

IN THE MATTER OF THE ARBITRATION
BETWEEN
THE STATE OF OHIO
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION
AND
THE OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION
AFSCME, AFL-CIO LOCAL 11

Arbitration Date: May 19, 2010

GRIEVANT, Greg Mason
CASE NO. 27-14- 20091221-0246-01-03

BEFORE: Arbitrator Craig A. Allen

Advocate for the Employer:

Buffy Andrews
Labor Relations Officer
Ohio Department of Rehabilitation and Correction
770 West Broad Street
Columbus, Ohio 43222

Advocate for the Union:

Robert Jones
Staff Representative
OCSEA, AFSCME Local 11
390 Worthington Rd., Suite A
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I. HEARING

The hearing was held at Lorain Correctional Institution on May 19, 2010.

The Joint Issue before the Arbitrator is "Was the Grievant, Greg Mason, removed from his position of Correctional Sergeant for just cause? If not, what shall the remedy be?"

The parties took a view of the Control Room from 10:25 A.M. to 11:04 A.M.

Testifying for Lorain Correctional Institution, "the Employer" were CO Tana Stanford, CO Carlos Atkinson, CO Donna Rancher, Luis Rosario Maintenance Plumber, Lt. Betty McCormick, Labor Relations Officer Rick Shutek, and Warden Marc Houk.

Testifying for the Ohio Civil Service Employees Association, Local 11AFSCME were Tim Jones, CO and Chief Steward, and the Grievant, CO Greg Mason.

II. STATEMENT OF THE CASE

On September 4, 2009 an incident occurred at the "Employer's" Institution resulting in Grievant Greg Mason being charged with Workplace Violence and interfering in an official inquiry.

Grievant was removed for violations of the Ohio Department of Rehabilitation and Corrections Standards of Employee Conduct Rules:

18. Threatening, intimidating, or coercing another employee or a member of the general public.

24. Interfering with, failing to cooperate in, or lying in an official investigation or inquiry.

The Union timely filed a grievance and the case is properly before the Arbitrator.

III. THE EMPLOYER'S CASE

The Employer's first witness was Tana Stanford. Ms. Stanford is a CO at Lorain Correctional Institution and has been there six and a half (6 ½) years. She is a Relief Officer.

Ms. Stanford was referred to Joint Exhibit 3, Page 55 which is her Incident Report. This report was done on the same day as the Incident, September 4, 2009 at 7:22 A.M. Ms. Stanford read her statement and said the Grievant threatened her. She said the Grievant told her "he would put her out on disability". Ms Stanford testified she had been out on disability as a result of a fight with an Inmate. She said the Grievant kept screaming at her.

Ms. Stanford testified that CO Rancher, CO Atkinson and Maintenance Plumber Rosario were present. She testified she told Lt. McCormack and David Harper of the Incident. Ms. Stanford said she is a Relief Officer and the Grievant is a Sergeant.

Ms. Stanford was referred to Joint Exhibit 3, Page 5 and testified that this was her statement to the Ohio Highway Patrol.

Ms. Stanford said she had gone to therapy and then went to the Ohio State Patrol at 1735 to file her report. She said she did this on her own and she is afraid to be here today.

On Cross-Examination Ms. Stanford said she is afraid today. She was asked why she is afraid today when she works with dangerous Inmates every day. Her response was that she is aware of her job duties and knows of the Inmate danger.

On September 4, 2009 Ms. Stanford said she did not see the Grievant in B-1 as she was on the radio side. She was referred to Joint Exhibit 3, Page 13, which is her interview. Ms. Stanford testified the Grievant was glaring at her while getting equipment. She was asked, "Is glaring a violation?" She replied, "NO". She said the Grievant motioned her over, and as the

Grievant was by the window, she could see the Grievant just fine.

Ms. Stanford testified that it was easy to hear conversation if the system was working and it was working on this day. Ms. Stanford said she said nothing to Grievant until he threatened her. She then said, "How does it feel to threaten a woman?"

Ms. Stanford then read Joint Exhibit 3 Page 14, her interview, and testified that Maintenance Plumber Rosario walked up and was there at the tail end of the Incident. She was looking around for other witnesses as she wanted back up. There were two other Cos working with her. Ms. Stanford was asked, "Why were you looking for witnesses?" She answered, "I am trained to get all witnesses available." She was then asked, "Was there any vulgar language?" She said, "NO".

Ms. Stanford said she had one other Incident with Grievant which occurred around Ramadan. She said the Grievant was yelling at her over the radio. Ms. Stanford testified she had no other problems with the Grievant.

Ms. Stanford testified she had been employed for six (6) years when the radio incident happened. There was no discipline as a result of the radio incident and no Supervisor spoke to her about it. Ms. Stanford was asked, "Was the radio incident serious?" She answered, "No". Ms. Stanford said she had no conversation with a Supervisor before she left on September 4, 2009.

Ms. Stanford was asked, "What is out back of Control Center?" She replied, "B-1, not the Captain's office. The Captain's office is to the side. B-1 is the entrance to Control."

She then testified the Grievant never asked her to go to the Captain's office. She said she talked to Dave Harper because she wanted to follow procedure and also talked to her Supervisor. The Supervisor told her to file a Workplace Violence Report.

Ms. Stanford was asked, "What do you want to have happen?" She answered, "I have no control over what happens with the Grievant."

Ms. Stanford then read Joint Exhibit 3, Page 13 of her interview. She was asked what sort of gesture she was referring to. She said the gesture was a "wave off" and that set Grievant off.

The next witness was Carlos Atkinson. Mr. Atkinson is a CO and has been at the Institution for six and a half (6 ½) years. CO Atkinson said Ms. Stanford and the Grievant had an Incident. He said he was the third officer in the Control room and CO Rancher was there also. CO Atkinson said he did a report on the same day as the Incident.

CO Atkinson was referred to Joint Exhibit 3, Page 59 which is his report. He said there was no reason for the Grievant to act the way he did. The Grievant wanted to take Ms. Stanford out back and beat her up. The Grievant was mad and agitated. The Grievant said over and over that he wanted to take Ms. Stanford out back. Ms. Stanford did nothing to provoke the Grievant.

CO Atkinson testified that Ms. Stanford called the Supervisor and did an Incident Report. Ms. Stanford was scared and upset when the Grievant left. He said Lt. McCormick asked him to do a report.

CO Atkinson then read Joint Exhibit 3, Page 62, which is his statement about the Grievant talking to him after the Incident. He testified that the Grievant was trying to get him to change his testimony. He said the Grievant came into Control and pulled him aside to a room. CO Atkinson said a person told him to go to the Captain's office to get him out of the room. The Grievant was trying to get him to change his testimony.

On Cross-Examination CO Atkinson was asked, "Did the Grievant ask Ms. Stanford to have respect?" He answered, "No." He said he was pushing door buttons in the Control Room

and assisting with the radio and telephones. He said there was radio traffic but no phone calls during the incident. CO Atkinson said he had a broken hand and so was in the Control Room every day. He testified the Captain's office is behind the Control Room in the hall way. He also said the windows in the Control Room are lightly tinted.

CO Atkinson was referred to Joint Exhibit 3, Page 28, which is his Interview statement. He said the Incident took thirty (30) seconds. The Grievant walked away but he was the only one yelling.

CO Atkinson was then referred to Joint Exhibit 3, Page 13. He was asked, "Did you ask what he meant by - Go out back?" He replied, "No, I didn't say anything to the Grievant." He said CO Rancher told him she thought they were playing.

CO Atkinson said the Grievant never asked him to change his story and he wasn't threatened. He said the Grievant did not use any vulgar language. He was then shown Joint Exhibit 3, Page 27, his Interview and said Ms. Stanford's presence set the Grievant off.

On Re-Direct CO Atkinson said the Grievant was on the key side of Control and that Grievant was pissed when he left the area.

On Re-Cross CO Atkinson said the Grievant wasn't joking.

The next witness was Donna Rancher. She was hired in 1996 and has been a CO for twelve (12) years. On September 4, 2009 she was in the Control Room. She was referred to Joint Exhibit 3, Page 40, which is her Interview statement. CO Rancher testified the Grievant approached the window and that she was issuing keys. The Grievant asked to talk to Ms. Stanford and motioned for her to come to the window.

CO Rancher then read Joint Exhibit 3, Page 41 of her Interview and said she wasn't

listening. She did hear a statement about "stay on disability". She testified she was answering the phones. CO Atkinson was working the doors. CO Rancher said Ms. Stanford was upset when the Grievant left and was asking about Union Representation.

CO Rancher was shown Joint Exhibit 3, Pages 44 and 45. She said the Grievant called her and said Ms. Stanford is lying about it. CO Rancher hung up. She said she was uncomfortable with the Grievant calling. CO Rancher said she thought at first that they were joking. She was asked if she could see the Grievant. She said she could and he could see her.

On Cross Examination, CO Rancher said the Grievant was not mad when he came to the window. The Grievant asked to talk to Ms. Stanford and she did not see Ms. Stanford make a gesturing motion. She said she would have heard any yelling. CO Rancher said she didn't do an Incident Report as she thought they were joking.

CO Rancher said when the Grievant called her he did not ask her to change her story or threaten her. He did tell her she was lying.

CO Rancher was asked, "What does take out back mean?" She answered, "It means go outside and get beat up". She said "go out back" does not mean go to the Captain's office". She said the incident took no more than two (2) minutes.

The next witness was Luis Rosario. Mr. Rosario has been at the Institution six and a half (6 ½) years and is now a Maintenance Plumber. Prior to that he was a CO for six (6) years.

Mr. Rosario was referred to Joint Exhibit 3, Page 62, which is his Incident Report. It is dated September 5, 2009 and concerns the Incident on September 4, 2009. Mr. Rosario testified he heard Grievant telling someone "they would go on disability again". He said he did not know to whom the Grievant was speaking.

Mr. Rosario testified he was walking up to the Control Center when he heard the Grievant. The Grievant was angry and disturbed.

On Cross-Examination Mr. Rosario said he did not ask the Grievant if he was upset. It was just his opinion. He said he didn't know there was an argument going on.

Mr. Rosario said Lt. McCormack ordered him to make a report. He said the Grievant did not yell or scream. He said CO Rancher was in front of the window and nothing out of the ordinary was going on. The Grievant made no threats that he heard.

Lt. Betty McCormack testified next. Lt. McCormack was hired in November 1991 and is a Lt. at the Institution. She is the Shift Supervisor. Lt. McCormack was shown Joint Exhibit 3, Page 58 which is her Incident Report. Lt. McCormack said the Grievant was agitated and told her to do something about that girl in there. The Grievant was upset and just referred to "that girl".

Lt. McCormack told the Grievant to write an Incident Report. Lt. McCormack walked by the Control Room and saw Ms. Stanford and sent a report to the Captain.

On Cross-Examination Lt. McCormack said she has no knowledge of Grievant's problems. She doesn't know what "out back" means. She said you can get to the Captain's office from the Control Room. It is to the left of Control.

Lt. McCormack said she and the Grievant were in the hall and the Grievant was yelling. She said she told him to write a report to try to calm him down. Lt. McCormack said she did not talk to CO Rancher. The Captain may have told others to write reports.

The next witness was Rick Shutek. Mr. Shutek has been at the Institution for twelve (12) years and has been the Labor Relations Officer for ten (10) years. Mr. Shutek says he administers the Labor Contracts and is an advisor to the Warden. Mr. Shutek said he oversaw the

Disciplinary Process in this case but the Warden makes the decision.

Mr. Shutek testified that the Grievant had a five (5) day fine on his record at the time of this Discipline. Mr. Shutek referred to Article 24.02 of the Contract and said a five (5) day is the highest before removal.

Mr. Shutek then read Joint Exhibit 4, Page 17, which is Rule 18. Rule 18 provides a 2 day suspension to removal for a first offense. He testified an employee can be removed at anytime for a Rule 18 infraction. Mr. Shutek was asked, "Why Removal?" He replied, "Because of the merits of the case and Grievant's conduct after the Incident."

On Cross-Examination, Mr. Shutek was shown Exhibit Union - 1 which is the Last Chance Agreement. He was also shown Exhibit Union - 2 which is Administrative Interviews. Mr. Shutek read the last entry on Exhibit Union - 2 dated 4-15-08. This refers to the Last Chance Agreement Union - 1. He said the Last Chance expiration date was August 12, 2009. He was asked, "Was the five (5) day fine removed?" He answered "No." The five (5) day fine is in force for two (2) years per Article 24.02 of the Labor Contract. Discipline stays for twenty-four (24) months. He was asked, "The Last Chance agreement was for one (1) year and there is no reference to the five (5) day fine being for one (1) or two (2) years." Mr. Shutek replied, "The Union did not appeal the five (5) day fine because of the Last Chance Agreement." He was then asked, "Was the five (5) day fine on the books an influence on this removal?" He answered, "How could it? It was too remote." Mr. Shutek then said, this is a second offence because of the five (5) day. He then said if the five (5) day fine had not been on the books this would have been a first offense.

The last witness for the Employer was the Warden, Marc Houk. Mr. Houk has worked

for the Department of Rehabilitation and Corrections for twenty-three and a half (23 ½) years. He has been a CO, a Sergeant, a Lt., an administrative assistant and a Deputy Warden at three (3) prisons prior to becoming Warden at this Institution. Mr. Houk has been Warden at this Institution two (2) years and three (3) months. Mr. Houk said it is his responsibility to maintain a safe and secure environment.

Mr. Houk said the Incident on September 4, 2009 was a Work Force Violence Issue. He was shown Exhibit Management 1 and said it is the Departments Work Place Violence Policy. The Department has zero tolerance. Mr. Houk ordered an Investigation.

Mr. Houk was shown Joint Exhibit 3, Page 6(a). This is the Hearing Officer's Report which found Just Cause. He said he reviewed the file. Mr. Houk testified this is an egregious act. The Grievant had a five (5) day suspension and this combination was the reason for removal.

Mr. Houk then read Exhibit Management 1 Page 2, Definition of Workplace Violence: Non-Physical. Mr. Houk said the Grievant violated this policy. He then read Management Exhibit 1 Page 3, Policy V which is Zero Tolerance. Mr. Houk was asked, "Any other such incidents while you were Warden?" He replied, "No".

Mr. Houk then read Joint Exhibit 4 Page 17 and testified that per Rule 18 a first offense could be removal. He read Rule 24 and said it also called for removal on a first offense. He said the Rule 24 Offense makes this more egregious.

On Cross-Examination, Mr. Houk said he applies progressive discipline. He was asked, "How many work force violations since you became Warden?" He answered, "Less than ten (10)." He also said not all were removed. Mr. Houk then looked at Exhibit Union 3, Notice of Discipline on Charlie Hines for Rule 24. He read Joint Exhibit 4 Page 17 and said it said two (2)

to removal. He also read Union Exhibit 4 the Notice of Discipline of Angela O'Sullivan.

IV. THE UNION'S CASE

The Union opened its case by re-calling Rick Shutek. Mr. Shutek was asked, "Does the Union file appeals on Suspensions, Fines, and Removals?" He answered, "Yes". He was then asked, "Do you know why the Union didn't appeal the Grievant's five (5) day fine?" Mr. Shutek said, "I can't answer, the case was settled."

The next witness was Tim Jones. Mr. Jones is a CO and the Chief Steward. CO Jones said he processes Grievances and Appeals. He said discipline is to be progressive and commensurate with the offense.

CO Jones said the discipline in this case was not progressive or commensurate with the offense. This is a first offense.

CO Jones was then asked, "Since September 4, 2009 have you heard from Management that this is a second offense?" He answered, "Yes in the Mediation at Mansfield."

CO Jones testified that Stefan Johnson was not removed for violations of Rule 18 and Rule 24. He was then shown Union Exhibits 1 and 2. He read the last entry on Union Exhibit 2 which said "Removal, Last Chance, 5 day fine."

CO Jones testified that the 5 day fine is part of the Last Chance Agreement and when the Last Chance Agreement is up, the fine is gone. He said the Union did not appeal the 5 day fine as it is part of the Last Chance Agreement. CO Jones testified that the Grievant did complete the Last Chance Agreement.

CO Jones then read the second page of Union Exhibit 1. He testified the Last Chance Agreement was finished after 1 year which was August 13, 2009.

He then read Joint Exhibit 3 Page 1, which shows this Incident happened September 4, 2009 and Grievant was off the Last Chance Agreement in August, 2009.

CO Jones testified that Past Practice was the slate is wiped clean when the Last Chance Agreement is finished. He said this incident is now the Grievant's first offense.

CO Jones was then asked, "What does go to the back mean?" He replied, "The shift office from the Control Center. This office is the Lt.'s or the Captain's."

CO Jones said he had worked with Grievant since 1994-1995. He was asked, "Did you ever know Grievant to threaten or intimidate any female Cos?" He answered, "No". He was also asked, "Did you ever know the Grievant to threaten or intimidate any male Cos?" He answered, "No".

CO Jones said the Grievant is a good employee. He said he has worked Control. If the intercom box is not working it is hard to hear people outside.

On Cross-Examination CO Jones said it was not his signature on the Last Chance Agreement.

On Re-Direct Examination, CO Jones said he was with the Grievant at Mediation and he was aware of the Zero Tolerance Policy.

The last witness was the Grievant, Greg Mason. Mr. Mason is a Correctional Counselor and has over twenty (20) years with the Department of Rehabilitation and Corrections.

The Grievant said on September 4, 2009 he went to B-1. He said he put his chit in the drawer and CO Rancher was on the window. The Grievant said Ms. Stanford gave him a wave and came over and pulled the schedule off the wall. He said he asked her if she was upset over the Incident with the Inmate Count. The Grievant said he called Ms. Stanford and she told him to

call the Unit. He said Ms. Stanford called him and cussed him out for “fronting her out on the radio.”

The Grievant said he never threatened Ms. Stanford. He said when the Inspector called him into the Office he said he had a question about the Stanford incident. The Grievant said he had gotten along with Stanford.

The Grievant testified that he said “Lets go back to the Captain’s Office.”

The Grievant left the Control Room and ran into Lt. McCormack. He told Lt. McCormack “She needed to have a chat with that girl.” He said Ms. Stanford cussed him at the window.

The Grievant said he felt Ms. Stanford had a grudge against him because of the incident over the radio. The Grievant said he never used “out back”. He said he doesn’t recall whether or not the intercom was working. The Grievant said he didn’t know Ms. Stanford was working Control on September 4, 2009. The Grievant testified he did not yell at Ms. Stanford and did not want to fight her.

The Grievant testified that the Inspector never told him not to talk to witnesses. He didn’t think talking to CO Atkinson was wrong. He further testified that CO Rancher was laughing all during the incident.

The Grievant testified that Ms. Stanford had a reputation for going out on a disability and that’s what he meant - NOT to whip her. At this time it was stipulated to Union Exhibit 3 that Grievant had gotten his Unemployment.

The Grievant said he had no prior discipline when removed. He said his Last Chance Agreement in 2008 concerned an Inmate spitting on him and his use of Mace.

The Grievant was shown Union Exhibit 1 which is his Last Chance Agreement. He also had a 5 day suspension. The Grievant was then given Union Exhibit 2 and read the last entry of 4-15-08. He said he understood the 5 day fine was part of the Last Chance Agreement. He further testified that he had some good evaluations.

The Grievant read Union Exhibit 4 consisting of two letters. This Exhibit shows he was Employee of the month in October 2007. He said he gave no indication to Ms. Stanford or CO Atkinson that he wanted to fight. The Grievant was asked what knowledge he had that Ms. Stanford did the Incident Report on another day than that on the report. He replied he has no direct knowledge of this.

The Grievant said he had no contact with Ms. Stanford after the Radio Incident until September 4, 2009.

On Cross-Examination he was shown Joint Exhibit 3 Page 71 which is his acknowledgment and Waiver of Right to a Representative. He said a Union Representative was there. The Grievant read the Exhibit and said it said he was not to discuss the case with anyone. The Grievant was questioned by Inspector Armbruster. He was shown Joint Exhibit 3 Page 19 and said he had questioned Inspector Armbruster. He then read Joint Exhibit 3 Page 21 and said he had questioned Inspector Armbruster.

The Grievant said Ms. Stanford has a reputation for wanting disability. He said he can't say why CO Rancher said what she did. He said CO Rancher was laughing when he left the Control Room. He said he had no similar problems.

The Grievant read the entry on Union Exhibit 2 from 10/12/95. He then read Management Exhibit 2 which showed Discipline for being agitated and using bad language. He read the entry

of 10/28/90 in Union Exhibit 2. Then he was given Management Exhibit 3 which showed Discipline for abusive statement "worthless piece of shit". The Grievant read the entry of December 13, 1998 which was a 10 day suspension for obscene and intimidating language. He then read the entry for October 1, 2001 in Union Exhibit 2 with Management Exhibit 5. This shows Discipline for a heated exchange "asshole, Bitch".

The Grievant then read the entry for March 26, 2002 in Union Exhibit 2 with Management Exhibit 6 which shows he told the B-1 Officer he would "take him out and beat his ass". He then read Management Exhibit 7 which showed he told an employee to "take it outside".

On Re-Direct the Grievant reviewed Joint Exhibit 3 Page 19 and said he doesn't recall what the question was as it was not finished. He was shown Management Exhibit 7 and he said he thought that Grievance was appealed but he couldn't remember as it was too old. At this point the Employer stipulated that the Exhibits concerning the priors were grieved.

The Grievant was not trying to take over the investigation. He said he was told not to talk to Stanford but did not understand the Waivers meant not to talk to any witnesses.

The Grievant was shown Management Exhibit 7 and said Eric Lane was no longer at the Institution. He was shown Management Exhibit 6 and said he doesn't recall who the B-1 Officer was. The Grievant reviewed Management Exhibit 5 and said CO Ross is no longer at the Institution. He read Management Exhibit 3 and said the woman was now a CO and they get along fine now.

The Grievant read Management Exhibit 2 and said Mascharo is no longer here. He read Management Exhibit 4 and said he was a scapegoat to protect the Regional Director's Daughter.

Hearing concluded at 4:30 P.M.

VI. OPINION OF THE ARBITRATOR

In their Closing Argument the Employer contends that the testimony of their witnesses is consistent. The Employer points out that CO Atkinson heard Grievant say "disability" and that CO Rancher said "out back" means to go be beaten up. Maintenance Plumber Rosario said "Never heard of the Captain's Office being outback".

The Employer also contends that the Grievant approached two witnesses about their testimony after signing on the Waiver that he would not contact any witnesses.

The Employer also stresses the testimony of Ms. Stanford that she felt threatened and scared. She said she was afraid of Grievant as he is a Staff Member. The Warden also testified about Zero Tolerance concerning Work Place Violence.

The Employer also argues that the Union witnesses are not credible. Chief Steward Tim Jones testified that Grievant had no priors but that the Management Exhibits proved otherwise. The Grievant had reason to lie and the Grievant never changes his behavior, after a warning progressive discipline does not apply.

The Union argues that there is no Just Cause for discipline. The Union contends that the Grievant only made a sarcastic remark and only wanted to go to the Captain's Office. The Union points out that both Ms. Stanford and the Grievant said there were no issues prior to September 4, 2009.

The Union also asserts that the Grievant did not interfere with the Investigation. The Union says that the Inspector never explained what the Waiver meant and that the Grievant never Threatened anyone.

The Union also argues that there was no active discipline at the time of this Removal as

the five (5) days were up when the Last Chance Agreement ended.

The Union also says, "Why would the Grievant want to hurt Ms. Stanford?" The Union argues this is a first offense and there is no progressive discipline and no Just Cause. This discipline is solely for punishment.

The Union also argues Ms. Stanford started the issue with a gesture at the Control window. The Union points out Ms. Stanford waited until three (3) hours after shift to go to the Ohio State Patrol and that CO Rancher thought they were joking.

The Union also says Maintenance Plumber Rosario said he wasn't sure who Grievant was speaking to. The Control Center windows are tinted and the entire incident took thirty (30) seconds.

The Union also argues that the Grievant did not know Ms. Stanford was at Control.

The Union says none of the Grievant's priors involved Work Place Violence. The Union also says the Chief Steward has only been Chief Steward for part of the time concerning his testimony about Grievant's record.

The Union also relies on several arbitration decisions which the Union claims are persuasive. The Arbitrator has reviewed all the arbitration decisions provided by the Union and does not find them to be on point.

The Union cites Ohio Civil Service Employees Association, Local 11 AFSCME, AFL/CIO and Ohio Dept. of Taxation, Donald Bugg, Grievant, decided by Arbitrator Anna Duval Smith. In this case the Grievant said "you got the right one" and stealthily crept up close behind a co-worker to eavesdrop Page 9 supra. This case had no threat of bodily harm, unlike the case before the Arbitrator. In addition the Donald Bugg case had another serious issue not present

here. Arbitrator Smith also finds the Union was denied timely discovery Page 10 supra.

The Union also cited State of Ohio Dept. of Mental Health and Ohio Civil Service Employees Association, AFSCME Local 11, AFL/CIO Grievant Edmonia Antorne. This case was decided by Arbitrator Dwight Washington, Esq.

In this case the Grievant “engaged in a heated conversation with Leugers in a loud and angry manner and used words that were viewed by NBH as threatening Page 3 supra. Leugers testified “she was shaken and frightened and immediately informed the manager on duty” Page 7 supra. Arbitrator Washington found “the apprehension concerning Antorne’s behavior towards management was genuine, but did not rise to the level of threatening, menacing or harmful”. In this case there is direct evidence that the statement of the Grievant was threatening and menacing

The next case the Union cites is The State of Ohio, Dept. of Mental Retardation and Developmental Disabilities v. Ohio Civil Service Employees Association Local 11, AFSCME, AFL/CIO, Grievant, Virginia Montgomery. This case was decided by Arbitrator David M. Pincus. Arbitrator Pincus set forth the rule that “classic cases dealing with verbal or physical threats toward Management involve severe forms of direct confrontation” Page 12 supra. Arbitrator Pincus also found some of the Management witnesses “not credible” Page 3 supra. Findlay, Arbitrator Pincus finds “Nothing in the record as it relates to “Brown” or “higher ups” references threatening comments regarding burning crosses in yards. She might have made some statements to that effect in general terms during the course of the investigation. Still none of the statements or transcripts used in support of the removal contain these direct threats” Page 13 supra. In this case there is testimony in the record that Ms. Stanford was directly threatened by the Grievant.

The Union further relies on Ohio Civil Service Employees Association, AFSCME Local 11, AFL/CIO and Ohio Dept. of Transportation, Grievant, Lino Bartolozzi. This case was decided by Arbitrator Dwight Washington, Esq. In this case Grievant posted threatening material in the vending area directed at Calvin Schmidt, a Co-worker. Schmidt confronted the Grievant. Arbitrator Washington said "I find that Schmidt's initial response to the posting fails to demonstrate any fear or apprehension on his part" Page 11 supra.

There was another important issue here not present in this case. Arbitrator Washington said "The facts are un-refuted that the Employer failed to provide any documents or witness list before the pre-disciplinary hearing" Page 13 supra. In this case there was evidence from Ms. Stanford and her co-workers that she was afraid and upset.

The Union argues that none of the Grievant's prior disciplines involve Work Place Violence. However, Management Exhibit 6 shows the Grievant being suspended for violation of Rule 18 when the Grievant told the B-1 Officer he would take him outside and beat his ass. Management Exhibit 7, while not charged as a Rule 18 violation shows Grievant admitting to telling another Officer to "take it outside".

In addition Management Exhibit 5 shows Grievant having a heated exchange with a female CO at the Control Room window.

The evidence is clear and convincing that the Grievant made a threat to Ms. Stanford. The Grievant's testimony that "out back" meant to go to the Captain's Office is not credible. CO Rancher testified that the obvious meaning was to go outside and fight.

The evidence is also clear that the Grievant violated Rule 24. CO Atkinson testified that the

Grievant tried to get him to change his testimony. CO Rancher testified the Grievant called her a liar and she hung up on him.

The Union argues that Grievant did not understand the Waiver and the Inspector told him only not to talk to Ms. Stanford. This is debatable as persons are responsible for knowing what they are agreeing to when they sign documents.

In any event, with the Grievant's track record a reasonable mind can only conclude that he knew he couldn't try to get witnesses to change their testimony.

There was considerable argument during the hearing as to whether or not Grievant's five (5) day fine was still part of his record per the Contract or was merged with the Last Chance Agreement and had therefore expired. The settlement part of the Last Chance Agreement was not available to the Arbitrator as per Rule, the Arbitrator can only conclude that the terms of the Contract rule and the five (5) day fine is part of the Grievant's record for two (2) years.


In any event Rule 18 and Rule 24 permit removal upon appropriate facts.

I find Removal is a correct remedy. The Grievant seems to have a problem with female co-workers and had a prior Rule 18 violation.

The evidence is clear that Grievant violated both Rule 18 and 24. Both of these rules, by themselves permit Removal.

The Grievance is denied.

Issued at Ironton, Ohio this 7th day of June 2010.



Craig A. Allen
Arbitrator