**OCB AWARD NUMBER: 2083**

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| **SUBJECT:** | **ARB SUMMARY # 2083** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **27-14-20091221-0246-01-03** |
| **DEPARTMENT:** | Ohio Department of Rehabilitation and Correction |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | Craig A. Allen |
| **GRIEVANT NAME:** | Greg Mason |
| **MANAGEMENT ADVOCATE:** | Buffy Andrews |
| **2ND CHAIR:** | N/A |
| **UNION ADVOCATE:** | Robert Jones |
| **ARBITRATION DATE:** | May 19, 2010 |
| **DECISION DATE:** | June 7, 2010 |
| **DECISION:** | DENIED |
| **CONTRACT SECTIONS:** | Article 24 |
| **OCB RESEARCH CODES:** | 118.01—Discipline-In General; 1186521—Insubordination; 113.04—Workplace Violence  |
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**HOLDING: Grievance DENIED. The Arbitrator held that the grievant violated the agency workplace violence policy and that removal was justified based on the Grievant’s threatening statements. The Arbitrator noted that the grievant, “seems to have a problem with female co-workers.” The grievant also violated Rule 24, Interfering with an Official Investigation, by talking with two witnesses in the case after being advised to not do so.**

On September 4, 2009, a relief officer at Lorain Correctional filed an incident report alleging that the grievant threatened and intimidated her. Officer Stanford alleged that the grievant motioned her over and proceeded to make numerous verbal threats. After an administrative investigation the grievant was removed. However, the grievant claimed progressive discipline was not followed. The employer found that the grievant had a five (5) day fine on the books and this, along with a zero tolerance policy for Work Place Violence was sufficient justification for removal.

The Employer argued that the violation warranted a removal at first offense. On September 4, 2009, the grievant threatened Ms. Stanford by telling her “he would put her out on disability.” He also said he wanted to take Ms. Stanford “out back.” Some of the witnesses interpreted “take out back” to mean that the grievant wanted to beat Ms. Stanford up. Another witness heard the grievant telling someone “they would go on disability again.” Also, the grievant contacted witnesses in the case after signing a waiver stating he would not do so. Per Rule 18, the Workplace Violence Policy, an employee can be removed on the first offense. Additionally, Rule 24, Interfering with an Official Investigation, also calls for removal on a first offense.

The Union arguedthat this was a first offense and the discipline is to be progressive and commensurate with the offense. The Union also argued the grievant had a Last Chance Agreement which expired and that when a Last Chance Agreement is satisfied that the slate is wiped clean, taking the five (5) day off the books. The Union noted that C.O. Stanford cussed the grievant out for “fronting her out on the radio.” The grievant told Lt. McCormack, “she needed to have a chat with that girl” meaning Ms. Stanford. The grievant claimed the “put on disability” comment only meant that Ms. Stanford had a reputation for going out on disability and not meant to threaten her. The Union argued that the grievant’s comments were not serious enough to rise to the level of removal.

The Arbitrator denied the grievance.He determined 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. 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. The settlement part of the Last Chance Agreement was not available to the Arbitrator as per Rule. Thus, 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. The Rule 18 and 24 permit removal upon appropriate facts. The arbitrator therefore found that removal was the correct remedy.