

IN THE MATTER OF CONTRACTUAL ARBITRATION PROCEEDINGS

OCSEA/AFSCME Local 11,
Employee Representative,

and

Lucinda Sanders,
Doug Evans,
Chris Hill,
Darrel Brown,
Scott Cyrus,
Grievants

Grievance No. 27-23-980414-0597-01-02
27-23-980529-0612-01-09
27-23-980529-0613-01-09
27-23-980522-0614-01-09
27-23-980605-0615-01-03

vs.

Arbitrator Stein

State of Ohio, Department of
Rehabilitation and Correction,
Employer

ISSUE AND JOINT STIPULATIONS / EXHIBITS

were
untimely
Issue: ~~Shall the above listed grievances be denied because the Union advanced them to Step 4~~ ^{untimely} [?]
~~untimely in violation of Contract Article 25.02? If not, what shall the remedy be?~~

Stipulated Facts / Exhibits:

1. The above listed Grievants are employed at the Ross Correctional Institution under the 1997-2000 Contract between OCSEA/AFSCME and the State of Ohio ("Contract").
2. Said Contract empowers and controls this arbitration, and is entered as Joint Exhibit 1.
3. All Grievants received a Step 3 Hearing. The Hearing Responses are entered as Joint Exhibit 2.
4. ~~_____~~
~~_____~~
~~_____~~
~~_____~~
5. The Office of Collective Bargaining may deny grievances that are not appealed through Step 4 as defined within the Contract at Article 25.02.


Management Representative


Union Representative

#1348 expedited

BENCH DECISION AND AWARD

2/23/99
JH

ARBITRATOR: Robert G. Stein

HEARING DATE:

2/22/99

GRIEVANT:

Lionel Howard

GRIEVANCE #: 27-25-980805-1439-01-C

DEPARTMENT:

DR&C

UNION:

OCSEA

MANAGEMENT
ADVOCATE:

Jim Lendavic

UNION

ADVOCATE:

Donnie Sargent

ISSUE

3 day suspension

AWARD

Grievance denied. The position of the Employee is upheld on the violations of 3(f) and 3(h). There is insufficient evidence to support the 3(f) and 3(k) violation. I find that the corrective action was progressive and was based upon recent corrective actions for similar offenses. Mr. Howard was responsible for keeping track of his obligations under FMLA and after FMLA was exhausted,

ISSUED AT:
DATE:JOCF
2/22/99ARBITRATOR'S
SIGNATURE:

#1348

BENCH DECISION AND AWARD

ARBITRATOR: Robert C Stein

HEARING DATE: 2/22/99

GRIEVANT: Jack Tweed

GRIEVANCE #: 27-25-(8-5-98) 1440 0103

DEPARTMENT: DR & C

UNION: OCSEA

MANAGEMENT ADVOCATE: Beth Lewis

UNION ADVOCATE: Don Sargent

ISSUE

1 day fine

AWARD

The 1 day fine is reduced to a written warning for a Rule 11 violation, Inattention to Duty. The evidence and testimony indicated that management allowed a practice of having the radio remain in the M-1 Gym Recreation Administrator's Office on several past occasions. There is insufficient evidence to support a Rule 28 or 7 charge. However, Officer Tweed was inattentive in not turning the radio off and keeping it out of sight. The Grievant

ISSUED AT: SOCF
DATE: 2/22/99ARBITRATOR'S SIGNATURE: 

Shall receive 1 day back pay, plus roll call (at the appropriate rate).

Grievance sustained. This is a non-precedent setting decision as agreed to by the parties. I find that when the parties engaged in the third step meetings at the Ross Correctional Institution they were not following the requirements of the Award issued by Arbitrator Keenan. Evidence of this non-compliance with the Keenan Award is apparent by the actions of the Department of Corrections and the Union. The appeals of the grievances from Step 3 to Step 4 were three to four days late. However, the delayed third step decisions issued by the Department undermined OCB's authority to enforce Arbitrator Keenan's Award in the instant matter.

If the Keenan Award were adhered to there would not have been a logical reason to issue third step decisions (JX 2) well after the Department should have known the grievances were untimely appealed. Four of the five decisions were issued more than five weeks after the July 15, 1998 deadline. The third step decision in the fifth case was also untimely by several weeks. This action by management is not only confusing, but it has the potential of leading to an awkward outcome. For example, if the third step decisions sustained the grievances in whole or in part, these renderings would have occurred after OCB considered the grievances to be dismissed. How would such an outcome serve the labor relations interests of either party? Why should the Union be forced to waste time and resources to appeal grievances that they won (or accepted management's answer) at the 3rd step?

The actions of the Department would have been less problematic if the third step would have been issued within the approximate time of late appeal. Given the complexity of the Department of Corrections and the vast responsibilities of OCB, it is understandable that OCB may not have been able to communicate the untimeliness of the grievances prior to DR&C issuing its 3rd step responses. However, when third step decisions are issued almost four weeks following the deadline for appeal to the 4th step (and are some 6 weeks late) something is wrong. It can only be assumed that the parties were still operating under the past practice of what Arbitrator Keenan calls, "A Gentlemen's Agreement," (i.e. to be flexible on time lines to answer and appeal grievances). It is reasonable to infer that the operational impact of the Keenan Award had not filtered down to Ross Correctional Institution so soon after being issued.

BENCH DECISION AND AWARD

ARBITRATOR: ROBERT G. STEIN

HEARING DATE: 2/22/99

LUCINDA SANDERS, DOUG EVANS,
GRIEVANT: CHRIS HILL, DARVEE BROWN,
SCOTT CYRUS

GRIEVANCE #: See Attached #s

DEPARTMENT: DR & C

UNION: OCSEA

MANAGEMENT
ADVOCATE: TINA KRUGENUNION
ADVOCATE: Don Sargent**ISSUE**

Timelines / Timeliness of moving the above
listed grievance from Step 3 to Step 4

AWARD

Grievance Sustained on a non precedent setting
basis. See attached decision

ISSUED AT:
DATE:SOCE
2/22/99ARBITRATOR'S
SIGNATURE: