

IN THE MATTER OF ARBITRATION

BETWEEN

**STATE OF OHIO
DEPARTMENT OF REHABILITATION & CORRECTION
FRANKLIN MEDICAL CENTER**

AND

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

Arbitration Dates: November 14, 2014

Grievant David A. Stewart: # 27-08-20140321-0031-01-03

BEFORE: Arbitrator Craig A. Allen

Advocate for the Employer:

Rick Shutek
Labor Relations Officer
Franklin Medical Center
1990 Harmon Avenue
Columbus, Ohio 43223

Advocate for the Union:

Kevin Birchfield
OCSEA, AFSCME Local 11
390 Worthington Rd., Suite A
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I. HEARING

The hearing was held November 14, 2014 at Franklin Medical Center. The hearing commenced at 9:20 A.M.

The stipulated issue before the arbitrator is “ Did Management have just cause to remove David Stewart ? If not, what should the remedy be?”

II. STATEMENT OF THE CASE

The grievant was removed March 20, 2014 for violations of Standards of Employee Conduct Rule 7, Failure to follow post orders, administrative regulations, or written or verbal directives; Rule 37, actions that could harm or potentially harm the employee, fellow employee or a member of the general public and Rule 39, any act that could bring discredit to the employer.

The Grievant, David Stewart, has no discipline in his record.

On March 20, 2014 the Union filed a Grievance and the matter is properly before the Arbitrator.

III. THE EMPLOYER'S CASE

The Employer's first witness was Michelle Silvus. Ms. Silvus has been a Program Administrator II at Franklin Medical Center. In 1998 she was a Department of Rehabilitation and Corrections (DR&C) Activity Therapist II. She then served as a Warden's Assistant I and is now a Warden's Assistant II. Ms. Silvus has served as an Inspector and Investigator since 2002 and has conducted over nine hundred (900) investigations. She knows Grievant as a Corrections Officer (CO) at Franklin Medical Center (FMC).

Ms. Silvus testified she investigated the Grievant's involvement with the Phantom Motor Cycle Club (MC) Gang. She said she received information from the Columbus Police Department. Ms. Silvus testified that the Grievant was very cooperative and was boastful of his role in the MC Gang. The Grievant told her "good investigation!"

Ms. Silvus was referred to Joint Exhibit 5 pages 17-22 and said it was her investigative report. Ms. Silvus was asked to summarize her report. She testified the Grievant said he was a member of the Phantom MC Gang. The Grievant said his nick name was "Hit Man" and that he was an enforcer for the Club.

Ms. Silvus testified that the Grievant had a nexus with an Inmate that he failed to report. Ms. Silvus also said the Grievant had been identified as a member of an outlaw biker gang whose members have been involved in a variety of crimes, including homicide felonious assault, aggravated robbery, drug trafficking, weapons offenses and offenses of violence.

Ms. Silvus read Joint Exhibit Section 5 Page 23 and said it was a Columbus Police Department Investigation Report. She said she got this January or February 2014. Ms. Silvus read Section 5 Page 24 and testified the Enforcer enforces Club rules.

Ms. Silvus then read Section 5 Page 30 and said it was the Grievant's Question and Answer. She said the Grievant denies having an official position with the Phantoms.

Ms. Silvus read Section 5 Page 28. This is part of the Grievant's Question and Answer.

Q: Are you associated with the Phantom Motorcycle Group? A: Was. Turned my colors in November 1, 2012. Q: Why did you turn them in? A: There was an anniversary party where the police came. Asked me if I had any weapons on me. I told him I had 2 guns. He handcuffed me.

Ran a 50 on me and then released me because I had a CCW. Ms. Silvus pointed out in Section 5 Page 29 the Grievant denies being questioned by the Columbus Police Department.

Ms. Silvus read Section 5 Page 24 which is the Columbus Police Department Investigation Report shows Enoch and Harrington, COs at London Correctional Institution, were members of the Phantom MC.

Ms. Silvus testified that the Columbus Police Department report showed three (3) COs involved in a gang which the Columbus Police Department identifies as a criminal organization. Ms. Silvus said the Grievant has PFFP tattooed on his left forearm "Phantom Forever Forever Phantom". He has these tattoos two (2) after leaving the gang. Ms. Silvus testified that Section 5 Page 24 is where the Columbus Police Department says the Phantoms MC Gang is a criminal gang according to the Ohio Revised Code (ORC) 2923.41.

Ms. Silvus said there is annual training for employees about security and gangs. Ms. Silvus testified that Section 5 Page 20 shows DR&C Policy 31-SEM-02, Standard of Employee Conduct and the Grievant had signed off on it.

Ms. Silvus read Section 5, page 51 which is the training card for the Grievant. There is Security Threat Group Training every year. All employees from the Warden on down are trained. The training covers specific threat groups, activities and tattoos.

Ms. Silvus testified that MC Clubs are a Threat Group. The Phantoms and Hell's Angels are used in training.

Ms. Silvus said that the Phantoms are used in her training. She is not 100% sure that the Phantoms were used in the Grievant's in service training.

On Cross-Examination Ms. Silvus was asked; "Was there an investigation in 2012 on October 29?" Ms. Silvus replied; "I opened a case in October, 2012. I received a call about the Columbus Police Department Investigation. I briefed the Warden and did Internet research". Ms. Silvus also said she ran a LEADS check and checked U-Tube about the Phantoms. She was looking for evidence the Grievant was with the Phantoms. Ms. Silvus then closed the investigation for lack of evidence about the Grievant. The investigation was closed in a month or so.

Ms. Silvus testified that she knew the Grievant had contact with Law Enforcement October 29, 2012. She said she ran her investigation based on facts and did not speak to the Grievant as there was no evidence. The Grievant was readily available. Ms. Silvas said she was unaware of Columbus Police Department filing criminal charges. After 2012 she had no reason to investigate.

Ms. Silvus testified that Captain Paden is the Security Threat Group (STG) Coordinator. The DOTS Offender Tracking (STG) portal has information on Security Threat Groups. It has profiles of Inmates as members. DR&C (STG) Central Office determines access to data base.

Ms. Silvus was referred to Joint Exhibit (JX) Section 5 page 18 and testified that Grievant got his nickname "Hitman" as a high school football and semi-pro player. She said she did not try to verify how he got his nickname.

Ms. Silvus testified that in his Q&A the Grievant said he was an Enforcer at the door for Toros. Ms. Silvus read JX 5 page 21 which is her Determination of Investigation. The Grievant admits to communication with the National Vice President, "Knock".

She said the Grievant turned his colors in in 2012 but in 2014 was still communicating with the Phantoms. The Grievant denied in his Q&A that he was an officer in the Phantoms.

Ms. Silvus read JX 5 pages 28 and 29 and said the Grievant was at the Phantoms' anniversary party. She said the Ohio Revised Code Definition tells what makes a criminal gang. Ms. Silvus testified she doesn't know what date the Phantoms went on the list. She read JX 5 page 24 which is the Columbus Police Department Report and said the Phantoms are a gang. This was her knowledge of the gang being on the list.

On Re-Direct Ms. Silvus read Management Exhibit 1 which is an STG Profile dated December 14, 2005 about the Phantom MC Club. Ms. Silvus said the Grievant was hired May 10, 1999. There is no approved nexus shown for Grievant.

Ms. Silvus read JX 5 page 33 which is an Offender Detail report on Inmate Quincy Phipps. On page 39 is STG information on Christopher Carter. JX Section 5 page 73 is a photograph showing Inmate Phipps (Blunt) and Christopher Carter (Yellow) with the Grievant in the photograph.

Ms. Silvus then read the Joint Stipulations page 3 of 5 and said the employee has to report any relationship with Inmates. She then read Exhibit Management 2 which is the Staff Nexus report to show a relationship with an Inmate. This has to be filled out. Ms. Silvus testified the Grievant knew two (2) Inmates in the Photograph.

On Re-Cross Examination Ms. Silvus said she didn't know the date of the Photograph on page 73. She said she did not ask the Grievant if he had a personal or business relationship with Phipps and Carter.

The Employer's next witness was Matthew Crisler. Mr. Crisler is the Institutional Investigator at London Correctional Institution. Mr. Crisler has been employed by DR&C for twenty-one (21) years. He has been a CO, LT, Assistant Investigator and Investigator. Mr. Crisler has conducted over one thousand (1,000) investigations.

Mr. Crisler was asked about the incident at the Phantom MC Club. He said he sat in on the Grievant's Q&A. The Grievant and two (2) London Correctional Institution employees were there. Enoch had weapons and a Concealed Carry Weapons (CCW) permit. Harrington had a weapon and no CCW permit so he was arrested.

Mr. Crisler contacted the Columbus Police Department and checked the Clerk of Courts' Web Site. He said he had to wait for Harrington's Court Case to be finished. He said it was late in November 2013 when he got the Columbus Police Department Report and January 2014 when he received the second report.

Mr. Crisler testified that the second report listed the DR&C employees in the incident. The employees were Enoch, Harrington and Stewart. He said Enoch and Harrington went on Administrative Leave. The case was sealed by the Columbus Police Department.

Mr. Crisler read JX Section 5 page 25 which is his overview of the incident dated January 26, 2014. He said the majority of the information came from the Columbus Police Department in January 2014. Enoch resigned and Harrington was terminated. Mr. Crisler read the Collective Bargaining Agreement page 97 Article 24.05 and said the Pre-Disciplinary may be delayed until disposition of the criminal charges.

On Cross Examination Mr. Crisler was shown Exhibit Union 1 which is part of Harrington's Disciplinary Packet and Union 2 which is also part of Harrington's Disciplinary Packet. Mr. Crisler testified that DR&C was not mentioned in the Articles. He also said that FMC and the Grievant were not mentioned.

Mr. Crisler testified he talked to Detective Mark Lovette and also to Harrington after his plea.

Mr. Crisler said he talked to Detective Lovette within days of the incident and we were notified that three (3) DR&C employees were involved in a criminal investigation.

On Re-Direct Mr. Crisler said the Grievant was not at London Correctional Institution. He also testified that if a criminal investigation is going on he had to wait until it is over. Mr. Crisler read page 27 of the Collective Bargaining Agreement and said the Pre-Disciplinary is delayed due to Criminal Charges.

On Re-Cross Examination Mr. Crisler testified he was asked to be at the Grievant's Q&A. He also said there was no administrative investigation until the criminal investigation was over.

On Re-Direct Examination Mr. Crisler said Detective Lovette's report was in January 2014. He said Enoch resigned prior to the investigation. He also said Harrington's Police Report did not mention the Grievant.

The Employer's next witness was Mark Lovette. Mr. Lovette is with the Columbus Police Department Criminal Intelligence Unit. Mr. Lovette said he has been a Police Officer for twenty-four (24) years and the last ten (10) years with a focus on Outlaw MC gangs.

Mr. Lovette testified that the Phantoms MC Club was originally out of the Vice Lords Street Gang in Chicago. He said the Club is involved in criminal activities such as murder and aggravated assault. Under Ohio Revised Code 2923.41 the Phantoms are a criminal gang. The Phantoms are currently being prosecuted in the Federal District Court in Detroit for criminal activity.

Mr. Lovette testified that his first knowledge of the Grievant being in the Phantoms was July 31, 2009 when he saw the Grievant wearing gang colors at the MC Club. He then testified that at first Grievant was a member. Then a Confidential Informant told him the Grievant was an officer in the MC Club as Grievant was the "Enforcer".

Mr. Lovette testified that the "Enforcer" is a Club Officer who deals with Club business outside of the Club. He said on October 28, 2012 the Phantoms had a Halloween Party. On October 27, 2012 there was a shooting at the Toros Club with members from Detroit involved in the shooting.

Mr. Lovette testified the Ohio State Highway Patrol (OSP) did weapons arrest. Enoch was one. The vehicle was seized. Mr. Lovette said Police Officers were called to the Party House "Man with a gun". He said the Grievant and Harrington were out in front.

Mr. Lovette then testified that Enoch was still under investigation. Harrington Pled guilty to carrying a concealed weapon. He said he executed a search warrant on Enoch's car. He recovered DR&C gear and a National set of Phantoms By-Laws. Exhibit Management 4 is the Phantoms National By-Laws. Mr. Lovette testified that page 1 of the By-Laws says the Phantoms are an Outlaw MC Gang. Period.

Mr. Lovette said you cannot leave a MC gang without the gang's permission. Gang members represent the gang. They like to be dominant. Mr. Lovette testified the Phantoms run by fear. Members have told Mr. Lovette once you're in you're in. The Officers command the members. Mr. Lovette then reads the Phantoms' National By-Laws which say only Phantoms are to have these By-Laws.

Mr. Lovette then read JX Section 5 pages 23 and 24 which is his report on Kevin Harrison. Mr. Lovette testified that the Phantoms are one of the more active violent clubs in Columbus. He said the Grievant was first in Toros and then the Phantoms. The Grievant was a Member long enough to know what the gang was.

Mr. Lovette testified that the Phantoms By-Laws are being used in the Federal Criminal prosecution in Detroit. He said these By-Laws are some of the worst he's seen. Mr. Lovette testified that on July 31, 2009 he saw the Grievant in Colors at the Club. He said seeing three (3) COs with the Phantoms was very troubling. Mr. Lovette testified that the Police have to rely on them. He reported this immediately to Kucinic. This is a real threat to the prisons.

Mr. Lovette testified that many Phantoms were Blood Members. The National President of the Phantoms was arrested.

Mr. Lovette said he has conducted In-Service Training for DR&C and this incident has shaken his trust in DR&C.

On Cross-Examination Mr. Lovette read JX Section 5 pages 73 & 74 which are the gang photographs. He testified that he found these on the Club Members Face Book. Mr. Lovette said he uses covert methods to get information. Mr. Lovette testified that in the Photographs on

pages 73 & 74, the Grievant, David Stewart, is in the lower right. He said the Phantoms started here in 1976.

Mr. Lovette read Exhibit Management 4 and said President and Vice President were appointed by National or Vice National. Mr. Lovette testified that the Outlaw Clubs feel like leaders of all the MC Clubs. He said some Clubs call themselves One Percenters. The term started in 1947 in California. He said 99% are good people. 1% cause the trouble. Mr. Lovette said all 1% Clubs are criminal clubs. The Wheels of Soul seem to regulate the 1% patch.

Mr. Lovette testified that the photographs on pages 73 and 74 Joint Exhibit Section 5 show the men in Colors. At the anniversary party on October 29 most people were in Club Colors. Mr. Lovette then said that in April or May 2009 the Phantoms were classified a criminal gang under State Law. He said JX Section 5 page 73 shows that all in the photograph are with the Columbus Chapter of the Phantoms.

On Re-Direct Examination Mr. Lovette testified that an "Enforcer" would know the difference between an Outlaw MC gang and those who are not. It would be clear to the "Enforcer". Mr. Lovette said he was aware of numerous crimes that the Phantoms were involved with. There was a homicide at Toros and Assaults.

Mr. Lovette then read Exhibit Management 5 and said it is a synopsis of activity of the Phantoms MC Gang from 2008 - 2011 prepared by him. He said all members know about the club's criminal activity.

On Re-Cross Examination Mr. Lovette testified that the Grievant had not been convicted of any crime.

IV. UNION'S CASE

The Union's first witness was Paul Shoemaker. Mr. Shoemaker is the Deputy Chief Inspector with DR&C. He supervises all Investigators. Mr. Shoemaker said he was aware of the incident on October 27. He said Enoch, Harrington and the Grievant were stopped by the Columbus Police Department. Mr. Shoemaker testified they were stopped because they fit the description of men who had pulled a gun. He said our office not notified until January or February 2014. Vinko Kucinic was notified.

Mr. Shoemaker read JX Section 5 page 25 and testified that STG Coordinator Vinko Kucinic got a call that the Columbus Police Department had arrested Enoch and Harrington and questioned the Grievant October 29, 2012. He said he has little information on Enoch and Harrison. Mr. Shoemaker testified Investigators have to check nexus with criminals to see if it is reported. He said he didn't draft a report.

Mr. Shoemaker said he did ask the Grievant a question in the interview concerning the report from the Columbus Police Department. He said he is familiar with the Harrington Case. Mr. Shoemaker testified that Harrington is under a Federal weapons charge. He said the Grievant was not arrested by the Columbus Police Department and there were no criminal charges against the Grievant.

Mr. Shoemaker testified he was aware of no investigation from 2012 to 2014. He said Michelle did an investigation he wasn't aware of until the Grievant's Q&A.

Mr. Shoemaker was shown Exhibit Union 3 and said it was the Grievant's Administrative Leave Notice dated February 10, 2014. He said he doesn't know why there was a delay from

2012 and 2014. Mr. Shoemaker testified the Grievant said he had no conversation with Inmate Quincy and no contact with Carter. Mr. Shoemaker said Carter was never at FMC. Mr. Shoemaker testified that the Grievant offered that Quincy and Carter were incarcerated.

Mr. Shoemaker reviewed JX Section 5 pages 74 and 75 and said the Grievant told them Yellow and Blunt were incarcerated. He said the Grievant is in the photograph on page 73. The photograph on page 74 shows Enoch and Harrington. The photographs are not time or date stamped. Mr. Shoemaker said he knew the Grievant from when they both worked at London.

Mr. Shoemaker read JX Section 5 page 67 which is Grievant's CO Evaluation. On page 68 it shows the Grievant has two (2) good ones. This is five (5) months prior to October 29, 2012. He then read JX Section 5 page 63 #12 and #13. This Evaluation is after the alleged confrontation.

On Cross-Examination Mr. Shoemaker read JX Joint Stipulation Tab 2 which is a DR&C Policy. The Policy says the employee has to file a nexus report. Mr. Shoemaker testified that the Grievant told him about Yellow and Blunt being incarcerated. He said the Grievant should have filed a nexus report.

Mr. Shoemaker read JX Section 5 page 31 where the Grievant said "When I'm on the job, I'm on the Job. Outside work is Different."

The Union's next witness was Vincent Goliday. Mr. Goliday is the Chapter President and Chief Representative for Bargaining. He has been a CO for seventeen (17) years. Mr. Goliday has been at London, Grafton, and now at FMC.

Mr. Goliday testified that the first he heard of an investigation was at the Q&A in 2014. Mr. Goliday said the average CO has little access to the STG information. He said the STG Committee has limited access to the information.

Mr. Goliday testified that the current STG training is now on E-Learning format with the Cos watching monitors. He said the training is limited.

Mr. Goliday said that before E-Training the training was a two (2) or four (4) hour block. Mr. Goliday testified that the training was mostly about prison gangs not MC gangs.

Mr. Goliday said there was a little uproar when the Grievant was removed. He said several DR&C employees belong to MC Clubs.

Mr. Goliday testified that no employee said they wouldn't work with the Grievant and the Grievant is a stand-up Officer. Mr. Goliday said he worked with him at Lebanon and he is professional on the job.

On Cross-Examination Mr. Goliday said STG is only for the Department.

The Union's last witness was the Grievant, David Stewart. Mr. Stewart testified he is employed now by Federal Express Ground and Metler Toledo. He has been a CO for fifteen (15) years and has no active Discipline.

The Grievant testified he is not a member of the Phantoms now. He was a member from July or August 2008 until he quit November 1, 2012. The Grievant testified he left the anniversary party and got questioned by the Police for no reason. He read Exhibit Union 4 which is his wife's affidavit that he turned his colors in November 1, 2012.

The Grievant testified that at the anniversary party he was out in front of the Club. He said the Columbus Police came and cuffed him. The Grievant said the Police checked him out and gave him his guns back. He said he did not report it to his Boss as he was not arrested.

The Grievant testified that Enoch and Harrington had charges filed. He said he saw Enoch in a Club, he chatted with him for about ten (10) minutes and then left.

The Grievant had a "PFFP" tattoo which he demonstrated is now covered up.

The Grievant testified that prior to joining the Phantoms he belonged to the Toros MC Club. He said when he left the Toros he was doing Security. The Grievant said he was patting people down and putting out fighters. He said there is no difference between the Toros and the Phantoms.

The Grievant was shown Exhibit Management 4 and said he has never seen these By-Laws before. The Grievant was asked; "These By-Laws say you can't leave?" He replied; "They don't apply to me. I turned my colors in and left." The Grievant was asked if he saw Phantoms committing crimes. He said he saw several Phantoms getting high. He also said he saw fights and people having sex on the pool table. The Grievant said he worked the door for the Phantoms.

The Grievant testified he was unaware of the Columbus Police Investigation. He said he did not know the Phantoms were a criminal gang.

The Grievant testified that his in-service training was on Prison gangs. He said in his fifteen (15) years with DR&C he got no information on MC Gangs.

The Grievant read JX Section 5 page 21 where he admits communicating with the National Vice-President. The Grievant said that once Yellow and Blunt got arrested he had no

no contact with them.

The Grievant reviewed Joint Stipulations Exhibit Policy on Unauthorized Relationships. The Grievant testified he gave no preferential treatment to any Inmate nor did he visit any Inmate. He said he had no Unauthorized Relationship and that he did none of the Prohibited Acts set forth in the Policy.

The Grievant was referred to D2(a) of the Exhibit which says to report personal or business relationships to the Department. He said he did not report previous contact because they weren't felons. The Grievant said he had five (5) years with Enoch at London.

The Grievant was then shown the photographs on pages 73 and 74 of JX Section 5. He said he had seen these before. The Grievant testified that the photograph on page 73 was taken in 2008. He is not in the photograph on page 74. The Grievant testified that when the cops raided the Club house they took the pictures off the wall.

The Grievant was asked about his nickname "Hitman". The Grievant said in 2004-2005 he played high school football and the players had nicknames.

The Grievant was given Exhibit Union 5. This is an affidavit from Kevin Cox. The affidavit says Kevin Cox played high school football with the Grievant and the Grievant's nickname was "Hitman" because of his bone crushing hits on opposing players. The Grievant read Exhibit Union 6 which is an affidavit from Richard Dickerson. Richard Dickerson says he played high school football with the Grievant and "Hitman" was his nickname.

The Grievant then read Exhibit Union 7 which is an affidavit from Kevin Hall. Kevin Hall says he played semi-pro football with the Grievant for the Columbus Battle Stars and the

Grievant's nickname was "Hit Man". The Grievant also read Exhibit Union 8 which is an affidavit from his ex-wife, Michelle Stewart Carter. Ms. Carter says the Grievant was an outside linebacker for the Ohio Swarm and his nickname was "Hitman".

The Grievant testified the Department never asked for proof about his nickname. The Grievant never told the Investigator he was an enforcer for the Toros.

Cross- Examination. There was no Cross-Examination.

The hearing adjourned at 3:00 P.M.

The parties agreed to file written Closing Arguments by Close of Business December 19, 2014. The parties agreed to copy each other with their Closing Arguments.

V. OPINION AND AWARD

The Advocates have done an excellent job presenting the position of their Case.

The Employer says the Grievant was removed on March 20, 2014 for a violation of the Standards of Employee Conduct Rule 7 - Failure to Follow Post Orders, Administrative Regulations, Policies, or Written or Verbal Directives, Rule 37 - Any Act or Failure to Act that could compromise or impair the ability of an employee to effectively carry out his/her duties as a public employee, and Rule 39 - Any Act that would bring discredit to the employer.

The Employer argues that at the time of the Grievant's removal he was a fourteen-year Correction Officer who was living a double life; portraying himself as a law abiding employee of the Ohio Department of Rehabilitation and Correction while representing simultaneously being a full-fledged member with the rank of enforcer of a Criminal Gang. The Grievant admitted that

during his tenure as a Correction Officer, he was a member of the Toros Motorcycle Club from (July/August 2008 to 2012). (Arb. Binder, Section 5, pages 28 and 29). The Grievant best captured his dual identity in his own words when he testified as follows: "When I'm on the job, I'm on the job. Outside of work is different". (Arb. Binder, Section 5, page 31).

The Employer asserts: The Grievant was a member of the Phantoms and knew this organization was a Criminal Gang. We need look no further than his own statements to prove this. The Grievant was asked in the original interview on February 12, 2014; Are you associated with the Phantom Motorcycle Group? He answered: "Was. Turned my colors in November 1, 2012". Grievant was then asked; Why did you turn them in? He answered; "There was an anniversary party where the police came. Asked me if I had any weapons on me. I told him I had two guns. He handcuffed me. Ran a 50 on me and then released me because I had a CCW".

The Employer then points out - The Grievant further testified that he "started riding in July/August 2008 with the Phantoms" and that "Yellow was the President" and he was locked up at PCI". (Arbitration Binder, Section 5, pages 28, 29 and 30).

The Employer argues that the Grievant's statements prove he knowingly was involved with a Criminal Gang.

The Grievant had received fourteen years of DRC Training on Security Threat Groups (gangs) to include specific instruction on outlaw motorcycle clubs. The Employer argues that it provides clear and unambiguous guidance on what is, and what is not acceptable behavior for an employee and the Grievant blatantly disregarded this guidance because he knew he was involved in a Criminal Gang. The agency's Unauthorized Relationship Policy 31-SEM-07 states in part

“at any time during an employees tenure with the Department, the employee becomes aware of the existence of a personal or business relationship with an offender, the next scheduled work day, the employee must report this information to his/her Appointing Authority or within DPCS, the Section Chief, or within the Adult Parole Authority, the Regional Administrator. The employee shall fill out the Staff Nexus Form (DRC 1500) indicating the nature of the relationship and whether permission to have contact is being sought.” and requires all employees to report relationships - a nexus - with inmates and offenders. (Arb Binder, Section 2, page 3 of 5 D, 2.a).

The Employer also argues that it is clear the Grievant was aware of the criminal nature of the Phantoms, continued to be associated with the Phantoms and wanted to conceal that association. To wit; Grievant testified: “Enoch - He is in Jail. Vice Pres. ,, I do still have contact with Knock [Enoch] No contact with anyone else”.

The Grievant testified that he maintained contact with Enoch, who was the Vice-President of the Phantoms. He testified that he had a drink with him at a bar in Columbus and talked with him. The Grievant further testified that the president of the Phantoms was incarcerated at the DRC Pickaway Correctional Institution (PCI). “Yellow locked up at PCI.” (Arb Binder, Section 5, pages 29, 30 & 31). The Employer argues that in neither case did the Grievant complete a required Nexus form acknowledging his relationship with incarcerated felons in accordance with the policy.

The Employer asserts; The facts are this: the Grievant knew he was a member of a criminal gang and did everything to conceal his association. The question then becomes this:

How can a man who compromised his position as a Correction Officer by joining an outlaw motorcycle gang and then failing to make mandatory notifications to the State on relationships he had with incarcerated gang members ever be trusted? Where would his loyalty be? Certainly not with the Ohio Department of Rehabilitation and Correction.

The Employer contends that the Grievant brought discredit to his employer, the Ohio Department of Rehabilitation and Correction. Columbus Police Department Detective Lovett testified under direct examination that upon his learning that three DRC Employees were members of the Phantoms Motorcycle Club, he was “concerned that gang members were infiltrating DRC as employees.” He further testified that this has shaken his trust with DRC; particularly the DRC staff he has worked with on Security Threat Group investigations and the training he has provided to them.

The Employer argues that Detective Lovett’s testimony shows clear evidence that the actions of the Grievant, along with those of Tierra Enoch and Kevin Harrington, have damaged the relationship between the Ohio Department of Rehabilitation and Correction and the Columbus Police Department.

The Employer says the obvious conclusion is that ODRC cannot have gang members as employees supervising incarcerated gang members.

The Employer contends that this very issue is underscored in Detective Mark Lovett’s testimony regarding his concerns that this criminal organization was infiltrating the ODRC through employment opportunities.

The Employer says that contrary to the Union's assertion otherwise, the Grievant knew he was a member of a criminal gang. The Union's defense rests on the premise that David Stewart was unaware of the criminal nature of the organization, to which he belonged, that he only joined this "Club" to ride motorcycles and have fun and he had not seen the Phantoms' By-Laws. The Employer argues that when you compare the Union's premise to his testimony given during the investigation in February of 2014, the defense falls apart. In the investigative interview, the Grievant describes "mandatory rides" and "prospecting with the Phantoms", and "go to all caberas (sic) required." (Arb Binder, Section 5, page 29) all of which are requirements found in the By-Laws he claims to have never seen.

The Employer further says the Grievant describes the rank structure of the Phantoms and many of the rules required for members - rules that he abided by. The Employer argues that for the record, during the instant hearing, he represented this "Club" as just some guys getting together to ride motorcycles and have fun.

The Employer asserts the Grievant knew the Phantoms were a criminal gang and that his association with the gang was against agency rules. The Union attempted to defend the Grievant by arguing he was not put on notice that he could not be associated with a criminal organization such as the Phantoms. The Employer argues that this argument is absurd, given the fact that all DRC employees annually attend required in-service training specifically addressing Security Threat Groups.

The Employer points out that Michelle Silvus, appearing on behalf of the Employer, identified the Grievant's Training Card (Arb Binder Section 5, pages 40 through 56) which

documented his attendance in annual Security Threat Group training since 2007. She testified that “outlaw motorcycle clubs were discussed in this training every year. Additionally, the un rebutted testimony of Michelle Silvus shows that all employees receive DRC Standards of Employee Conduct, including the Grievant. The section of the Standards of Employee Conduct that specifically speaks to this issue states in part: “The Department of Rehabilitation and Correction is responsible for the confinement and supervision of offenders until their release from custody in order to perpetrate social order and ensure public safety. The very nature and purpose of the Department demands that its employees be held to the highest standards of conduct at all times, including personal and business affairs. An employee’s visibility to the public as well as those entrusted to the Department’s supervision, requires the display of exemplary conduct at all times. Illegal conduct on the part of any employee, whether on or off duty, in addition to being unlawful, reflects upon the integrity of the Department and betrays the trust and confidence placed in it by the public.” ((Arb Binder, Section 2 - Joint Stipulations, page 5 - Standards of Employee Conduct Policy).

The Employer argues that the Union’s attempt to show the Grievant as unaware of the Phantoms’ criminal nature was further dismantled by Detective Mark Lovett and Management Exhibit 5, which showed the criminal activity with the Phantoms Motorcycle Club back at least until August 4, 2008, when the Wheels of Soul, Sin City Disciples, and the Phantoms Motorcycle Club got into a confrontation with the Boogie Down Motorcycle Club and resulted in a Boogie Down member being shot eight times and killed at the Toros’ Club house. The Grievant joined the Phantoms in July/August 2008 after just leaving Toros.

The Employer points out that the Grievant's testimony shows he was recruited to be a Phantom by a female "property" of the Phantoms known as "Red". (Arb Binder, Section 5, Page 29). This Phantom property known as "Red" is also identified as having been involved in criminal activity at the Toros' Club House in May of 2011, involving physical assault and brandishing a weapon. "Red" and a second female "property" of the Phantoms known as "Biggest Mamma" were the suspects in a shooting on E. 5th Avenue where a vehicle was fired on and hit several times by gunfire as it drove away from the scene (Management Exhibit 5).

The Employer argues that the Grievant claims to have no knowledge of any criminal activity, when taking place all around him, are murders, assaults, shootings, and Phantoms' members going to prison. He knew he was a member of a criminal gang and he knew he could be fired from his job because of it.

The Employer also argues that the Grievant did not quit the Phantoms due to the moral conflict of associating himself with a criminal gang, he only quit the Phantoms when his job was in jeopardy, only when he had to quit, not because he wanted to quit. The Grievant claims he quit the Phantoms by "turning in his Colors" when he "learned " of the Phantoms' criminal nature. The Grievant "claims" he quit on November 1, 2012 - the night of a party at the Phantoms' Club House when the Columbus P.D., responding to a complaint of a man brandishing a weapon, detained and questioned the Grievant. The Employer points out that at the same time, the Grievant watched two of his friends and DRC co-workers, also Phantoms' members, get arrested and taken to jail; one for stolen weapons and one for carrying a concealed weapon without a permit. These two co-workers, one being Tierra Enoch, who resigned his position as a Correction

Officer at the London Correctional Institution in November of 2013, and the other being Kevin Harrington, who was removed from his position of Correction Officer at the London Correctional Institution on February 6, 2014, which was later amended to a resignation in March of 2014.

The Employer argues that faced with the prospect of being removed from his Correction Officer position, as his fellow State employees had, it would make good sense to claim you left the criminal organization for moral reasons, when in fact you did so to save your job.

The Employer further argues that the record demonstrates that the Grievant did not quit the Phantoms at all. What occurred at this November 2012 anniversary party was claimed to be the reason he quit the Club. (Arb Binder, Section 5, page 28). Yet later in his testimony he talks about mandatory rides to Chicago, and Kansas City and one in October of 2013 to a Phantoms member's funeral in Detroit. He further testified that the Phantoms' Club House got closed down in the Fall of 2013. If he truly quit the Club, why is he riding to Detroit for a funeral and how does he have knowledge of the inter-working of the Phantoms organization? Could it be because the By-Laws require a member to ride when called to do so? Could it be that he knows what is going on because he is still a member?

The Employer cites Management Exhibit 4, #9 and #9B which says: "9-all members are expected to attend national runs and call outs, as well as a minimum of five state lines a year on a motorcycle, and 9-B Memorial runs will be set per State annually. All members of that State are expected to attend this mandatory to show respect and love for your fallen family members".

The Employer says the Grievant's admission that he is still participating in funeral runs and is aware of Club business and issues demonstrates he is still a member or, at the very least,

is on a leave of absence from the Phantoms pending the outcome of the instant case.

Furthermore, testimony from expert witness, Detective Mark Lovett, demonstrates that once you are in the gang, you don't get out, unless you are kicked out. Detective Lovett's testimony also places the Grievant as a ranking member within the Phantoms. The Columbus Police Department lists the Grievant as the "Enforcer" for the Phantoms - Columbus Chapter.

The Employer says the Just Cause Standard places a burden upon the employer to show proof in the form of evidence of misconduct. It simply cannot take a disciplinary action absent evidence. No evidence was received by DRC demonstrating the Grievant was a member of a criminal gang until January 2014. Once DRC had evidence of the Grievant's rank and membership with the Phantoms it took action.

The Employer says the Union asserted in defense of the Grievant that DRC failed to take swift and immediate action against the Grievant and that this somehow fatally flaws the Employer's Just Cause finding for removal. The Union's Opening Statement reads in part that "ODRC took swift and almost immediate action regarding the other 2 ODRC employees that belonged to the Phantoms Motorcycle Club following their arrest and encounter with law enforcement on 10/28/2012. During that period of time OCSEA advised both of these employees to resign from their positions" (Union Opening, page 3). In the words of the Union, the Ohio Department of Rehabilitation and Corrections' "swift and almost immediate Action" was no more than placing both employees on paid administrative leave at London Correctional Institution due to pending criminal charges. The end result was that one of the two employees came in and resigned in November 2013, before an administrative investigation could be started

on him. The second employee was removed on February 6, 2014 for his association with the criminal gang known as the Phantoms Motorcycle Club. This removal was later amended to a resignation on March 26, 2014.

The Employer asserts that the administrative investigation and resulting removal on the London Correctional employee was nearly identical to the timing and action taken against the Grievant. Matt Crisler, London Correctional Investigator, testified that the criminal case against the London Correctional Employee, Mr. Harrington, was a sealed case with the Court and nothing was released until the criminal proceedings were complete. Matt Crisler further testified that the Grievant did not have any pending charges nor was his position and involvement with the criminal gang fully known until the Columbus Police Department Investigative Report was released to the Ohio Department of Rehabilitation and Correction late January 2014. How is it that the London case is viewed as “swift and almost immediate” when the nearly identical time lines at Franklin Medical Center is not?

The Employer argues that the misconduct of the Grievant has been proven and the cause for employment termination demonstrated. The Employer says it is abundantly clear the position the Grievant placed himself in when he joined the criminal gang known as the Phantom Motorcycle Club. It is also clear as to his inaction on reporting known inmate nexus relationships. The Employer also argues that the testimony of Detective Mark Lovett affirms the damage and discredit to the Ohio Department of Rehabilitation and Correction.

The Employer cites Management Exhibit 4, Number 10, C which states in part “No Phantom member is to speak of club business to anyone other than a club member”. This leads

you to only one conclusion. The Grievant remains a Phantom member despite his false claim that he quit.

The Union points out that the Grievant was an almost 15 year employee with no active disciplinary action in his record and had higher than average Performance Evaluations.

The Union says the rules at issue are not unreasonable rules, but argues that the interpretation of the rules and action taken against the Grievant based on this interpretation are unreasonable and unfounded.

The Union says the incident giving rise to the removal occurred on 10/28/2012. The Department knew about this incident one day later and took almost immediate action against two other employees who were involved in the incident on the date in question. The Union points out the Department did not question or approach Grievant during that time. Instead the Department conducted an "investigation", an investigation that did not involve any conversation with the Grievant or restriction of his job duties. During that investigation at no time did the Department question the Grievant nor discuss his membership in the motorcycle club ("MC") with him. The Union argues that the initial investigation resulted in no evidence being discovered related to the Grievant's involvement with the motorcycle club or any questionable or illegal conduct by the Grievant.

Testimony of the Department's own witness confirmed that this initial investigation was closed within a couple of months of the Department's notification of the 10/28/2012 incident due to the lack of evidence to move forward with discipline or further investigation.

The Union says when the Department finally decided to take disciplinary action against

the Grievant, 15 plus months later, he was forthright and direct. He never denied his past association with the MC, and indicated during his initial questioning that immediately following the 10/28/2012 incident he turned in his colors and disassociated with the Club. Yet ODRC maintained that the Grievant's current membership of the Club at the time of the investigation was a contributing factor in his removal. The Union referred to "Finding of Fact" page 5 Line 1 "Finding of Fact" page 6. Last Paragraph in "Mitigating/Aggravating Circumstances", "Determination of Investigator", page 21, first line in "Determination of Investigator".

The Union argues that for almost 15 months between the closure of the initial investigation and the removal proceeding the Grievant was permitted to work with no restrictions. During this time the Grievant also received performance evaluations indicating he had above average professionalism and leadership.

The Union says that after questioning the Grievant on 2/2/14 he was placed on administrative leave and removed 30 days later. The Union argues that he had not been arrested and in the 15 months it had taken the Department to conduct two investigations he had disassociated from the Motorcycle Club based on his own judgment well before Management ever raised an issue of his membership.

The Union argues that the Department characterized the Grievant's personality as a "Jekyll and Hyde" related to his on duty performance and off duty conduct. The Department presented this characterization as their justification for the discipline and removal of the Grievant. The Union further argues that during the time period in question the Grievant's actual performance evaluations used terms such as "very respectful and courteous" (pg. 63, #12 & #13)

“professional in his dealings with inmates” and “is at a level of professionalism that is above what is required” (pg. 68, #5 & #6).

The Union says that assistant Chief Investigator Paul Shoemaker testified that the Grievant’s problems and disciplinary action were completely unrelated to his performance or on the job conduct. Mr. Shoemaker stated the Grievant’s problem was with the Columbus Police Department.

The Union says the testimony of Detective Mark Lovett shows no evidence to support the assertion. Detective Lovett testified that at no time has the Grievant been investigated under the suspicion of specific criminal activity or illegal conduct and at no time has the Grievant been arrested for his association with either the Motorcycle Club nor his participation in any Club activities. Detective Lovett was unable to point to a single criminal act he could associate directly to the Grievant. Detective Lovett merely testified that he knew who the Grievant was because he had seen him at Club activities and had identified him. He also offered no testimony indicating that the Grievant’s evidence and testimony about leaving the Club is inaccurate, or that the Grievant has had any contact with the Club or participated in any activities since the date he turned in his Colors.

The Union asserts that Detective Lovett’s testimony proves that the Grievant has not been linked to any criminal activity and it proves that there is no nexus between the Grievant’s off duty conduct and his ability to do his job. The Union argues these are mere identifications and empty assertions that do not prove a nexus exists. The Union says there is no evidence to prove the Grievant’s membership in the Motorcycle Club is a removable offense. The Department

bases their entire accusation on an observation by the Columbus Police Department that the Phantoms Motorcycle Club is an “outlaw” motorcycle club and a criminal gang, a fact that Detective Lovett admitted is unknown by those outside of the Prosecutor’s Office or Police Department.

The Union says Detective Lovett provided evidence of the National By-Laws of the Club, asserting that the by-laws make clear that the Club is an “outlaw” Club and further supporting the classification of the Club as a criminal gang. Detective Lovett also admitted that the by-laws were found on someone other than the Grievant and that there was no evidence to support an assumption that the Grievant had ever seen the By-laws.

The Grievant testified that he had never seen the by-laws before and that he had no idea what the difference was between an “outlaw” Club and a Motorcycle Club that is merely a social motorcycle riding group. The Union argues there is no evidence the Grievant knew the difference.

The Union says testimony by both the Grievant and Vince Golliday was that motorcycle Clubs are not specifically addressed in yearly training. Both individuals also testified that a CO would have to request special permission to have access to a screen that flags inmates as being in an STG, and even when a CO has access to that screen the name of the STG is not displayed.

The Union argues that based on the evidence of the lack of public knowledge about the different types of Motorcycle Clubs, the lack of training about such Motorcycle Clubs as gangs and STGs and a lack of any list of STGs being provided to COs there was no way for the Grievant to know in advance that the Motorcycle Club he chose to be a member of would be

classified an STG for Department purposes.

The Union says there is no evidence of the Grievant being a current member of the Club at the time of his removal. The Grievant testified and provided a sworn statement from another party that he turned in his Colors and left the Club more than a year before the Department questioned him about his membership. Grievant also testified he covered up his Club Tattoo. The Union argues there is no evidence the Grievant was investigated for criminal activity or illegal conduct.

The Union points out that past arbitrations have pointed to the requirement of the existence of a rational relationship between the conduct in question and the employee's ability to do the job. The Department alleges that because the Grievant is known by the Columbus Police Department as a member of this Motorcycle Club the membership alone is enough to bring discredit to the Department. The Union argues that other nexus arbitration decisions clearly show the level of proof and rational relationship required is significantly higher than what exists here.

The Union cites Department of Mental Health & OCSEA case no. 12-13 (1/19/88)-007-01-05 award No. 204 (1988). In this case the Grievant was reinstated without back pay after being convicted of aggravated drug trafficking. The Grievant was a housekeeper. The Arbitrator found that there was no evidence that because the Grievant trafficked in drugs off the job he would traffic in drugs on the job.

The Union cites ODRC & OCSEA case No. G-87-2258 (OJR-87-206) award No. 145. ODRC removed a Grievant after he had been convicted of an aggravated felony of the second degree for knowingly causing or attempting to cause physical harm to another by means of a

deadly weapon. The Grievance was denied. The case for the discredit to the Employer and nexus to the job included the following factors; whether a huge potential for adverse publicity to the facility exists; whether reinstating Grievant would disrupt rather than enhance the facilities goal of rehabilitating and integrating convicts by changing existing behavioral patterns; and whether if the Grievant was reinstated he/she would be subject to manipulation and harassment from other inmates as a consequence of his own felony conviction.

The Union argues that none of these factors are present as the Grievant has never been convicted. Vince Golliday testified that co-workers of the Grievant were shocked that he had been removed for his activity with the Club as they saw no negative impact on the job.

The Department contends that as the Grievant is a member of this Motorcycle Club , the Department has been discredited with the Columbus Police Department. Detective Lovett testified that the Department's concerns with the Club are related to crimes such as assault and murder. The Union says there is no evidence the Grievant was aware of such activities. The Grievant testified that all he had seen were a person smoking marijuana in a parking lot or having sex in the Club House. This is not severe criminal activity. There is no evidence of a nexus between the concerning conduct and the Grievant's ability to do his job.

The Union argues that work history and a Grievant's rehabilitation efforts to reform conduct should be considered. The Union cites ODRC & OCSEA case No. G-87-2258 (OJR-87-206) award No. 145. The grievance was denied due to the Grievant's conviction of a felony. Here the Union argues there was no conviction and the Grievant had already taken steps to remove himself from the Club. The Union also argues that the Department hires convicted felons after

they have paid their debt to Society.

The Union argues further that the willingness of the Department to overlook felony convictions after a rehabilitation period, regardless of what the public or law enforcement perception of hiring such individuals would be, but not to allow a nearly 15 year employee to stay on the job after he shows evidence that he has removed himself from association the Department views as inappropriate but not illegal in nature, is not only contradictory, but is unreasonable.

The Union cites Department of Mental Retardation and Developmental Disabilities & OCSEA case No. G-87-1930 award No. 189. In this case the Grievant was reinstated without back pay after a third degree felony conviction for aggravated trafficking in cocaine. The Arbitrator gave weight to the work history and testimony provided by the Grievant's co-workers and supervisors.

The Union argues that in this case the Grievant has a virtually untarnished work history with no active discipline. The Grievant had above average evaluations and there was testimony from a co-worker and from Paul Shoemaker that the Grievant's job performance was above average and the off duty conduct never affected the Grievant on the job.

The Union argues there was no Just Cause for removal.

The evidence is clear that the Grievant failed to file a Nexus Report concerning "Yellow", who was in Pickaway Correctional Institution. It may be arguable as to whether he should have filed a Nexus Report about having a drink in a bar with Enoch but he had to file a Nexus Report about "Yellow".

There was some dispute in the testimony about training concerning motorcycle gangs as a

STG. However, there is no dispute that the Phantoms were a criminal gang. The Grievant's argument that he thought the Phantoms were a social motorcycle Club is not credible. The testimony of Detective Lovett about the numerous serious crimes committed by the Phantoms belies Grievant's statement. There was no "isolated incident" of criminal activity of which Grievant may not have been aware. After all, he was an Officer.

The testimony of Detective Lovett that this relationship of the Grievant with the Phantoms brought discredit to the Employer is persuasive.

The Employer goes to great lengths to prove the Grievant went on a ride to a funeral in Detroit in 2013 and his testimony shows familiarity with the By-Laws. The Employer argues that the Grievant is still a member. The Union argues that he quit. Whether he is still a member or not, the evidence is he maintained his relationship with the Club and its officers. A ride to Detroit and failure to file a Nexus Report is telling evidence.

The Union argues that the first investigation produced no evidence and therefore the second investigation is tainted. The Employer was within its rights both times. The fact that the Grievant continued to work because the first investigation produced no evidence was to be expected. The fact that the Grievant during this time had good evaluations does not mitigate the seriousness of his off duty conduct. Neither does the Union's argument that there was no conviction.

There is a rational relationship between the conduct in question and the employee's ability to do his job.

The grievance is denied.

Issued at Ironton, Ohio this 13th day of January 2015.

Craig Allen
Craig A. Allen
Arbitrator

