

PROCEDURAL HISTORY

The Ohio Civil Service Employees Association is hereinafter referred to as "Union." LaDonna Paul is hereinafter referred to as "Grievant." The Ohio Department of Youth Services, Indian River Juvenile Correctional Facility is hereinafter referred to as "Employer or DYS."

The Employer and the Union were parties to the Collective Bargaining Agreement effective May 12, 2018, through February 28, 2021. On September 4, 2019, the Grievant filed this written grievance and submitted the same to the Employer pursuant to Article 25 of the parties' Agreement. Following unsuccessful attempts at resolving the grievance, the Union requested that the grievance be advanced to arbitration. Pursuant to the Agreement between the Employer and the Union, the parties have designated this Arbitrator to hear and decide certain disputes arising between them. The parties presented and argued their positions on March 11, 2021, via virtual hearing.

The Employer proposed the issue to be:

Did the Grievant engage in a violation of the DYS-IRJCF performance-based work rules?

The Union proposed the issue to be:

Did the Grievant violate DYS Policy 131-SEM-05, General Work Rule(s), Specifically: RULE 5.01P Failure to follow policies and procedures (Specify performance-based policy or procedure) and RULE 5.28P Failure to follow work assignment or the exercise in poor judgement in carrying out an assignment, Failure to perform assigned duties in a specific amount of time or failure to adequately perform the duties of the position or the exercise in poor judgement in carrying out an assignment; and therefore triggering the Last Chance Agreement. If not, what should the remedy be?

The record indicated that following some discussion, the parties agreed to modify the issue as proposed by the Employer. Since the issue was modified again by the Advocates in their submissions, the Arbitrator has framed the issue to conform to the evidence as follows:

Whether or not the Grievant violated the Last Chance Agreement executed on October 13, 2019?

During the hearing, both parties were afforded a full opportunity for the presentation of evidence, examination, and cross-examination of witnesses. Witnesses other than the representatives were sequestered in virtual waiting rooms.

The following individuals testified on behalf of the Employer:

Alex Stojsavljebic, PREA Administrator
James Darnell, Superintendent

The following individuals testified on behalf of the Union:

Carlos Cooper, JCO and Chapter President
LaDonna Paul, Grievant

The parties stipulated to the following facts:

- 1) Grievance #DYS-2019-03246-03 is properly before the Arbitrator.
- 2) Grievant commenced employment with the Ohio Department of Youth Service-Indian River Juvenile Correctional Facility on January 19, 2016, in the Juvenile Correctional Officer (JCO) classification.
- 3) Grievant served continuously in the JCO classification until her removal.
- 4) Ohio Department of Youth Services removed Grievant from his JCO position on August 28, 2019.
- 5) At the time of her removal, the Grievant possessed the following active discipline:
 - a. October 13, 2018 Last Chance Agreement (3 Years) in lieu of Removal
 - b. August 8, 2018, Written Reprimand

All exhibits were admitted and listed as follows:

Joint Exhibits:

1. Collective Bargaining Agreement between the State of Ohio and Ohio Civil Service Employees Association, May 12, 2018-February 28, 2021
2. Discipline Trail
 - a. Removal letter dated August 28, 2019.
 - b. Pre-disciplinary conference hearing officer report dated August 8, 2019
 - c. Investigation report (redacted) dated July 24, 2019
3. Grievance Trail
 - a. Removal grievance filed On September 4, 2019
 - b. Step 2 Response filed on December 29, 2019.
4. DYS Policy 131-SEM-05 General Work Rules/Rules Violated/Grid
5. DYS Policy 179- YSA-01 Sexual Abuse and Sexual Harassment Reporting and Responding
6. DYS Policy 179-YSA-03 Medical and Behavioral Health Services Response to Sexual Abuse
7. DYS Policy 179-YSA-04 Sexual Abuse and Sexual Harassment: Prevention, Detection, and Education
8. Grievant Position Description
9. August 2018 Post Orders
10. June 2019 Grievant signed the acknowledgment of Post Orders
11. Grievance Training Records at DYS:
 - a. DYS Pre-Service Prison Rape Elimination Act Training & Child Incident/Abuse/Neglect Reporting 1.5 hours (March 16, 2017)
 - b. DYS In-service Prison Rape Elimination Act/Professional Boundaries 1.5 (May 7, 2018)
12. Prison Rape Elimination Act-National Standards Pre-Service Power Point Training
13. IRJCF Institutional Consistency-Local Operating Procedure
14. IRJCF Institutional Consistency PowerPoint Training
15. IRJCF Institutional Training Attendance Acknowledgment and Test.

Management Exhibits:

16. Grievant Removal/Last Chance Agreement October 2018
17. Grievant Removal/Last Chance Agreement Investigation 2018
18. Grievance Written Reprimand August 2018
19. JCO Herman Horner Two(2) Day Working Suspension - April 25, 2020
20. JCO Ellote Langford Written Reprimand-May 12, 2020

The Arbitrator received post-hearing briefs on March 26, 2021 at which time the record was closed. The parties agreed that the Arbitrator could issue the award on or before May 17, 2021.

RELEVANT CONTRACT LANGUAGE AND POLICY¹

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.

General Work Rules, Policy No. 131-SEM-05 is incorporated as if fully rewritten herein.

Purpose: The purpose of this policy to establish uniform, written work rules regarding subjects that have general applicability for all employees, accordingly to the statutory provisions governing the conductor all state employees, according to the statutory provisions governing the conduct of all state employees in the Ohio Revised Code 124.34 and the terms and conditions of the Collective Bargaining Agreements (CBA)that exist between the State of Ohio and the respective unions for all union employees.

Rule 5.01P: Failure to Follow Policies and Procedures
(Specify performance-based policy or procedure)

Rule 5.28: Failure to Follow Work Assignment or the Exercise in Poor Judgment in Carrying Out an Assignment.
Failure to perform assigned duties in a specified amount of time or failure to adequately perform the duties the position or the exercise in poor judgment in carrying out an assignment.

Sexual Abuse and Sexual Harassment: Prevention, Detection, and Education, Policy No. 179-YSA-01 is incorporated herein as if fully rewritten:

Purpose: The purpose of this policy is to provide procedural guidance for the reporting, responding, and investigating of allegations of sexual abuse and harassment.

Policy: It is the policy of the Ohio Department of Youth Services to establish a zero-tolerance standard for any incident of sexual abuse or sexual harassment that occurs between youth, staff, volunteer, and contractors on youth.

¹ The Grievant was trained on all policies.

Medical and Behavioral Health Services Response to Sexual Abuse, Policy No. 179-YSA-03 is incorporated herein as if fully rewritten:

The purpose of this policy is to provide guidelines that reduce, if not eliminate, the incidence of sexual abuse within correctional facilities by screening youth for potential predatory behavior and the risk for potential victimization. Additionally, this policy shall provide procedural guidance for medical and behavioral health practitioners when responding to allegations of sexual abuse and victimization.

Policy: It is the policy of the Ohio Department of Youth Services (DYS) to establish a zero-tolerance standard for any incident of sexual abuse or sexual harassment that occurs between youth, staff, volunteers, and contractors on youth. In the event an incident of sexual abuse does occur, DHS shall ensure that alleged victims receive timely, unimpeded access to emergency medical and behavioral health services consistent with the community level of care without financial cost, where evidentiary or medically appropriate.

Sexual Abuse and Sexual Harassment: Prevention, Detection, and Education, Policy No. 179-YSA-04 is incorporated herein as if fully rewritten:

Purpose: The purpose of this policy is to establish a zero-tolerance stance against prison sexual abuse and to provide guidance in prevention and tracking techniques for sexual abuse directed toward youth victims by staff or other youths.

Policy: It is the policy of the Ohio Department of Youth Services (DYS) to ensure that youth, staff, contractors, and volunteers are provided training on sexual abuse and sexual harassment.

Procedure:

1. All new employees shall receive instruction related to prevention, detection, response, and investigation of sexual abuse during preservice...
2. DHS shall provide each employee with refresher training at least every two (2) years to ensure that all employees know the current sexual abuse and sexual harassment policies and procedures.

Post Orders for Housing Units are incorporated herein as if fully rewritten:

Security Procedures:

5. Conduct security rounds at random intervals every 30 minutes.

DayRoom Expectations:

1. Day rooms shall have a uniform set up on each unit.
 - a. If day room/group doors open inward, furniture must be limited in order to minimize the risk of barricade.
2. Youth Specialists shall supervise, monitor, engage and interact with youth in a prosocial manner while in the day area/room.
8. Sitting and Lying on tables/furniture and floors is prohibited.
9. The youth's feet shall remain on the floor and not on the furniture.

DYS IRJCF- Local Operating Procedure, Local Operating Procedure Number 301.06.01-01 is incorporated herein as if fully rewritten:²

Purpose: It shall be the policy of Indian River Juvenile Correctional Facility to provide consistent expectations for the following areas:

A. Dayroom Expectations

Procedure: A. Dayroom Expectations:

- a. Youth should be seated upright in the dayroom according to the Unit Seating Chart with their feet on the floor.
- j. Staff are to be present when you are in the group room (even just one youth). Youth should never be left unsupervised; this includes when a youth is with a visitor.

² The training manual also highlights supervision in the group room and reads "When any youth are in the group room (even just one) staff are to be present; youth should not be unsupervised; this includes when youth are a visitor ."

STATEMENT OF FACTS

The Department of Youth Services confines felony offenders, ages ten (10) to twenty-one (21), who are adjudicated and committed by one of Ohio's eighty-eight (88) county juvenile courts. DYS operates three (3) juvenile correctional facilities, one of which is Indian River Juvenile Correctional Facility (IRJCF). IRJCF consists of eight (8) different housing units, which can each hold a maximum of twenty-three (23) youth at any given time. IRJCF also provides behavioral health services, and more than half of the juvenile offenders have behavioral health issues.

IRJCF hired Grievant on January 19, 2016, in the Juvenile Correctional Officer (JCO) classification. As such, the primary duties of the Grievant include providing for the safety, security, custodial care, and surveillance of youth assigned to the juvenile facility, enforce and follow DYS policies and procedures, rules and regulations, actively and verbally engaging youth in the programming activities. On June 25, 2019, the Grievant worked the first shift from 6am-2pm in the I Unit, a post position. There were three (3) other juvenile corrections officers including a float assigned to I Unit. A social worker whose office is located adjacent to the group room and the dayroom was also on duty.

The Grievant was assigned five (5) youth offenders to supervise in the group room. The Grievant and the youths participated in card games played on the side of an overturned chair as an activity. Although there were four (4) players in the game, the Grievant provided each youth an opportunity to participate in the activity. The loser of each game would be replaced by a youth that was waiting to play. The two (2) nonplaying youths were first separated, one in the chair in the middle of the room and the other sitting on the floor next to the chair, which obstructed the view of the Grievant. The Grievant did not direct the youth to move to a location that she could see

him. The social worker also walked past the youth sitting on the floor and did not direct the youth to sit in the chair.

While the Grievant continued to play the card game, the youth who sat in the chair moved to a position next to the youth sitting on the floor. The Grievant did not notice or, if she did notice, did not redirect or separate the youths. The youths engaged in sexually inappropriate behaviors for approximately five (5) minutes. The youths can be observed watching the Grievant while they engaged in sexual misconduct. When the Grievant arose to retrieve the remote control, she walked past the youths sitting on the floor next to one another but did not separate them.

Another juvenile offender reported the sexual misconduct of the two (2) youths. The Grievant did not know about the incident until she returned to work that evening for the third shift. The entire incident was captured on camera. As a result of the investigation, a PREA violation was found. The two (2) youths were separated. The Employer terminated the Grievant. At the time of the termination, the Grievant had a written reprimand assessed on August 8, 2018, and a removal held in abeyance with a last chance agreement dated October 13, 2018.

POSITION OF THE PARTIES

POSITION OF THE EMPLOYER

The Employer contends that the Grievant violated Rule 5.01P by failing to maintain proper and complete visual contact of the youth under her supervision. Due to her failure to properly supervise the five (5) youths, two (2) of the youth engaged in sexual acts with each other in violation of PREA. Further, the Employer asserts that the Grievant violated Rule 5.28P by positioning herself at a table where furniture (chair) inhibited her view of youth under her supervision. The Grievant failed to ask the youth to move and failed to position herself differently to have a complete and consistent visual of the youth under her supervision. The Employer maintains that the Grievant violated the DYS General Work Rules and her conduct violated the terms of her LCA.

In addition, the Employer contends that the Grievant provided brand new information during her direct testimony. Specifically, she stated an employee working in a supervisory temporary work level (TWL) provided direction during a "Team Huddle" that youth were permitted to sit on the floor on the unit. The Grievant did not provide this information in her initial statement on June 25, 2019, and did not provide that information during her investigatory interview on July 15, 2019. Further, the Union failed to subpoena the TWL employee to provide direct testimony regarding the meeting. The statements are unfounded and do not negate whether the Grievant failed to exercise proper supervision and situational awareness over five (5) youth, permitting a PREA violation to occur.

Further, the Employer contends that the Grievant failed to properly supervise assigned youth on her unit resulting in a PREA violation. The Employer argues that the Grievant was responsible for the supervision of five (5) youth in the group room. The Employer argues that while the Grievant maintained proper supervision over the three (3) youth playing card games, the Grievant failed to maintain a proper and complete visual of the youth under her supervision leading to a preventable sexual encounter between the two (2) youths and the PREA violation. The Employer asserts that PREA

violations are serious offenses. DYS has disciplined other employees for similar misconduct based on their disciplinary records, but under the terms of the LCA agreement, the penalty for her actions is removal.

Moreover, the Employer contends that DYS appropriately removed the Grievant for violation of the terms of her Last Chance Agreement. The Employer asserts that the Grievant signed a LCA in lieu of her removal on October 13, 2018. The Grievant, DYS, and OCSEA each signed the LCA on October 13, 2018, making the LCA effective until October 13, 2021. The Employer argues that based on the language of the LCA, the level of discipline is not in dispute or part of this arbitration. The Employer points out that the terms of the LCA agreement hold the October 13, 2018 removal in abeyance. If the Grievant violates any provision of the LCA, then the removal is the appropriate level of discipline. The Employer argues that the parties willingly signed the LCA and are bound by the terms of the agreement.

Lastly, the Employer contends that the Grievant violated the DYS General Work Rules, just cause exists, and DYS appropriately removed the Grievant. The Employer requests that the grievance be denied in its entirety.

POSITION OF THE UNION

The Union contends that the video evidence demonstrates that the Grievant was properly positioned in the activities room to visualize the youths in the area. The Union argues that the evidence established that the Unit Manager at the time stated that the youths were permitted to sit on the floor in the Dayroom and also the Activity/Group room. Thus, the Union maintains that the employee working in a supervisory temporary work level (TWL) modified the duties of the Grievant, and there was no violation of work rules and policy.

In addition, the Union contends that a review of the video confirms that the Grievant was doing her job to the best of her ability, socially interacting with the youths and doing her rounds. The Union asserts that all staff had the

same responsibility to maintain a safe environment for the youths in residence of the Indian River Juvenile Correctional Facility. The points out that the video shows that the social worker passed the youth as she walked toward her office and did not direct to him sit in a chair. The Union suggests that the social worker was also in a better position to observe the youths' sexual misconduct from her office, but no other individuals were disciplined or even coached about their responsibility for this incident.

Further, the Union contends that there was not a complete investigation into the incident. The Union argues that the Employer failed to interview staff, including other juvenile correction officers, the Unit Manager (TWL) at the time of this incident, and the social worker. The Union asserts that the Employer only focused on the actions of the Grievant. The Union also asserts that the Investigator concluded that the actions of the Grievant did not warrant a termination even knowing that the Grievant currently had a Last Chance Agreement on her record.

Moreover, the Union contends that the Grievant signed the last chance agreement under duress. On a Saturday (10-13-2018), the Grievant was told by the Superintendent at that time "that if she did not sign the LCA, she would be terminated." The Union requests that the enforcement be discontinued.

Lastly, the Union contends that the grievance should be granted. The Union requests that the Grievant be returned to her position as a Juvenile Corrections Officer/Youth Specialist, compensated for all back pay including overtime lost, the Grievant's seniority, and benefits restored. Further, the Union requests that the enforcement of the Last Chance Agreement signed October 13, 2018, be discontinued and, if unable to do so, to allow time severed which would leave only six (6) months of its effectiveness of three (3) years from date all parties signed the Last Chance Agreement. Additionally, the Union requests that the Employer reimburse its dues.

Discussion

As a general rule, a just cause provision such as found in Article 23.1 imposes on an employer the burdens of establishing: (1) that the Grievant committed the offense with which she was charged, and (2) that the penalty imposed was justified under the circumstances. Usually, as well, the Union has the burden of showing factors in mitigation such as tenure, disparate treatment, lack of training, and so forth. However, a Last Chance Agreement modifies the general rule. It becomes the controlling document. Absent a showing of duress or other ground for setting aside a contract, most Arbitrators enforce the terms of the LCA.

The Grievant entered into a last chance agreement on October 13, 2018 that covered performance-based violations. The Last Chance Agreement read as follows:

"The following constitutes a Last Chance Agreement between LaDonna Paul (Employee-Bargaining Unit OCSEA and the Ohio Department of Youth Services, ("Department" or "DYS").

THE DEPARTMENT AGREES TO:

Hold the implementation of the REMOVAL issued on 10-13-2018 in abeyance for a period of three (3) years. This removal will not be implemented unless there is a violation of this Last Chance Agreement.

THE EMPLOYEE, MADONNA PAUL. AGREES TO THE FOLLOWING IN CONSIDERATION FOR THIS AGREEMENT:

1. LaDonna Paul agrees that the above-termination is for "Just Cause."
2. LaDonna Paul agrees to follow all rules, policies and procedures of the Department of Youth Services and Indian River Juvenile Correctional Facility.
3. LaDonna Paul agrees to withdraw, rescind and not refile all current and pending Grievances, EEO claims, and Ohio Civil Rights Commission

complaints and to dismiss with prejudicial pending lawsuits including but not limited to those related to this incident.

4. LaDonna Paul waives any and all claims she has or may not have against DYS concerning terms and conditions employment through the date this agreement. All parties to this Agreement hereby acknowledge and agree that this Agreement is in no way precedent setting. This Agreement shall not be introduced, referred to, or in any other way utilized in any subsequent arbitration, administrative hearing, or litigation excepts may be necessary enforce its provisions and terms.

It is agreed by all of the parties that if LaDonna Paul violates this Last Chance Agreement or if there is any further violation of any performance related DYS Work Rules, as provided under DYS Policy 131-SEM-05 General Work Rules, the appropriate discipline shall be removal from her position. Pursuant to respective collective bargaining agreement, any appeal or grievance arising out of this agreement shall be limited the question whether or not LaDonna Paul violated this Last Chance Agreement. DYS will be obligated only to prove that LaDonna Paul violated this agreement or any of the rules or policies specified in this agreement occurred while this agreements in full force and effect.

All parties agree that this Last Chance Agreement shall be in full force and effector three (3) years from the date all parties to the agreement have executed the agreement. This period shall be extended by a period equal to LaDonna Paul's leave of fourteen (14) days or longer including, but not limited to, vacation, personal leave, sick leave, disability, O.I.L., workers' compensation, paid administrative leave and unpaid administrative leave.

LaDonna Paul agrees that she signs this Agreement voluntarily, without coercion or under duress."

Authorizing Signatures: Grievant, Employer, and Union.

The language of the LCA is clear and unambiguous. The duration of the LCA is for three (3) years from the date of execution. The parties executed the LCA on October 13, 2018. The LCA expired on October 13, 2021. There was no evidence of circumstances that extended the LCA. The alleged misconduct occurred on June 25, 2019, and the State terminated the Grievant on August 28, 2019. The LCA was in full force and effect.

There is an assertion that the LCA was signed under duress. The Union argues that the Grievant signed the LCA under duress, and the duress was the fact that she would be fired if she did not sign the LCA. However, a review of the LCA indicates that the Grievant, Employer, and Union executed the document. Since the Grievant was represented, the inference is that she had a full understanding of the terms of the LCA. By agreeing to the LCA, the Grievant forfeited her right to challenge that just cause did not exist for the pending termination. In turn, the Employer lost its right to immediately discharge the Grievant for that prior alleged misconduct. More importantly, the LCA afforded the Grievant the opportunity to promptly return to work. If the Grievant wished to challenge the termination, then she could not accept the benefits of an immediate return to work. She made her choice with representation to execute the LCA and cannot now complain. This Arbitrator finds the LCA to be valid and enforceable.

The Union challenges the penalty of termination and points to the investigator's conclusion that the Grievant's actions did not warrant termination. The evidence all established that DYS has disciplined other employees for similar misconduct with lesser penalties; however, this is not a proper consideration in the enforcement of this LCA. Likewise, this Arbitrator cannot consider the progressive discipline policy under the parties' CBA. Absent a finding that the LCA is invalid, this Arbitrator lacks the authority to disregard the explicit terms of the LCA agreement or modify the penalty as requested by the Union. The agreed language of the LCA states that if the Grievant violates this Last Chance Agreement or if there is any further violation of any performance-related DYS Work Rules, as provided under DYS Policy 131-SEM-05 General Work Rules, the appropriate discipline shall be removal from her position. Although the Union asserts that the record establishes disparate treatment, mitigation is not a consideration in a last-chance agreement analysis. All of the parties agreed, in effect, that just

cause for discharge exists if DYS establishes that the Grievant violated the LCA or any of the rules or policies specified in this agreement occurred while the LCA was in effect.

Having determined that the LCA is valid, the next question is whether the Grievant committed the alleged misconduct. The LCA specifically and clearly states that "LaDonna Paul agrees to follow all rules, policies, and procedures of the Department of Youth Services and Indian River Juvenile Correctional Facility." The Employer asserts that the Grievant violated Rule 5.01P by failing to maintain proper and complete visual contact of the youth under her supervision. Due to her failure to properly supervise the five (5) youths, two (2) of the youths engaged in sexual acts with each other in violation of PREA. Further, the Employer asserts that the Grievant violated Rule 5.28P by positioning herself at a table where furniture (chair) inhibited her view of youth under her supervision.

The Employer argues that the youths should not have been sitting on the floor in violation of the above-state rules. The Grievant's failure to redirect the youths constitutes a violation of the aforementioned work rules, policies, and procedures. At the arbitration hearing, the Grievant testified that during a team huddle between the interim unit manager and the staff, the interim unit manager, who was aware of the lack of tables in the room, instructed the staff to improvise. The Grievant explained that the interim unit manager wanted the youth to be engaged in program activity and did not care if they sat on the floor as long as they were not engaging in acts of violence. The Union President, who is also a juvenile correction officer, confirmed that the youths were permitted to sit on the floor in the dayroom, and no one had been disciplined for allowing youth offenders to sit on the floor. The video depicts the social worker walking past the youth sitting on the floor with no redirection to the youth. The testimony establishes that the social worker was not discipline. Although the evidence has relevance in

the determination of just cause, the evidence is not relevant for a LCA analysis because the limited focus is whether there is a violation of the rules. If the evidence established that the rules were change, the testimony would be given weight. The best evidence to support her affirmative defense is the testimony of interim unit manager (TWL). Otherwise, the evidence establishes disparate treatment.

The Union challenges the fairness of the investigation when the Employer does not interview the TWL, but the Grievant did not mention that the youths were permitted to sit on the floor as a result of the team huddle meeting during the investigation. Without said disclosure, the Employer properly assessed the incident in accordance with the rules, policies, and procedures. The Grievant responded under cross-examination that the investigator did not ask her about the supervisory change in policy. The Grievant further explained that the investigator only wanted yes or no answers even though she provided more than yes and no responses. Her testimony is suspect when she is asserting an affirmative defense. Nonetheless, assuming arguendo that the TWL gave such instructions, the Grievant permitted the youth due to the lack of supervision to be seated next to one another on the floor outside of her line of vision resulting in a PREA violation.

Leaving no stone unturned, the Union argues that the cited policies apply to the Dayroom only, and not the Group room. The Grievant was assigned to the Group room at all relevant times, and therefore she could not violate the Dayroom rules, policies and procedures. However, the Superintendent testified that the rooms are interchangeable and the only difference in the layout of the room is water cooler. The Superintendent also testified that the policies have been historically applied to both rooms. This was not refuted by the Union.

Rules and policies like contracts are read as a whole. Although the post order titles the section as Dayroom Expectations, the reading of the policy as a whole applies those same expectations to the Group room when it states that "If day room/group doors open inward, furniture must be limited in order to minimize the risk of a barricade." Bullet 2 reads: "Youth Specialists shall supervise, monitor, engage and interact with youth in a prosocial manner while in the day area/room." Here, the reference is to the day area/room, which infers the application to both rooms. Supervision in the correctional facility is more than present in the room but requires a direct visual of youth. This bullet also uses the verb monitor, meaning to watch, to keep track of, or check on. Further, Local Operating Procedure Number 301.06.01-01 states that the Staff are to be present when you are in the group room (even just one youth) and youth should never be left unsupervised. More importantly, the Grievant was trained on the rules and policies and understood that these rules applied to the Group room.

The Arbitrator finds that the Employer has met its burden of proof. The Grievant violated Rule 5.01P by failing to maintain appropriate visual contact of the youths under her supervision. The Grievant exercised poor judgment by positioning herself at a table where the chair inhibited her view of youth under her supervision in violation of Rule 5.28P. The Grievant's actions resulted in two (2) youths engaged in sexual acts with each other in violation of PREA.

In conclusion, this Arbitrator finds that the LCA is valid and enforceable. The LCA was negotiated with the Union's participation and placed into writing with the Grievant's consent. The Arbitrator finds that the Grievant has engaged in misconduct covered in violation of

the LCA. The penalty of discharge has already been agreed upon by the parties. The grievance is denied.

AWARD

Having heard, read and carefully reviewed the evidence and argumentative materials in this case and in light of the above Discussion, the Grievance is denied.

May 17, 2021

/s/ Meeta A. Bass

Arbitrator Meeta A. Bass
Reynoldsburg, Ohio

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Opinion and Award was served on the following individuals this day of May 17, 2021:

FOR THE EMPLOYER:

Bradley A. Nielsen
Indian River Juvenile Correctional Facility
Labor Relations Officer 3
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Columbus, OH 43228

FOR THE UNION

Bruce Thompson
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