

#1467

IN THE MATTER OF
ARBITRATION
BETWEEN THE
OHIO DEPARTMENT OF CORRECTIONS
AND

OCSEA LOCAL 11, AFSCME AFL-CIO

Grievant: John Kerry Noble
Case # 27 32-19990622-0205-01-03

ADVOCATE FOR THE UNION:

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INTRODUCTION

A hearing on the above referenced matter was held on October 31, 2000 and November 21, 2000, in Caldwell, Ohio. The parties stipulated to the fact that the issue was properly before the Arbitrator. During the hearing the parties were given a full opportunity to present evidence and testimony on behalf of their positions. The parties submitted briefs in lieu of closing arguments. The hearing was closed on December 11, 2000. The Arbitrator's decision, by mutual agreement of the parties, is to be issued no later than January 25, 2001.

ISSUE

The parties stipulated to the following definition of the issue:

Was the Grievant, John Noble, terminated for just cause? If not, what shall the remedy be?

RELEVANT CONTRACT LANGUAGE

(Listed for reference, see Agreement for language)

ARTICLE 24 DISCIPLINE

BACKGROUND

The issue in dispute in this matter involves the termination of John Noble, a

Corrections Officer, employed at the Noble Correctional Institution for approximately two and one-half years. Mr. Noble was terminated from his position on June 18, 1999 because the Employer determined that he violated:

- Rule 8: *Failure to Carry out a work assignment or the exercise of poor judgment in carrying out a work assignment;*
- Rule 12: *Making obscene gestures or statements or false or abusive statements toward or concerning another employee, supervisor, or member of the general public;*
- Rule 13 (A), *Acts of discrimination on the basis of race, color, sex, age, religion, national origin, disability, or sexual orientation.*

At the time of his termination Mr. Noble had a reprimand on his record for violation of Rule 25; *Failure to immediately report a violation of any work rule, law or regulation.*

Between the months of January 1999 and March 1999 the Grievant was charged with violation of the above listed rules. A summary of what the Grievant was accused of is as follows:

1. The Employer determined the Grievant had behaved unprofessionally when he had inmates pack up the property of other inmates and had an inmate access the extra duty log and commissary sheets. The Employer found that the Grievant conducted a shakedown which left inmates' property in an inappropriate mess, and he was charged with offering to

bring cigarettes into the institution to cover up for the loss of inmate property.

1. The Employer also charged the Grievant with calling fellow officer, Latanya Jeffreys, a “bitch” in front of an inmate.

1. The Employer charged the Grievant with committing an act of discrimination based on race or color when he was said to have called Inmate Tobert, an African-American, a “porch monkey and when he referred to a group of African-American inmates and Officer Jeffreys as “you people.”

Details of these events are addressed in both the Employer and the Union’s positions and shall not be reiterated here. The Grievant disagreed that he had committed the above acts and filed a Grievance when he was terminated from his position.

EMPLOYER’S POSITION

The Employer’s position is detailed in its brief. A summary of the case from the Employer’s perspective is as follows:

Employees of the Department of Rehabilitation and Correction are highly trained in how to deal with inmates, other staff members, difficult situations, racial issues, and professionalism. The Grievant ignored the training he had received in these areas. Because of the Grievant’s actions, the security of the Noble Correctional

Institution was compromised to a point where the Employer can no longer trust the Grievant to monitor the actions of inmates. The Grievant's proven offenses warrant termination.

To preserve the security of an institution, employees must treat inmates with a certain level of respect. The Grievant's actions demonstrate a basic disregard for the security of the institution, his co-workers, and inmates. When the Grievant called Inmate Tolbert a "porch monkey," a riotous situation could have occurred. The Grievant directed a racial slur toward a black inmate. Luckily, CO Jeffreys intervened; her stepping between Inmate Tolbert and the Grievant served to calm Inmate Tolbert. But then, instead of allowing the incident to end, the Grievant followed the inmate into the dorm area. It was as if he were trying to get the inmate to retaliate.

Another example of the Grievant's discriminatory behavior was when he directed a racially derogatory statement towards CO Jeffreys and a group of African-American inmates. When the Grievant said, "*You people* would be welcome in my town as long as you behave," the Grievant implied that the group of African-Americans could not behave. One could understand the comment if the Grievant had simply made the statement to inmates – after all, they are inmates and are in prison because of some unlawful behavior. But there was no reason to direct this comment to CO Jeffreys. The Grievant's comment was demeaning, at best. At worst, it showed the inmates that the Grievant and CO Jeffreys did not work together as a team, a situation that could have compromised both employees' security. A third example of the Grievant's discriminatory behavior was when he threw the black inmate's bedding and belongings on the floor when conducting a shakedown. The Grievant left the white inmates' belongings in order. Even the white

inmates complained about this situation. The Grievant's poor judgment again compromised security at the institution.

The Grievant again exercised poor judgment by offering to bring in cigarettes for an inmate to replace the cigarettes he had lost. This incident demonstrates just how far the Grievant was willing to go to cover his mistakes. The Grievant offered to bring contraband into the institution, in effect establish an improper relationship with an inmate, and involve an innocent co-worker in his scheme. The Grievant was willing to do all of this just to avoid the Employer's finding out that he had again lost an inmate's property.

The Grievant also demonstrated poor judgment by showing favoritism toward Inmate Loew. Inmate Loew was allowed to pack up the belongings of other inmates, pass out commissary slips, and have access to the extra duty log. These are not duties that even an inmate porter should be allowed to perform. The Grievant was trained not to show favoritism to any inmate. CO Jeffreys repeatedly informed the Grievant that he should not allow Inmate Loew to do these things. However, the Grievant ignored his training and CO Jeffreys' warnings. Instead of performing his duties as required, the Grievant called CO Jeffreys a "bitch" in front of Inmate Loew. The Grievant's actions risked Inmate Loew's security – the inmate could have been blackmailed or attacked for the information he possessed. And, again, the Grievant's comment toward CO Jeffreys showed the inmate that the correction officer were not a team, and in fact, were adversaries. Many inmates would have used this information against both correction officers.

The fact that the Grievant's actions did not result in a violent situation does not lessen their seriousness. The Grievant's actions created the threat, or possibility, that a violent situation might occur. The Department cannot afford to take these threats lightly. The Department cannot be expected to tolerate this type of behavior from an employee who had received as much training in the relevant areas as had the Grievant. Given the Grievant's short tenure of employment, termination was the Department's only reasonable course of action.

The Employer respectfully requests that this grievance be denied in its entirety.

UNION'S POSITION

The Union's made two separate arguments; one dealing with the merits of the case and the other dealing with a procedural violation it alleges the Employer committed. Its summary of the case and closing is as follows:

CO Noble's removal from the Ohio Department of Rehabilitation and Correction, (hereinafter "DR&C") was based upon the Employer's paranoia from the institution being a powder keg of rumors and innuendo among the workforce regarding alleged civil rights issues. The fact that the institution was under the watchful eye, of not only the Department of Rehabilitation and Corrections, but also the FBI and other law enforcement entities due to other cases, they were paranoid. CO Noble was hired as an employee of the DR&C as a Correctional Officer on January 6, 1997, transferred to Noble Correctional Institution March 15, 1998, and was employed in that position until June 18, 1999 when he was unjustly removed.¹ CO Noble's unjust removal is based in

¹ Joint Exhibit 3d.

part upon the events that alleged occurred during the period of January through March 1999.

During that period CO Noble was a second shift officer who had just bid into the C-2 dormitory unit of Noble Correctional Institution in January of 1999. As part of his job some of the many duties he was responsible to maintain discipline and order of inmates and internal and external security of the institution. He directed inmate activity in assigned areas of the facility including dayrooms, showers, cells, living and recreational areas. Directed inmate porters and clerks and other inmate work crews/details. Prevented escapes or incidents, which threaten safety or security of the facility, which included using physical force, unarmed self-defense or other skills in which to detain/secure inmates. He also completed and maintained written security documents, or other unit reports and files, conduct and special incident reports, post logs, records, and reports. He took visual count of inmates and reported the count verbally and in writing, distributed mail, made periodic rounds, reported unusual circumstances and information orally and in writing; properly searched, inventoried inmate property, detected contraband, checked locks, and stored equipment and supplies in safe area.

On or about March 5, 1999, CO Noble received a phone call from Officer Zdunczyk that an inmate Woods had transferred from another dorm and to check the inmate out for more cigarettes than he was permitted to have. CO Noble checked the inmate's property and had to confiscate approximately 9-10 packs of cigarettes from the inmate. He issued a contraband receipt to the inmate, but the cigarettes never reached the Captains office as contraband. CO Noble placed them on the table, not at the desk and was getting out the paperwork and answering the telephone, when they came up missing.

He notified the shift captain (Captain Miller) and explained the situation to him. CO Noble did write a ticket on inmate Woods. Sometime later CO Noble was walking from the dining hall back to C-2 dormitory and conversed with Sergeant (Correctional Counselor) Jude Snell who is also assigned to C-2. The conversation was about inmate Woods and the confiscated cigarettes and they were stolen before CO Noble had them secured. CO Noble was very frustrated and was thinking out loud about the missing cigarettes and sarcastically remarked to Sgt. Snell maybe he should just buy some cigarettes and bring them in to replace the missing ones. Because of this event, CO Noble testified that he was pulled from his post pending investigation and was placed in the one of the most important security posts in the institution – front entry. This post is to control entry and control contraband from entering the institution. One would question if management were seriously concerned that CO Noble might bring in cigarettes. Why would they place him in the front entry post? By working that post not only could he be able to bring in contraband he could plan or assist both employees and/or visitors to bring in contraband.

On or about March 6, 1999, CO Noble shook down several inmates and alleged left their property in an inappropriate mess. CO Noble searched inmate Hudson's box and bed area, and found contraband. Inmate Hudson consistently made comments and threatened CO Noble about his job and discipline actions. Inmate Hudson would make statements that his family had connections and all that he had to do was make a call home. Inmate Hudson reported to Case Manager, Ed Chilcote that CO Noble alleged left his box open and now his hygiene was missing. Mr. Chilcote discussed the matter with CO Noble and he stated that the hygiene was there when he conducted the search. Mr.

Chilcote requested CO Noble check inmate Hudson's area again and fill out a theft/loss report if appropriate. CO Noble returned to Mr. Chilcote's office and stated that the hygiene items were not in his box and that he believed inmate Hudson gave it to another inmate. CO Noble then searched inmate Hudson and 3 other inmates and their bed areas, and alleged scattered their property all over, unnecessarily. Mr. Chilcote gave testimony that in his opinion CO Noble harassed inmates of color and was overzealous in his pursuit of contraband. Yet when asked how he arrived at that conclusion he responded through complaints and conversations. Yet again, when Mr. Chilcote was asked if he knew the racial status of Hudson's neighbors which CO Noble also shook down, at Mr. Chilcote's request he didn't know. Mr. Burris and Mr. Snell both testified that logbooks did not indicate any racial profiling. Mr. Bevins testified that when shaking down an inmate's property when looking for something specific, your mission is to seek and find the specific item. The purpose is not to provide room service, like you're at the Holiday Inn.

On or about March 8, 1999, inmate Tolbert and CO LaTanya Jeffreys alleged CO Noble referred to inmate Tolbert as a "porch monkey" and referred to other inmates that "you people were welcome in my town as long as you behave". Both inmate Tolbert and CO Jeffreys are African-American. CO Noble emphatically denied that neither he ever made a statement of this nature nor had he ever made any racial statements of this nature during his employ.

On or about March 13, 1999, CO Jeffreys alleged CO Noble referred to her as a "bitch" in front of inmates. Again, CO Noble vehemently denied this alleged statement.

Sometime between March 8 and 19, 1999, CO Jeffreys and inmate Loew alleged

that CO Noble asked inmate Loew to keep an eye on CO Jeffreys regarding the manner in which she performed her job duties in the housing unit. CO Noble again denied this statement.

Sometime between January and March 19, 1999, it is alleged that CO Noble had inmate Loew do pack-ups and gave the extra duty log book to select inmate workers. CO Noble also had inmate Loew pass out commissary slips. Management introduced exhibits indicating the training that CO Noble had received, however pack ups, extra duty logs, and commissary slips were not listed as any of the training received.² Mr. Bevins gave testimony that he is not aware of any training given, has never sat in on any training in that area, and furthermore if there was a lesson plan, it would need to be approved by the Training Department. In cross-examination of CO Noble, management asked questions regarding the pack up policy and post orders, however no documents regarding pack up policies and post orders were introduced. The reason being was because the pack up issue had been a major problem at this institution and numerous memos had been put out, and the procedure had been changed on numerous occasions, but the problems with property still existed. The memos were written prior to CO Noble transferring to Noble Correctional Institution. CO Noble testified that there had been problems that pages would come up missing out of the extra duty logbook. He would make up a quick reference sheet and the officers would carry it with them, so they always had a correct account of who was to work extra duty. This practice actually started when CO Noble worked in one of the other dorms. The information on the extra duty log was the following: inmate name, number, bunk, date, description and hours worked. CO Noble gave testimony that he was never instructed not to let inmates handle anything regarding

commissary slips. It appears contradictory that the unit clerks, the Sergeant's clerks and the Unit Manager's clerks are trusted to take these same documents from one office to the other. Management argued that by allowing inmate Lowe to assist in these areas was permitting an inmate to supervise other inmates. CO Noble testified that head porters are essentially placed in the same position by being a lead worker and advising the other porters as to their duties. With respect to the issue of commissary slips CO Noble gave testimony that he had dialogue with Captain McBride regarding how he was having inmate Lowe distribute the commissary slips. Captain McBride advised him that it was not a good practice and not to do it again. CO Noble stated that he advised Ms. Jeffreys that she was correct that he was not to have inmate Lowe distribute the commissary slips. CO Noble never did it again. If this was in question, why didn't management call Captain McBride to refute or rebut this testimony?

The Union brought forth testimony that discredited the allegations and witnesses of management. It was apparent that management was stacking charges, which was raised by the Union at both the predisciplinary hearing and step 3 hearing.³

The Union questioned why management witness Ms. Jeffreys did not write incident reports to all the allegations that she gave in confidential statements. Ms. Jeffreys testified that she didn't report the alleged incidents even though she had received the same training that CO Noble had received regarding writing reports, the importance of reporting, the obligation of reporting and the penalty for failure to report.⁴ Ms. Jeffreys testified that she witnessed the missing cigarette event, yet she failed to assist or backup her co-worker. Ms. Jeffreys testified that Captain McBride had never advised her

² Management Exhibits 14 and 18

³ Joint Exhibit 2C and 3C

to write incident reports. She also testified that she didn't report until Mr. Burris called her in for questioning and then wrote confidential statements in lieu of incident reports.⁵ Still being on probation, makes one question why Ms. Jeffreys wasn't concerned with protecting herself. Also, Ms. Jeffreys testified that she felt discriminated, why had she not contacted the institutional EEO officer? Why didn't she serve notice to CO Noble that she was offended? Mr. Burris testified that Ms. Jeffreys didn't act broken up about the alleged derogatory remarks. Is it coincidental that Ms. Jeffreys and inmate Lowe's memories both improved on 4/30/99 by being able to report in more specific detail than they had in earlier confidential statements?⁶ Ms. Jeffreys testified that she wasn't present during the alleged incident with inmate Tolbert. Inmate Tolbert testified that "Ms. Jeffreys saw the whole entire situation go down and she looked at him like are you just going to let this go down without saying anything." In inmate Tolbert's confidential statement ⁷ he states in part that "*CO Noble did shock me down an found two books that was over do I ask him why took them an he told me Why! an then I said you don't have to talk me like that because I'm a man just like him. At that time he said if you act like a porch monkey you get treated like a porch monkey!*" Inmate Tolbert testified that the alleged incident occurred up front while in line before late night movie, mixing it, and that he was ready to put his hands on CO Noble. When inmate Tolbert was questioned if he would be considered a leader in his community (dorm), he responded that he could set up the situation, and that he was physical and boisterous, and took no mess from officers or anyone. Inmate Tolbert also testified that he never filed formal complaints or kites on

⁴ Joint Exhibit 5A and B

⁵ Management Exhibits 2, 3, 4

⁶ Management Exhibit 4 and 8

⁷ Management Exhibit 1

CO Noble only the confidential statement.

The issue as to whether or not actual tickets were written on inmates by CO Noble seems apparent when management witness Mr. Snell testified that he was disciplined for being behind in hearing 340 tickets. Ms. Wilson testified that there were major problems with tickets being given out but weren't coming back. Mr. Snell also testified that he was asked by Mr. Burris to review logbooks of racial profiling by CO Noble,⁸ however none was found. With respect to the conversation between Jude Snell and CO Noble regarding the missing cigarettes, Mr. Snell reported that he didn't believe that CO Noble was being sarcastic or joking about bringing in cigarettes to replace the missing ones.⁹, however he testified that CO Noble had no expression.

The Union brought forth testimony that other DRC employees in similar situations have been given more lenient discipline with same/similar charges for alleged violations of rule 8, 12 and 13 but not to the degree of removal. This was also raised at the step 3 hearing.¹⁰

The Union provided testimony from other non-Caucasian females that CO Noble was not racially biased. Officer Jody Payton (African-American female) testified that she had worked with CO Noble approximately 3 days per week for several months in the education department. She testified that there was a cooperative spirit, they worked well comfortably with no problems. She testified that her experience with CO Noble was pleasant, he didn't swear, no racial or gender biases and no derogatory slurs toward inmates. Officer Annette Queen (African-American female) supported Ms. Payton's testimony. Furthermore, Ms. Wilson, (Asian-American female) the unit secretary in C-

⁸ Management Exhibit 9

⁹ Joint Exhibit 3C

2 dormitory expressed a pleasant and professional experience working with CO Noble. Ms. Jeffreys had different good days from CO Noble, so in essence only worked approximately 3 days a week with CO Noble for the period of time. Ms. Jeffreys tried to paint a picture that CO Noble was a racist with not only herself but with the inmates too. If CO Noble was truly racially biased why didn't the other non-Caucasian females have the same experience that Ms. Jeffreys tried to portray?

Training Officer Bill Bevins gave testimony that the use and/or procedure for the use of extra duty logs and commissary slips is not taught in pre-service or in-service training. Furthermore, if there were a lesson plan, it would have to be approved through the Training Department. He also testified to the major importance of incident report writing, how it is trained, proper procedure regarding the time frames following the alleged incident, and how they are used. He also expressed the penalty for failure to write an incident report. Mr. Bevins also testified to the changes that had been made regarding special needs in cultural diversity training, due to the over whelming concern by the DR&C because of the employee's rural culture. Mr. Bevins gave testimony of the different types of searches, and how they differ when searching for a specific item.

The Collective Bargaining Agreement stipulates that discipline should be used as tool to correct behavior and not solely for the purpose of punishment. The alleged incidents in the instant case predominately happened within a two-week period. CO Noble was never given an opportunity to correct any alleged misconduct. Once CO Noble was put on notice via the pre-disciplinary notice on or about May 1, 1999, there where no additional nor any subsequent allegations of misconduct. Just cause requirements set forth that an employee be adequately warned of the consequences of his

¹⁰ Joint Exhibit 2C and Union Exhibit 4 and 5

conduct and secondly that rules, orders, and penalties be evenhandedly applied and without discrimination with reasonable consideration given to mitigating circumstances. These standards have not been met.

Additionally, the Collective Bargaining Agreement stipulates that discipline should be commensurate with offense. The D R & C Standards of Employee conduct suggest that short of egregious infractions (which could merit termination in the extreme case), this grid suggests a far lesser discipline.

It is a fact that Ms. Jeffreys did not like CO Noble, in Mr. Chilcote's opinion he did not care for CO Noble, and Mr. Burris rendered his opinion that he didn't want CO Noble reinstated. It is a fact that DR&C had not trained CO Noble in specific areas. It is a fact that CO Noble was never afforded an opportunity to correct any behavior once served notice. It is a fact that the institution was under scrutiny and watchful eye for alleged civil rights issues.¹¹ It is a fact that the training department had to change their training in areas regarding cultural diversity. If you look at the Standards of Employee Conduct ¹² specifically rule 8, first offense the guideline is a written up to a removal. Rule 12, first offense, written up to a removal, and 13A, first offense, written up to a removal. Management would like for you to believe that CO Noble is not sensitive to other races and cultures, but direct testimony by other co-workers indicated differently. Does the above events warrant or justify removal? The Collective Bargaining Agreement asserts that discipline should be progressive and commensurate with the offense. Surely in the case of CO Noble, a lesser form of discipline was suggested.

¹¹ Bart Brown decision , page 5

¹² Joint Exhibit 4A

PROCEDURAL ISSUE:

Was the Grievant, John Noble, denied relevant documents and witnesses requested for the pre-disciplinary hearing? If so, what shall the remedy be? ¹³

The Union presented testimony through CO Noble that he had received a pre-disciplinary notice on or about April 30, 1999. The notice specified a meeting would take place on May 7, 1999 however, it was moved to May 10, 1999. The notice itself, on the second page, states in part, "during the conference, you will have an opportunity to present an explanation, any mitigating circumstances, documents and witnesses"¹⁴

The Union presented management their request for documents and witnesses through Steward Jim Nixon. The document was stamped received by the Labor Relations Officer on May 10, 1999. The Union was not provided these documents or witnesses for said hearing.

Management's witness Mr. Jackson testified that he had written an incident report regarding CO Noble's discipline packet and a meeting held between himself, CO Noble and LRO Richard Kampmeier.¹⁵ His report reads he was there as a Union Representative. Under cross-examination Mr. Jackson stated that he was only the chapter treasurer, that he was not a Union Steward. Why was Mr. Jackson in a meeting of this nature, when he was not a steward of record?

Management argued that the documentation request had no relevance to the hearing. Some of the documents requested were regarding a use of force and the pre-

¹³ Union Exhibit 6

¹⁴ Management Exhibit 3A

disciplinary hearing did not include any alleged violations with respect to the use of force. However, additional documents were requested beyond the use of force issue. The witnesses requested were directly involved in the alleged chain of events that the grievant was being questioned about. Five witnesses were requested: CO Jeffreys, Mr. England, Sergeant Snell, Captain McBride, and Inmate Lowe. Ms. Jeffreys and Sergeant Snell gave direct testimony for management in the current proceedings. Inmate Lowe wrote confidential statements that were management exhibits.¹⁶ Captain McBride was the shift captain who had dialogue with CO Noble regarding commissary slips, and Mr. England was the Unit Management for the C dormitory. How could these witnesses not be considered relevant?

The Union respectfully requests the arbitrator find in favor of the Union's argument on the procedural issue. Also, put CO Noble back to work by reinstating him to his prior position with full back pay, restore all benefits, including but not limited to repayment of lost roll call pay, shift differential, holiday, overtime, PERS contributions, vacation, sick, and personal leave. Be reimbursed for all health, life, optical and dental costs incurred as a result of the loss of benefits, otherwise to make him whole as well as expunge these proceedings.

Based upon the above, the Union requests that the grievance be sustained.

DISCUSSION

The Grievant in this case is a relatively inexperienced employee in the field of corrections. He has worked in the field for less than four years and at the time of his discharge had only worked in the Ohio Department of Corrections for two and one-half

¹⁵ Management Exhibit 28

years. However, he is a person with substantive work experience. Prior to entering the field of corrections he served in the United States Air Force for some twelve years, achieving the rank of captain. By his own account he was responsible for the supervision of some 225 people. He stated that every year in the Air Force and in corrections he had cultural diversity training. Mr. Noble appears to be an intelligent and articulate person, traits that are consistent with holding the responsible position of being a military officer. Unfortunately, during his work at Noble he allowed his personal prejudices to affect his work performance.

On paper the Grievant's impressive employment background and the responsibility he has apparently shouldered in the past did not get translated to civilian life. One would expect a person with the Grievant's background of supervising hundreds of people, particularly in high profile organizations such as the Air Force to be particularly sensitive to issues of diversity. The evidence and the testimony in this case support a contrary finding.

There is little question that in 1998 Noble Correctional Institution had been under the scrutiny of the FBI and the State Highway Patrol for allegations related to racism. The Union strongly argues that the Employer was paranoid as a consequence of this scrutiny. The Union argues that in reaction the Department conducted "witch hunts" regarding employee conduct, was quick to attribute motive to behavior without sufficient reason, and "rushed to judge" employees and hastily issued discipline with little or no evidence. While this Arbitrator has been involved in cases that occurred during these highly charged times where there was no basis for a finding of discipline, the instant case cannot be considered to be in that category.

The evidence and testimony presented by the Employer were substantive and the defensive mounted by the Grievant against the Employer's allegations lacked credibility. The Union's witnesses did not work with the Grievant for any extended period of time and were not in a position to be credible judges of his character. The Grievant denied much of what the Employer claimed to be true, but offered little in the way of a plausible explanation for why so many different employees and inmates found him to demonstrate prejudicial attitudes toward African-American employees and inmates. The Employer demonstrated clearly and convincingly that the Grievant was abusive and acted in a discriminatory manner toward Officer LaTanya Jeffreys and to the African-American inmates he supervised.

Gender based remarks

The testimony of CO Jeffreys was key to the Employer's case. It is particularly difficult for an employee in a law enforcement setting to testify against a fellow employee and partner. Her testimony appeared to be sincere and devoid of any motive other than to tell the truth. Absent any evidence of a personal grudge or a revenge motive, her testimony must be given considerable weight. The Union did not present any evidence or testimony to substantiate that CO Jeffreys had any other motive for her participation in this case.

Co Jeffreys testified that the Grievant called her a "bitch" in front of a male inmate. What possible justification could exist for making this defamatory remark in front of an inmate? A correctional institution is a place where discipline and professional conduct are essential in order to maintain authority over inmates.

A belittling remark like this undermines CO Jeffreys' ability to be taken seriously,

to be treated on an equal footing with male correctional officers, and to maintain her authority over inmates. More importantly if allowed to continue, it could eventually embolden inmates to be less cooperative when she gives them directives and to feel freer to disrespect her. Most importantly it could impact her safety and that of the institution. Inmate Lowe's statement, although given far less weight than direct testimony, serves to reinforce CO Jeffreys' statement. The fact that CO Jeffreys did not fill out an incident report is offset by the reality of being a relatively new correctional officer and the code of silence that is often practiced among personnel in this kind of work. In the words of CO Jeffreys who was the Grievant's permanent partner, "*...a grey shirt is a grey shirt, we are supposed to stick together.*"

Race based remarks/behavior

Mr. Noble's remarks to African-American inmates and to CO Jeffreys about "*you people would be welcome in my town as long as you don't start trouble*" is just one example of the race based remarks the Grievant displayed in this case (MX 3, Jeffreys' statement). When this statement is considered in conjunction with the reference made to inmate Tolbert that he was acting like a "*porch monkey*" (Jeffreys' statement, JX 2C, MX 1) a condescending pattern of racial categorizing becomes apparent. I found the Grievant's denial that he made either of these statements to be less than credible particularly in contrast to the testimony of CO Jeffreys and Inspector Burris. I must agree with the Employer's observation that the term "*porch monkey*" is so uncommon that it is unlikely that CO Jeffreys made it up. Inmate Tolbert's testimony is naturally suspect given his extensive criminal record, but it cannot be ignored that most of his testimony was corroborated by the testimony of CO Jeffreys,

It is clear that the Grievant in general had a problem with utilizing proper communication techniques with inmates and other staff members. It is surprising to this Arbitrator that a person who once commanded 225 military personnel would have such difficulty, unless the transition from military management to civil supervision was not something that came easy for Mr. Noble. In February of 1999, Officer Noble had to submit to remedial training to improve his communication skills with inmates and staff (MX 22, 23). He has also been trained in inmate supervision, cultural diversity, and professionalism (MX 13, 17, 18, 19, 20, 21).

The Employer also provided evidence and testimony that support its allegation that the Grievant had a propensity toward racial profiling of inmates who were shaken down more frequently. Things apparently went so far that White inmates complained to CO Jeffreys that the Grievant was carelessly indifferent to the personal belongings of African-American inmate Hudson, as well as other African-American inmates (Jeffrey's testimony).

It is also clear from the testimony presented by the Union that inmate Hudson and the Grievant did not have a good relationship for which inmate Hudson must bear his share of responsibility. His conduct was not without its serious problems; however, his description of his treatment by the Grievant cannot be summarily dismissed as irrelevant when it is supported by the credible testimony and evidence of Inspector Burris (MX 11). It is a matter of record that White inmates also told CO Jeffreys that, "*the Grievant was prejudiced because he didn't shake down anyone white*" (MX 2). What motive would White inmates have to lie in this situation? The Union did not present any defense of this information. The Grievant's overall attitude and pattern of behavior regarding African-

Americans was unacceptable (Jeffreys' testimony, Chilcote Incident Report, 3-12-99, MX 12).

The Grievant's attitude toward African-American inmates also appeared to be in play when he was responsible for the loss of property (cigarettes) of an African-American inmate. He confided in Sgt Snell and gave him the distinct impression that considered the inappropriate act of replacing the cigarettes he lost. (See Snell testimony, MX 27). The Grievant argued he was simply using sarcasm and was not serious. The propensity of the Grievant to bend or break rules undermines this explanation. The Employer forwarded the more plausible explanation. The Grievant was attempting to cover-up his loss of the cigarettes that were a matter of record due to the existence of the contraband slip.

There is strong evidence and testimony that demonstrated that the Grievant allowed inmates to do pack ups in spite of warnings to the contrary by CO Jeffreys and Inspector Burris. The potential harm and conflict that this practice could engender again demonstrates the Grievant's lack of appreciation and understanding of the environment of a correctional institution. In and of itself this rule violation is insufficient to support a discharge, but when considered along side the substantial evidence of other inappropriate conduct, the Employer's case for discharge is made.

Procedural violations

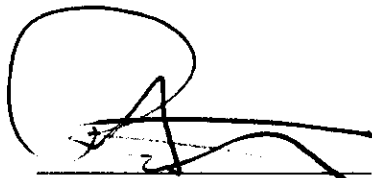
I do not agree that the Agreement was violated. The evidence and testimony support the fact that the Grievant was provided all relevant documents and a list of witness's names that were known at the time in support of the Employer's charges. The Grievant had the continuing opportunity to request documentation and identify witnesses

during the grievance process. It is also noted that the Union did not use in arbitration what it claimed it needed in the pre-disciplinary phase of this case. The Employer is accurate when it asserts that a claim of a procedural error carries with it the burden of an affirmative defense. In this case the Union was unable to meet its burden.

AWARD

The grievance is denied.

Respectfully submitted to the parties this 25th day of January, 2001.

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

Robert G. Stein, Arbitrator