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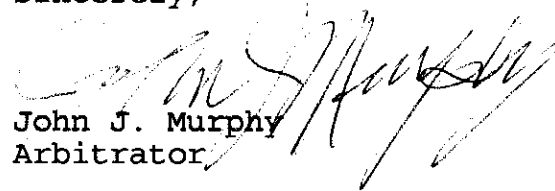
March 8, 1999

Rhonda G. Bell
Office of Collective Bargaining
106 North High Street, 7th Floor
Columbus, Ohio 43215-3009

Dear Ms. Bell:

Enclosed please find one (1) copy of my Summary Opinion and Award relative to the Thomas Sandy Grievance, together with a statement for my services rendered as arbitrator in this matter.

Sincerely,


John J. Murphy
Arbitrator

JJM:ms

Encl.

In The Matter of the Arbitration

-between-

District 1199, SEIU

-and-

State of Ohio,
Department of Adult Parole Authority

ARBITRATOR: John J. Murphy
Cincinnati, Ohio

APPEARANCES:

FOR THE EMPLOYER: Rhonda G. Bell
Beth Lewis
Office of Collective Bargaining

Also present: David Headley
Lab Technician, Adult Parole Authority

Don Amos
Director of Emergency Services
Clark County Mental Health Service

Michael Sand
Supervisor, Adult Parole Authority

FOR THE UNION: Matt Mahoney
Service Representative
District 1199, SEIU

Also present: Thomas Sandy
Parole Officer, III
Grievant

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PROCEDURE

On March 4, 1998, the Grievant was issued a suspension of three days from his position of Parole Officer III effective March 31, April 1, and April 2, 1998. The three day suspension was grieved, and the parties agreed that the matter was properly brought to arbitration. At a full day of hearing, four witnesses were heard, and nine joint exhibits were received as well as ten party exhibits.

The parties further agreed that the decision of the arbitrator should be in the form of a Summary Award and Opinion to be dispatched to the parties within five business days of the close of the arbitration hearing.

AWARD

The Grievant was charged with a violation of the following standards of employee conduct: Rule 22--Falsifying any official document; Rule 8--Failure to carry out a work assignment; Rule 7--Failure to follow posted orders, administrative regulations, policies and directives. The Employer failed its burden proving a violation by the Grievant of either Rule 22 or Rule 8. To that extent, the grievance is granted. The Employer established by evidence, and the Grievant conceded a failure to contact Clark County Mental Health Agency on a monthly basis about a parolee in the Grievant's custody; consequently, the Employer sustained its burden of showing a violation by the Grievant of Rule 7.

Based on the findings set forth above, a three day suspension without pay is decidedly excessive. The sanction for the violation of Rule 7 is converted to an oral reprimand, and all reference to the three day suspension should be expunged from the Grievant's records.

REASONS

Of the three rules that form the substance of charges against the Grievant, the most serious in terms of potential punishment for a first offense is Rule 22 (suspension to removal). This charge turns on the Grievant's falsifying a form devised by his supervisor by entering negative results on four weekly drug tests for a parolee. Rule 8 carries a potential punishment of written reprimand to removal for a first offense. While the case against the Grievant by the Employer did merge evidence of the violation of both Rules 7 and 8, the principal matter involved in the charge against the Grievant for Rule 8 was the Grievant's alleged failure to carry out a work assignment to arrest the parolee.

Rule 7 carries a potential punishment of oral reprimand to three days suspension for the failure to follow regulations, policies, and procedures. In this area, the Employer charged the Grievant with failing to contact the mental health agency on a monthly basis concerning the parolee's progress, failure to have the parolee sign the "Standard Conditions" of parole, and failure to have the parolee sign the Supervision Plan for six months after

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the commencement of the parole procedure. Each of these matters is discussed separately below.

1) The Falsification Charge. McKinley Hall was the major source of urine analysis and testing used by parole officers in the supervision of parolees in the county in which the Grievant worked. Prior to June of 1997, the therapist at McKinley had informed the parole officers that they were to assume that the results of weekly urine analysis were negative unless the therapist notified the parole officers to the contrary.

Because the unit's supervisor was concerned about tracking weekly urine analysis and verification, he devised a form to be used by parole officers effective June of 1997. The purpose of the form was to assist parole officers, including the Grievant, in tracking weekly urine tests and verification. The parole officer could enter the information weekly or at the end of each month prior to submission of the form to the unit supervisor.

The falsification case against the Grievant turns on the very first month in which the form was required to be used by all parole officers. The form in question submitted by the Grievant showed negative results of four weekly urine analyses for the parolee. The case against the Grievant is based upon a letter by the parolee's therapist dated January 23, 1998 in which the therapist states that the last drug screen for the parolee occurred on May 20, 1997. Based upon this sentence in the therapist's letter, the Employer charges the Grievant with falsifying the June document

in which negative results for the parolee were recorded by the Grievant.

A case of falsification of a record typically requires evidence to show an intent on the part of the Grievant to deceive through the information placed on the record. This case was not made by the Employer. The form in question was a brand new form and required the parole officers not to rely any longer upon the previous practice of assuming positive results unless told differently by therapists. As the evidence shows, as of June of 1997 the parole officers must now check with the therapist on each of the results.

The evidence also shows that McKinley Hall would not open its files to the parole officers, and, therefore, the officers had to check with the individual therapist. A letter from an administrative assistant at McKinley Hall verified the Employer's testimony that he tried to contact the therapist but was unsuccessful. The assistant suggested that he leave the forms with her to be completed by the therapist, but, again this effort did not meet with success. The letter ends with the note that the Grievant did in fact return to McKinley Hall and received the requested information.

"Intent to deceive" by the information recorded on the form was not established by the evidence in this case. The Grievant was supervising this parolee since January of 1997 and continually relied upon McKinley Hall not only to collect the parolee's urine

The charge of the Employer is that the Grievant did not arrest the parolee on Friday afternoon or on the weekend. Had the Grievant done so, the arrest would have prevented the parolee from engaging in a serious felony that led to a shooting on Sunday, August 10.

The key consideration, however, in this case is that there is no evidence that the supervisor in any way communicated a need for immediate execution by the Grievant of the arrest order. One must recall that the purpose of the arrest was a violation of parole by

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the parolee's failure to comply with his program on mental health rehabilitation. The supervisor was aware of this failure as of July 3 and did not assign the Grievant to arrest the parolee until August 8.

3) Failure to Follow Administrative Regulations, Policies, and Procedures. The Grievant, as parole officer, decided to add an additional condition to the fourteen printed "conditions of supervision." This additional condition required the parolee to "complete a mental health assessment and all recommended treatment." In addition, the Grievant completed a "supervision plan" under which the Grievant indicated that he would maintain monthly contact with the Mental Health Agency dealing with the parolee. This he did not do. On the other hand, the Mental Health Agency did contact the unit supervisor in July with the news that the Grievant had not been meeting this condition that had been imposed by the parole officer, and nothing was done about this information until the unit supervisor met with the parole officer in August.

The failure by the Grievant to maintain monthly contact with the Agency is a violation of Rule 7, and this violation constitutes just cause for discipline of the Grievant. The Employer chose to suspend the Grievant for three days for falsification of records, failure to carry out a work assignment, and failure to follow administrative procedures. The Employer did not meet its burden of showing falsification and failure to carry out a work assignment.

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In light of the discipline chosen by the Employer predicated upon the Grievant's violation of all three rules, the appropriate discipline for the proven violation of Rule 7 is an oral reprimand.

The Employer also charged the Grievant with two other violations of Rule 7, but neither charge was supported by the evidence. The "standard conditions" were signed by the parolee on January 30, 1997, weeks after the date of his release from prison on parole early in January. This did not comply with the administrative procedure of having this document signed by a parolee within three days of release from prison.

On the other hand, the undisputed evidence shows that the Grievant was on approved leave on the date of the parolee's release from prison. The Grievant entrusted another parole officer with the task of securing the signature of the parolee on the form "standard conditions." On return from the approved leave, the Grievant discovered that the signature of the parolee had not been obtained by his colleague, and the Grievant obtained the signature at the next opportunity. The last charge of a violation of Rule 7 involved the date at which the parolee signed the supervision plan--June 9, 1997. According to the unit supervisor, the parolee--by practice--should have received and signed the supervision plan within thirty days of the commencement of supervision.

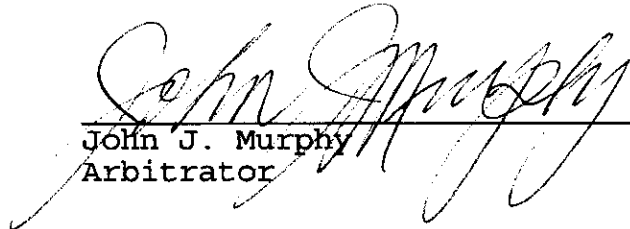
The evidence, however, shows that the parole unit of which the Grievant was a member did not take this alleged practice in a

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serious manner. For example, while the unit supervisor signed off the supervision plan on February 17, 1997, it appears that the Plan did not make its way from the supervisor to the Grievant until a month later, at which time the Grievant signed off. The undisputed testimony was that files containing these plans would disappear for months in the supervisor's office.

Of the three specifications made by the Employer of failures by the Grievant to comply with administrative practices and procedures, this record supports a negative finding against the Grievant on only one of the three charges.

Date: March 8, 1999



John J. Murphy
Arbitrator

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