Thomas J. Nowel, NAA
Arbitrator and Mediator
Cleveland, Ohio

IN ARBITRATION PROCEEDINGS PURSUANT TO
AGREEMENT OF THE PARTIES

In The Matter of a Controversy Between:	)	Grievance No.
	)	DRC-2016-
Ohio Civil Service Employees Association,	)	00418-3
Local 11 AFSCME, AFL-CIO	)	
	)	ARBITRATION
and	)	OPINION AND
	)	AWARD
Department of Rehabilitation and	)	
Correction, Ohio Reformatory for Women	)	December 22,
	)	2016
Re: Gerald Geter Removal	)	

APPEARANCES:
Garland E. Wallace, Labor Relations Officer, for the Employer; Derek Urban, OCSEA Staff Representative, for the Union; and Cullen Jackson for the Ohio Office of Collective Bargaining.

INTRODUCTION

This arbitration arises pursuant to a collective bargaining agreement between the State of Ohio and the Ohio Civil Service Employees Association, Local 11 AFSCME. The parties are in disagreement regarding the termination of employment of Gerald Geter, the Grievant, who had been employed as a Correctional Officer at the Ohio Reformatory for Women. Although the Grievant was the recipient of two notices of removal, this case involves issues surrounding the absenteeism charge and alleged violation of the Last Chance Agreement which had been executed by the Employer, Union and Grievant. The grievance appealing the termination of the Grievant was filed with the Employer on February 1, 2016. It was denied by the Employer, and the Union appealed the matter to arbitration.

The arbitrator was selected to hear this case pursuant to Article 25 of the collective bargaining agreement. Hearing was held on October 25, 2016 at the Ohio Reformatory for Women. At hearing, the parties were afforded the opportunity for examination and cross examination of witnesses and for the introduction of exhibits. Prior to hearing, the parties stipulated to a series of joint exhibits. The parties agreed that the matter was properly before the arbitrator.

The Employer utilized the services of a court reporter, Rhonda Lawrence, Geiger Brothers, Inc. – Bruner Corporation. The parties agreed that a copy of the transcript would be provided to the arbitrator. At the close of the hearing, the parties agreed to submit post hearing briefs no later than November 28, 2016 with submission of the Award no later than January 3, 2017.

ISSUE

The parties stipulated to the following issue to be decided by the arbitrator. "Was the grievant, Gerald Geter, removed from employment for just cause. If not, what shall the remedy be?"

STIPULATIONS

1. Grievant was classified as a Correctional Officer.
2. Date of hire: August 28, 1995.
3. Date of removal: January 19, 2016.
4. Grievant had an active Last Chance Agreement at the time of his removal.
5. The Grievant signed and received the Standard of Employee Conduct.

WITNESSES

TESTIFYING FOR THE EMPLOYER:
Ronette Burkes, Warden
Leon Hill, Deputy Warden
Laura Perna, Lieutenant
David Rispress, Lieutenant
Melonie Marcum, Correctional Officer

TESTIFYING FOR THE UNION:
Gerald Geter, Grievant
Dametra Carey, Steward
Ashley Gossard, Correctional Officer
Brett Gaines, Chief Steward
Arthur Jones, Correctional Officer
Roger Keller, Human Resources Manager (as if on cross examination)
Shavelle Little, Correctional Officer
Jossette Okereke, Captain (as if on cross examination)

RELEVANT PROVISION OF THE AGREEMENT

Article 24 – Discipline
24.01 – Standard
Disciplinary action shall not be imposed upon an employee except for just cause. The Employer has the burden of proof to establish just cause for any disciplinary action. In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have the authority to modify the termination of an employee committing such abuse. Abuse cases which are processed through the Arbitration step of Article 25 shall be heard by an arbitrator selected from the separate panel of abuse case arbitrators established pursuant to Section 25.04. Employees of the Lottery Commission shall be governed by ORC Section 3770.021.

LAST CHANCE AGREEMENT

A Last Chance Agreement was executed by the Employer, Union and Grievant on December 11, 2014 as follows.

The following constitutes a Last Chance Agreement, effectuated on December 11, 2014, made by and between the Ohio Department of Rehabilitation and Correction (DRC), and the Ohio Civil Service Employees Association, Local 11, AFSCME (OCSEA), and Gerald Geter, parties hereto.

The Department agrees to:
1. Hold in abeyance the removal order dated December 11, 2014 for violations of rule 3H of the Standards of Employee Code of Conduct.

The Employee agrees to:
1. Enter into a Last Chance Agreement effectuated on December 11, 2014 for any and all future violations of the Standards of Employee Code of Conduct Attendance-Based Track.
2. Strictly adhere to DRC policies and work rules with no further attendance related violations in order to retain their position.
3. The Employee also agrees and understands that a violation of any rule of the attendance based standard of the standards of employee conduct during the life of

this agreement shall result in the immediate termination of their employment from the Department of Rehabilitation and Correction.

All parties hereto agree that if the employee violates this Last Chance Agreement the appropriate discipline shall be termination from their position. Any grievance arising out of this discipline shall be limited to the question of whether or not the grievant did indeed violate this Last Chance Agreement. DRC need only to prove that the employee violated this agreement or the discipline grid. The Arbitrator shall have no authority to modify the discipline. All parties acknowledge the waiver of the contractual due process rights to the extent stated above.

This Last Chance Agreement is in full force and effect until December 11, 2016. This period may be extended by a period equal to employee's leave of fourteen (14) days or longer except for approved periods of vacation leave.

The Employee agrees they have signed this Last Chance Agreement voluntarily, without coercion or under duress.

GRIEVANCE

Statement of Grievance: Geter states on January 19, 2016 during a meeting with the Warden, present were 4 other executive staff, he asked the Warden for a Union rep he states he was told he didn't have the right to one he was being fired. Mr. Geter states he expressed his concern to her by telling her, she was firing him for a lie. He states Warden Burkes replied to him, you were sleeping. On January 19, 2015 [2016] Gerald Geter was terminated from duty for allegedly violating rule 3g leaving work area post facility without permission of a supervisor. The termination was in reference to an incident that occurred on October 24 2016 [2015] further citing this event as probable cause for termination in reference to a last chance agreement which was signed December 11, 2014 illegally, under duress and intimidation. Gerald Geter was terminated without just cause and for the sole purpose of punishment.
Resolution Requested: Reinstate Gerald Geter to his position as Correction Officer. Pay all back pay to the date of incident. Restore all leave balances. Cease and desist denying members union representation. Cease and desist violating the contract. Make grievant whole.

BACKGROUND

The Grievant, Gerald Geter, was a Correctional Officer at the Ohio Reformatory for Women until the termination of his employment on January 19, 2016. His hire date was August 28, 1995. During his service at the facility, the Grievant received discipline for a number of incidents. His employment was first terminated in 2014, and the action was held in abeyance when the Employer, Union and Grievant executed a Last Chance Agreement dated December 11, 2014. Among other terms of the Last Chance Agreement, the signatories agreed to an end date of December 11, 2016.

The Grievant served in the U. S. Army prior to his employment at the Ohio Reformatory for Women (ORC). He had been deployed in "Desert Storm." He attended officer candidate training.

The Grievant suffers from certain medical conditions and has been prescribed a number of medications. He has utilized sick leave in the past including a short period when he was hospitalized. The Employer has been aware of his diabetic condition and high blood pressure. The Grievant has exercised his FMLA rights.

The Grievant was assigned to first shift on October 23, 2015. He then volunteered to work the third or night shift from October 23, 2015 to October 24. The Grievant may have slept for two hours prior to arriving for the third shift overtime assignment. He was assigned to patrol the perimeter of the facility which required driving around the ORW continually as a precaution in the event of an escape. The Grievant carried a firearm. It was reported shortly after 1:00 am on

October 24 that the patrol vehicle had not been seen for a period of time. Lieutenant Laura Perna and Lieutenant David Rispress drove a golf cart around the perimeter searching for the patrol vehicle driven by the Grievant. The perimeter patrol vehicle was located on a dirt road near a sewage station building at approximately 1:20 am. Lieutenants Perna and Rispress reported that the Grievant was sleeping in a reclined position. The Lieutenants reported that they observed the Grievant sleeping for approximately ten minutes and then knocked on the window of the patrol vehicle. Perna and Rispress report that the Grievant was awakened. The Grievant denies sleeping. The Grievant was replaced on perimeter patrol by Correctional Officer Nos and was ordered to report to the infirmary for a medical exam (anatomical) in order to be certain that he was medically fit to continue working his shift. The Grievant reported that his sugar level was high, blood pressure was elevated and had only slept for two hours prior to reporting for the overtime shift. The Grievant was released to return to work by medical, and he reported to Lieutenant Rispress. At this point, the Grievant left the Lieutenant's office, went to the entry building, left the facility and apparently returned to his home.

The Employer claims that the Grievant was ordered to report to the Rogers 2 unit to replace Correctional Officer Nos who had taken the place of the Grievant on perimeter patrol. The Employer states that this order was given twice. The Grievant claims that he was given the option to work the remainder of the shift on Rogers 2 or leave the facility. The Employer claims that an option to leave the

facility was not offered, and supervision did in fact not know that the Grievant had left the facility until reported missing on the Rogers unit.

Pre-disciplinary hearing was convened on December 8, 2015. The charge was violation of Rule 3G – Absenteeism and ultimately violation of the Last Chance Agreement. In addition, the Employer terminated the Grievant for the sleeping incident. The Grievant received two separate termination notices following one investigation. The pre-disciplinary hearing was bifurcated as the hearing officer and administrator ended the first session proceedings due to having other appointments. The Grievant had not completed his rebuttal of the charges. The pre-disciplinary hearing was continued on December 14, 2015. The Union representative, who attended the hearing on December 8, 2015, was not available on December 14, 2015. The Employer nevertheless continued the hearing on the second date, and another Union representative attended the meeting although he was not familiar with the issues surrounding the matter and was therefore unprepared. The Grievant's employment was terminated following the pre-disciplinary hearings. The Union grieved the removal, and the matter was appealed to arbitration.

At an earlier time, the Human Resources Manager, Roger Keller, publicly revealed medical and FMLA information regarding the Grievant. Mr. Keller made derogatory and profane remarks regarding certain employees in the entry building and which were generally directed at the Grievant. The Grievant filed a number of complaints against management in the past. Keller made additional negative comments at a later time.

Although the Grievant was terminated twice for separate alleged violations of policy, the Rule 3G and Last Chance Agreement violations are the subject matter of this arbitration case.

POSITION OF THE EMPLOYER

The Employer reminds the arbitrator that this case involves the violation of Rule 3G, Absenteeism, leaving the work area/post/ facility without the permission of a supervisor. The discipline matter regarding the sleeping incident is a completely different issue. The Employer emphasizes that the discipline regarding the absenteeism issue was presented to the Grievant and Union first and the discipline regarding the sleeping issue second. The discipline regarding the absenteeism is the subject of the Last Chance Agreement. The Employer argues that this case is straight forward. Any violation of the absenteeism rule must result in termination of employment as dictated by the Last Chance Agreement, and the arbitrator has no authority other than to enforce the LCA. Although the Grievant and Union suggest that coercion was involved when he signed the LCA, he had the option to not enter into the agreement. He and the Union clearly had a choice in the matter. The Grievant knowingly entered into the agreement as indicated by his signature.

The Employer states that the Grievant was given specific instructions to report to the Rogers 2 unit. First when he was instructed to report to the medical office and second when he brought his medical report to Lieutenant Rispress at the Captain's office. The Employer states further that at no time did any supervisor give

the Grievant the option of working Rogers 2 or going home. Testimony of Lieutenants Rispress and Perna confirm this. The Employer states that testimony reveals that the Grievant left the office abruptly slamming the door following the second order to report to Rogers 2. The Employer states that supervision assumed that the Grievant reported to Rogers 2. The Employer argues that the case at arbitration comes down to the question of whether the Grievant was granted permission to leave the facility, and evidence clearly indicates that permission to leave was never granted. The Grievant, in fact, never asked for permission to leave. The Grievant is therefor in violation of the absenteeism rule which is in direct violation of the Last Chance Agreement.

The Employer states that the disciplinary process regarding the absenteeism charge was handled separately from the charge of sleeping on duty which is a violation of the performance track of the disciplinary grid. The Employer states that the sleeping charges were not listed on the notice of pre-disciplinary hearing (Jt. Exb. 7).

The Employer argues that no one in management was "out to get" the Grievant. The actions of HR Manager Keller were appropriate, and Lieutenant Rispress had worked at ORW for four months and therefore had no time to form an opinion regarding the Grievant. There was no conspiracy by management, as the Union suggests, to discriminate against the Grievant or look for ways to end his employment at the facility. The Grievant accuses Lieutenant Rispress of lying, but evidence at hearing proves otherwise.

The Employer argues that the pre-disciplinary hearing in this matter was conducted appropriately. The Grievant was properly represented at both sessions of the hearing. The Employer suggests that all Union representatives are adequately trained, and the fact that a different representative participated at the second day of hearing, does no invalidate the process.

The Employer states that it is critical that two Correctional Officers staff each shift to complete the inmate count which ensures the safety of staff, the public and inmates themselves. The Grievant's presence on Rogers 2 was critical. The Grievant had the right to ask to be relieved of his assignment but never did so. Staff who observed the Grievant leaving the facility had no knowledge if Mr. Geter had been given permission to leave. The Grievant knew he was on a Last Chance Agreement for attendance issues but left the institution in any event. The Employer asserts that the Grievant violated the absenteeism policy; he violated his Last Chance agreement; the grievance of the Union must be denied in its entirety.

POSITION OF THE UNION

The Union states that the Grievant, being a twenty-one year employee, knew and understood the rules and policies of ORW and therefore was aware that he could not leave the facility without permission. The Union emphasizes that allegations against the Grievant are false. The Grievant has stated that he was given the option of leaving the institution or reporting to Rogers 2. The Union states that the Grievant has consistently held that he was given the option by supervision. His story has not changed since the beginning. He clearly believed that this was his

choice. He was directed to report to the infirmary, and his medical report indicated that his blood pressure was elevated and sugar level was high. The Union states that it was therefore reasonable for supervision to allow the Grievant the option of leaving the facility. In addition, time clock evidence supports the Grievant's version of events. The Union states that Correctional Officer Gossard recalled the Grievant telling her that the was given the option to leave when he encountered her as he left the facility. The Union states that, if Lieutenant Rispress was concerned about the whereabouts of the Grievant, he did not make any attempt to contact him following his departure.

The Union argues that evidence and testimony from Lieutenants Perna and Rispress were confusing and contradictory regarding the alleged direct order to report to Rogers 2. The Union emphasizes that this confirms supervision's dishonesty in this matter. It is unclear the number of times the Grievant was told to report to Rogers 2 based on the testimony and reports of the two Lieutenants. In addition, Lieutenant Rispress testified at the arbitration hearing that the Grievant stormed out the door and slammed it. Never before during the investigation, pre-disciplinary hearing or any other setting had Rispress made this statement. The Union emphasizes the dishonesty involved in the matter. The Union states that Lieutenant Rispress stated that the Grievant asked if he thought he was drunk. But the Grievant never made this statement. Lieutenant Rispress reported that the Grievant was sleeping when he was ordered to leave the perimeter vehicle, but he testified at arbitration that he could not prove he was sleeping. The Union highlights the inconsistencies and untruthful statements. The Union argues that

Lieutenants Rispress and Perna are relatively new members of management and are hoping for advancement and have therefore covered up their mistakes and poor handling of the entire incident.

The Union argues that the investigation lacked fairness and due process as the various incident reports were not provided to the Grievant or Union representative prior to the Grievant's investigative interview. The Union states that Captain Okereke admitted that providing incident reports is common practice. Further, only one investigation was conducted but two specific charges were brought against the Grievant and two notices of termination of employment were issued. The Union argues that this is double jeopardy. The Union states that, in an earlier arbitration regarding the issuance of two distinct disciplines resulting from one investigation, Arbitrator Washington found that the actions of the Employer resulted in double jeopardy. The Union argues further that management's conduct at the pre-disciplinary hearing denied the Grievant his due process rights when the hearing was ended abruptly and reconvened when the original Union representative was unavailable. The Union argues that the Grievant's ability to rebut the charge was compromised.

The Union argues the significant bias against the Grievant leading to his termination. The Union argues that the actions of Human Resources Manager, Roger Keller, have been discriminatory and confrontational including the leaking of FMLA protected information to others; his profane statements directed to the Grievant in the presence of other employees; and his confrontational comments

regarding it being ”firing day” of the Grievant. These actions and behavior were confirmed by a number of employees and management as well.

The Union suggests that the Employer knew that a charge of sleeping would not be sufficient grounds to terminate the Grievant’s employment. The charge of leaving the facility without authorization became therefore the approach taken by the Employer to remove the Grievant from his position. The Union argues that this assertion is supported by evidence and testimony.

The Union urges the arbitrator to reinstate the Grievant; order the payment of lost wages including missed overtime opportunities; reinstate all leave balances and payments to OPERS; reinstate lost seniority; provide payment for the cost of medical, dental and vision expenses incurred by the Grievant and members of his family; remove all record of the discipline from the Grievant’s personnel record; and generally make the Grievant whole.

ANALYSIS AND OPINION

The Employer terminated the employment of the Grievant twice. At the time of the hearing at arbitration, both disciplinary actions had been appealed by the Union. By agreement of the parties, the appeal of the termination regarding potential violation of Rule 3G, “Leaving the work area/post/ facility without the permission of a supervisor,” is considered first and is the subject matter of this case at arbitration. The parties agree that there are two employee rule tracks at the institution, an attendance track and performance track. This division is reflected in the disciplinary grid (Jt. Exb. 183 – 188). There was no evidence at hearing that the

Grievant had active discipline regarding the performance track. Evidence indicates that the Grievant's record included a series of attendance violations which resulted in discipline. The Grievant was on a Last Chance Agreement regarding any violation of the attendance track. Therefore, if the arbitrator finds that an attendance violation occurred, the Last Chance Agreement bars reinstatement and modification of the imposed disciplinary penalty. "Any grievance arising out of this discipline shall be limited to the question of whether or not the grievant did indeed violate this Last Chance Agreement. DRC need only to prove that the employee violated this agreement or the discipline grid. The Arbitrator shall have no authority to modify the discipline" (Geter Last Chance Agreement, Jt. Exb. 2). At hearing, testimony included numerous issues, incidents and factors surrounding the employment of the Grievant and members of management. Nevertheless, the Last Chance Agreement is controlling. It is what the parties and Grievant bargained. It is their agreement.

The Union argues that the notice of termination regarding the alleged sleeping incident is dated December 7, 2015 and is therefore the only violation to be considered. To then terminate the Grievant for an absenteeism violation is redundant and constitutes double jeopardy. The notice of termination for the absenteeism issue is dated December 17, 2015. Both notices were signed by Warden Burkes and dated as noted herein. The notices were presented to the Grievant during a meeting on January 19, 2016. The Grievant was presented with the notice of termination for absenteeism first based on his testimony at hearing. The Union argues otherwise, but this was the testimony of the Grievant. The Union suggests double jeopardy, but evidence indicates that two separate rule violations

may have occurred. Sleeping on the job, as the parties would agree, is a performance violation, and leaving the job site without permission is potentially a violation of the attendance track. Dividing rule violations in this manner has been the practice at ORW. If found to be true, that the Grievant was found sleeping on the job and then left the facility without permission, two separate violations would have occurred giving the Employer reason to impose two disciplinary actions. The Union's argument regarding double jeopardy is not convincing. Both parties cite an arbitration award of Arbitrator Washington to support their positions regarding double jeopardy. It is unclear what Arbitrator Washington wrote regarding double jeopardy and the circumstances surrounding the matter, as the award was not included with the post hearing briefs of either party.

The Union goes on to argue that a lack of due process occurred as there was one investigation which resulted in two distinct imposed disciplines. But it is not uncommon that an investigation would uncover an unanticipated policy violation resulting in unanticipated discipline. The Employer, in this matter, cannot be faulted for conducting one investigation regarding allegations of two rule violations which may have occurred during the same shift and within a short period of time. The Employer separated the charges against the Grievant into two pre-disciplinary packets, and each issue was considered separately with two pre-disciplinary hearing officers (Jt. Exb. 14). Random Watson conducted the pre-disciplinary hearing regarding the charge involving Rule 3G, unauthorized leaving. The Union argues lack of due process in that the Grievant was not permitted to complete his rebuttal of the charge regarding Rule 3G as Hearing Officer Watson and Employer

representative, Captain Okereke, closed the hearing abruptly, Watson indicating that he had heard enough and Okereke stating that she had another appointment. This behavior of the part of the Employer is disturbing. As the Union argues, the Grievant had a contractual and legal right to present a complete rebuttal. Employer representatives realized the shortcomings of their approach and reconvened the hearing a few days later but did so when the original Union steward was not working and was unavailable to represent the Grievant. How difficult would it have been to re-schedule the second day of hearing one or two days later when Union steward Carey would have been available? Substitute Union steward Gaines expressed his lack of knowledge regarding the case. The Employer suggests that all Union stewards are well trained regarding pre-disciplinary hearings. But faced with a potential termination of employment, the Employer fell short in the manner in which the pre-disciplinary hearing was conducted. It should be noted that Union Steward Gaines agreed, at the onset of the second day of hearing, to move forward with the proceedings (Jt. Exb. 8). Nevertheless, the Grievant was given the right, during two scheduled hearings, to "ask questions, comment, refute or rebut" as outlined in Section 24.05 of the collective bargaining agreement. Generally, the Grievant was not denied his rights regarding the pre-disciplinary hearing, but the Employer could have done much better and opened itself to criticism and challenge. Management at ORW may wish to review the manner in which these matters are conducted in the future.

The Union calls into question actions and behavior of Human Resources Manager Roger Keller and suggests that bias on the part of the Employer impacted

the decision to terminate the employment of the Grievant. Mr. Keller revealed certain medical and FMLA information regarding the Grievant, but this appears to have been a procedural deficiency rather than a discriminatory action, but evidence indicates that he directed profane remarks at the Grievant in a public work area at a time prior to the instant matter. Evidence indicates further that Keller stated "it's a firing day" to the Grievant in a work area a few days following the October 24 incident. Behavior of this nature for a Human Resources official, or any member of management, is completely unprofessional. Nevertheless, what is at issue in this matter is the Last Chance Agreement and actions of the Grievant in respect to violation of the absenteeism disciplinary track and grid, something he controlled.

The testimony of Lieutenants Perna and Rispress are generally consistent with their investigatory statements. There may have been small deviations or inclusion of things remembered at the arbitration hearing, but, under oath, their testimony paints a clear picture of the incidents which occurred during the early morning hours of October 24, 2015. When they discovered the Grievant in the perimeter vehicle, Lieutenant Rispress ordered the Grievant to report to the office, and, once there he was directed to report to the medical office and was told he would be assigned to Rogers 2 to replace Correctional Officer Nos who had taken his place on the perimeter assignment. When he returned to the office, Lieutenant Rispress again directed the Grievant to report to the Rogers 2 unit. Although the Union suggests that this did not occur, sworn testimony indicates that the Grievant stormed out of the office and slammed the door. Lieutenant Perna accompanied Rispress during the entire series of incidents from the search for the perimeter

vehicle to the two directives given to the Grievant to report to Rogers 2. Her testimony corroborates that of Lieutenant Rispress. The Union argues that the Lieutenants are new members of management and have attempted to cover certain mistakes, but Perna has been employed by the Department of Rehabilitation and Correction for fifteen years and Rispress for five years. The Union has emphasized that they have been dishonest in their assertions that they directed the Grievant to report to Rogers 2 without an option of leaving the facility. There is no evidence to suggest that the Lieutenants are dishonest and no evidence that either have been untruthful in the past. Their credibility remains intact.

Correctional Officer Marcum stated that the Grievant left the facility during the middle of the night shift, but she had no knowledge if he had been given permission by supervision to leave. Additionally, Correctional Officer Gossard testified that she observed the Grievant leave the facility and that he told her that he had permission to leave. CO Gossard did not observe or hear a member of supervision grant the Grievant the option of leaving.

There are many moving pieces in this case, allegations of dishonesty, bias and discrimination. The core of this matter, nevertheless, is the Last Chance Agreement and violation of the Absenteeism Track and Grid. Evidence in this matter is clear. The Grievant left the facility after 2:00 am without permission of a supervisory employee. He was expected in Rogers 2, and Lieutenants Rispress and Perna were surprised to learn that he never reported to the assignment. The Grievant's medical report indicated elevated sugar levels and blood pressure, but it also noted that he

was released to continue and complete the shift. Had he asked, supervision may well have relieved him of his assignment. It should be noted that CO Nos replaced the Grievant on the perimeter assignment, and it was important that another CO replace him on Rogers 2. But the Grievant left the facility without permission, and the fact that he slammed the door when leaving the office after being assigned to Rogers 2 indicates his frame of mind when leaving the facility. The Union makes a point that supervision made no attempt to contact the Grievant after his departure, but evidence indicates that Lieutenant Perna did, in fact, attempt to call him, getting an answering machine when he failed to answer his telephone.

The Grievant has been employed for twenty-one years with the Department of Rehabilitation and Correction. He has maintained an acceptable performance record but in recent years was subject to a series of disciplinary actions, due to Absenteeism Track rule violations, which culminated in the Last Chance Agreement. Regardless of the reason for leaving the institution without authorization, the Grievant violated Rule 3G when he did so. The Last Chance Agreement states that any violation shall lead to termination. The Employer has proven that the Grievant violated Rule 3G. "The Arbitrator shall have no authority to modify the discipline." The Union argued that the Grievant was coerced when he executed the Last Chance Agreement, that he did so under duress and pressure from the Employer. The final statement contained in the LCA states "This employee agrees they have signed this Last Chance Agreement voluntarily, without coercion or under duress." The Grievant signed the document. The Last Chance Agreement is an important tool

utilized by labor and management to resolve disputes, allow for continued employment and provide for that one last chance. It must be honored by the arbitrator. The Grievant violated the Last Chance Agreement. There was just cause, therefore, to terminate his employment. Grievance is denied.

AWARD

Grievance is denied.

Signed and dated this 22nd Day of December 2016 at Cleveland, Ohio.

_____
Thomas J. Nowel, NAA
Arbitrator

CERTIFICATE OF SERVICE

I hereby certify that, on this 22nd Day of December 2016, a copy of the foregoing Award was served, by electronic mail, upon Garland E. Wallace, Labor Relations Officer, for the Employer; Derek Urban, OCSEA Staff Representative, for the Union; and Cullen Jackson for the Ohio Office of Collective Bargaining.

_____
Thomas J. Nowel, NAA
Arbitrator