#1591

IN THE MATTER OF ARBITRATION

BETWEEN

STATE OF OHIO – DEPARTMENT
OF REHABILITATION AND CORRECTIONS

AND

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION
AFSCME LOCAL 11, AFL-CIO

Grievant:: Nettie Tomblin

Case No. 27-13(01-10-24)-2087-01-09

Date of Hearing: May 22, 2002

Place of Hearing: London, Ohio

APPEARANCES:

For the Union:

Advocate: Dave Justice

Witnesses and Representatives:

Nettie Tomblin, Grievant

Douglas Weimer, Correction Officer

Stephen Gause, Correction Officer

Thomas Gilbride, Job Coordinator

Brenda L. Browning,

For the Employer:

Advocate: William D. Cavanaugh

Witnesses and Representatives:

Nina Valentine, OCB Representative

Pamela Cass, Education Specialist

Marty Dillard, Investigator

Joan Boyer,

ARBITRATOR: Dwight A. Washington, Esq.

Date of Award: July 1, 2002

INTRODUCTION

The matter before the Arbitrator is a grievance pursuant to the Collective Bargaining Agreement ("CBA"), in effect March 1, 2000 through February 28, 2003, between the State of Ohio and the Ohio Civil Service Employees Association AFSCME Local 11, AFL-CIO ("Union").

The issue before the Arbitrator is whether just cause exists to support removal of the Grievant. Nettie Tomblin ("Tomblin") for violating Department of Rehabilitation and Corrections Standard of Employee Conduct Rule(s) 6 – insubordination, 24 – failure to cooperate and 46(a) – unauthorized relationship.

The removal of the Grievant occurred on October 19, 2001 and was appealed pursuant to Article 24 of the CBA. This matter was heard on May 22, 2002 and is properly before the Arbitrator for resolution. Both parties had the opportunity to present evidence through witnesses and exhibits.

BACKGROUND

Tomblin worked for DR&C in various capacities as a secretary, typist, office assistant, account clerk and a Corrections Officer ("CO") for over thirteen (13) years. On October 19, 2001 the Grievant was removed for violation of DR&C Standards of Employee Conduct ("Rules"): Rule 6 – Insubordination; Rule 24 – Failing to cooperate in an investigation; and Rule 46 – Unauthorized relationships...with any individual...or friends or family under supervision of DR&C. Since March 14, 1988 Tomblin worked as unit secretary at the London Correctional Institution ("LCI") for the Deputy Warden of special services. A part of Tomblin's duties required her to participate in the paperwork associated with educational initiatives or job placement services for inmates at LCI.

In March 2001 Tomblin's work area was accessible by porter inmates who worked as office aides under the direction of Tomblin among others, performing light duties such as trash removal, cleaning, etc. Of significance is allegations associated with Tomblin's inappropriate relationship with Inmate Jon Boyer ("Inmate Boyer") who worked as a porter. Inmates who were enrolled in Adult Basic Education ("ABE") classes and/or pursuing their GED submitted various

forms and attended school requiring contact with Tomblin who facilitated the paperwork associated with the programs. Pamela Cass ("Cass"), Education Specialist, and Doublas W. Weimer ("Weimer"), CO, worked in the same area as Tomblin at all times were knowledgeable about the special services programs and Tomblin's responsibilities.

Weimer, a twenty-four (24) year employee, was responsible for ensuring that inmates followed the proper procedures when attending classes. He was assigned to what was designated as the ABE/GED post. Weimer post enable him to visually observe some of Tomblin's activities while she was in her office. While CO Weimer was assigned the ABE/GED post he didn't observe Inmate Boyer do anything wrong or have physical contact with Tomblin, or he would have written an incident report. However, on one occasion CO Weimer observed Inmate Boyer leaning on the desk of Tomblin, which prompted a conversation with Inmate Boyer on February 8, 2001 regarding this behavior. CO Weimer did not talk to Tomblin about this incident. However, on another occasion CO Weimer became concerned when Inmate Boyer became upset when another inmate allegedly looked at Tomblin inappropriately.

Cass in March 2001 was serving as the Job Linkage Coordinator for LCI in the special services area. Cass's office and the ladies bathroom were located adjacent to Tomblin's office and a partial view into Tomblin's office was possible from either the bathroom door or Cass's office. On March 5, 2001 Cass in exiting the restroom observed Inmate Boyer with his hand on Tomblin's back. Inmate Boyer and Tomblin were facing away from Cass and were unaware of her (Cass) presence. Cass saw Inmate Boyer rubbing Tomblin's back for approximately 5 – 10 seconds, until Inmate Boyer turned around and saw Cass and immediately withdrew his hand. An incident report dated March 5, 2001 was prepared by Cass after informing Officer Robbins what she observed. Cass did not inform Tomblin what she had observed. Additionally, on one prior occasion Cass and Tomblin had a disagreement, when Cass observed an inmate sitting on Tomblin's desk and informed her accordingly.

Thomas Gilbride ("Gilbride") worked in the special services area as a job coordinator. Gilbride on one occasion observed Inmate Boyer sitting on Tomblin's desk and it looked like to

him that they were acting as boyfriend/girlfriend. Other co-workers had informed Gilbride about their concerns regarding apparent inappropriate conduct with Tomblin and Inmate Boyer. Gilbride told Inmate Boyer that his conduct with Tomblin was inappropriate had Inmate Boyer agreed not to do it anymore. Gilbride further reminded Inmate Boyer of prior warnings about being friendly with other secretaries in the past.

Marty Dillard ("Dillard"), Investigator at LCI, initiated an investigation upon learning of the back rubbing incident which concluded in a report dated June 26, 2001 regarding Inmate Boyer and Tomblin. Dillard interviewed Inmate Boyer and Tomblin on several occasions between March 7, 2001 and April 21, 2001. Due to alleged back rubbing incident Inmate Boyer was placed in segregated housing ("hole") on March 5, 2001 and a search of prior telephone calls made by Inmate Boyer were reviewed.

Inmate Boyer's telephone calls with his mother were analyzed and calls dated February 3rd, 15th, 19th and 24th suggested to Dillard that Inmate Boyer was engaged in an inappropriate relationship with a staff member. Dillard, on March 9, 2001, obtained a written statement (DR&C Ex. 5) from Inmate Boyer who admitted the touching incident. According to Inmate Boyer Tomblin had also received jewelry (i.e., Mickey Mouse watch, gold cross), pictures of himself (Inmate Boyer) and that he was in love with Tomblin. Inmate Boyer informed Dillard of personal details regarding Tomblin's family and that Tomblin had been in telephone contact with his mother as well. Inmate Boyer indicated that Tomblin was using her son's cell phone sometimes to contact his mother who resided in Bellville, Illinois. To verify Inmate Boyer's numerous assertions on April 4, 2001, a Computerized Voice Stress Analysis test ("CVSA") was given to Inmate Boyer by DR&C. The union objected to the use and introduction of the results of the voice stress test on the grounds of reliability in this proceeding. [1]

Dillard also intercepted two (2) letters written by Inmate Boyer for Tomblin that were disguised as inter-office mail intended for the Deputy Warden's office. The letters were dated

[1] The CVSA was administered by DR&C without any input or agreement with the union regarding its admissibility or use. The union objected to its use and/or admissibility. The objection was sustained and no weight was given to the results of the CVSA administered to Inmate Boyer.

March 10, 2001 and March 21, 2001 and no evidence was offered to suggest that Inmate Boyer was not the author. The contents of the letters contained intimate details regarding their relationship and love for each other. The letters were never in Tomblin's possession.

Dillard interviewed Tomblin who provided her home telephone number and address. Tomblin was also asked to provide her post office box number and the cell number of her son on March 29, 2001 and again on April 3, 2001. Regarding the P.O. Box, Tomblin could not locate the box number and indicated that her husband had terminated the box sometime ago and no verified evidence regarding the P.O. Box became part of this record. DR&C accepted Tomblin's explanation regarding her failure to locate her closed P.O. Box number.

Regarding the cellular phone issue, Tomblin maintained that she did not know her son's number. On April 4, 2001 Tomblin was given a directive from Warden Mack in writing to provide her son's cell number – within twenty-four (24) hours. Tomblin failed to provide her son's cell number to DR&C throughout this matter and testified that her son refused to give her the number. On June 15, 2001 Tomblin received a second written directive from Warden Mack for her son's cell number. Tomblin once again failed to comply.

Stephen Gause ("Gause"), Chief Steward, was present during the investigatory proceedings and indicated that Tomblin cooperated and fully answered all questions regarding her alleged relationship with Inmate Boyer and/or his family. Gause believed that the only reason Tomblin failed to provide her son's cell phone number is because she simply did not know it. With respect to obtainment of employees personal data (i.e., address, phone numbers, etc.), by inmates, this information is accessible because it's maintained in unsecured cabinets according to Gause.

From April 5, 2001 through June 25, 2001 Tomblin was off work on medical leave. Joan Boyer, mother of Inmate Boyer, contacted Dillard and indicated that Tomblin had telephoned her residence, sent an email and had exchanged letters between them. On February 23, 2001 Joan Boyer received a telephone call from an unidentified female who discussed her son. On February 24, 2001 Joan Boyer states "...your friend called at 9:30 last night." Joan Boyer at

that time did not know the voice of the female caller. On the other hand, Tomblin denies calling Joan Boyer and contends that on February 23, 2001 she was out of town in West Virginia and could not have called Joan Boyer.

On March 2, 2001 an unidentified female friend of her son called and asked Joan Boyer to tell her son that everything was going to be okay. On March 5, 2001 Joan Boyer received a call from Tomblin who discussed the back rubbing incident, identified herself as Tomblin and counseled Joan Boyer not to worry about her son who was placed in the hole. Finally, requested Joan Boyer's email address was requested by Tomblin during this conversation.

Joan Boyer received an email on March 6, 2001 from tomblin@hotmail.com (Nettie Tomblin) which states in part "... (DR&C Ex. A) I hope you did not think my call Friday night (March 2, 2001) was too forward or that it surprised you too much, but Jonathan said, He had asked if he could give me your phone number and that you said I could call anytime. Although, he did not know I was going to call Friday night (March 2, 2001). In fact I did not know I was going to call either. I am glad I did..." The email was signed Nettie. Tomblin denies sending any email to Joan Boyer and the only evidence offered to refute the email was Tomblin testimony.

On March 7, 2001 Joan Boyer accepted a collect call from Tomblin and spoke with her for about forty (40) minutes. The call was from Mechanicsburg, Ohio to Joan Boyer's home number in Bellville, Illinois. According to Joan Boyer, Tomblin stated that she was calling from a pay phone. Tomblin denies calling Joan Boyer. However, Joan Boyer provided her phone bill documenting this call which was from a pay phone. (DR&C Ex. B)

Joan Boyer states that Tomblin provided her home phone number as well as her address and between March 5, 2001 through April 20, 2001 numerous telephone conversations occurred all of the telephone calls were initiated by Tomblin to Joan Boyer. The home address provided to Joan Boyer by Tomblin was the same address previously given to Dillard. Joan Boyer did not call or write to Tomblin prior to her son's death and no evidence was offered to indicate otherwise. Tomblin informed Joan Boyer that many of the calls were made by using a

pre-paid calling card or a public pay phone. During Joan Boyer's last visit on February 18, 2001 her son stated that he was having a relationship with his supervisor – Nettie Tomblin.

Brenda L. Browning ("Browning"), Tomblin's sister worked at LCI and would interact with the grievant during the workday. According to Browning they were extremely close and it was not unusual for them to discuss personal information while at work. Browning did not observe Tomblin with a Mickey Mouse watch and added that it's not unusual for inmates to obtain personal information on employees. Regarding Tomblin's son, Browning described him as mannerable, and if he (son) knew that his mother's job was at risk he would have provided his cell phone number.

Joan Boyer on the other hand indicated that Tomblin, admitted the relationship with her son during their numerous phone conversations and as an example, Tomblin sent a typewritten (DR&C Ex. C) love letter for Joan Boyer to forward to her son with her regular mail. Joan Boyer did not send the love letter. Joan Boyer further added that Tomblin consider moving to the St. Louis, Missouri area to avoid potential problems relating to her job and family.

After the death of Inmate Boyer, on April 21, 2001 additional contacts occurred by telephone (May 6, 2001) and Joan Boyer sent registered letters to Tomblin dated May 17, 2001 and July 31, 2001 (DR&C Ex. F, H). The letters were mailed to Tomblin's home address in Mechanicsburg, Ohio and proof of mailing and receipt of the letters were attached to Joan Boyer's Affidavit as attachments. With respect to the May 17, 2001 letter, Tomblin denies receiving the letter. The United States Postal Service confirmed that on May 18, 2001 the letter was delivered at 10:40 a.m. at Tomblin's Mechanicsburg, Ohio **home** address (DR&C Ex. F(1)). The July 31, 2001 letter from Joan Boyer was sent certified mail – return receipt requested to Tomblin's Mechanicsburg, Ohio **home** address. On August 7, 2001 Phillip Tomblin (husband) signed the receipt. (DR&C Ex. H(1)) Tomblin denies ever seeing this letter and stated that her husband probably destroyed the letter.

Joan Boyer was attempting to retrieve from Tomblin a handwritten book that her son was writing prior to his death. In the May 17, 2001 letter, mailed to Tomblin's home address. Joan

Boyer clearly upset with Tomblin's failure to return all of her son's personal possessions, indicates that a record of their contacts was kept, and disclosure to DR&C could occur if Tomblin did not provide the book. On May 19, 2001 Joan Boyer receives portions of the book from a P.O. Box located in Springfield, Ohio. Tomblin denies sending any materials to Joan Boyer or utilizing a P.O. Box in Springfield, Ohio.

According to DR&C, due to the numerous unauthorized contacts by Tomblin with an inmate and/or family member removal was warranted and was compounded by her unwillingness to cooperate during the investigation. The union submits that just cause does not exit to any violations of the rules and reinstatement with back pay should occur.

ISSUE

Was the Grievant, Nettie Tomblin, removed for just cause? If not, what shall the remedy be?

RELEVANT PROVISION OF THE CBA AND OHIO REVISED CODE
ARTICLE 24 – DISCIPLINE

24.01 – Standard

> Disciplinary action shall not be imposed upon an employee except for just cause. The Employer has the burden of proof to establish just cause for any disciplinary action. In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have authority to modify the termination of an employee committing such abuse. Abuse cases which are processed through the Arbitration step of Article 25 shall be heard by an arbitrator selected from the separate panel of abuse case arbitrators established pursuant to Section 25.04. Employees of the Lottery Commission shall be governed by O.R.C. Section 3770.02(i).

DR&C STANDARDS OF EMPLOYEE CONDUCT
RULE 6, RULE 24 & RULE 46

Rule 6: Insubordination - Disobedience or inappropriate delay in carrying out a direct order of a supervisor

Rule 24: Interfering with or failing to cooperate in an official investigation or inquiry.

Rule 46: Unauthorized relationships – a. The exchange of personal letters, pictures, phone calls, or information with any individual under the supervision of the Department or friends or family of same without express authorization of the Department.

POSITION OF THE PARTIES

POSITION OF THE UNION

The Grievant was not engaged in any instances of inappropriate contact and/or relationship with Inmate Boyer or his family. The Grievant denies all allegations of inappropriate contact (i.e., exchanging gifts, pictures, letters or personal information) with Inmate Boyer. Porter inmates had access to personal information and Inmate Boyer could have obtained Tomblin's home address and telephone numbers. Moreover, Tomblin and Browning discussed personal information while at work regarding family and health conditions.

Tomblin maintains that co-worker Cass did not observe Inmate Boyer rubbing her back and based upon prior conflicts with each other, Cass's credibility is an issue.

With respect to the alleged contact with the mother of Inmate Boyer, manifested by phone calls, email and letters, Tomblin uncategorically denies any contact or relationship whatsoever with Joan Boyer. Joan Boyer was either coerced by the employer or fabricated all of the charges against the Grievant. In other words, Joan Boyer testimony and exhibits should be afforded no weight because of deliberate falsification.

The failure to cooperate charge during the investigation (i.e., failure to provide son's cell phone number) must fail because Tomblin did not know the number and therefore, just cause does not exist to find a violation of Rule 24.

The union submits that the totality of the evidence fails to establish just cause for the removal of Tomblin who had over thirteen (13) years of service with DR&C with no prior discipline of record.

POSITION OF THE EMPLOYER

The DR&C requires all employees to adhere to the Standards of Employee Conduct, which contains specific prohibitions about interactions between employees and inmates or their family.

The investigation indicated that Tomblin placed the safety of herself and co-workers in jeopardy by engaging in personal contact with Inmate Boyer. Statements provided by Cass and

Inmate Boyer corroborates the rubbing incident of March 5, 2001. Furthermore, Inmate Boyer's statement of March 9, 2001 and interviews with Investigator Dillard are unrefuted regarding personal information provided by Tomblin to Inmate Boyer (i.e., medical issues of Tomblin. marital problems, etc.). Additionally, two (2) letters written by Inmate Boyer to Tomblin were intercepted by DR&C, which contains supportive data to establish the unauthorized relationship.

With respect to family members, Joan Boyer provided a sworn affidavit with attachments establishing the numerous contacts which occurred with Tomblin between March 2, 2001 through July 31, 2001. The attachments included an email from Tomblin dated March 6, 2001; telephone log(s) of numerous calls from the Mechanicsburg, Ohio area to Joan Boyer's home number; and verification of letters dated May 17, 2001 and July 31, 2001 from Joan Boyer addressed to Tomblin's home address in Mechanicsburg, Ohio.

Finally, upon cross examination disinterested witnesses Weimer and Gilbride both observed Inmate Boyer and Tomblin engaged in conduct which they considered inappropriate.

Finally, Tomblin's refusal to provide her son's cell number despite two (2) verbal requests and written directives of April 4, 2001 and June 15, 2001 by Warden Lawrence Mack prevented LCI from investigating the matter fully and supports the failure to cooperate and insubordination charges.

BURDEN OF PROOF

It is well accepted in discharge and discipline related grievances, the employer bear the evidentiary burden of proof. see, Elkouri & Elkouri – "How Arbitration Works" (5th ed., 1997)

The Arbitrator's task is to weigh the evidence and not be restricted by evidentiary labels (i.e. beyond reasonable doubt, preponderance of evidence, clear and convincing, etc.) commonly used in the non-arbitable proceedings. see, Elwell- Parker Electric Co., 82 LA 331, 332 (Dworkin, 1984)

The evidence in this matter will be weighed and analyzed in light of the OBR burden to prove that the Grievant was guilty of wrongdoing. Due to the seriousness of the matter and Article 24 requirement of "just cause", the evidence must be sufficient to convince this Arbitrator

of guilt by the Grievant. see, J.R. Simple Co and Teamsters, Local 670, 130 LA 865 (Tilbury, 1984)

DISCUSSION AND CONCLUSIONS

After careful consideration of this matter including all of the testimony and evidence of both parties, I find that the grievance must be denied. My reasons are as follows:

DR&C presented the following evidence in support of an unauthorized relationship with Inmate Boyer and/or family members: (1) Inmate Jon Boyer's statement dated March 9, 2001; (2) Cass testimony and statement dated March 5, 2001; (3) Inmate Jon Boyer's letters dated March 10, 2001 and march 21, 2001; (4) Joan Boyer testimony and sworn Affidavit with attachments dated September 14, 2001; (5) testimony of CO Weimer upon cross-exam; (6) testimony of co-worker Gilbride upon cross-exam; and (7) Dillard's investigatory report dated June 26, 2001.

DR&C presented the following evidence in support of the insubordination or failure to cooperate charges: (1) testimony of Dillard; and (2) Warden Mack's letters dated April 4, 2001.

The union presented Tomblin as its only material witness in refuting the testimony of DR&C witnesses and exhibits. The union offered testimony through Gause regarding Tomblin's cooperativeness during the investigation in response to the insubordination and cooperation charges.

As will be discussed below, the contra evidence for Tomblin was primarily through her testimony who challenged the credibility and weight afforded to DR&C witnesses and its documentary evidence. From the Grievant theory of the case **all** of the material matters are in dispute and no confirming or corroborating evidence exists to support her removal. This Arbitrator in considering the entire evidence according each witness and documentary evidence the proper weight finds the Grievant position unsupported by any version of the evidence in the record.

With respect to the back rubbing incident of March 5, 2001, the relevant facts adopted by the Arbitrator indicates the Cass upon leaving the restroom observe Inmate Boyer hand on

Tomblin's back for 5 – 10 seconds. Inmate Boyer's statement of March 9, 2001 indicated he rubbed Tomblin's back[2] supporting Cass's version. With regard to Tomblin's assertion that the event did not occur, in light of the concerns described by CO Weimer and Gilbride the testimony of Tomblin was unpersuasive.

Inmate Boyer admitted to rubbing Tomblin back, holding hands and sharing a stolen kiss in his March 9, 2001 statement. Furthermore, Inmate Boyer added in the March 21, 2001 letter that "...[I[knew that someone was in the bathroom, and I heard the toilet flush. I knew then that I should have removed my hand from your back, but I didn't. And then Ms. Cass is standing thee, looking at me..." Inmate Boyer admitted the back rubbing incident to investigator Dillard as well as other inappropriate conduct (i.e., exchange of gold chain, watch, pictures, etc.). Recognizing that self-interest shapes witness perspective this Arbitrator is convinced that Cass version of the facts and corroborating statements from Inmate Boyer supports the back rubbing incident by clear and convincing evidence.

Moreover, the back rubbing incident is buttressed by the testimony from union witness(s), CO Weimer and Gilbride, who both observed other conduct between Inmate Boyer and Tomblin which was inappropriate. On one occasion Gilbride credibly testified that he instructed Inmate Boyer not to sit on the corner of Tomblin's desk. Upon hearing Gilbride directives to Inmate Boyer, Tomblin replied that "...she'll have anyone she wants to sit on the corner of her desk..." according to Gilbride. Although, Gilbride and Weimer were called as union witnesses their testimony was given substantial weight as supportive evidence regarding relevant past conduct of Tomblin and neighter witness exhibited any bias by reason of a particular outcome. See, Poloror Products of Pennsylvania, 23 LA 789, 793 (1955). Based upon Tomblin's adamant position regarding the March 5, 2001 incident alone, it would be untenable for DR&C to maintain Tomblin in a position involving public trust or public safety.

[2] Tomblin testified that Inmate Boyer's initial statement was dated March 7, 2001 not March 9, 2001. Tomblin indicated that the March 7, 2001 statement was considerably more inconsistent with the letters subsequently intercepted as Kites. However, no credible evidence of a March 7, 2001 was before the Arbitrator to make a determination of the impact or weight to be afforded each statement.

Similarly, Tomblin maintained throughout the investigation and the hearing, that no contact(s) occurred and no relationship existed with Joan Boyer. Again, it should be noted that Tomblin denies any knowledge of or involvement with Joan Boyer. I find that DR&C proffered conclusive and substantial evidence (i.e., the testimony of Joan Boyer; telephone records of Joan Boyer; email from Tomblin to Joan Boyer; May 17, 2001 letter to Tomblin from Joan Boyer; and July 31, 2001 letter to Tomblin from Joan Boyer) -- that unauthorized contacts between Tomblin and Joan Boyer occurred.

Illustrative of the events surrounding the unauthorized contacts occurred in early March 2001 based upon the institutional response to the back rubbing incident of March 5, 2001. On Friday evening (March 2) Joan Boyer received a telephone call from a female who stated she was a friend of her son's and requested that Joan Boyer tell her son "everything was fine." Joan Boyer delivered this message on Sunday (March 4) to her son. After being placed in the hole on March 5, 2001, Joan Boyer received a call later that day from a female who identified herself as Nettie Tomblin.

In this conversation Tomblin specifically referenced the call of March 2 and sought Joan Boyer's email address so she could stay in contact with her. On March 6, 2001 Joan Boyer received an email from Tomblin indicating the Grievant's desire to call her (Joan Boyer) anytime. No credible was offered to refute or explain the receipt of the email from tomblin@hotmail.com dated March 6, 2001 at 7:12:26 p.m. to Joan Boyer (DR&C Ex. A).

The next day (March 7th) Joan Boyer received a **collect** phone call from Tomblin that lasted forty (40) minutes. Tomblin denies calling to Joan Boyer on March 7, 2001. However, the itemized phone bill indicates that the call originated from a pay phone in Mechanicsburg, Ohio (DR&C Ex. B). Joan Boyer's credibly testified that Tomblin did not want to use a pay phone but she was trying to purchase more pre-paid cards. Joan Boyer memorialization of this call was believable and common sense indicates surely on March 7, 2001 Joan Boyer knew Tomblin voice after having three (3) telephone conversations within five (5) days with her.

Based upon the events between March 2, 2001 and March 7, 2001, the evidence is conclusive and overwhelmingly that three (3) phone conversations and an email initiated by Tomblin with Joan Boyer occurred. Therefore, DR&C convincingly demonstrated during this period alone, unauthorized contacts occurred with Joan Boyer by Tomblin.

The evidence is also clear and convincing that Joan Boyer's letters of May 17, 2001 and July 31, 2001 were delivered to Tomblin home address. The notion that verified proof of delivery by the United States Postal Service should be discounted by Tomblin testimony defies logic and serves to belie Tomblin's believability. The letters were delivered and no credible evidence suggests otherwise. Moreover, how do you disregard the signature of Tomblin's husband on the return receipt for the July 31, 2001 letter?

Tomblin was also charged with violation of Rule 6 – insubordination. Evidence was presented through the testimony of Dillard and letters dated April 4, 2001 and June 15, 2001 from Warden Mack requesting that Tomblin provide her son's cell phone number. Tomblin failed to comply with the excuse that her son refused to provide the cell phone number. The image that Tomblin portrayed was that her son was either defiant or ill-mannered. However, Browning testified that Tomblin's son was mannerable and respectful. If respectful to his aunt -- why not to his mother as well? Therefore, logic suggests that Tomblin's son would have complied if requested. For DR&C, the obtainment of the cell phone number was pivotal in determining whether or not phone calls to Joan Boyer had occurred in using that phone. The inference reached by this Arbitrator is that Grievant did not want to disclose the number to DR&C and unfortunately his son became the excuse. This refusal to comply with Warden Mack's requests supports a violation of Rule 6. Consistent with the above analysis a violation of Rule 25 – failure to cooperate, is also implicit in the refusal and supported by the record.

Tomblin had numerous opportunities to present testimony or documentary evidence to explain her position. As example, why didn't Tomblin obtain her son's cell phone bill from her husband since Tomblin testified that her husband paid the bill? Why didn't Tomblin offered evidence as to past detective email transmissions? Why didn't Tomblin obtain a statement from

the post office indicating her PO Box number during the time period she and/or her husband paid the bill? Why didn't Tomblin have her husband explain the mail process regarding the receipt of certified or registered letters to their Mechanicsburg, Ohio home address?

Finally, to believe Tomblin's version of the events leading to her removal would require the development and/or sharing of information of a conspiracy involving co-workers, telephone providers, U.S. Postal Service, Inmate Boyer, DR&C and Joan Boyer. No common thread of self-interest exists among the class of potential conspirators and based upon my analysis of the record as a whole – no mitigation exists to lessen the removal of Tomblin. Tomblin was aware of the risks and participated with full knowledge of the consequences to the detriment of herself, co-workers and the public.

AWARD

The grievance is denied.

Respectfully submitted this 1st day of July 2002.

Dwight A. Washington, Esq., Arbitrator