

In the Matter of Arbitration)	
)	
between)	OPINION AND AWARD
)	
American Federation of State, County)	
and Municipal Employees,)	BMS Case No. 10-PA-1297
Council 5, Union)	
)	
and)	
)	Issued: November 8, 2010
State of Minnesota, Department of)	Redacted version* Nov. 23, 2010
Corrections, Employer)	

Appearances:

For the Union: Tim Henderson, Field Staff Representative, AFSCME Council 5

For the Employer: Joy Hargons, Labor Relations Bureau, Minnesota Management and Budget

The Undersigned was chosen as Arbitrator in this matter through the procedures of the Minnesota Bureau of Mediation Services. A hearing was held in this Matter on September 14, 2010, commencing at 9 a.m. in the Warden’s Conference Room at the Lino Lakes Correctional Facility, Lino Lakes, Minnesota. With the simultaneous submission of post-Hearing briefs on October 12, 2010, the Record in this matter was closed.

* Redacted to conceal the name of the Lieutenant whose discipline is mentioned on page 3 and which has not yet reached a final disposition through the grievance machinery.

The Parties

The Union, as its name suggests represents a wide range of state and local government employees, in this particular case, the correctional officers at the state prison in Lino Lakes, Minnesota. The Employer is the Department of Corrections of the State of Minnesota, which manages the prison where the Grievant was employed.

The “Prison within a Prison”

This was how Lt. Art Gullette described the segregation unit at the Lino Lakes correctional facility. As such, it had special and particularly strict rules about the treatment and handling of the inmates housed therein. These rules required that offenders be “pat searched” when leaving or entering their cells and be handcuffed before leaving their cells, that only one offender could be on the flag (floor) at a time, that offenders be denied access to newspapers while in segregation, and have restricted access to the telephone. Other rules dealt with items that the inmates were allowed to have in the cells, access to recreation, health care, legal assistance and meals.

For the most part, inmates in segregation were there for disciplinary reasons and/or because they could not be safely housed in the general prison population. Examples of reasons for being in segregation included assault on a corrections officer, attempted murder of a fellow general population inmate, and an attempted gang “hit” on an offender housed in another correctional facility. Some of the offenders housed in segregation were there as overflow from

the general population, when there were no beds available. The special rules did not differentiate between the two types of segregation inhabitants.

The grievant, Sgt. Paul Helin, has been employed at the Lino Lakes facility for almost 23 years, mostly in the “Triad unit,” but during the summer of 2008, he bid into the segregation unit.

He did this at the urging of Lt. Art Gulette, at that time himself employed in segregation, because he appreciated Sgt. Helin’s ability to work with offenders. A month or so after Sgt. Helin’s transfer, Lt. Gulette himself transferred out of segregation and was replaced by Lt. J-----.

With his rank of Sergeant, Sgt. Helin was the “lead worker” when on duty in Segregation.

Also in this picture is the “relief sergeant,” Sgt. Sue Courteau. Witnesses described her style as “policy” or “by the book,” while Sgt. Helin was described as “doing it his way.” This led to friction between the two sergeants, as well as enhanced reaction by the offenders to Sgt. Courteau’s stricter management. Indeed, during the investigation of events to be shortly described, Capt. Mark Freer (Lt. J-----’s supervisor) stated to OSI Special Investigator Cheryl Bender that he had more concerns about Sgt. Courteau escalating inmate behavior than about Sgt. Helin not doing room checks. [Empl. Ex. 10, p. 14] It appears that Sgt. Courteau complained to Lt. J----- about Sgt. Helin’s lax application of the rules, and the Lieutenant raised some of these concerns with Capt. Freer. Neither of them seem to have addressed the issue squarely, and both suffered some consequences at the end of the whole process: the Captain got a supervisory conference (which is not discipline), while the Lieutenant received a written

reprimand. [Warden Miles testimony].

“That’s not the way I do it”

Having joined the segregation unit in July 2008, Sgt. Helin’s way of doing thing was already noted by late January 2009: on January 20, Lt. J----- sent a note to all “seg offenders”---

Hanging or attaching items to the walls, lights, door or any part of your cell is not allowed. This includes the paper that you have been placing in your cell windows.

At the bottom of the sheet, the Lieutenant has written: “Met w/ seg staff regarding window coverings—this continues to be a problem in the unit — Sue says Paul doesn’t care ---- spoke w/ Paul about this and he tells me he will comply” [Empl. Ex.. 8D]

In February 2009, there is a note to the file regarding a conversation with “Paul about cuffing and pat searching all offenders—he states he is doing this” [Empl. Ex.. 8E]

On June 6, Sgt. Courteau e-mailed Lt. J----- to the effect that staff are not searching inmates when they leave their cells and asks whether this reflects a new policy. The Lieutenant’s response—cc’d to Sgt. Helin—was “This is not an option”. [Empl. Ex. 8G]
Employer Exhibits 8H and 8I are continuing follow-up on this subject.

But it is only in the fall of 2009 that things really fall apart. On October 20, 2009, Jane Welch, RN reported four different occasions between August 26th and October 19th, when offenders receiving health services either in Segregation or in the Medical Unit were uncuffed

and loosely supervised by Sgt. Helin.[Empl. Ex.. 11 (1), p.1) Welch's report seems to have launched the investigation which ensued. Lt. J-----, as Sgt. Helin's supervisor, started the investigation by watching surveillance tapes of various parts of the segregation unit.

Subsequently, the investigation was turned over to Cheryl Bender of OSI.

As I begin, let me remark that this is about the only case involving surveillance tapes where the tapes have been indisputable and clear. Thus, evidence about the first four of the following breaches of policy is very conclusive.

1. On October 10, 2009, Sgt. Helin permitted multiple offenders to be on the floor at one time. This is contrary to policy. The "swamper" [inmate janitor] is not working, contrary to policy, but is using the staff microwave. Sgt. Helin shares a newspaper with offender Class, again a prohibited act.

2. In the recreation area on October 11, 2009, multiple, uncuffed offenders are seen, possibly unsupervised. This is contrary to policy.

3. Again, on October 11, Sgt. Helin permitted two inmates who had been brought to segregation for being in a fight to enter segregation while the inmate barber, his client and his tools were unsecured, as was another offender inmate (Class).

4. On October 10 and 17, Sgt Helin permitted offender Class to use a telephone on an

unmonitored line, to dial numbers himself and make numerous calls over a lengthy period of time. Sgt. Helin testified that this was a legal Call. No authorization form was reported, nor were the calls entered on the Legal call log.

5. Sgt. Helen admitted that he gave extra food (to avoid waste) and other supplies to inmates, but testified that he did so in a fair and equitable manner. Employer witness Crittenden testified that Sgt. Helin's distribution of food leftovers and other items seemed "random." But it is policy that extra food be returned to the kitchens and, if offenders run out of certain supplies (e.g., envelopes) they must buy them from the canteen.

With respect to the first four incidents involving serious breaches of security .as shown on the surveillance tapes, Lt. Gulette was asked if he had ever seen "infractions of such magnitude." He answered "no" to that question, and said the whole thing left him "disappointed and dismayed." (After all, he recruited Sgt. Helin to the Segregation unit.). Asked on cross-examination, if he had "any issues with his {Paul's] style," Lt. Gulette said they "had some discussions." These discussions must have been near the beginning of Sgt. Helin's tenure in Segregation, since Lt. Gulette only supervised him there for about three weeks.

During the time period in which the taped security breaches were filmed, the Segregation unit was being painted by inmates from outside Segregation. Changes in some rules were obviously needed (e.g., the painting would have to put more than one inmate on the flag at a time), but this would seem a singularly inappropriate time to be lax on rules that applied to

residents of Segregation. A group of inmate painters would bring into the Segregation unit an unknown number of quarrels and disputes above and beyond those existing among and between the residents of Segregation. It is probable that laxity of treatment of Segregation inmates would reduce whatever deterrent effect the possibility of being sent to Segregation might have on the behavior of the general inmate population.

The Union has contended that Sgt. Helin was not treated in a fashion that would have told him his work style was inappropriate to Segregation and have encouraged him to correct it. But, as we have noted above, on several occasions Sgt. Helin was told that some policy needed to be followed and he assured the Lieutenant that he was complying or would comply. But the complaints and questions continued to be raised. Eventually, Sgt. Helin's work style evolved into the "perfect storm" of security and safety breaches of early to mid-October. This Arbitrator cannot agree with the Union's contention that no inmate's or correctional officer's safety was ever at risk ("in harm's way")—prisons are risky places, Segregation units, more so. Many of the rules exist to curtail those levels of risk

The Union also contends that Sgt. Helin has learned his lesson and will follow all the rules if reinstated. It is a hard thing to say, but he should have picked up the discordance between the rules and his style short of being terminated.

The Union also claims disparate treatment, in that Captain Freer was not disciplined, Lt. J----- got a written reprimand, other correctional officers got suspensions in this matter—only

Sgt. Helin was terminated. But he was the lead worker in the unit, right square in the spot where the corrections system meets offender inmates, many in Segregation because of misbehavior when previously housed with the general population. Sgt. Helin's own testimony to the effect that he hadn't read the legal call policy "in its entirety" suggests disdain for rules per se, which then encourages a failure to enforce them.

Sgt. Helin's role as the lead worker in the unit and rank of sergeant, coupled with Lt. Gulette's opinion that he had never seen "infractions of such magnitude" fully support the conclusion that Sgt. Helin was terminated for just cause.

AWARD

The Grievance is denied in its entirety.

Given at St. Paul, Minnesota this eighth day of November 2010.

James G. Scoville, Arbitrator