

#1860

IN THE MATTER OF ARBITRATION  
BETWEEN  
STATE OF OHIO – DEPARTMENT OF REHABILITATION AND CORRECTIONS  
AND

OHIO EDUCATION ASSOCIATION

**Grievant:** Donald Reams

**Case No.** 27-13 (20050526) 2702-06-10

**Date of Hearing:** October 24, 2005

**Place of Hearing:** London, Ohio

**APPEARANCES:**

**For the Union:**

Advocate: Ronald Snyder, Esq.  
2<sup>nd</sup> Chair: Vickie Miller

**Witnesses:**

Donald Reams  
Bryan Lee

**For the Employer:**

Advocate: Dave Burris  
2<sup>nd</sup> Chair: Mathew Crisler

**Witnesses:**

Major Bill Kelly  
Martin Dillard  
William To

**ARBITRATOR:** Dwight A. Washington, Esq.

**Date of Award:** January 13, 2006

## **INTRODUCTION**

The matter before the Arbitrator is a grievance pursuant to the Collective Bargaining Agreement ("CBA") in effect March 1, 2003 through February 28, 2006, between the State of Ohio and the Ohio Civil Service Employees Association AFSCME Local 11, AFL-CIO ("Union").

The issue before the Arbitrator is whether just cause exists to support the removal of the Grievant, Donald Reams ("Reams"), for violating the Department of Rehabilitation and Correction ("DR&C") Standard of Employee Conduct Rules 5(b), 7 and 28.

The removal of the Grievant occurred on May 12, 2005 and was appealed in accordance with Article 24 of the CBA. This matter was heard on October 24, 2005 and both parties had the opportunity to present evidence through witnesses and exhibits. Post hearing briefs were received on December 5, 2005 at which time the record was closed. This matter is properly before the Arbitrator for resolution.

## **BACKGROUND**

The Grievant worked for DR&C since 1995, initially as a Correction Officer ("CO") for two (2) years and after that as a Teacher at Orient and London Correctional Institutions. At the time of removal the Grievant had a written warning on his disciplinary record regarding a prior Rule 28 violation.

The incidents relevant to the instant Grievance events are primarily associated with the dates of January 24<sup>th</sup> and 25<sup>th</sup>, 2005 involving the vocational program at London Correctional Institution ("LoCI").

The Grievant taught inmates electronics and computer repair related courses. The Grievant was a member of a statewide committee who helped develop the

curriculum for the electronic and computer repair ("ECR") course that he taught at LoCI. Part of the curriculum prepared the students for the "A +" Examination.<sup>1</sup>The teaching materials and equipment was provided by CES Industries, Inc. ("CES").

The Grievant shared space with another vocational program taught by Craig Bowman ("Bowman"). Bowman taught Administrative Office Technology ("AOT") students, and the AOT/ECR students occupied a large room together, with no physical barrier between them. On January 24<sup>th</sup> the Employer observed what appeared to be security issues in the vocational area and ordered the program closed. The security issues involved materials on both the ECR and AOT computers.

On January 25<sup>th</sup> the Grievant, Bowman and inmates were observed in the vocational program room and were instructed to leave the area again. The employer changed the locks to ensure the Grievant or others would not have access to the room.

An investigation commenced to ascertain if the Grievant was in violation of any work rules. Upon the conclusion of the investigation and the disciplinary process, DR&C concluded that the Standards of Employee Conduct Rules 5(b) – purposeful or careless act(s) which result in damage, loss or misuse of property of the State; Rule 7 – Failure to follow post orders, Administrative Regulations, policies or directives; and Rule 28 – loss of control of any instrument that could result in a breach of security or jeopardize the safety of others to include but not limited to weapons, class "A" tools, keys, communication devices, etc.

A significant part of the investigation involved the Tool Control Policy (Joint Exhibit, ("JX") 3, pp. 56-76) in that the Grievant failed to identify, secure and file the proper documents with the Tool Control Officer as required. Other parts involved the

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<sup>1</sup> The CES materials allowed students to seek A+ certification in the ECR program. Part of the A+ curriculum allowed students to load software and work with passwords. (UN. EX's, 2,3)

Grievant providing his password to inmate Aides; installing software not approved by DR&C; and allowing games/music on the computers.

The Grievant was removed effective May 12, 2005. The Employer contends that the removal was proper while the Union submits that Reams' conduct did not warrant removal.

### **ISSUE**

Was the Grievant, Donald Reams removed for just cause, if not, what shall the remedy be?

### **RELEVANT PROVISION** **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 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 O.R.C. Section 3770.02(i).

### **DR&C STANDARDS OF EMPLOYEE CONDUCT** **RULE 5(b), RULE 7 & RULE 28**

**Rule 5(b):** Damage, loss or misuse of property of the State to include but not limited to vehicles, telephones, hardware/software, computer, e-mail and internet usage.

### **OFFENSE**

<b>1<sup>st</sup></b>	<b>2<sup>nd</sup></b>	<b>3<sup>rd</sup></b>	<b>4<sup>th</sup></b>	<b>5<sup>th</sup></b>
WR or 1	2	5	R	

**Rule 7:** Failure to follow post orders, administrative regulations, policies or directives.

### OFFENSE

<b>1<sup>st</sup></b>	<b>2<sup>nd</sup></b>	<b>3<sup>rd</sup></b>	<b>4<sup>th</sup></b>	<b>5<sup>th</sup></b>
WR or 1	2	5	R	

**Rule 28:** Loss of control of any instrument that could result in a breach of security or jeopardize the safety of others, to include but not limited to weapons, class "A" tools, keys, communication devices, etc.

### OFFENSE

<b>1<sup>st</sup></b>	<b>2<sup>nd</sup></b>	<b>3<sup>rd</sup></b>	<b>4<sup>th</sup></b>	<b>5<sup>th</sup></b>
WR or 1 or R	2 or R	5 or R	R	

### POSITION OF THE PARTIES

#### **POSITION OF THE UNION**

The Grievant, well-respected in the vocational education field, was a member of the Curriculum Advisory Committee of the Ohio Department of Rehabilitation and Corrections that approved the electronics and repair course taught throughout the State of Ohio.

The electronics and computer repair course ("ECR") taught by the Grievant at LoCI included preparing the students for A+ examination. The approved curriculum "required the students to load software onto the equipment, work with passwords, and assign passwords." (Post-Hearing Brief, Union, p.2) The Grievant testified that he was familiar with the OIT policy that contained the procedures for hardware and software procurement and installation (JX-3, pp 101-103). The grievant was also familiar with the OIT policy regarding access and use of computer hardware and software, but believed the use of the computers in the ECR classroom constituted a necessary exception to the department's OIT policy due to curriculum he was teaching. Therefore, the loading and

unloading of software, as well as the use of passwords were required activities for inmates. The Grievant taught between eight and eleven students, whereas Bowman normally had twenty to twenty-five students in his AOT class.

The investigation commenced after Major Kelly and Deputy Warden Cook became aware that students were allegedly using the computers to share inappropriate games or music. On January 24, 2005 the Grievant and students were ordered out of the lab area by Major Kelly. However, Ernest Mack, ("Mack") the Grievant immediate supervisor, instructed him to return to the lab on January 25, 2005 to delete games and music from the computers, according to the Grievant.

On January 25<sup>th</sup>, 2005 the Employer did find games and music on the hard drives of computers examined by Mark Painter, ("Painter") Central Office Administrator. Painter reported his findings to Martin Dillard, ("Dillard") the investigator (JX-3, pp 18-20). However, the Union submits that all of the computers examined were from the AOT class and not the ECR class. Likewise, when the Network administrator, William To ("To") examined the hard drives; they were from the AOT Lab only. (JX-3, p.30) Also, on January 31, 2005 Painter's report indicated that the Computer Repair Lab was not connected with the AOT Network. (JX 3, p.32)

DR&C produced no evidence that the Grievant or any of his students loaded games or music on the ECR computers. The Grievant's ECR class operated a closed network, i.e., no internet, no intranet or access to any computers outside the ECR classroom. Simply, no facts exist to support a violation of DRC Policy 05-0IT-11 in that Reams permitted inmates to assign passwords and/or shared his administrative password. The grievant ordered new equipment for the program from CES in early 2005.

In regards to the allegations concerning violation of Rule 28, the Union argues that the computer equipment from CES arrived at LoCI and was ultimately delivered to the Grievant without being properly handled by warehouse employees. DR&C policy

requires that all boxes be searched upon arrival. If any tools are in the boxes, the tools are secured in the warehouse until the Tool Control Officer can pick-up the tools. The Tool Control Officer then ensures proper color coding and engraving occurs.

In this case, the warehouse, without alerting the Tool Control Officer, delivered to the Grievant the CES equipment. The Grievant opened the boxes and found six (6) tool boxes with the computer equipment. The Grievant contacted Lieutenant Barney, the Tool Control Officer, upon which Lt. Barney told the Grievant to hold onto the tools until the next inventory was conducted. Although, the tool kits were never placed on the inventory list, the Grievant did secure the tools in a locked cabinet. The Grievant also had inmate aides disperse the tools and obtain the inmate's I.D. who was using the tool for control purposes. No evidence was offered that any of the tools were missing or used at any time in an improper manner.

The Union contends that the investigation was biased and inadequate at best, illustrated by Investigator Dillard's comments contained in his findings, such as Reams' "...conduct was an insult and the program was a fiasco." (JX-3, p.21) The Union points out that no evidence is in the record to conclude the Grievant embarrassed anyone or that the inmate students were not satisfactorily completing their course. Additionally, why were others not disciplined regarding the failure to secure the tool kits in the warehouse?

Finally, other grievances were consolidated with the removal (No. 2702) alleging various contractual violations such as: changing the educational program without bargaining (No. 2700); failure to follow progressive discipline (No. 2699); attempt by DR&C to select the union representative (No. 2702); and sharing the confidential information with a co-worker (No. 2698). Based on the evidence presented at the hearing, a violation of the relevant provisions of the CBA occurred and each grievance should be upheld.

The Union contends that as a long term employee, mitigation applies considering his work record where only a written reprimand was active. The Grievant seeks reinstatement, back pay and restoration of any rights or benefits he's entitled to receive.

## **POSITION OF THE EMPLOYER**

The Grievant was employed as a CO for approximately two (2) years and worked as a teacher in the vocational program for five (5) years for the DR&C. In 2002, the Grievant was transferred to LoCI where he worked in the computer repair vocational program.

On January 24, 2005, Major B. Kelly and Deputy Warden Cook went to the Grievant's work area to determine if inmates assigned to the computer area were bringing music CD's to the classroom. While in the area, Major Kelly observed cages where equipment was stored being unlocked; an inmate playing a game on the computer in the unlocked cage area; and discovered downloaded songs, websites and other data not related to the vocational programs. The Grievant and inmates were instructed to leave the area until further notice.

The vocational work area was shared with Bowman who taught AOT Lab course to inmates. The Grievant taught the computer repair course known as "ECR" or Electronics and Computer Repair. Based upon potential security issues, the Institution's Network Administrator, To examined the hard drives on the computer in the vocational area.

On January 25, 2005 Major Kelly observed the Grievant, Bowman, and inmates in the vocational program area deleting games from one computer. Also, a scanner that was connected to a computer the prior day had been disconnected and moved. Major Kelly instructed the grievant and the inmates to immediately leave the area. The locks were changed to the classroom to prevent further access.



DR&C's policy requires that instruments/tools must be on the inventory list and secured. The Grievant had knowledge of the policy, but allowed uninventoried tools in his area in violation of the policy. The tools at issue were contained in equipment shipped to LoCI as part of the CES materials in July or August 2004. Major Kelly observed the tools under Grievant's control which failed to comply with the tool control policy. M.A. Dillard ("Dillard") conducted the investigation (JX 3, p.17) for LoCI and found six (6) tool kits and three (3) screwdrivers in a wooden cabinet adjacent to an inmate workstation.

Additionally, the Grievant installed unapproved software on computers, known as Partition Magic. The Grievant admitted bringing Partition Magic software to LoCI. Partition Magic was not approved by the Employer and allows the user to create other sub-drives from the hard drive, according to To. The user of Partition Magic could hide information from a lay person. The introduction of Partition Magic was inappropriate and allowed the inmates to store illegal software such as Quake II, Doom, Dear Hunter III, Real War etc., on the computers.

DR&C further contends that the Grievant provided his Administrative password to inmate Aides which could allow total control of the system according to To. This conduct violates DR&C Policy OS-OIT-11 which prohibits inmates from receiving or assigning passwords to computers or files (JX-3, p1). The Grievant admitted giving the password to his Aides.

To indicated that the AOT and ECR programs were networked together by a patch cable and that all of the computers in that area shared the same unapproved software programs. Also, the programs (AOT and ECR) could have been networked through the Internal Data Frame ("IDF") Room, since both switches for each program were located outside the IDF Room in the lab room.

DR&C submits that the Grievant in direct opposition to Major Kelly's order of January 24, 2005 returned to the area in effort to delete games and/or music CD's from

the computers. In contradiction to Grievant's testimony, Mack, School Administrator testified in rebuttal that: (1) the Grievant was not authorized to return to the classroom on January 25, 2005; and (2) the Grievant was not authorized to delete any programs from the computers on January 25, 2005.

The ECR program was out of control in the following areas:

- Multiple violations of the tool control policy.<sup>2</sup>
- Providing inmate Aides with his Administrative password;
- Bring Partition Magic to the institution; and
- Allowing games on the computers.

As a result of the above the Grievant violated standards of the Employee Conduct Rules 5(b), 7 and 28. The removal was based upon just cause and the Grievance should be denied.

### **BURDEN OF PROOF**

It is well accepted in discharge and discipline related grievances, the Employer bears the evidentiary burden of proof. See, Elkouri & Elkouri – "How Arbitration Works" (6<sup>th</sup> Ed., 2003). The Arbitrator's task is to weigh the evidence and not be restricted by evidentiary labels (i.e. beyond reasonable doubt, preponderance of evidence, clear and convincing, etc.) commonly used in non-arbitrable proceedings. See, Elwell- Parker Electric Co., 82 LA 331, 332 (Dworkin, 1984).

The evidence in this matter will be weighed and analyzed in light of the DR&C's burden to prove that the Grievant was guilty of wrongdoing. Due to the seriousness of the matter and the Article 24 requirement of "just cause," the evidence must be sufficient to convince this Arbitrator of (the Grievant's) guilt. See, J.R. Simple Co. and Teamsters, Local 670, 130 LA 865 (Tilbury, 1984).

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<sup>2</sup> The Grievant received a written reprimand for violation of Rule 28 based upon the disappearance of safety scissors that was under his control. This discipline remained active on the date of removal.

## **DISCUSSIONS AND CONCLUSIONS**

After careful reconsideration of the evidence, I find that the grievance (2702) is sustained in part and denied in part based on the reasons as follows:

As a threshold matter, all of the other individual grievances referenced on page six (6) and included in this hearing upon agreement of the parties are denied in total for lack of proof to support the various claims.

The Grievant was removed for violation of the following Rules of The Standards of Employee Conduct:

Rule 5(b) - Purposeful or careless acts which result in damage loss or misuse of the property of the state to include....hardware/software, computer, e-mail, and internet usage. (Emphasis added)

Rule 7 - Failure to follow just orders, administrative, regulations, policies or directives. (Emphasis added)

Rule 28 - Loss of control, of any instrument that could result in a breach of security or jeopardize the safety of others to include but not limited to weapons, class "A" tools, keys, communication devices, etc. (Emphasis added)

An analysis associated with each rule violation will be discussed.

### **A. RULE 5(B) VIOLATION**

The employer contends that the Grievant knowingly allowed inmate students to share, transfer, and/or download inappropriate music or games not associated with the ECR program.

Major Kelley observed an inmate playing a game on a computer and a review of some of the computers indicated that over the 1,000 songs on websites were on certain computers. Furthermore, To on January 26, 2005 shortly after 1:00 p.m., examined certain computers and discovered that Partition Magic was installed and certain hard

drives were partitioned off which contained non-standard software installed in these computers (JX-3, p.30). Painter, who was also requested to examine the computers in the ECR/AOT area, indicated that on January 26<sup>th</sup> while touring the lab he believed that the computers were mapped together and storing music or other paperwork. (JX-3, p.31)

Painter continued his investigation, and on January 27, 2005 he removed hard drives in seven (7) computers and concluded that all had 'Partition Magic' shared folders. These folders contained music or data which required administrative rights to establish. In reviewing certain lab workstations, many computers contained numerous programs that other lab computers did not. (JX-3, p.36) All of the computers that Painter examined were AOT computers. (JX 3, pp. 37-51)

Painter and To, according to Dillard, were instructed to do a "... search of all computers and hard drives in both AOL and Computer Repair. "(JX-3, p.18) (*emphasis added.*) A review of Painter's and To's statements all refer to computers in the AOT lab, only. The record is void of any evidence regarding what software or inappropriate games were discovered on the hard drives of computers in the repair lab. The employer contends that both labs were networked together by a patch cable according to inmate Steward. (JX 3, p.19) If true, where's the evidence to support that either inappropriate games or music when found on the ECR computers by or hard drives examined To, Painter or Dillard?

Dillard testified that he found a patch cable that could connect the AOT and repair lab. To testified that based upon the wiring and a "crossover cable" that all of the computers in the lab area were connected. The issue is not whether all of the computers were connected, but did the Grievant have knowledge that his students were misusing property, i.e., software, inappropriately in the computer repair class? The facts are undisputed that all of the music or games observed by Kelley, To or Painter were not on any of the ECR computers.

The investigation by DR&C failed to establish that either Painter's, To's or Dillard's analysis established that the Grievant had engaged in either careless or purposeful acts resulting in misuse of the computers as it relates to games/music CD's in the repair lab in violation of Rule 5(B).

Furthermore, in the Grievant's initial interview of February 16, 2005 with Dillard he stated:

Q. Were you aware of the games & music on the computers?

A. Yes, but asked them to remove & delete them (JX 3, p. 27)

The Grievant admitted knowing of games that were on the computer programs and had instructed his Aide to remove the game from the computer. DR&C initially through Major Kelly testified that he observed games, music and photographic data on computers in the lab area on January 24, 2006. Kelly also indicated that the computers were interconnected and the inmates could "play games" together. Unfortunately, Kelly added that the lab room did not allow him to differentiate between ECR verses AOT.

Investigator Dillard's report states that games including Rage; Boxing, Invaders, IG2 (war game) and over 30 other games were contained on a CD discovered in the lab (JX 3, p. 18). Dilliard's report further states that on February 2, 2005, he and assistant investigator M. Crisler conducted a search of the AOT/Computer Repair class where they discovered the CD'S with games. The CD's were located at station 5 and 12, which were under the control of AOT students—not ECR students. No evidence indicates that Dillard included an analysis of hard drives of the students under the Grievant's control to allow an inference as to what specific games were on the hard drives of the ECR students. Painter's and To's analysis, similarly only addresses AOT computers. Assuming the Grievant's students shared games with AOT students, where's the tie that binds the program together? The investigative report at the minimum should have

included inmate's statement (s) verifying actual use/sharing of the same files between the programs.

On the other hand, the Grievant's testimony as to why he, Bowman and students were in the lab on January 25, 2005 was credibly contradicted by Mack, and not believable. Additional facts would have been helpful in resolving the following questions: Was the Grievant deleting games/music from ECR computers only? Was the Grievant helping Bowman delete games/music from the AOT computers? Did the Grievant disconnect the crossover cable? How long on the 25<sup>th</sup> was the Grievant in the lab room prior to Kelly's intervention? Did the investigation determine what was deleted by the Grievant, Bowman and students on the 25<sup>th</sup>? Simply, the investigation fails to address areas directly related to the Grievant conduct. I find that the Grievant's conduct was woefully inappropriate, and probably insubordinate, on the 25<sup>th</sup> by returning to the lab contrary to Major Kelly's directive. However, the Grievant was not charged with a Rule 7 violation for failure to follow Major Kelly's directive.

Painter's Incident Report of February 1, 2005 states in part: "... Mr. Reams stated that what [sic] time he was in the lab, he had deleted all the games." (JX 3, p.29) The record does not allow the Arbitrator to infer the Grievant deleted original installed game(s) or other games; or that the games were deleted in the ECR area or the AOT area.

## **B. RULE 7 VIOLATIONS**

The Employer contends that the following conduct was in violation of Rule (7); introduction of 'Partition Magic'; providing of Administrative passwords to inmate Aides; and breach of the tool control policy.

### **1. 'PARTITION MAGIC'**

The introduction of 'Partition Magic' software by the Grievant allowed the user to create multiple sub-divided hard drives.

The Employer contends that this software is not authorized by DR&C and the Grievant was aware that its users could hide files on the drive. However, To testified that files cannot be actually hidden but someone might miss files created by the new partition drives if one was not inclined to look for multiple hard drives. In other words, regardless of the number of hard drives created by 'Partition Magic' the folders or data created are accessible just difficult to locate.

The Grievant admitted during the investigation that he bought a copy of Partition Magic into LoCI without consent or authorization of the employer. To testified credibly, that Partition Magic software is not authorized or used at DR&C. No evidence was presented by the Grievant to refute the Employer's position, and the evidence indicates that the Grievant violated the policy regarding the control of approved software for use at DR&C in contrary to Policy 05-OIT-01 (JX 2, p. 103) and violation of Rule 7.

## **2. ADMINISTRATIVE PASSWORDS**

The employer contends that the students had access to computers and the Grievant shared his administrative password with several inmate Aides in violation of DR&C policy 05-OIT-11 (JX pp. 104-107) as a result this conduct violated Rule 5(B) and Rule 7. The Employer contends that through the testimony of To and the Grievant's own admission it is undisputed that the inmate Aides were provided the Grievant's Administrative password. The testimony of To indicated the seriousness of this action is that the inmates could control the system with the Administrative Password.

DR&C argues that Ream's students by having his password could access the Local Area Network ("LAN") network which consisted of other computer equipment, workstations or peripherals in other parts of the facility external to the ECR laboratory. In short, DR&C contends..." that he shared his administrative password with inmates [and] with the administrative password could control the system." (DR&C, Post Hearing Brief, p.8)

The Grievant admitted that three (3) inmate Aides were provided his password to assist other students to set up the system in compliance with the approved curriculum in the ECR course. (Union ("UN") Exhibits 2, 3) The Union points out that in order to prepare Grievant's students for the "A+" Examination, the CES materials in the approved course outlined required students to load software "...work with passwords, and assign passwords." (Union Post Hearing Brief, p.2) No evidence was presented by DR&C to establish that any of the Grievant's students had access to the entire educational program at LoCI or that Grievant's students has access beyond CES programs and materials. Moreover, Painter's Incident Report prepared on January 26, 2005 states "... During my tour of the AOT lab it appeared that they was on their own local network,..." (JX 3, p.31)

I concur with the Union. The evidence in the record fails to demonstrate or reconcile the Grievant's responsibility as teacher in an approved curriculum, which required among other things, knowledge and application by students of passwords and related functions. (Un. Ex 3) If DR&C wanted this educational program to exclude certain competencies regarding the use of the administrative password to assist in course materials, DR&C has the management right to do so prior to the approval of the CES materials. Moreover, if the Grievant's administrative password was strictly prohibited from disclosure for any purpose, including limited educational use, such directive should have been provided to the Grievant as well as all other instructors teaching a similar course in other institutions. Educational programs in accord with Policy 05-OIT-11, specifically allows exceptions to the policy by allowing "limited" access to the computers (Section V) inmates are allowed access to approved educational stand-alone LAN systems (Section VI, E).

Finally, no evidence exists to infer that the Grievant's conduct directly or indirectly provided inmates the apparent ability by the assignment of his "administrative



password” to effect the administrative operations of LoCI (i.e., court sheets, pass lists, bed rosters or any data entry involving confidential information, security or sensitive information); the Departmental Tracking System; the Employee Relations System; the Office automation system; or the Training, Industry, and Education Systems. In fact, the evidence is undisputed that the computers in the ECR laboratory were network with other computers in the ECR and arguably the AOT lab room.<sup>3</sup>

Unfortunately, the evidence is lacking to infer that Grievant’s behavior contributed to the inmates’ ability to “control the system.” The record is void of evidence to infer how to define or analyze what “control the system” meant, and what conduct of the Grievant specifically allowed the inmates an opportunity to “control the system.”

Therefore, the assigning of the Grievant’s administrative password within the confines of his duties as a teacher in an approved course of study did not violate Policy 05-OIT-11.

### **3. TOOL CONTROL POLICY**

DR&C, for the obvious security reasons, identifies, tracks, controls, and secures all tools or equipment used by inmates under its supervision.

The Grievant obtained training equipment from CES in July/August 2004 which included computers and related equipment for the ERC class (JX 3, p.159). The CES equipment was searched upon arrival at LoCI and all tools are required to be secured and turned over to the tool control officer for identification and color coding. Also, etchings or engraving on all tools occur prior to issuance to the proper authority within LoCI in accord with the Tool Control Policy (JX 3, pp. 62-64). The CES equipment, including six (6) tool kits arrived in the ECR lab without the tool kits being properly inventoried and

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<sup>3</sup> Evidence was presented that the ECR and AOT computers shared data through a crossover cable because both areas shared the same data cabling (wiring). To credibly testified that the ECR and AOT labs were considered a LAN but neither lab had internet or other technology to access computers outside the lab. Clearly, the ECR and AOT labs had that capacity to share data via the crossover cable. The issue is simply what information was shared that violated DR&C policies that involved the Grievant?

labeled by the Tool Control Officer at LoCI. The Grievant did not add the tools to LoCI inventory list upon arrival in the lab area.

The kits met the definition of Class B tools by policy and were required to be maintained and secured and accessible to staff only, the policy requires that daily/weekly tool reports(s) be submitted to the Tool Control Officer. (JX, 3, pp 65-66) Major Kelly and Investigator Dillard concluded that the Grievant violated the Tool Control Policy in the following manner:

- 1) Tools were not on the inventory list;
- 2) Tools not stored in a vaulted or secure manner; and
- 3) Grievant was knowledgeable about policy and failed to notify the Tool Control Officer of the kits.

The Grievant testified that the tools were distributed to inmates by an Aide or himself. The inmate was required to leave his I.D. as collateral until the tool was returned. Additionally, the cabinet containing the kits were not locked at all times but no tools were lost or came up missing from July 2004 until the present.

It's abundantly clear to the arbitrator that LoCI's warehouse employees as well as the Grievant were in violation of the Tool Control Policy. The Grievant, admits that the kits were not added to the inventory at LoCI for color coding/etching at any time after arrival in the ECR lab area. The imposition of controls over the tools, i.e., the system to track who took the tools and daily inventory, by Grievant failed to comply with Policy 310-SEC-36 (JX 3, pp. 56-58). The Grievant began his employment as a CO and is well aware of the never-ending security issues associated with inmate supervision. Prior to Major Kelly pointing out the infractions of the Tool Control Policy, the Grievant took no affirmative action to become compliant.

The tool control policy violation for the extended period of noncompliance is problematic due to the potential safety issues involved. However, the institution is not

exonerated for the lax way in which the tool kits were delivered and, at no time during the six (6) months did any supervisor notice that none of the kits were color coded and/or etched. Were any visual audits or inspection conducted by supervisors during that time period?

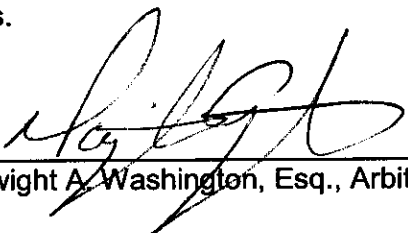
The failure of LoCI at the warehouse to properly perform its functions does not mitigate the Grievant's knowledge of the Tool Control Policy and his failure to comply for almost six (6) months. I find the Grievant violated Rule 7 and 28 regarding violation of the Tool Control Policy.

This is the Grievant's, second violation of Rule 28 and discipline is appropriate — but not removal.

#### **AWARD**

The overall state of programs under Grievant's supervision warrants a suspension commensurate with the findings of Rule 7 and Rule 28 violation, but not removal. The grievant was not discharged for 'just cause' and shall be reinstated but with no back pay or benefits. The Grievant shall be reinstated within a reasonable period of time, not to exceed thirty (30) days from the date of this award. The date of his return to work shall serve as the length of the suspension imposed in this matter.

The Arbitrator will retain jurisdiction to resolve any disputes arising in the implementation of this award for sixty (60) days.

  
Dwight A. Washington, Esq., Arbitrator

Respectfully submitted this 13<sup>th</sup> day of January, 2006.