#1053

IN THE MATTER OF ARBITRATION
BETWEEN

STATE OF OHIO, DEPARTMENT OF REHABILITATION AND CORRECTIONS	)	GRIEVANCE NO. 27-03-(94-10-04) -0474-01-03
AND	)	OPINION AND AWARD
OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, AFSCME, LOCAL 11 AFL-CIO	)	GRIEVANT: RANDALL QUISENBERRY

JAMES M. MANCINI, ARBITRATOR

APPEARANCES:

FOR THE EMPLOYER

David Burrus
Colleen Wise

FOR THE UNION

Jamie Greene Parsons
Dave Justice
Randall Quisenberry

S U B M I S S I O N

This matter concerns a grievance filed on September 29, 1994 by Randall Quisenberry. The grievant alleged that he had been improperly discharged in violation of the Collective Bargaining Agreement between the State of Ohio (hereinafter referred to as the Employer) and the Ohio Civil Service Employees Association, AFSCME Local 11 (hereinafter referred to as the Union). The arbitration hearing was held on May 12, 1995 in Chillicothe, Ohio. The parties submitted closing arguments at the hearing and waived their right to submit post-hearing briefs.

B A C K G R O U N D

The grievant, Randall Quisenberry, began his employment with the Department of Rehabilitation and Corrections on April 11, 1988. The grievant was employed as a correction officer at the Chillicothe Correctional Institution. The grievant's duties as correction officer included supervision of inmates at the Chillicothe Correctional Institution which is a medium security facility.

The events which led to the grievant's discharge include the following. On July 14, 1994, the grievant was involved in a domestic dispute at the residence of his girlfriend,

Karla Raines. The police were called to the scene and both the grievant as well as Ms. Raines were cited for disorderly conduct. Patrol Officer, James Rout, who was one of the officers reporting to the scene, stated that the grievant was hostile, aggitated and disrespectful towards the police upon their arrival. The grievant admitted to Patrolman Rout that he had kicked the basement door open after Ms. Raines had locked it on him. According to the grievant, Ms. Raines grabbed the kitchen knife and threatened him with it. Patrol Officer Rout stated that the grievant has a reputation in the community for being violent towards police officers who always request back-up whenever they are called to a scene where the grievant is present. The grievant and Ms. Raines were both cited and fined for disorderly conduct.

On July 21, 1994, the grievant was arrested for being intoxicated while walking in the middle of the street. The grievant was incarcerated until he became sober at which time he was released.

On July 31, 1994, the grievant again was charged with domestic violence involving an incident with Karla Raines at her residence. Patrol officer, Phillip Buchanan, testified that the grievant ran from Ms. Raines' house shortly before the police

arrived wearing only his shorts. Ms. Raines stated that the grievant had been drinking and became violent. She stated that the grievant hit her in the mouth, and started to choke her. It was at that point that she was able to call the police. Officer Buchanan located the grievant at his mother's house and attempted to arrest him. According to Officer Buchanan, right after he placed handcuffs on the grievant, he began to push the officer backward where they struggled for a moment. Officer Buchanan stated that he had to apply pressure to the grievant's throat in order to get him under control. Eventually, the grievant was placed in the police car and brought to the police station where he was charged with resisting arrest. During his arrest, the grievant complained about Officer Buchanan's treatment of him, claiming that the officer had brutalized him. Officer Buchanan concluded his testimony by stating that the grievant had a reputation with the police for being belligerent and uncooperative.

The evidence showed that with respect to the July 31st incident, the resisting arrest charge was reduced to a lesser charge of disorderly conduct. In return, the grievant dropped his excessive force charge which he had made against the arresting officer. Ms. Raines also subsequently dropped her domestic violence charge against the grievant.

The grievant generally acknowledged that these incidents occurred but blamed most of the problems on his girlfriend's drinking problem. The grievant noted that he properly reported each of the incidents to management at the Chillicothe Institute as required by the Standards of Employee Conduct. The grievant further acknowledged that there were occasions when he was drunk that he has been abusive towards the police. However, the grievant denied that he had ever resisted arrest over the July 31st incident. He claimed that Officer Buchanan had failed to tell the truth about his arrest in his report. He stated that Officer Buchanan had improperly shoved him in the back during the arrest.

The grievant further stated that on August 8, 1994, he sought help for his drinking problem at the Scioto Paint Valley Mental Health Center. He was admitted to the program and participated in the individual treatment as well as outpatient group sessions for his alcohol abuse problem. Mr. E. Jay Hammond, a counselor at the health center verified that the grievant had completed the intensive outpatient care program and remained active in Alcoholics Anonymous.

The grievant further testified that with respect to the July 31st incident, he was told by a hearing officer at the

Chillicothe Correctional Institute that if he was able to get the charges against him reduced to a minor offense, then he would not be disciplined too severely over the matter. The grievant testified that subsequently he was able to get the resisting arrest and domestic violence charges reduced to a minor disorderly conduct charge. The grievant's attorney verified that someone in a position of authority from the Correctional Institute had assured them that if the charges were reduced to a minor misdemeanor, then discipline would not include termination. The charges were subsequently reduced to the minor offense of disorderly conduct.

Mr. Fred McAninch, Warden, stated that he decided to terminate the grievant for his off duty misconduct which he found to constitute a violation of Rules 1, 3a, 13, 15, 38, 39, and 41 of the Employee Standards of Conduct. Mr. McAninch stated that he believed that the grievant's behavior compromised his ability to supervise inmates. In his Notice of Disciplinary Action, the Warden further indicated that the grievant's violent, assaultive behavior was contrary to the mission and obligation of the institution. If the grievant's violent tendencies were to erupt within the institution, the Warden noted that it could pose a threat to the inmates under his supervision. The Warden

further indicated that he took the grievant's record into consideration which showed that the grievant had previously received a written reprimand and a two and one-half day suspension for an alleged assault against a private citizen. This latter incident occurred in March, 1994. The Warden noted that the grievant's March arrest was written-up in the local newspaper. He stated that several administrative staff brought the newspaper article to his attention. He also claimed that the inmates would be well aware of the grievant's off duty violent behavior. He stated that the grievant had brought discredit to the institution by his violent misconduct.

The grievant was terminated effective September 19, 1994. He subsequently filed his grievance herein claiming that it was improper to remove him for his off duty misconduct which only involved minor misdemeanor charges. At his Step 3 grievance hearing which was held on December 9, 1994, it was brought out that the grievant had recently been involved in another serious incident which resulted in his arrest. According to Officer Craig Raymond, on November 22, 1994, the grievant had gotten drunk while celebrating his birthday. He allegedly attacked two of the individuals who were with him at the time and police had to be called. In his report, Officer Raymond stated that the

grievant was drunk and went crazy that night. The grievant also became belligerent and used profanity towards the officers when they tried to arrest him. In its Step 3 response to the grievance, the Employer noted that the grievant's post-discharge behavior showed that the grievant was unable to control himself within the community and therefore posed a great potential for impairment on the job.

Mr. John Lynch, Jr., currently union steward and past president, stated that during his eight years of employment at the Chillicothe Correctional Institute he has not seen any other employee discharged for off-duty misconduct. He stated that he assisted in the filing of the grievance because the grievant had a good work record and progressive discipline was not followed. Mr. Randy Fink, current union president, stated that there were two other employees who have been involved in off-duty misconduct like the grievant but who were not discharged for their behavior. Specifically, Mr. Fink referred to the cases involving correctional officers, Ralph Netter and John Ashton. The evidence indicated that Mr. Netter had been involved in a series of off-duty charges for such things a disturbing the peace, criminal trespass and disorderly conduct. The local newspaper referred to several of the charges which were brought against

Mr. Netter. With respect to Mr. Ashton, he was charged with disorderly conduct in October, 1990 but according to Mr. Fink he was never disciplined by the Employer for his off-duty misconduct.

Ms. Barbara Denton, Labor Relations Officer, stated that Mr. Netter had actually been given a three day suspension for his March, 1994 off-duty misconduct. At that time, Mr. Netter was cited for possession of marijuana and disorderly conduct. She also noted that Mr. Netter is currently serving a thirty day suspension. With respect to Mr. Ashton, Ms. Denton stated that he was also given a three day suspension for disorderly conduct following a December, 1990 incident.

POSITIONS OF THE PARTIES

POSITION OF THE EMPLOYER

The Employer contends that it had just cause to discharge the grievant from his position as correction officer at the Chillicothe Correctional Institution. The Employer submits that the evidence clearly shows that the grievant engaged in serious off-duty misconduct which violated certain Standards of Employee Conduct Rules. In addition, the grievant had a prior disciplinary record which included a two and one-half day suspension for violating some of those same rules. The kind of off-duty misbehavior engaged in by the grievant reached a point where it made it impossible for the grievant to carry-out his duties as a correction officer.

The Employer refers specifically to the three off-duty incidents involving the grievant in July, 1994. In two of the incidents, the grievant was involved in assaultive behavior towards his girlfriend, Karla Raines. The grievant was also arrested for being drunk in a public place. Perhaps the most serious offense occurred on July 31, 1994 when the grievant resisted arrest and became very beligerent towards the police officer involved. These three incidents along with the grievant's

prior offense in May, 1994 showed a pattern of abusive volatile behavior on the part of the grievant that is totally unacceptable for a correction officer.

The grievant's actions violated various departmental work rules. The grievant violated Rule 15 regarding immoral and indecent conduct by engaging in violence against women and innocent individuals. He violated Rule 38 which states that an employee should not harm a member of the public. Most significantly, the Employer argues that the grievant violated Rules 39 and 41 which provide that an employee's actions should not compromise or impair his ability to carry-out his duties and should not bring discredit to the Employer. The Employer notes that the grievant's actions were documented in the local newspapers. The grievant is not only an embarrassment to the department but also his misconduct shows that he is no better than the inmates that he supervises. In this case, there was a rational nexus established between the grievant's off-duty misconduct and his ability to carry-out his duties in supervising inmates. The evidence clearly shows here that the grievant has effectively destroyed his ability to supervise inmates.

The Employer disputes the Union's contention that the grievant was subjected to disparate treatment. The two examples

cited by the Union do not prove unequal treatment. It was not shown that either of the two cases were similarly situated to the grievant with respect to the kind of offenses committed, prior discipline, or seniority.

The Employer further claims that there was no basis established for providing the grievant with a second chance as he requested. The evidence showed that the grievant was given a second chance following his two and one-half day suspension for similar misconduct in March, 1994. Moreover, the grievant's enrollment in an EAP program does not call for the mitigation of the discharge penalty imposed. It is apparent that the counseling he has received for his alcohol problem has not worked. In November, 1994, the grievant was again involved in another drunken incident where he supposedly went crazy as indicated in the police report by severely beating an individual. It is obvious that the grievant's behavior has not changed and therefore management requests that his grievance be denied.

POSITION OF THE UNION

The Union contends that the grievant's discharge should be set aside for several reasons. First, the Union presented evidence showing that the grievant had been subjected to disparate treatment. In two other instances, employees were treated differently by management for having committed similar off-duty offenses. These other employees were given more lenient discipline than the grievant for engaging in similar off-duty misconduct. The evidence also showed that no other employee had ever been discharged for engaging in off-duty misconduct at the Chillicothe Correctional Institution.

The Union further points out that the grievant's off-duty misconduct only involved minor misdemeanors. On July 14, 1994, the grievant was charged with disorderly conduct, a misdemeanor. On July 21, 1994, the grievant was charged with disorderly intoxication, again a minor misdemeanor. Finally on July 31, 1994, the more serious charges of domestic violence and resisting arrest were dropped and reduced to one charge of disorderly intoxication, a 4th degree misdemeanor. There was also some evidence that a representative of management had advised the grievant's attorney that Mr. Quisenberry would not be terminated if he pled to a minor misdemeanor charge. Considering

that there were only misdemeanors involved, it is evident that the charges against the grievant for his off-duty misconduct were not as serious as alleged by the Employer. This showed that the Employer failed to conduct a fair and thorough investigation prior to imposing discipline.

The Union further argues that the grievant's discharge should be set aside because he has enrolled in a self help program with Scioto Paint Valley Mental Health in Circleville, Ohio. The grievant has shown that he has been counseled under an out-patient alcohol program at the mental health center. The grievant completed a recovery program and attended after care sessions with Alcoholics Anonymous. Based on statements from his counselor in the program, it is evident that the grievant has made efforts to correct his alcohol problem.

Under the departmental standards, it specifically provides that consideration may be made by the appointing authority in determining disciplinary action for an employee who is participating in a substance abuse program. In this case, the department was aware of the grievant's enrollment in the self help program at the mental health center prior to his discharge. However, the department failed to give Mr. Quisenberry consideration called for under its own standards of employee

conduct for an employee participating in a substance abuse program. The Union asks that the grievant be reinstated and given another chance due to the fact that he has been treated for his alcohol problem under a recognized substance abuse program.

The Union further points out that the grievant has been a good employee during his approximate six and one-half years of employment at the Department of Rehabilitation and Corrections. The grievant's prior incidents did not involve any on-duty misconduct. The Union asks that the grievant be reinstated to his former position with full lost wages.

I S S U E

Was the removal of Randall Quisenberry for just cause, if not, what shall the remedy be?

O P I N I O N

The parties stipulated that the sole issue before this arbitrator is whether the grievant was discharged for just cause. The Employer had the burden of establishing by clear and convincing evidence that the grievant did engage in the alleged misconduct. Moreover because the misconduct occurred away from the work place, the Employer also had the burden of showing that there was a nexus between the misconduct and the grievant's employment with the state.

This arbitrator finds that the Employer did establish by clear and convincing evidence that the grievant did engage in serious off-duty misconduct on three occasions in July, 1994. The first occasion occurred on July 14th when the grievant was issued a citation for disorderly conduct after engaging in a domestic dispute with his girlfriend, Karla Raines. The testimony of Officer Rout shows that the grievant became hostile and disrespectful towards the police when they attempted to question him about the incident. The second incident occurred on July 21st

when the grievant was arrested for being intoxicated in the middle of Paint Street in Chillicothe. The grievant was cited and held until he became sober. He attempted to call-in sick on that same day but his request for leave was denied. The grievant paid the fine for disorderly intoxication.

Perhaps the most serious act of misconduct engaged in by the grievant occurred on July 31, 1994. At that time, the grievant was arrested after a domestic charge was filed against him by Ms. Raines who stated that the grievant had hit her in the mouth and pushed her around. Officer Phillip Buchanan testified that when he went to arrest the grievant, he became totally beligerent. After the handcuffs were placed on the grievant, he began to resist his arrest by physically pushing Officer Buchanan backwards. At the same time, Mr. Quisenberry began yelling that the officer had brutalized him and that he would sue him. Eventually, Mr. Quisenberry was brought under control and charged with resisting arrest. Although the grievant denied that he had ever resisted arrest by Officer Buchanan, this arbitrator must find from the credible testimony offered by Officer Buchanan as well as from the police report which he prepared at the time, that the grievant did in fact resist arrest by pushing Officer Buchanan backwards in a brief

scuffle. This arbitrator therefore concludes that the Employer did establish by clear and convincing evidence that on three occasions in July, 1994, while off-duty, the grievant engaged in serious misconduct which included disorderly intoxication, domestic violence, and resisting arrest.

In cases such as this involving off-duty misconduct, most arbitrators will not sustain discipline for such conduct unless there is evidence of a reasonable nexus between the conduct and the employee's job. Discharge for conduct away from the workplace is permissible if it is clearly shown that (1) behavior harms the reputation of the employer, or (2) behavior renders the employee unable to perform his/her duties, or (3) behavior leads to refusal or reluctance of other employees to work with him. The Employer here argues that the grievant's misconduct clearly has damaged his reputation and brought discredit to the Chillicothe Correctional Institution. The Employer further argues that the grievant's off-duty misconduct has made it impossible for him to effectively carry-out his duties in supervising inmates.

Upon review of the record, this arbitrator would agree with the Employer that the grievant's off-duty misconduct clearly damaged the reputation of the Chillicothe Correctional Institute. First, the evidence indicated that two of the incidents which

the grievant was involved in, including the one for which he received a two and one-half day suspension in March, 1995, were written up in the local newspaper. According to the Warden, both the staff as well as the inmates were aware of the grievant's off-duty misconduct from these newspaper articles. Moreover, the police officers involved with respect to the grievant's misconduct, all stated that Mr. Quisenberry had a reputation in the Chillicothe law enforcement community of being beligerent and uncooperative especially when he was intoxicated. The local police were also aware of the fact that the grievant was employed as a corrections officer at the Chillicothe Correctional Institute. Considering the evidence showing that the grievant's misconduct became common knowledge in the community, it must be held that his behavior did harm the Employer's reputation.

A more difficult question concerns the Employer's claim that the grievant's misconduct has compromised his reputation with inmates making it impossible for him to carry-out his duties as a correction officer. Certainly as stated in the Standards of Employee Conduct, a correction officer by the very nature of his job must be held to the highest standards of conduct in their personal affairs. The correction officer serves as a role model for inmates. As such, it is evident that the

kind of off-duty misconduct engaged in by the grievant here obviously affected his ability to serve as a role model for the inmates he supervises. However, it is unclear from the record as to exactly how security could be compromised if the grievant continued his duties as a correction officer in supervising inmates. The evidence does not show that the grievant had any difficulty in carrying out his duties at any time prior to his discharge which included the time period when his off-duty misconduct occurred. There was no evidence produced which showed that the grievant had experienced any difficulty in supervising inmates following his off-duty misconduct. Thus it cannot be said here that the grievant's behavior has effectively destroyed his ability to supervise inmates. However, this arbitrator would find from the evidence that the grievant's off-duty misconduct has affected his ability to serve as a role model for inmates and in that sense has impaired his relationship to his job.

Thus this arbitrator has concluded from the record that a reasonable nexus was established between the grievant's off-duty misconduct and his job. The Employer demonstrated that the grievant's wrongful actions had an adverse impact on its operations. Clearly, the grievant's off-duty misconduct fell

outside the range of acceptable behavior. The grievant's misconduct violated various departmental rules prohibiting certain kinds of off-duty behavior on the part of employees. The grievant's misconduct violated Rule 41 by damaging the Employer's reputation and Rule 39 by impairing his ability to carry-out his duties as a correction officer. The grievant's drunken behavior also violated Rules 13, 15, and 38, all of which prohibit actions which could harm or abuse members of the public. In sum, this arbitrator must find that the serious off-duty misconduct engaged in by the grievant in this case certainly warranted severe disciplinary action.

Having determined that the misconduct warranted severe discipline, the next question which must be resolved is whether the discharge penalty imposed was excessive under the facts presented. The Union contended that the penalty was too severe and unreasonable under the circumstances. The Union basically presented two arguments claiming that there was disparate treatment and that the grievant should be given "a second chance" because he voluntarily entered a rehabilitation program for his alcohol related problems.

This arbitrator has reviewed the evidence presented regarding the Union's claim that the grievant was subject to

unequal treatment. The Union cited two examples of employees who engaged in serious off-duty misconduct but who were not discharged. However, the evidence pertaining to these two individuals falls far short of that needed to establish a case of unequal treatment. With respect to Mr. Ashton, there was only one infraction noted for which he was given a three day suspension. With respect to Mr. Netter, there was some showing made that he may have engaged in similar off-duty misconduct for which he received disciplinary suspensions. However, it was incumbent upon the Union to also answer the question as to whether there were any aggravating or mitigating circumstances which could explain the different treatment accorded Mr. Netter. Factors such as the degree of the employee's fault, his seniority as well as prior discipline all could have accounted for the difference in the disciplinary treatment. There was no evidence presented concerning these other factors which could have played a role in the discipline handed out to Mr. Netters for his off-duty misconduct. As a result, this arbitrator cannot reasonably conclude from the evidence presented that the grievant here was subjected to greater discipline than any other employee who may have committed similar off-duty conduct. Disparate treatment simply was not proven.

However, this arbitrator does find as a mitigating factor evidence showing that the grievant has voluntarily sought treatment for his alcohol abuse problem. It is widely accepted that alcoholism is a diagnosible and treatable disease and should be treated as such. Just as other illnesses are viewed as mitigating factors in a disciplinary action, an employee's alcohol abuse problem may also be regarded as grounds for mitigation. The Employer in the instant case recognizes this mitigating factor in its own Standards of Employee Conduct by stating that chronic substance abuse is an illness and that "consideration may be made by the Appointing Authority in determining disciplinary action for an employee..." As a general rule in a case such as this involving alcohol abuse, the employee has the burden of proving that he or she is taking firm and meaningful action to confront the problem and overcome it. What must be determined is whether the evidence shows that the employee's misconduct was a consequence of an alcohol related problem and further that his recovery from alcohol abuse is assured to the point where it is unlikely that repetition will occur.

In the instant case, the evidence shows that on August 8, 1994, Mr. Quisenberry voluntarily enrolled into a self help program for his alcohol related problem with the

Scioto Paint Valley Mental Health Center in Circleville, Ohio. It is significant that the grievant was referred to the center by the Employee Assistance Program prior to the discharge decision being rendered. Article 24.09, Employee Assistance Program, states that participation in an EAP program "may be considered in mitigating disciplinary action" if such participation commenced "within five (5) days of a predisciplinary meeting or prior to imposition of discipline." The record reveals that management was advised that grievant had entered an alcohol rehabilitation program at the predisciplinary hearing. However, management for whatever reason decided that this was not a mitigating factor. This arbitrator cannot agree with that decision. In that the grievant's off-duty misconduct was clearly related to an alcohol abuse problem, his participation in a rehabilitation program was certainly a mitigating factor which should have been considered in this case.

The evidence establishes that the grievant has participated in individual treatment as well as an intensive out-patient group program for his alcohol abuse problem at the health center. He completed the four week intensive out-patient care program on February 10, 1995. As attested to by Mr. Hammond, his counselor at the center, the grievant has successfully

completed his rehabilitation program to the extent that he is fit to return to his former job as correction officer at the Chillicothe Correctional Institution. Mr. Hammond concluded his testimony by stating that the grievant is following an "effective personal recovery program" by remaining very active in self help groups such as Alcoholics Anonymous on a weekly basis. Thus it is apparent from the evidence that the grievant has taken meaningful action to confront his alcohol abuse problem and to be treated for it. Based on the evidence, including the testimony of his counselor, this arbitrator would have to conclude that the grievant has made sufficient recovery from his alcohol related problem to assure the Employer that the risk of repetition of his off-duty misconduct is slight.

It is important to point out that the grievant's off-duty misconduct was directly related to his alcohol abuse problem. The police reports of the incidents show that in each case alcohol was involved. Indeed, the grievant was charged with disorderly intoxication on two of the occasions, July 21st and July 31, 1994. The grievant himself attributed his off-duty misconduct to his drinking problem. Moreover, several of the police officers involved in handling the incidents stated that

the grievant only became beligerent and difficult to handle after he had become intoxicated. Thus considering that the grievant has now received treatment for his alcohol abuse problem, it would appear that it would be highly unlikely for him to again commit the kind of off-duty behavior which was involved in this case.

In response to the Union's claim that the grievant's participation in an alcohol rehabilitation program is a mitigating factor, the Employer cited the grievant's post-discharge misconduct occurring in November, 1994. At that time, the grievant was once again cited for becoming intoxicated at a celebration for his birthday and for allegedly attacking two individuals. Certainly the grievant's behavior in this instance was reprehensible and totally inappropriate. However, it is important to note that this particular incident occurred towards the initial stages of the grievant's participation in a rehabilitation program for his alcohol abuse problem. Significantly, the incident occurred prior to the grievant's participation in the intensive out-patient group program at the health center. The grievant's counselor, Mr. Hammond, did not seem overly concerned about the grievant's November intoxication incident undoubtedly because he was aware of the fact that the grievant

had not yet participated in the intensive out-patient group portion of the rehabilitation program which consisted of three hour sessions on a daily basis over a four week period of time. Moreover, the evidence showed that the grievant has not been involved with any kind of alcohol related misconduct since his completion of the intensive out-patient group program in early February, 1995. Thus considering evidence showing no further alcohol related conduct as well as the grievant's completion of the intensive out-patient group program, this arbitrator cannot agree with the Employer that the grievant's one post-discharged act of misconduct shows that it is likely that he will again bring discredit to the Chillicothe Correctional Institution. To the contrary, the record indicates that the grievant's recovery from his alcohol abuse problem is assured to the point where the risk of repetition of similar off-duty misconduct is highly unlikely.

Therefore, this arbitrator has determined from the record before him that the grievant has demonstrated that he is taking firm and meaningful action to confront his alcohol abuse problem and to overcome it. The evidence showed that the grievant has successfully completed individual as well as group treatment at the Scioto Paint Valley Mental Health Center for

his alcohol abuse problem. The evidence further indicates that the grievant has been fully rehabilitated and that it is highly unlikely that there will be a reoccurrence of the kind of off-duty misconduct which occurred in this case. Considering this evidence, this arbitrator concludes that the grievant should be given a final chance to establish that he is fully rehabilitated and is ready, willing and able to accept his responsibility to be a good, sober and dependable employee. This arbitrator would like to emphasize that if the grievant had not acknowledged his alcohol abuse problem, there would be absolutely no hesitation in upholding the discharge decision rendered by the Employer. However, the grievant has recognized his alcohol abuse problem and has dealt with it in a forthright fasion. All evidence available to this arbitrator indicates that the grievant has been rehabilitated of his alcohol abuse problem.

It was also established that the grievant is a six and one-half year employee who apparently had a satisfactory on the job performance record. There was no evidence produced showing that the grievant has had any problems associated with the performance of his duties as a correction officer. The undisputed testimony offered by several Union witnesses was that the grievant was "a good officer" who could effectively supervise

inmates. Taking into consideration that the grievant has demonstrated an ability to fulfill his duties as a correction officer during his six and one-half years of employment as well as the fact that he has now received rehabilitation for his alcohol abuse problem, this arbitrator finds that it is reasonable to reduce the discharge penalty assessed by the Employer.

In conclusion, this arbitrator finds from the circumstances presented that the Employer did not have just cause to discharge the grievant. It would be appropriate to reinstate the grievant to his former position on a conditional last chance basis. The reinstatement is conditioned upon the non-reoccurrence of the kind of off-duty misconduct giving rise to the discipline imposed in this case. Any repetition of this kind of off-duty misconduct will justify his immediate dismissal. In addition, the grievant shall as a condition of his reinstatement continue to participate in individual aftercare counseling and self help support groups to the extent determined by the state's Employee Assistance Program or its designee.

With respect to the appropriate remedy, this arbitrator finds that the grievant is not entitled to lost wages. It is evident that the grievant's termination was essentially his own

fault. It was his off-duty misconduct which precipitated the events which led to his discharge. Moreover, it was clearly shown that the grievant did engage in serious off-duty misconduct. Considering the seriousness of the misconduct committed as well as the fact that it was the grievant's own actions which led to the discharge decision being rendered, this arbitrator finds that it would be inappropriate to provide the grievant with any lost wages. As such, the grievant's termination is to be modified to a disciplinary suspension. The grievant shall immediately be reinstated on conditional, last chance basis as previously indicated with full seniority and benefits but without any back pay.

A W A R D

The grievance is sustained in part. The Employer did not have just cause to discharge the grievant. The grievant's termination shall be reduced to a disciplinary suspension. The grievant shall be reinstated with full seniority and benefits to his former position on a conditional last chance basis. The grievant shall not be entitled to any lost wages. As a condition of his reemployment, the grievant shall continue to participate in individual aftercare counseling as well as self help support groups to the extent determined by the state's Employee Assistance Program or its designee. Further, any repetition of the kind of off-duty misconduct engaged in by the grievant in this case will justify his immediate dismissal. The grievant's reinstatement shall in accordance with these provisions be on a last chance basis.

6-7-95

JAMES M. MANCINI, ARBITRATOR