

1700

IN THE MATTER OF ARBITRATION

BETWEEN

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

AND

OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS

Before: Robert G. Stein, Arbitrator

**Grievant(s): Maurice Rivers
Case # 27-09-02-12-23-0959-01-03
Removal Case**

Advocate(s) for the UNION:

**George L. Yerkes, Staff Representative
OCSEA LOCAL 11, AFSCME AFL-CIO
Westerville OH 43215**

Advocate for the EMPLOYER:

**Ron Nelson, DRC Labor Rel.
OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS
1050 Freeway Dr. North
Columbus OH 43229**

INTRODUCTION

A hearing on the above referenced matter was held on June 16, 2003 in Grafton, Ohio. The parties agreed that the issue is properly before the Arbitrator. During the hearing the parties were given a full opportunity to present evidence and testimony on behalf of their positions on the merits. The parties made oral arguments in lieu of submitting briefs. The case was closed on June 16, 2003.

ISSUE

The parties agreed to the following definition of the issue:

Was the grievant, Maurice Rivers, removed for just cause? If not, what shall the remedy be?

RELEVANT CONTRACT LANGUAGE

(As cited by the parties, listed for reference, see Agreement for language)

ARTICLE 24

BACKGROUND

The Grievant in this matter is Maurice Rivers, a Correctional Officer employed by the Grafton Correctional Institution ("GCI", "Department" "Employer"). The Grievant is a relatively short-term employee. He began his employment with the Department on December 11, 2000. He was first employed at Lebanon Correctional Institution ("LCI"), and on March 10, 2002 he transferred to GCI. At the time of his termination the Grievant had no prior discipline on his record.

The Grievant was removed from his position for violation of *Department Rules # 24 Interfering with, failing to cooperate in, or lying in an official investigation or inquiry; #25 Failure to immediately report a violation of any work rule, law, or regulation; and #46a Unauthorized Relationships, 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.* The Grievant is accused of corresponding with inmate White at LCI after receiving a written letter from him. The letter from inmate White was sent to the Grievant's home.

The Grievant claimed to only have had a twenty (20) minute conversation with inmate White in segregation on one occasion during one of the shifts that he worked while assigned to LCI. During his short tenure at LCI, the Grievant stated he would occasionally see Inmate White and simply say, "Hello" to him (See Investigatory interview with

Grievant, 11/4/02). During the arbitration hearing the Grievant substantiated the above information. Inmate White was from Youngstown, where the Grievant resides. The Grievant's cousin, Roosevelt Gray, was an inmate at LCI. (See Grievant's testimony).

The Employer claims that at first the Grievant denied having any relationship with inmate White, or corresponding with him (Rule # 24). He later admitted to receiving a letter from inmate White and sending him a correspondence. He never reported this action to his supervisor (Rule # 25). The Employer evaluated the content of the letter that the Grievant wrote to inmate White (Jx 2, p. 12) and determined it contained intimate phraseology, the use of nick names, and references to family that strongly supported the existence of a personal relationship with inmate White (Rule 46a).

SUMMARY OF EMPLOYER'S POSITION

The Employer argues that the Grievant violated a basic rule of safety and security while working as a Corrections Officer at a correctional institution. He developed an unauthorized relationship with an inmate. By initially attempting to conceal the fact, he compounded his violation of this rule and further discredited himself, argues the Employer. Finally, the Employer contends that failing to report the

inmate's letter to his supervisor created more suspicion surrounding his relationship with inmate White.

The Employer points out that the Grievant was trained how to handle these matters while at the Academy and was well aware of the rules in this regard. The Employer argues that the Grievant's attempt to hide his relationship with inmate White proves the Grievant is untrustworthy and not a candidate for progressive discipline.

Based upon the above, the Employer requests the grievance be denied.

SUMMARY OF UNION'S POSITION

The Union does not deny that the Grievant violated Departmental rules in this case, although it considers the Rule #25 violation to be a case of stacking charges. Its main argument is that the action of the Employer in discharging the Grievant is “...*grossly disproportionate to the offense*” (See Union's opening statement). Although a short-term employee, it contends the Grievant has a good work record, free of discipline. In addition, the Union argues that the Grievant has always been willing to work overtime when asked and has a good attendance record.

The Union asserts the Grievant should be put back to work and should have an opportunity to demonstrate that he can learn from his

mistakes. Based upon the above, the Union urges the Arbitrator to sustain the Grievance.

DISCUSSION

The content of the letter the Grievant sent to inmate White represents the "smoking gun" in this case. Any reasonable person would conclude that the Grievant was expressing himself to inmate White in what could only be characterized as a personal way. The following quotes from his letter to inmate White unequivocally demonstrate this point:

"What's Up? Lite Skin...What's up baby boy. My family is cool...Man I miss you...Can't wait till you get out you promised me you was going to come over and Kick it with me. Know if ever need some were to stay you can stay with me were Cool like that. So take care of yourself and I'll see you on the outside...Much Love, Reese" (Jx 2, p. 12).

Furthermore, according to the testimony of Investigator, Eddie Young, the Grievant referred to inmate White as "his dude."

When the content of the Grievant's letter to inmate White is matched against the content of White's letter (Jx 2, p. 9, 10) to the Grievant, any doubt that the Grievant violated Rule 46a is erased. Moreover, there is reason to believe that the Grievant has never been totally honest about his relationship with inmate White. For example, the Grievant maintained that while he was a Corrections Officer at LCI, he would occasionally say hello to inmate White and that on one occasion he had a twenty (20) to thirty (30) minute conversation with him while

working in segregation (see Grievant's statements and testimony in arbitration).

It is difficult to believe that from this one brief encounter between inmate White and the Grievant (Jx 2, p. 21) a level of intimacy was created to justify the manner in which he addressed inmate White in his letter and to warrant an invitation to stay at the Grievant's home.

The inconsistencies in the Grievant's two interviews conducted on October 25 and November 4, 2002 by Investigator Eddie Young vividly demonstrate that the Grievant was covering up his actions. The incongruity between the two interviews goes to the issue of trustworthiness. One of the core traits that is absolutely essential to the performance of Corrections Officer is trustworthiness.

I do not find the Rule # 25 violation: "failing to report a work rule violation..." represents stacking of charges. Correction Officers should report any inappropriate contact made by inmates in order to maintain the security of an institution. Information regarding the inmates' propensity to behave in a certain manner is arguably at the foundation of safety and security in a correctional facility.


The Grievant appears to be a compassionate person, but one whose judgment and suitability as a Corrections Officer is highly questionable. Given the facts in this case and the Grievant's evasive conduct before and during the investigation, I find no discernible reason

to substitute my judgment for that of the Employer. It may very well be the case that the Grievant is better suited to work outside of the field of corrections.

AWARD

The grievance is denied.

Respectfully submitted to the parties this 30th day of July, 2003.

A handwritten signature in black ink, appearing to read "Robert G. Stein", written over a horizontal line.

Robert G. Stein, Arbitrator