Ms. Kerry Baker, Unit Administrator and the Grievant's Supervisor, Mr. Acie Singleton. The meeting was held after a number of youth (including Mr. Snipes) were transferred from the Shawnee Unit to the Navajo Unit. According to Ms. Baker, the meeting was prompted by complaints by the Navajo Unit Manager, Mr. Braithwaite, that the Grievant was taking youth off the Navajo Unit.

From the testimony given by Ms. Baker, it is unclear whether she spoke directly to the Grievant during this meeting or whether she spoke to both Mr. Singleton and the Grievant at the same time. The Grievant was told to confine her Social Work activity with three youth: Blanchard, Parks and Lowery. She was told not to have contact with any other youth on the Navajo Unit (Employer Exhibit 6) after June 24, 1993. Under cross-examination, Ms. Baker made it clear that in providing this direction to the Grievant she never used the phrase direct order. In addition, Ms. Baker never said that the Grievant would receive disciplinary action for non compliance with this directive. The written statement (although unsupported by direct testimony) of Mr. Singleton generally corroborates what Ms. Baker stated and also corroborates the testimony of the Grievant that there was some friction between Mr. Braithwaite and the Grievant over the taking of former Shawnee youth off the Navajo Unit. Finally, Ms. Baker testified that she never saw the Grievant with any youth from the Navajo Unit after June 24, 1993.

The Employer's charge of willful disobedience of a direct order lacks sufficient substantiation to place it in the category of insubordination. In as much as we are dealing with a termination of an 11 year employee, the Employer has the burden of providing evidence and testimony that is clear and convincing. The Grievant was given a valid directive, but it was not followed up with a statement to address the consequences of non compliance. What the evidence and testimony did establish was that the contact the Grievant had with youth Snipes after June 24, 1993 was unauthorized and was not part of her assigned responsibilities. Such action could have been sufficient grounds for a lesser charge, but not insubordination.

RULE 29. UNAUTHORIZED COMMUNICATION WITH YOUTH.

The Employer presented a substantial amount of evidence and testimony to demonstrate that the Grievant had contact with Mr. Snipes on numerous occasions. The important question, of course, is: was any of this contact in violation of Rule 29?

Telephone Contacts: In the words of the Employer, this evidence represents the "most objective" basis to establish unauthorized contact. The Grievant admits to receiving 14 telephone calls (although 15 calls appear on Union Exhibit 4). The content of the 11-minute call on July 13, 1994 from youth Snipes to the Grievant is known. Although the audio tape was not available, Mr. Maier's accounting of this conversation (in writing and in testimony) and the State Highway Patrol's written transcript of the tape reveals a conversation that was substantially outside the boundaries of a professional Social Worker/Client relationship. This was a conversation which corroborates other evidence and testimony related to written communications from the Grievant to Mr. Snipes and contact by way of gifts of food and other items (Employer Exhibit 18).

The July 13, 1993 conversation lends credence to statements made by other youth. Youth Parks in Employer Exhibit 3, page 3, talks about receiving "hygiene" items and food from the Grievant. The Grievant specifically asked, "what did Parks say?" in reference to her previous question regarding the enjoyment of "all your stuff." She later makes statements of how much she has spent on youth Snipes.

The Grievant claims that all 14 collect telephone calls from youth Snipes were for purposes of counseling and addressing his concerns about the June 1st move from the Shawnee Unit to the Navajo Unit. These claims are simply not credible. The Grievant's first record of stating these reasons was in the Arbitration hearing. When first questioned on July 29, 1993 about why youth Snipes called her, she answered, "I don't know." She had a meeting with Supervisor Singleton and Unit Administrator Baker about contact with youth on Navajo, yet she never mentioned some three to four hours of telephone conversations with youth Snipes that occurred in the prior two week period. If these conversations were about Mr. Snipes' concerns and something needed to be done about them then, why didn't she mention them to management? When cross-examined, Union witness Sillaman-Crum, Union delegate, stated she had never received any telephone calls at home but, if she had, she would "probably tell Mr. Chandler" (her Unit Manager).

The Union argues that the Employer committed a procedural mistake in charging the Grievant with rule violation 29b (Contact with Youth). The removal notice (Joint Exhibit 3) does list 29b as one of the charges upon which the termination was made. Yet, the Hearing Officer in Union Exhibit 2 only speaks to Rule 29a in his determination of just cause for discipline. In support of its position, the Union references the Goldstein and Fullmer decisions. In summary, these decisions state that an employee must be properly charged in order to impose discipline.

A careful reading of Union Exhibit 2 does reveal that the Hearing Officer, Mr. Charles Rhodes, omitted Rule 29b on the list of charges beginning on the first page of

his report to the IRS Superintendent. However, in his address to the charges beginning on page 3, Mr. Rhodes does reference the telephone calls and letters referring to the entire section as unauthorized communication with youth with a just cause recommendation. This error does not reach the level of impropriety that is referenced in Goldstein or Fullmer. In those cases, punishment was given to employees and there was substantial disparity between the charges made and the punishment given. There was no dramatic escalation or de-escalation of charges in the instant case. The listing of Rule 29b, both in the notice of removal and in the pre-disciplinary meeting notice, more than offset the error of not listing 29b in the first part of Union Exhibit 2. I do not find that this error was prejudicial to the Grievant or to the Union.

Other Contacts: The written communication between youth Snipes and the Grievant is the second main area of evidence and testimony. The testimony of Ms. Baker, Ms. Sillaman-Crum, Ms. Margevicius and the Grievant and the content of Union Exhibit 5 clearly establishes that youth do send cards and letters to employees of DYS. This act is not unusual and it would appear from the testimony of these same witnesses that employees are seldom, if ever, given corrective action for receiving correspondence from youth (much of which appears to be within the scope of work). The Grievant even posted some of the cards in the office she shared with her Supervisor. She testified she never received any comment or criticism for this casual display. Moreover, the Grievant testified that get well cards were gathered and sent to her in the past while she was hospitalized. This was done by Mr. Braithwaite, Unit Manager.

An examination of the content of Employer Exhibit 13, however, does lead the reader to believe that the writer (Mr. Snipes) was communicating outside the boundaries of a youth to Social Worker work relationship. Ms. Baker stated in her testimony that the correspondence contained in Union Exhibit 13 is inappropriate and should have been reported the first time it occurred. She went on to explain such reporting would be "CYA" commonsense behavior (apparently recognizing the potential for misperception and negative consequences for an employee).

The Union downplayed the content of the cards sent to the Grievant by Mr. Snipes. It offered Union Exhibit 15 which represented valentines sent to Ms. Sillaman-Crum. However, Employer Exhibit 13 and Union Exhibit 5 (valentine cards to Sillaman-Crum) are not the same kind of correspondence. Union Exhibit 5 can be characterized by comments of gratitude, while the cards written by Mr. Snipes to the Grievant are emotional and romantic in expression. The only correspondence the Grievant denies receiving was the letter dated Monday 14, which contains the most explicit romantic and sexual language of the correspondence placed in evidence.

The Grievant was also charged with initiating corresponding with youth Snipes. Although it is common for youth to attempt to communicate with employees, the opposite does not appear to be true. No evidence in testimony was presented that indicated it was appropriate to send youth correspondence, unless it was work-related or authorized by supervision.

The Grievant claims she did not send letters or cards to Mr. Snipes (Employer Exhibit 10). Youth Snipes testified she did send him correspondence. Mr. Parks in his statement also stated that Mr. Snipes received correspondence from the Grievant. Finally, the Grievant in the conversation she admitted having with youth Snipes on July 13th (Employer Exhibit 18) stated; "Did you get some mail today?... I mailed them at Belden Village... three cards, etc." The extent to which this conversation went on for two pages of the transcript does provide convincing corroborative evidence that Mr. Snipes is telling the truth about the Grievant sending correspondence to him. The specific content or extent of this correspondence is unclear, yet it is safe to assume it was not authorized by supervision, occurred after June 24, 1993, and was not an official part of her job responsibilities for work purposes.

The most vivid and potentially exploitive evidence presented by the Employer addressed the issue of alleged sexual activity between the Grievant and Mr. Snipes. Mr. Snipes described separate acts of fellatio and masturbation which were allegedly performed on him by the Grievant while in her office. He also described acts of fondling, kissing and hugging which he claims were done with the Grievant. The Grievant denies that this type of activity occurred. Mr. Moore stated he saw the Grievant and Mr. Snipes kissing outside of the gym (Employer Exhibit 4). Once again, the taped telephone conversation (Employer Exhibit 18) lends support to the statements of Mr. Snipes.

However, in considering the sources of this testimony and their highly manipulative nature, one must be very cautious in drawing conclusions about the details of what really occurred. Mr. Parks' statement concerning what Mr. Snipes did with the Grievant amounts to hearsay. Mr. Moore said he saw kissing and touching, however, he was not at the Arbitration hearing to be cross-examined. That leaves us with the offsetting testimony of the Grievant and Mr. Snipes.

Accusations of the Grievant having illegal contact by taking pictures of the youth (including youth Snipes) are inconsequential. This activity was approved by Ms. Baker and appeared to be well within the scope of work behavior.

This case is about conduct and judgement and not character. The Grievant exceeded the boundaries of what should constitute a professional Social Worker/youth relationship. Social Workers, unlike guards, need to be sympathetic and sensitive but these traits are "professional tools" of the business. They are used purposefully and are kept within specific boundaries. Emotional involvement with clients or youth is both unprofessional and unethical.

The foregoing evidence and testimony established the fact that the Grievant exceeded the boundaries of professional behavior in her relationship with youth Snipes, a relationship she characterized as "friends." It is clear the Grievant was aware of the rules of DYS (Employer Exhibit 14) and the consequences of same. It is also clear that after June 24, 1993 she was not authorized to have contact with youth Snipes. She continued contact in spite of this supervisory direction.

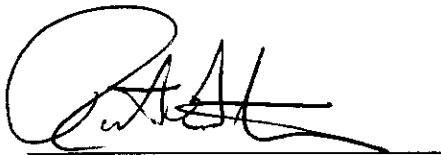
The position the Grievant held was one of privilege. She had the right to take custody of incarcerated youth and to counsel them. Along with this privilege goes trust and responsibility. This is responsibility for the safety and security of the school's employees, youth and the community.

The Grievant's actions in the instant case were not a momentary loss of judgement, but were repeated and deliberate. The Grievant's actions breached the trust and confidence the Employer must place in her as a Social Worker in a maximum security institution. Unfortunately, her prior service and record cannot mitigate what was done.

AWARD

Grievance denied.

Respectfully submitted this 16th day of May, 1994 in Akron, Ohio.

A handwritten signature in black ink, appearing to read 'R. Stein', written over a horizontal line.

Robert G. Stein, Arbitrator

100-100000-100000