3411 Helen Road
Shaker Heights, OH 44122
August 5, 1997

Colleen Ryan
Office of Collective Bargaining
106 N. High Street, 7th floor
Columbus, Ohio 43215-3019

Henry L. Stevens
Ohio Education Association
5026 Pine Creek Drive
Westerville, Ohio 43081

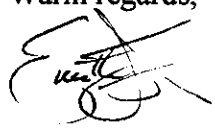
Dear Advocates:

Here is my arbitration decision in connection with SCOPE/OEA and Mary Lou Kennedy, Grievant, versus Ohio Department of Rehabilitation and Correction.

Case Number, Hearing Date and Location: Case 27-25-961010-1153-06-10
June 4, 1997 Southern Ohio Correctional Facility, Lucasville, Ohio

Thank you for demonstrating the highest professionalism throughout the proceedings. I shall be send you my invoice separately.

Warm regards,



Dr. Everette J. Freeman

enclosure

In the Matter of Arbitration Between STATE COUNCIL OF PROFESSIONAL EDUCATORS, OHIO EDUCATION ASSOCIATION/NATIONAL EDUCATION ASSOCIATION (SCOPE/OES), - And - STATE OF OHIO DEPARTMENT OF REHABILITATION AND CORRECTION	OPINION and AWARD Everette J. Freeman, Arbitrator Case # 27-25-961010-1153-06-10 Mary Lou Kennedy, Grievant **15-DAY SUSPENSION**

Pursuant to the procedures of the parties a hearing was conducted at the Southern Ohio Correctional Facility in Lucasville, Ohio, on June 4, 1997 before Everette J. Freeman, Arbitrator. The parties agreed to the jurisdiction of the Arbitrator for a determination of the issue(s) presented. The parties were given a full opportunity to present written evidence and documentation, to examine and cross examine sworn witnesses, to argue their respective positions during closing oral statements, and to present post-hearing briefs. The Record of this proceeding was subsequently closed upon receipt by the Arbitrator of both post-hearing briefs on July 11, 1997, and, this matter is now ready for final resolution herein.

The case for the Employer was presented by Colleen Ryan, Operations Team Leader, State of Ohio, Department of Administrative Services, Human Resources Division, Office of Collective Bargaining. The case for the Union was argued by Henry L. Stevens, Labor Relations Consultant, Ohio Education Association.

WITNESSES

Witnesses on behalf of the Employer were:

Carla Bentley, Personnel Officer, Southern Ohio Correctional Facility;

Dave Colley, School Administrator/Supervisor II, Southern Ohio Correctional Facility;

Victor Crum, Labor Relations Officer, Southern Ohio Correctional Facility.

Witnesses on behalf of the Union were:

James Bowling, State Council of Professional Educators, Site Representative;

Brent Carney, State Council of Professional Educators, Departmental Representative.

EXHIBITS

Joint Exhibits

1. 1994-1997 Collective Bargaining Agreement
2. Grievance Trail
    a) Letter from Henry L. Stevens to Steve Gulyassy dated

April 21, 1997
b) Agency Step 3 Response from Joseph B. Shaver & Charles Adams dated March 5, 1997
c) Grievance Form

3. Notice of Disciplinary Action from Terry Collins to Grievant dated September 19, 1996 (signed September 16, 1996)

4. June 10, 1996 Predisciplinary Conference Hearing Officer's Report, Management Witnesses/Document List, Acknowledgement of Waiver of Predisciplinary Hearing form, Union/Employee Witness Request form, Request for Disciplinary Action memo from D. Colley to T. Hairston, dated August 20, 1996, and Grievant's Request for Leave and Employee Call-Off Form

5. Revised Standards of Employee Conduct dated June 1, 1990 and Revised Standards of Employee Conduct dated January 4, 1996

6. Grievant's March 7, 1996 acknowledgment of receipt of Revised Standards of Employee Conduct.

Employer Exhibits

The Employer submitted the following documents to the Arbitrator pursuant to this case:

M-1. Arbitration Hearing Opening Statement;

M-2. Not applicable;

M-3. Grievant's Attendance Record;

M-4. August 17, 1996 State of Ohio Payroll Disbursement Journal;

M-5. Grievant's prior notices of disciplinary action, grievance settlement agreement dated October 27, 1995, and letters of reprimand dated March 1, 1995 & January 30, 1995;

M-6. Standards of Employee Conduct Rules Violations & Penalties.

Union Exhibits

U-1. September 20, 1996 inter-office communication form S. Stallings to J. Bowling.

ISSUE

The parties did not submit a joint written stipulation regarding the issue. Construed narrowly, the issue before the Arbitrator is whether the Grievant, Mary Lou Kennedy, was suspended for fifteen (15) days without pay for just cause. There are three corollary issues which relate to the narrower issue of the suspension. They are:

I. Was the grievance for the fifteen (15) day suspension timely filed by the Association; and

II. Did the Employer violate, misinterpret, or misapply Section 13.03 of the collective bargaining agreement between the Association and the State of Ohio by failing to adequately investigate the circumstances of the Grievant's absence from work, including failure to interview the Grievant, and by failing to provide the Association with copies of the prior discipline record at the pre-discipline conference?

III. Was the Employer's treatment of the Grievant disparate?

FACTS

The Grievant, Mary Lou Kennedy, has been in the employ of the Southern Ohio Correctional Facility (SOCF) since July 28, 1980. The Grievant is classified as a Teacher 3 and is responsible for running the library. Her duties include coordinating educational media systems, cataloguing books, ordering periodicals, and providing help to inmates.

On August 14, 1996, the Grievant telephoned the SOCF to report that she had car trouble and subsequently did not report for work. On August 16, 1996, the Grievant submitted a Request for Leave form requesting a vacation day for August 14th, the day she reported a flat tire and did not arrive for work. The Grievant's request to apply leave time to cover her August 14th absence was denied because "no proper documentation provided" and because of "insufficient leave balance" (Joint Exhibit 4, p. 7).

On August 29, 1996, the Employer prepared and mailed a pre-disciplinary conference notice to the Grievant with documentation related to August 14th incident. On the same day, the Grievant signed an acknowledgment of notice of predisciplinary conference and elected with here signature not to waive her right to a predisciplinary conference. On September 4, 1996, a predisciplinary conference hearing took place before Hearing Officer Otto Bender. The Grievant did not appear at the predisciplinary conference. The hearing officer noted in his finding that the Grievant did not provide required proper documentation for leave which was not pre-approved. Bender's Hearing Officer's Report findings of fact ends with the statement that "Ms. Kennedy also has excessive absenteeism (See attached Payroll Record)" (Joint Exhibit 4).

On September 19, 1996, SOCF Warden Terry Collins issued a fifteen (15) suspension to the Grievant for violation of Rules 3H and 3K of the Standards of Employee Conduct (Joint Exhibit 3).

On December 5, 1996, a Step 3 hearing was held at the SOCF wherein the Association contended that the Employer disciplined the Grievant without just cause and that both the Grievant's request for vacation and personal leave were denied (Joint Exhibit 2).

On April 21, 1997, the Association prepared and mailed to the Employer an appeal on behalf of the Grievant (Joint Exhibit 2, p. 1).

APPLICABLE CONTRACT PROVISIONS

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…

13.03 - Pre-Suspension or Pre-Termination Conference

When the Employer plans to initiate a suspension, fine, termination, or demotion a written notice of pre-disciplinary conference shall be given to the employee who is the subject of the pending discipline and to the designated Association representative. Written notice shall include a statement of the charges against the employee, contemplated disciplinary action, and the date, time and place of the conference. The conference will be held at a

reasonably convenient location determined by the Employer and shall be scheduled no earlier than three (3) days following the notification to the employee…

At the conference, the employee shall be provided with all 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. a fine in an amount not to exceed two (2) days pay for discipline related to attendance only; to be implemented only after approval from OCB;
4. suspension without pay;
5. demotion or discharge.

ARTICLE 27 - PERSONAL LEAVE

27.05 - Notification and Approval of Use of Personal Leave

Employees may be granted personal leave for absence due to mandatory court appearances, legal or business matters, family emergencies, unusual family concerns, medical appointments, weddings, religious holidays or any other matter of a personal nature upon giving forty-eight (48) hours notice, to include one (1) full work day, in writing to the supervisor. In emergency situations, requests may be granted with a shorter notice. Requests for the use of personal leave shall not be unreasonably denied.

ARTICLE 30 - VACATION

30.01 - Vacation Scheduling

Employees eligible to receive vacation may submit vacation requests, in amounts of full days, between March 1

and March 31 for the twelve (12) month period beginning May 1 of that year through April 30 of the following year… Vacation requests may also be submitted during other times of the year at least three (3) days in advance and shall be approved on a first-come, first-serve basis regardless of seniority. This time limit may be waived at the discretion of the Employer. Vacations shall be approved by the Employer for the time requested by the employee insofar as adequate scheduling of the work unit permits.

ARTICLE 5 - GRIEVANCE PROCEDURE

5.08 - Disciplinary Grievance Procedure

A. General

An employee who wishes to grieve a suspension, a discharge, or a demotion shall have grievance subjected to an expedited grievance/arbitration procedure as outlined in this section, and shall be excluded from the regular grievance procedure as outlined in Section 5.05…

C. Procedure

An employee with a disciplinary grievance or an authorized Association representative shall file a grievance under the procedures listed below unless mutually agreed otherwise.

1. Step 3

An employee or an authorized Association representative may file a grievance directly to the Agency Head/Director or designee of the employing agency at Step 3 either within ten (10) days of the effective date of the action or within ten (10) days after receipt of the notice as to the action, whichever is later.

* * * * *

ARGUMENTS OF THE PARTIES

The Employer's Position

In its opening statement, through testimony and argument, exhibits, written documentation, and in its post-hearing brief, the Employer focused on providing justification for suspending the Grievant for fifteen (15) days. The Employer argues that the suspension was for just cause under the terms of the collective bargaining agreement. In its opening argument, during the arbitration hearing, and in its post-hearing brief, the Employer asserts that not only was the Grievant disciplined for just cause, but that the Grievant's absentee record justifies the level of discipline imposed. Furthermore, the Employer reasons, the Grievant's prior discipline history may be used to support the level of discipline imposed. The Grievant and/or the Association did not receive copies of the prior discipline at the pre-disciplinary conference. Both the Grievant and the Association were well acquainted with the Grievant's discipline history.

The Employer argues that the Association has no standing before the Arbitrator inasmuch as the grievance was not filed on a timely basis as set forth in Section 5.08(C)(1). In its post-hearing brief, for example, the Employer maintains that the failed to file a grievance on behalf of the Grievant within the contractually specified ten (10) day period. To quote the Employer's post-hearing brief:

> "The Notice of Disciplinary Action (Joint Exhibit 3)is dated September 19, 1996. Ten(10) calendar days from the receipt of this Notice and the effective date of the action is October 3, 1996, allowing for the contractually required three (3) days for mail delivery. The dates of actual suspension were October 29, 1996, through November 16, 1996. Ten(10) days from the actual date of suspension is November 26, 1996, using the latest date arguable as having been the latest date effecting the Grievant. The grievance (Joint Exhibit 4, p.3) is signed by SCOPE/OEA Labor Relations Consultant Henry Stevens on April 21, 1997. Using the Employer's date of September 19, 1996, as both the effective date and the date of notice, **the grievance is two hundred (200) days late.** Even using the more lenient date of November 16, 1996 as the triggering date, **the grievance is one hundred forty-six (146) days late."**(Employer's Brief at 3-4)

Over and above issues of timeliness relative to the Association's filing the grievance, the Employer insists in testimony and its post-hearing brief that it has never been the practice at the SOCF to provide copies of prior disciplines at or before the predisciplinary conference.

The Association's Position

The Association, through its written evidence and documentation, witnesses, cross-examination of Employer witnesses, arguments during the arbitration hearing, and throughout its post-hearing brief, asserts that the Employer's suspension of the Grievant was without just cause. The Association's position is that the Employer breached the terms of the collective bargaining agreement and failed to meet any of the established seven standards of just cause. The Association argues

further that the Employer conducted no investigatory meeting from which to make its determination that the Grievant had broken Rule 3-H, (Being Absent without Proper Authorization), and Rule 3-K, (Excessive Absenteeism/Abuse of Leave).

During the arbitration hearing and in its brief, the Association objected to the Employer's claim that the grievance was not arbitrable on account of the timeliness of its filing. The Association states:

> "To raise the issue of arbitrability at the hearing when it had not been raised previously, is most often rejected by arbitrators. In the Employer's third step response, the hearing officer, Mr. Charles Adams, states: **'To the question of procedural objection, the Union/ Management had none, and the hearing was considered properly constituted'**". (Association's Brief at 14)

Finally, the Association objected to the introduction at the arbitration hearing of Grievant's disciplinary history on the basis that this history was not introduced into the record at the pre-disciplinary conference and, accordingly, was inadmissible at arbitration and "a blatant violation of the Agreement". (Association's Brief at 14)

In its post-hearing brief, the Association reminds the Arbitrator that it does not have the burden of proof in this case nor is it required to have the Grievant appear at the hearing. The Association petitions that the grievance be sustained and that the Grievant, Mary Lou Kennedy, be made whole.

DISCUSSION AND FINDINGS

Procedural and substantive issues are part and parcel to this arbitration case. The Employer and the Association disagree over whether the other is able to bring issues before the Arbitrator which had not been addressed at the Step 3 hearing. For its part, the Employer asserted that the Arbitrator should rule on the arbitrability of the grievance, since it was not timely filed. The Association objected to the Employer's petition on the basis that the dispute centered on just cause. The Association claims further that the Employer never introduced the arbitrability issue before the arbitration hearing commenced. The Employer also sought to introduce the discipline history of the Grievant at the arbitration hearing against the objections of the Association. In contrast, the Association sought to persuade the Arbitrator that the Employer could not offer into evidence the disciplinary tree of the Grievant at arbitration because such documentation was not made a part of the record during the appeal phase.

While the parties agree about the basic facts of the dispute; namely, that the Grievant did not report to work on August 14, 1996, contention arises concerning whether the Grievant's absence from work could have been covered by vacation or personal leave and the degree to which the Grievant knew she risked disciplinary action for failing to report to work. Neither

the Employer nor the Association presented arguments that the Arbitrator found inadmissible for consideration as part of the proceeding, even though such arguments may have been settled procedural or substantive issues in other forums. The Arbitrator's approach to this hearing was to admit matters for whatever they were worth and, where appropriate, defer a ruling on the merit of such issue(s)until rendering this final decision, guided by the language of the collective bargaining agreement.

The first and foremost issue before the Arbitrator, overshadowing all others, is whether the grievance is arbitrable at all. Despite the Association's assertion that the Employer may not challenge the arbitrability of an issue at arbitration if no prior challenge arose at the Step 3 level, it is wholly permissible for one of the parties at arbitration to raise the arbitrability issue. In its brief, the Employer cites, and cites correctly, the distinguished Elkouri and Elkouri who state in How Arbitration Works, 5th ed., at 311, that the "right to contest arbitrability is not waived merely by failing to raise the issue of arbitrability until the arbitration hearing"(Employer's Brief at 5).

The Employer's request to abandon arbitrating this case is predicated on the matter of timeliness in filing the grievance on behalf of Ms. Kennedy. Section 5.08(C)(1) of the collective bargaining agreement specifies the Step 3 procedure to be used by the parties in addressing grievances. The Employer argues that had the Association submitted a timely grievance on behalf of Ms.

Kennedy, the latest date the Association could have done so and comply with the ten (10) day Step 3 appeal request requirement was November 26, 1996. The Association did not prepare and mail its grievance until April 21, 1997. No explanation for the time gap between the time when the fifteen (15) day suspension began or ended and when the grievance was tendered is provided by the Association at arbitration or in its post-hearing brief.

It would appear, however, that the actual Step 3 hearing occurred on December 5, 1996, and that a Step 3 response was not issued until March 5, 1997. The question, then, is whether the Association filed, not a grievance, but a request to arbitrate within fifteen (15) days after receiving the March 5, 1997 Step 3 Response. It is unclear from the arbitration hearing, testimony, exhibits, or the post-hearing briefs of the parties, when the Step 3 Response was received by the Association. What is clear is the request to arbitration was dated April 21, 1997 and sent certified mail. It appears to have been received by the Employer on April 23, 1997.

In the absence of evidence submitted by the Employer that the Step 3 Response was received by the Association on a date that would have rendered its April 21st arbitration request untimely, the Arbitrator finds nothing to support a finding that the grievance lacks timeliness. Indeed, the Arbitrator finds that if, as the testimony of Mr. Carney suggests, the Employer issued a Step 3 response within 45 days, the Association still would have has sufficient time to submit a timely request for

arbitration. Accordingly, the Arbitrator rejects the Employer's pray for dismissal on arbitrability grounds.

In their respective post-hearing briefs, both parties rely heavily upon the seven tests for just cause in arguing for and against the fifteen (15) day suspension. For its part, the Employer asserts that it more than adequately satisfied the tests of just cause in its disciplinary action against the Grievant. Among other things, the Employer stresses that the Grievant had ample notification and forewarning about Rule 3-H and Rule 3-K, that the Grievant chose not to appear at the pre-disciplinary hearing or the arbitration proceeding, and that its investigation was "fair and objective" (Employer's Brief at 7,9,10). Alternatively, the Association submits that the Employer failed to satisfy the test for just cause by, among other things, failing to insure that the Grievant understood Rule 3-H and Rule 3-K relative to possible disciplinary conduct, failing to provide the Grievant with all documents pertaining to the possible disciplinary action, and failing to exercise even-handedness in its treatment of the Grievant (Association's Brief at 8,9, 12).

Both parties devote a considerable portion of their post-hearing briefs to rehearsing positions offered at the arbitration hearing. While the Arbitrator appreciates the care with which the parties seek to bring the tests for just cause to his attention in their respective post-hearing briefs, these tests are not controlling in this case in and of themselves. Indeed, these issues are secondary to the main one. The salient issue is

whether the predisciplinary hearing represents the discipline proceeding requiring full disclosure to the Grievant and the Association of evidentiary and discipline-related documentation, including the employee's disciplinary and absentee record.

The Employer maintains through its opening statement, written documentation, witnesses, and post-hearing brief that it follows a normal, established, and customary procedure for determining a disciplinary course of action. The Employer asserts that a request for disciplinary action is initiated followed by a pre-disciplinary conference convened to ascertain if there is cause to initiate discipline. Following the predisciplinary conference, a notice of disciplinary action is issued. The Employers argues that it followed the aforementioned procedure in the Grievant's case and in no way discriminated against her relative to the manner of its investigation or imposition of discipline.

The core of the Association's position, as expressed at arbitration and in its post-hearing brief, is that the Employer misinterpreted the Section 13.03 of the collective bargaining agreement. In support of its claim that the Employer violated the contract, the Association relies upon the language in Section 13.03 which states that "At the conference, the employee shall be provided with all documents used to support the possible disciplinary action which are known of and available at the time." The Association also claims that the Employer failed to investigate Ms. Kennedy's leave request thoroughly and properly.

Clearly the burden of proof in this case rests with the Employer. In meeting its burden of proof, the Employer not only seeks to rely upon the Arbitrator's interpretation of the contract, but on testimony regarding past practice as well as its post-hearing argument. With respect to the matter of the predisciplinary hearing, the Arbitrator finds no evidence that the Grievant suffered disparate treatment relative to documentation provided or actions taken. The Arbitrator understands the predisciplinary conference to be a conference in advance of imposing discipline. Its scope is the immediate allegation(s) at issue. In the case before the Arbitrator, the specific allegation concerns the Grievant's absence from work and the documents directly relevant to it; namely, the employee call-off form, the request for leave form, the request for disciplinary action, the notice of disciplinary hearing, the hearing acknowledgment of notice waiver, and whatever documentation the Grievant and/or Association wish to present. Discipline is imposed when and only when an employee receives from the Employer a notice of disciplinary action. That discipline, the Arbitrator finds, is administered by the Appointing Authority after the predisciplinary conference and not as part of it.

As regards the issue of whether the Employer should have provided the Association copies of prior discipline at the predisciplinary hearing, the Arbitrator looks to the testimony of Victor Crum, SOCF Labor Relations Officer, as compelling,

persuasive, and unrefuted. Mr. Crum testified that for the past decade the Employer has never provided the Association with copies of prior disciplines at the predisciplinary hearings. Neither during the arbitration hearing nor in its post-hearing brief does the Association endeavor to rebut Mr. Crum's declaration of past practice. Accordingly, the Arbitrator must give the testimony of Mr. Crum as well as the Employer's argument great weight. The Association's claim that the Employer violated Section 13.03 is therefore set aside.

In its post-hearing brief, the Association charges the Employer with failure conduct an investigatory meeting or an investigation as specified in Section 13.02 of Article 13. This charge was not raised at the arbitration hearing. Unfortunately, the Association provides no evidence that its Section 13.02 right to an investigatory meeting were ever exercised in the form of request from the Grievant or the Association to the Employer to conduct a 13.02 meeting. Indeed, the evidence - both written and oral - point to a disinclination by the Grievant to participate in any of the hearings including the arbitration hearing. Certainly, while it is not necessary for the Grievant to be present at the predisciplinary conference or at the arbitration hearing, her absence is curious in light of the charge that the Employer might have neglected to provide the Grievant an opportunity to offer evidence in her own behalf. The Arbitrator rejects the Association's charge that the Employer failed to conduct a proper investigation of the grievance. To be sure, the

Arbitrator is not persuaded by the Association argument about the Employer's failure to conduct an investigation on the basis that had the Association felt strongly about its due process claim, it would have swiftly, vigorously, and relentlessly pursued the matter in order to prevent itself from exposure to a potential duty of fair representation charge.

The Association, in connection with its claim of inadequate investigation, asserts that the Grievant was denied the opportunity of utilizing leave time to cover for her August 14, 1996 absence. The Association notes:

> "Had the Employer made an effort to conduct a full, fair and objective investigation, they could have found that Ms. Kennedy had ample amount of leave(vacation - 7.4 hours, sick-3.3 hours, personal - 8.2 hours, compensatory-1.62 hours) to cover this absence… Ms. Kennedy needed 36 minutes of vacation to cover the 8 hours requested. 36 minutes could have come from personal leave or compensatory time… (Association's Brief at 11).

Testimony at arbitration and the Grievant's request for leave form indicate that the Grievant requested eight (8) hours of vacation leave. In the first instance, it is the employee's responsibility to know the amount of leave time he or she has accumulated. The Association's assertion above indicates the Grievant lacked a full eight (8) hours of vacation available to use. The Employer is under no obligation to advance vacation leave time or make special accommodations for the Grievant. Association witness James Bowling supported through his testimony the Employer's claim that the SOCF is not obligated to honor any

request for vacation made outside the three (3) day advance notice requirement. To wit, it is worth noting that the Association did not offer evidence that Ms. Kennedy sought to utilize any other type of leave. In sum, the Arbitrator finds that the Employer did not discriminate against the Grievant in not granting leave since the decision to grant or not grant leave request is discretionary.

During the arbitration hearing, the Employer sought to introduce the Grievant's attendance history into the record over the objection of the Association. The Association's objection is overruled inasmuch as such information is routinely introduced at arbitration. The Arbitrator finds from the testimony of Carla Bentley, Personnel Officer, SOCF, that the Grievant had been absent from work a total of eight (8) weeks, excluding Family and Medical Leave Act-related absences, from January 1996 through August 1996. The Arbitrator finds that, given the Grievant's prior absenteeism and discipline record, it is not unreasonable for the Employer to hold Ms. Kennedy to a stringent attendance standard. Moreover, it is not likely that the Grievant or the Association did not know about this attendance record since both the Association and Ms. Kennedy had been parties to prior grievances related to the Grievant's attendance.

Finally, the matter of whether the punishment in the case at hand fit the offense. Notwithstanding prior counseling, two written reprimands, and four suspensions, the Grievant found herself away from her duty station on the morning of August 14,

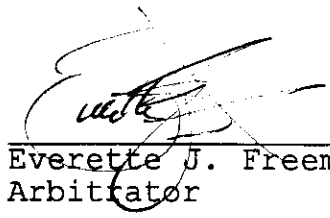
1996. The Arbitrator finds that the Employer sought to obtain documentation from the Grievant supporting her claim of a flat tire and was unsuccessful. In the absence of firm documentation that the August 14th absence was caused by a flat tire, the Employer was bereft of the necessary confirmation to find favor with the Grievant's pray for vacation leave even had she sufficient leave accumulated. Given the lack of sufficient proof of the flat tire, the Grievant prior attendance record, and her personal leave time shortage, the Employer acted reasonably and nondiscriminatorily in disciplining Ms. Kennedy.

According to testimony by Victor Crum, testimony undisturbed at cross-examination, the Grievant could have been removed from the SOCF payroll insofar as the August 14th absence was her fourth disciplinary violation. In opting to suspend rather than terminate the Grievant, the Employer, it seems to this Arbitrator, was exercising discriminatory behavior in favor rather than against Ms. Kennedy.

What the Arbitrator seeks to do in this case is to rely heavily on a determination as to whether the Employer violated the procedural requirements of the contract. Procedurally, the Employer did not breach the collective bargaining agreement and in particular Articles 5, 13, 27, and 30. While the Arbitrator appreciates the Association's desire to see its interpretation of the dispute, the contract, and past practice prevail, the Employer satisfies fully its burden of proof in this case and its actions procedurally were in accord with the contract.

AWARD

The grievance is denied in its entirety.



Everette J. Freeman, Ed.D.
Arbitrator

August 5, 1997