

1590

OPINION AND AWARD
IN THE MATTER OF THE ARBITRATION BETWEEN
OHIO BUREAU OF WORKERS' COMPENSATION
-AND-
District 1199/SEIU

For the Union

Harry W. Proctor, Administrative Organizer, District 1199/SEIU
Shelley Kastner, Grievant

For BWC

Roger A. Coe, Management Advocate, Labor Relations Officer
Joseph Dauer, Programmer Specialist 2
Jerome Elbicki, BWC Claims Representative Supervisor
Mark Fritz, 1199 Union Delegate, Regional Development Advisor
Jay Reel, BWC Claims Specialist
Neni M. Valentine, Labor Relations Specialists/OCB 2nd Chair
Fred Schnitzapahn, BWC Service Office Manager

Grievance No.

34-11-011010-0094-02-09

Hearing Date

April 19, 2002

Subject of Dispute

Last Chance Agreement/False Statements

Date of Decision

July 7, 2002

Award

Grievance Denied

Arbitrator: Robert Brookins, J.D., Ph.D.

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I. Preliminary Statement

The Parties to this dispute are the Ohio Bureau of Workers Compensation ("Employer") and District 1199/SEIU ("Union").^{\1} On September 21, 2001, BWC notified the Grievant that a removal action was contemplated against her and that a pre-disciplinary hearing would convene on September 27, 2001.^{\2} On September 28, 2001, the Pre-Disciplinary Hearing Officer issued a letter calling for progressive discipline commensurate with the offenses established.^{\3} In a letter dated October 1, 2001, the Grievant was notified that her removal would become effective October 4, 2001.^{\4} The Union responded with Grievance No. 34- 11-011010-0094-02-09 on October 10, 2001^{\5} and Grievance No. 34-11-011010-0095-02-09 on October 10, 2001.^{\6} On October 14, the Union withdrew Grievance No. 0095 and combined it with Grievance No. 0094.^{\7} The Union notified BWC of its intent to arbitrate Grievance No. 0094 on December 3, 2001.^{\8} A Step 3 hearing was held on December 12, 2001 and the Step-3 decision denying Grievance No. 0094 was issued on December 18, 2001.^{\9}

The Parties selected the undersigned from their permanent panel of grievance arbitrators to hear this matter and agreed on April 19, 2001 as a hearing date. Accordingly, an arbitral hearing was convened on that date before the Undersigned, at the Ohio Office of Collective Bargaining, in Columbus Ohio. The dispute contained no outstanding procedural issues and the parties stipulated that the matter was properly before this Arbitrator. At the beginning of the hearing, the parties agreed that the validity of the Last Chance Agreement ("Agreement" or "Last Chance Agreement") itself was not an issue in this dispute. A single issue was presented to the Undersigned as set forth below. The Parties had a full and fair opportunity to present evidence and arguments in support of their positions in this matter. Specifically, they were permitted to make opening statements, to introduce admissible documentary evidence, to present witnesses who testified under oath, and to cross-examine the opponent's witnesses. Finally, the parties elected to submit post-hearing briefs in lieu of closing arguments. The last post-hearing brief was

received on or about May 31, 2002 when the arbitral record was closed.

II. The Facts

The relevant facts surrounding this dispute are not sharply disputed. On October 4, 2001, the Employer terminated Ms. Shelley Kastner ("Grievant"), a twelve-year employee with a solid work record for violation of her Last Chance Agreement, which had approximately two weeks to expiration. Upon her removal, the Grievant was an Industrial Rehabilitation Case Management Specialist in the Independence Service Office of the Ohio Bureau of Workers' Compensation.

The Grievant's problems began when she returned to work on Monday, April 30, 2001, after being off for the weekend, beginning Friday, April 27, 2001. When she returned to work, on Monday, April 30, the Grievant discovered she could not gain access to her BWC-ASSIGNED computer. The computer would not accept her password and continuously displayed a statement entitled "400X."

The Grievant contacted the BWC Help Desk, which instructed her on how she should circumvent the "400X" statement and gain access to her computer, for the day. Subsequently, she sought to enlist the services of Mr. Joseph Dauer, a Program Specialist 2, who had resolved any computer problems the Grievant encountered with BWC's computers since approximately October 1995. In the Grievant's view, Mr. Dauer knew everything about the Employer's computers. This time, however, Mr. Dauer did not repair the problem. In fact, after troubleshooting the problem, he denies ever having seen the "400X" statement. Thus, the Grievant's problem persisted and she grew ever more anxious about not being able to perform her computer-related tasks because she believed that "400X" was in control of her machine. Indeed, on occasion, she was unable to produce or access letters that she needed to complete allegedly because of "400X."

To exacerbate matters, Mr. James Conrad, BWC Administrator, circulated a global E-mail reminding employees that BWC disallowed them either to download or to otherwise introduce objectionable material, such as pornography, onto BWC's computers. Neither Mr. Dauer nor any other BWC computer

expert could find any objectionable material on the Grievant's computer, though the computer did crash after all but two system files were deleted, at which time Mr. Dauer gave the Grievant another computer until he could reload the system files onto her original computer.

The Grievant's anxiety mounted until virtual desperation impelled her to communicate her fears and suspicions to others. Thus, on Saturday, June 23, 2001, the Grievant sent an E-mail to Mr. Lou Leonard from her personal computer at home. That E-mail stated in relevant part:

Late afternoon yesterday [6/22/01], I called the BWC Help Desk. . . . One of the issues . . . was the 40OX message. . . . The Help Desk answer to this issue told me what has been going on. . . . I cannot get into my computer . . . [because it] is owned by someone else who has their password which belongs to the initial person who owns my computer. This is how someone else is getting into my computer and making their changes which I am unaware of. I do not know how bad some of the changes made have been or will be. *This appears to be how Joe Dauer and Jerry Elbicki set up Jerry's control of my BWC Computer.* I am very concerned about Joe. Many times, at least three times, I had asked Joe about the 40OX message I had to override. Joe kept saying he had no idea where that message came from or how to deal with that message, *even though honest Joe knew exactly what had occurred. It appears that on 04/27/01, Joe messed up my computer enough to eventually convince me that I needed a new system.* Joe installed the new system and will not change anything that will interrupt this new system. Why am I concerned because I have never, ever done anything, said anything or acted in any negative way toward or about Joe Dauer. *But look at how Joe Dauer has no problem with destroying my entire career at BWC. If Joe can so easily destroy my career, what else will Joe do to me (since he does not appear to limit himself). This does not make Jerry Elbicki (and Jay Reel) innocent because they have been doing this for years. If we are coming to end of Jerry & Jay's abilities to get me within the BWC environment, will Jerry & Jay ultimately seek revenge to get me outside of the BWC environment. . . . ?*

On Saturday, June 24, 2001, the Grievant forwarded an email from her home computer to Mr. Conrad, stating in relevant part: "I have very recently learned that I do not have control over all of what goes into my computer and comes out of my computer. As follow-up to your recent e-mail forwarded to all BWC State Employees', I am very afraid that I may have pornographic pictures, comics/cartoons or jokes somewhere in the BWC computer system I am authorized to use. . . ."

Finally, in a letter dated September 21, 2001, Ms. Nancy Kuss, BWC Meeting Officer, stated in relevant part:

This letter is to inform you that disciplinary action is contemplated against you in the form of a removal . . . for the following reasons:

You are being charged under BWC Progressive Disciplinary Guidelines (Work Rules) for Bargaining Unit Employees: Insubordination (A) Willful disobedience/failure to carry out a direct order and Failure of Good Behavior (A) Making false, abusive, inflammatory, or obscene statements toward or concerning another employee, supervisor or a member of the general public.

Specifically, you violated your *Last Chance Agreement* dated October 8, 1999, by making false statements regarding your immediate supervisor and your service office manager, Fred Schnitzapahn. You also E mail without copying your immediate supervisor in direct violation of a written direct order."¹⁰

On or about July, 19, 2001, BWC Internal Affairs Director Richard Bivins and Internal Affairs Agent Steven Johnson interviewed the Grievant pursuant to her complaints about the computer problems.

Relevant parts of that interview are set forth below:

Kastner was asked directly about Elbicki and Reel relative to the assertions set forth in her email dated 6/23/01. She related that she is not comfortable with Reel because when she met him, *he told her that he was in a motorcycle gang* and that they live by their own rules. . . .¹¹

Kastner acknowledged that she has no proof of any of the above and stated that these are "just my feelings". . . .

On September 19, 2001, the Grievant was subjected to an investigatory interview.¹² Her pre-disciplinary hearing was held on Thursday, September 27, 2001 before Pre-Disciplinary Officer Nancy Kuss. On Friday, September 28, 2001, Officer Kuss recommended "progressive discipline commensurate with the offense."¹³ On October 1, 2001, Mr. James Conrad issued a letter of removal, which stated in pertinent part:

This letter is to inform you that you are hereby removed from employment as an Industrial Rehabilitation Case Management Specialist in the Independence Service Office of the Ohio Bureau of Workers' Compensation (BWC) effective the close of business Thursday, October 4, 2001. . . . You have been found in violation of the following BWC Progressive Disciplinary Guideline (Work Rules) for Bargaining Unit Employees: Insubordination (A) Willful disobedience/failure to carry out a direct order and Failure of Good Behavior (A) Making false, abusive, inflammatory, or obscene statements toward or concerning another employee, supervisor or a member of the general public.

Specifically, you violated your *Last Chance Agreement* dated October 8, 1999, by making false statements regarding your immediate supervisor and two (2) BWC bargaining unit employees. You also sent an E mail without copying your immediate supervisor in direct violation of a written direct order.¹⁴

*How she violated
her last chance
agreement*

III. Relevant Contractual Provisions

ARTICLE 8 - DISCIPLINE

Disciplinary action may be imposed upon an employee only for just cause.

8.02 Progressive Discipline

The principles of progressive discipline shall be followed.

These principles usually include:

- A. Verbal Reprimand
- B. Written Reprimand
- C. A fine in an amount not to exceed five (5) days pay.
- D. Suspension
- E. Removal

The application of these steps is contingent upon the type and occurrence of various disciplinary offenses. The employee's authorization shall not be required for the deduction of a disciplinary fine from the employee's paycheck.

IV. Other Relevant Documentary Evidence Last Chance Agreement

* * * *

EMPLOYEE

1. Specifically, agrees and understands that the aforementioned actions/violations constituted failure of good behavior (making false, abusive, inflammatory or obscene statements or intentionally filing false charges regarding harassment toward or concerning another employee, supervisor or a member of the general public) and dishonesty (falsification of an official document) as defined in the work rule disciplinary guide; and \15
2. Acknowledges that she has received a copy of this Agreement, has been fully informed of the terms and Consequences of it and has voluntarily entered Into the Agreement after having been advised by her union representative.
3. Agrees to take all legally proscribed medications.

By signing this Agreement, the EMPLOYEE and UNION agree to waive any contractual time restrictions regarding the imposition of discipline.

It is agreed by all of the parties hereto that if the EMPLOYEE violates this Last Chance Agreement and/or if there is any violation of the work rules as they relate to #1 failure of good behavior, or #2 falsification of an official document, the appropriate discipline shall be termination. It is agreed that any other Work Rule violations shall result in appropriate discipline consistent with the principles of progressive discipline.

The UNION shall have the right to arbitrate whether or not a violation of the Last Chance Agreement took place. However, if an arbitrator determines that a violation of the Last Chance Agreement and/or the above cited Work Rules occurred, the arbitrator shall be without authority to

modify the discipline imposed.

This Last Chance Agreement is in full force and effect for twenty-four (24) months from the date of the employee's signature on this Agreement. This twenty-four (24) month period may be extended by a period equal to employee leaves of fourteen (14) days or longer except for approved periods of vacation leave.

DIRECT ORDER

I am hereby issuing you a direct order to reiterate my earlier direct orders that you must include Jerry Elbicki OR myself (Fred Schnitzapahn), on all e-mails you send to Fraud/Special Investigations or any e-mails you send where you have concerns about a claim. If you suspect Jerry or myself to be involved in the suspected alleged fraud, you are to notify another member of Independence Management OR Labor Relations

Relevant E-Mails

June 23, 2001
9:37 p.m.

The Grievant wrote to Lou Leonard:

Hi Lou,

Here is a summary of my recent understanding of events within the BWC office: Late afternoon yesterday [6/22/01], I called the BWC Help Desk to get answers for my broken computer issues. One of the issues I presented to the BWC Help Desk was the 1400X message that pops up on my screen and rejects my password when I try to appropriately enter my computer. I need to over-ride this message by clicking on the keys at the bottom of the screen to type in my password. This way I can get into my computer. The Help Desk answer to this issue told me what has been going on:

I should have complained because the reason I cannot get into my computer is cause my computer is owned by someone else who has their password which belongs to the initial person who owns my computer. This is how someone else is getting into my computer and making their changes which I am unaware of. I do not know how bad some of the changes made have been or will be. This appears to be how Joe Dauer and Jerry Elbicki set up Jerry's control of my BWC Computer. I am very concerned about Joe. Many times, at least three times, I had asked Joe about the 400X message I had to override. Joe kept saying he had no idea where that message came from or how to deal with that message, even though honest Joe knew exactly what had occurred. It appears that on 04/27/01, Joe messed up my computer enough to eventually convince me that I needed a new system. Joe installed the new system and will not change anything that will interrupt this new system. Why am I concerned because I have never, ever done anything, said anything or acted in any negative way toward or about Joe Dauer. But look at how Joe Dauer has no problem with destroying my entire career at BWC. If Joe can so easily destroy my career, what else will Joe do to me (since he does not appear to limit himself? This does not make Jerry Elbicki (and Jay Reel) innocent because they have been doing this for years. If we are coming to end of Jerry & Jay's abilities to get me within the

BWC environment, will Jerry & Jay ultimately seek revenge to get me outside of the BWC environment? I thought it was a good idea to forward this update on my home computer. Have a nice weekend! !

June 24, 2001
8:30 p.m.

The Grievant wrote to:

Administrator Conrad:

I am very recently learned that I do not have control over all of what goes into my computer and comes out of my computer. As follow-up to your recent e-mail forwarded to all BWC State Employees', I am very afraid that I may have pornographic pictures, comics/cartoons or jokes somewhere in the BWC computer system I am authorized to use. I did search my BWC computer system to the best of my ability and did not find pornographic material. But anything can be added to my BWC computer system at any time and may be located where I cannot find it. I may be able to begin an end to my current computer experience, tomorrow.

Thanks,
Shelley Kastner

June 24, 2001
8:45 p.m.

Chuck Quinlan wrote to:

Shelley and Gary. Mr. Conrad asked me to look into the situation described below. I discussed it w/ Jim Cunningham, our IT Network Director, to try to figure out what is going on. Neither Jim nor I are completely clear on your specific concerns. From what we gathered you are very concerned that the named individuals have inappropriately obtained your password and may be misusing your PC and/or account. To be certain, either Jim or a member of his management team will be contacting you to better understand the issues and to take a look at the PC and account in question. We will then follow an appropriate course of action depending upon what we find.

Sincerely

Chuck Quinlan

June 26, 2001
6:45 p.m.

The Grievant wrote to:

Chuck,

All of you are so kind.

I am very interested in sharing what I have experienced with you. And today, I found additional information that is important to share with you. The reason I am probably concerned about what is happening is that I have no clue as to why they are behaving this severely. It is probably because they do not like me. There are always people one likes and dislikes. But to go this far?? The people involved appear to be over the line and out of control. For this reason, I cannot anticipate how much farther they will go. But,,, My Family is going on vacation from 7/2/01 to 7/13/01. And we have to go. Our son, Carter, graduated from high school this year and has joined the military. Carter will be leaving with the military at the end of July. This summer will be our very last Family vacation that we will definitely be together for a prepared and planned vacation (things do not end, they just change ...).

Thanks, again. Your response has made me feel calmer,
Shelley

Relevant Excerpts From Letter of Removal

October 1, 2001

Shelley Kastner
636 Maplewood Avenue
Sheffield Lake, Ohio 44054

Dear Ms. Kastner:

This letter is to inform you that you are hereby removed from employment as an Industrial Rehabilitation Case Management Specialist in the Independence Service Office of the Ohio Bureau of Workers' Compensation (BWC) effective the close of business Thursday, October 4, 2001.

After reviewing the recommendation of the meeting officer and considering the information presented by you and your union representative, it has been determined that just cause exists for your removal. You have been found in violation of the following BWC Progressive Disciplinary Guideline (Work Rules) for Bargaining Unit Employees: Insubordination (A) Willful disobedience/failure to carry out a direct order and Failure of Good Behavior (A) Making false, abusive, inflammatory, or obscene statements toward or concerning another employee, supervisor or a member of the general public.

Specifically, you violated your Last Chance Agreement dated October 8, 1999, by making false statements regarding your immediate supervisor and two (2) BWC bargaining unit employees. You also sent an E mail without copying your immediate supervisor in direct violation of a written direct order.

* * * *

Sincerely,

James Conrad

V. The Stipulated Issue

The parties stipulated to the issue before the Arbitrator to be Did Shelley Kastner violate the terms of the Last Chance Agreement and was her removal for Just Cause? If not, what should the remedy be?

VI. Summaries of Parties' Arguments

A. Summary of BWC's Arguments

1. The Grievant violated BWC's Work Rules and her Last Chance Agreement by making false and reckless statements about supervisors and coworkers. For example, Ms. Kastner made statements like "Joe Dauer is out to destroy my career at BWC."
2. The Grievant's mailing to the BWC CEO could serve no other rational purpose than to damage the careers of innocent individuals.
3. The Union presented no objective evidence to establish that any of the statements in question were true or accurate.
4. The Employer satisfied all seven relevant tests for removing the Grievant

B. Summary of Union's Arguments

1. The Grievant's removal was not for just cause under the Last Chance Agreement and Article 8 of the Collective-Bargaining Agreement.
2. The Grievant never instigated an investigation, and lacks the power to do so. The record is unclear as to whether the Grievant was fired for prompting an investigation or violation of work rules as set forth in Last Chance Agreement.
3. Any accusatory statements by the Grievant resulted from her genuine fear and frustration with "400X", the computer problems she experienced, and her lack of complete control of information entering her computer. The Grievant made no malicious comments.
4. The Grievant contacted Administrator Conrad because of his previous Global E-Mail stating that BWC would be checking its employee's computers for objectionable material.
5. Management failed to produce a policy that prohibits BWC employees from contacting Administrator Conrad.
6. The Agreement gives the impression that there were medications which if not taken would adversely affect the Grievant's on-the-job-behavior.

VII. Analysis

A. Preliminary Considerations

1. Evidentiary Standards

Although there is language in the letter of removal¹⁶ suggesting that the Grievant was charged with violating the Written Direct Order, that order is not the case.¹⁷ For the stipulated issue before the Undersigned is whether the Grievant violated the Last Chance Agreement.¹⁸ Also, because this is a disciplinary matter, the Employer has the burden of persuasion or the risk of nonpersuasion regarding its

Issue is not violation of written Direct Order, but rather violation of last chance agreement

Burke is an employer

charges against the Grievant, and the Union has the burden of persuasion regarding its affirmative defenses.

2. Arbitral Approach to Last Chance Agreements

Last Chance Agreements stand or fall on their language, are often narrowly construed, and may exhibit some tension with corresponding Collective-Bargaining Agreements. Thus:

Arbitrators encourage such progressive programs of salvage and rehabilitation by *strict enforcement* of such "last chance agreements" *in accordance* with the terms which the parties, including the employee, have been willing to accept. However *harsh or strict* such terms and even though the arbitrator might well regard such conditions as unfair,

that cannot be his concern.¹⁹

B. Scope of the Last Chance Agreement

The first task in this dispute is to ascertain the behavioral boundaries of the Last Chance Agreement in an effort to assess what conduct BWC may reasonably expect from the Grievant. The Agreement was struck on October 18, 1999 and was scheduled to expire in approximately 24 months from that date. The Arbitrator now turns to the language of the Agreement itself. At the outset the Agreement defines failure of good behavior to include: "making *false, abusive, inflammatory or obscene* statements. . . . [I]f the EMPLOYEE- violates this *Last Chance Agreement* and or if there is *any* violation of the work rules as they relate to #1 *failure of good behavior* . . . the appropriate discipline shall be *termination*."

The Last Chance Agreement specifically forbids the Grievant from making "false, abusive, inflammatory or obscene statements or to exhibit "failure of good behavior." In the Arbitrator's view, a false statement is, "Contrary to fact or truth. . . . Deliberately untrue. . . . Arising from mistaken ideas."²⁰

Furthermore, although BWC has the burden of persuasion in this dispute, that burden is satisfied under these conditions if BWC satisfies the foregoing definition.

C. Actionable Statements Attributable to Grievant

Although the Parties argued myriad issues, the sum and substance of this dispute is whether the Grievant uttered statements that violated the letter or intent of the Last Chance Agreement, which hung

Very
Important

Definition
of
False Statement

over her head like the sword of Damocles. Following are some examples of statements to which the

Grievant either admitted having made and which lack support in fact. June 23, E-mail:

This appears to be how Joe Dauer and Jerry Elbicki set up Jerry's control of my BWC Computer.

... [L]ook at how Joe Dauer has no problem with destroying my entire career at BWC.

If Joe can so easily destroy my career, what else will Joe do to me (since he does not appear to limit himself). This does not make Jerry Elbicki (and Jay Reel) innocent because they have been doing this for years. If we are coming to end of Jerry & Jay's abilities to get me within the BWC environment, will Jerry & Jay ultimately seek revenge

to get me outside of the BWC environment. ...?

On June 24, 2001, the Grievant's E-mail to Mr. Conrad stated: "I am very afraid that I may have pornographic pictures, comics/cartoons or jokes somewhere in the BWC computer system I am authorized to use. ..." Finally, the Grievant admitted stating that Mr. Jay Reel told her that he was in a motorcycle gang and that they live by their own rules, a statement that Mr. Reel categorically denies, though he admits to being in a "motorcycle group."

The foregoing statements manifestly fall within the prohibitive scope of the Last Chance Agreement. The statement about Mr. Dauer is but one example. Evidence in the record does not support the allegation that Mr. Dauer tried to destroy the Grievant's career at BWC or worse. In support of this allegation, the Grievant offered the following line of reasoning: (1) Mr. Dauer knows everything about computers (or at least about the Grievant's BWC computer); (2) Therefore, Mr. Dauer had the skill to remove the "400X" statement from the Grievant's computer; (3) That Mr. Dauer failed to do so establishes that he consciously decided to leave the "400X" statement on the Grievant's computer; (4) the "400X" statement interfered with the Grievant's computer-based productivity by preventing the computer from accepting her password and, therefore, from accessing the computer to perform her job; and (5) If she did not do her job, the Grievant felt she would be fired, all because Mr. Dauer deliberately refused to repair her computer.

The Arbitrator credits some of the foregoing statements as fundamentally logical. For example, Mr. Dauer testified at the arbitral hearing that he was indeed a computer expert for BWC. Therefore, the

Grievant had some basis for an honest belief that Mr. Dauer could have removed the "a 400X" statement from her computer. The difficulty is that there is no evidence in the record suggesting that Mr. Dauer actually could remove the statement or that he ever saw it in the first instance:

In any event, that is as much credit as the Grievant's logic can reasonably command. There is absolutely no evidence in the arbitral record to support the accusation that Mr. Dauer deliberately tried to destroy the Grievant's career by deliberately leaving the "a 400X" statement on her computer. There is even less support for the proposition that Mr. Dauer was predisposed to commit any other act or omission intended to harm the Grievant, or that he did not somehow limit himself. Similarly, nothing in the arbitral record remotely supports the accusations that Mr. Jerry Elbicki and Mr. Jay Reel "have been . . . doing this [trying to destroy the Grievant's career] for years," or that these men somehow intend to "get" the Grievant "outside of the BWC environment."

The Arbitrator now turns to the Grievant's E-mail to Mr. Conrad which states in relevant part: "I am very afraid that I may have pornographic pictures, comics/cartoons or jokes somewhere in the BWC computer system. . . . [A]nothing can be added to my BWC computer system at any time and may be located where I cannot find it." Although this statement probably would have been troublesome for the Grievant with respect to the written direct order, which as mentioned above is not an issue here, the statements are insufficiently accusatory to offend the Last Chance Agreement, since it is directed toward no one.

Although the Grievant accused Mr. Jay Reel of belonging to a motorcycle gang, he categorically denied that accusation, while testifying before the Undersigned at the arbitral hearing. However, he readily admitted belonging to a motorcycle "group" that tries to assist in the neighborhood. Here again, the Arbitrator gives the Grievant the benefit of the doubt, since she could have innocently misinterpreted a motorcycle "group" for a motorcycle "gang."

Finally, on June 26, 2001, the Grievant made the following statement in her e-mail to Mr. Chuck

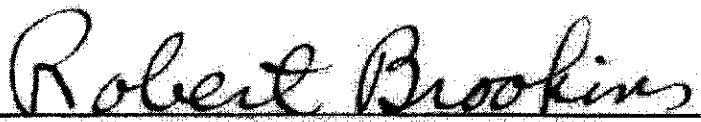
Quinlan: "The people involved appear to be *over the line and out of control*. For this reason, I cannot anticipate *how much farther they will go*. Although this statement is not as offensive to the Last Chance Agreement as those about Mr. Dauer, it is hardly innocuous, especially if Mr. Quinlan can identify the persons to whom the Grievant refers. In any event, this statement violates the spirit of the Last Chance Agreement, inasmuch as it accuses "people" of being "out of control" without offering any evidence to substantiate that claim. Ultimately, however, the Grievant's statements about Mr. Dauer, without more, violate the Last Chance Agreement, thereby triggering the agreed-upon penalty therein.

VIII. Penalty Decision

Because the Arbitrator has found that the Grievant violated the Last Chance Agreement, just cause is established for discipline. By the express terms of the Last Chance Agreement, termination is the only available measure of discipline because the sole function of the Arbitrator in this dispute is to determine whether the Grievant violated the Agreement in the first instance. Having made that determination in the affirmative, the Arbitrator is obliged to allow the agreement to take its agree-upon disciplinary course.

IX. The Award

Accordingly, and for all the foregoing reasons, the grievance is hereby denied


Robert Brookins, Professor of Law, J.D., Ph.D.

¹ Referred to collectively as ("The Parties").

² Joint Exhibit No. 3, at 2.

³ *Id.* att 3-5.