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| In the Matter of Arbitration | : | Grievance No.: 27-19-20140702-0157-01-09 |
| | : | |
| Between the | : | |
| | : | |
| State of Ohio, Department of Rehabilitation and Correction, Ohio Reformatory for Women, Employer | : | Grievant: Dennis Coley |
| | : | |
| and the | : | Date of Hearing: February 27, 2015 |
| | : | |
| Ohio Civil Service Employees Association, American Federation of State, County and Municipal Employees, Local 11, AFL-CIO, Union | : | Howard D. Silver, Esquire Arbitrator |

DECISION AND AWARD OF THE ARBITRATOR

APPEARANCES

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Ohio Reformatory for Women, Employer

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PROCEDURAL BACKGROUND

This matter came on for an arbitration hearing on February 27, 2015 at 9:00 a.m. in a conference room in the administration building at the Ohio Department of Rehabilitation and Correction's Ohio Reformatory for Women, 1479 Collins Avenue, Marysville, Ohio 43040. At the hearing both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions. The hearing concluded on February 27, 2015 at 1:15 p. m.

Post-hearing briefs from both parties were received by the arbitrator by March 30, 2015 and exchanged between the parties.

No challenge as to the arbitrability of the grievance has been raised.

This matter is properly before the arbitrator for review and resolution under the authority of Articles 24 and 25 of the parties' collective bargaining agreement.

AGREED ISSUE STATEMENT

The parties agreed that the issue raised by the grievance in this case is:

Was the grievant, Dennis Coley, removed from employment for just cause?

If not, what shall the remedy be?

JOINT STIPULATIONS

The parties jointly stipulated to the following facts:

1. Grievant was classified as a Storekeeper 2
2. Date of Hire: May 31, 1994
3. Date of removal: June 30, 2014

4. Date of Retirement: November 1, 2014¹
5. Grievant had an active written reprimand (Rule #8)
6. Grievant signed for the Standards of Employee Conduct (SOEC) on November 1, 2009.

In addition to the facts stipulated above, the parties agreed to the admission of joint exhibits that include:

1. 2012 – 2015 OCSEA Contract
2. Grievance Trail, Step 3 Response
3. Disciplinary Trail Notice of Discipline, Hearing Officer Report, Investigative Report
4. (1) CD – RW
5. Standards of Employee Conduct (SOEC) and grievant's receipt to 2009
6. Grievant's Training Records
7. Inmate Handbook (13 - 15)
8. 5120-9-04
9. 5120-9-31
10. 64-DCM--01
11. Start date: 9/8/13

STATEMENT OF THE CASE

The parties to this arbitration proceeding, the Ohio Department of Rehabilitation and Correction, Ohio Reformatory for Women, the Employer, and the Ohio Civil Service Employees

¹ This stipulation, Joint Stipulation 4, was challenged as inaccurate by the Union at the hearing. The Union claims that Mr. Coley did not retire following his removal from employment that occurred on June 30, 2014. The arbitrator shares the Union's skepticism about the accuracy of Joint Stipulation 4.

Association, American Federation of State, County and Municipal Employees, Local 11, AFL-CIO, the Union, are parties to a collective bargaining agreement that, in Article 24, section 24.01, prohibits the imposition of disciplinary action upon an employee except for just cause.

The grievant in this proceeding, Dennis Coley, began his employment with the Ohio Department of Rehabilitation and Correction on May 31, 1994 at the Trumbull Correctional Institution. For nineteen years Mr. Coley worked from the position of Food Service Manager 1, an exempt position, at the Trumbull Correctional Institution and later at the Oakwood Correctional Institution. With the displacement of Mr. Coley from his position in 2013, Mr. Coley displaced into a Storekeeper 2 position, a non-exempt position, at Ohio's Reformatory for Women. Mr. Coley assumed the Storekeeper 2 position at Ohio's Reformatory for Women on September 8, 2013.

On June 3, 2014 Mr. Coley received written notice of a pre-disciplinary conference scheduled to occur on June 17, 2014. In this notice, Exhibit 3, pages 20-21, Mr. Coley was apprised of rules alleged to have been violated by him, namely Rule 12A, Making obscene gestures or statements, or false, abusive or inappropriate statements; Rule 13, Improper conduct or acts of discrimination or harassment on the basis of race, color, sex, age, religion, national origin, disability, sexual orientation, gender identity or military status; Rule 18, Threatening, intimidating or coercing another employee or a member of the general public; Rule 44, Threatening, intimidating, coercing or use of abusive language toward any individual under the supervision of the Department; Rule 45, Without express authorization, giving preferential treatment to any individual under the supervision of the Department, or any individual within 6 months following their release from custody or supervision of the Department, but not limited to: B. The offering, receiving, or giving of anything of value.

The pre-disciplinary conference that addressed the allegations made against Mr. Coley occurred on June 20, 2014. At the pre-disciplinary conference investigator Katie Nixon identified the investigatory packet that had been created as a result of an investigation of the allegations against Mr. Coley and identified Ms. Nixon's investigation report that had been submitted on May 8, 2014. No inmates were at the pre-disciplinary conference.

On June 24, 2014 the pre-disciplinary conference hearing officer, Amanda Moon-Thomas, issued her report finding that Mr. Coley had violated Rule 12A, Making obscene gestures or statements, or false, abusive or inappropriate statements; Rule 44, Threatening, intimidating, coercing, or use of abusive language toward any individual under the supervision of the Department; and Rule 45B, Without express authorization, giving preferential treatment to any individual under the supervision of the Department, or any individual within 6 months following their release from custody or supervision of the Department, but not limited to: B. The offering, receiving, or giving of anything of value.

On June 25, 2014 the Employer issued a Notice of Discipline letter addressed to Dennis Coley intended to notify Mr. Coley that he was being removed from his position of employment as a Storekeeper 2 at the Ohio Reformatory for Women. This Notice of Discipline letter, Exhibit 2, pages 6-7, is dated on its face June 25, 2014 and was received by Mr. Coley on June 30, 2014. The June 25, 2014 Notice of Discipline alleged that Mr. Coley had acknowledged that he had "...referred to and called Ms. W. Williams the 'cougar' because she likes younger men." Mr. Coley is alleged in this notice to have commented on Ms. W. Williams's ankle bracelet, telling Ms. Williams that only whores wear those. It is alleged in the June 25, 2015 Notice of Discipline letter that Mr. Coley acknowledged he gave to and called inmate Truman by the nickname "princess." The June 25, 2014 notice of discipline letter claimed that Mr. Coley had acknowledged that he

would ring a bell to get inmates to come to Mr. Coley's attention. The June 25, 2014 Notice of Discipline letter directed to Mr. Coley also included the following:

You acknowledged that you had a conversation with inmates about the Oprah show wherein younger kids were discussing the preference of oral sex over sexual intercourse.

You acknowledged that you did not remember giving your lunch to inmates, but that you did complain to the inmates that it was a "chore to go get the inmate's (sic) lunches." However, an inmate confirms that you gave your lunch which consisted of two sandwiches an apple and an orange to her and one other inmate.

The June 25, 2014 Notice of Discipline letter states that the removal of Mr. Coley is effective immediately. See Exhibit 2, page 6.

The June 25, 2014 notice of discipline letter directed to Mr. Coley alleged violations of the Standards of Employee Conduct Rules - Rule 12A: Making obscene gestures or statements, or false, abusive, or inappropriate statements; Rule 44: Threatening, intimidating, coercing, or use of abusive language toward any individual under the supervision of the Department; Rule 45B: Without express authorization, giving preferential treatment to any individual under the supervision of the Department, or any individual within 6 months following their release from custody or supervision of the Department, but not limited to: B. The offering, receiving, or giving anything of value.

The June 25, 2014 Notice of Discipline letter directed to Mr. Coley stated that pursuant to Article 25 of the OCSEA/AFSCME Contract Mr. Coley could grieve this disciplinary action if a grievance were to be filed through a Union representative within fourteen calendar days of the notification of the removal of Mr. Coley. Mr. Coley's signature, dated June 30, 2014, appears on the second page of the June 25, 2014 Notice of Discipline letter, Exhibit 2, page 7.

On July 2, 2014 a grievance form, Exhibit 1, page 1, was prepared, dated on its face July 2, 2014 and signed at the bottom of the form with an illegible signature dated July 2, 2014. This grievance form complained that the June 30, 2014 removal of Dennis Coley from his position was without just cause and for the sole purpose of punishment. The remedy sought through this grievance form includes an order that the Employer cease and desist in violating the parties' Agreement; reinstatement of Mr. Coley to a Storekeeper 2 position at Ohio's Reformatory for Women without loss of seniority, placed in the same position with appropriate days off; payment of Mr. Coley for any missed wages; payment of Mr. Coley for any medical or any other type of expenses while being removed, payment of Mr. Coley for any missed retirement; and make the grievant whole.

In the top margin of the grievance form that appears as page one of Exhibit 1 there is handwritten: "Rec'd 7-9-14" and under this notation are handwritten initials.

The grievance form filed on July 9, 2014 contesting the June 30, 2014 removal of Mr. Coley from his Storekeeper 2 position at the Ohio Reformatory for Women moved through the parties' contractual grievance procedure as expressed in Article 25 of the parties' Agreement and produced a Step 3 response from the Employer on July 22, 2014. The Step 3 response from the Employer, Exhibit 1, page 4, denied the grievance, finding the grievant had made inappropriate and obscene statements to both female inmates and female staff members. The Employer's Step 3 response found that the grievant had shown preferential treatment to certain inmates when he gave them his lunch that he brought in to work. The Step 3 response issued on behalf of the Employer by the Manager of the Bureau of Labor Relations for the Ohio Department of Rehabilitation and Correction found that: "Based upon the grid in the Standards of the Employee Conduct the discipline issued was appropriate in this case. Therefore, this grievance is denied at Step 3."

The grievance remained unresolved and was moved to final and binding arbitration under Article 25, section 25.02, Step Five of the parties' Agreement.

SUMMARY OF TESTIMONY AND EVIDENCE

Waneitta Williams

Waneitta Williams has been employed by the Ohio Department of Rehabilitation and Correction for fourteen years. Ms. Williams had worked at MCI, an institution of the Ohio Department of Rehabilitation and Correction, until 2013 when Ms. Williams was displaced from her position and Ms. Williams displaced into a Storekeeper 2 position at the Ohio Reformatory for Women in September, 2013.

Ms. Williams testified that when she began her employment at the Ohio Reformatory for Women in September, 2013 she was assigned to the warehouse where she was to work as a storekeeper with storekeeper Dennis Coley. Ms. Williams testified that things did not go well between Mr. Coley and Ms. Williams, describing Mr. Coley as a "straight up bully." Ms. Williams recalled Mr. Coley calling Ms. Williams a cry baby, cursing Ms. Williams, and telling Ms. Williams that she was stupid and dumb. Ms. Williams testified that she told Mr. Coley that he could not continue to talk to her that way as he was being verbally abusive.

Ms. Williams testified that the verbal abuse of Ms. Williams by Mr. Coley occurred in front of inmates. When asked how long Ms. Williams had suffered this verbal abuse from Mr. Coley Ms. Williams testified that it had not been every day but it had gotten to the point where Ms. Williams had stopped talking to Mr. Coley.

Ms. Williams testified that Mr. Coley's treatment of Ms. Williams distracted Ms. Williams from the job at hand at the warehouse and affected the ability of Ms. Williams to efficiently

perform her duties. Ms. Williams testified that there had been substantial tension among inmates and staff in the warehouse caused by Mr. Coley's comments and Ms. Williams testified that the berating Ms. Williams suffered from Mr. Coley made Ms. Williams feel worthless.

Ms. Williams recalled that Mr. Coley had asked Ms. Williams whether her tongue ring was intended for sexual purposes. On another occasion, after noticing that Ms. Williams was wearing an ankle bracelet, Mr. Coley told Ms. Williams that ankle bracelets are called whore bracelets because that's who wears them.

Ms. Williams testified that a temporary worker assigned to the warehouse at the Ohio Reformatory for Women, Vicki Fisher, had observed Mr. Coley's behavior toward Ms. Williams, as had three inmates.

Ms. Williams testified that she had tried to get along with Mr. Coley and had asked Mr. Coley for assistance in mastering the operation of the computer used in the warehouse. Ms. Williams testified that she attempted to ignore the abusive comments from Mr. Coley directed at her in the hope that such comments would stop.

Ms. Williams testified that she approached her direct supervisor and explained to the supervisor the comments that were being directed by Mr. Coley to Ms. Williams about whore bracelets, tongue rings, and f-bombs. Ms. Williams testified that she received no assistance from this supervisor beyond being told that she and Mr. Coley needed to work things out between them.

Ms. Williams testified that she approached a Union steward about the behavior of Mr. Coley toward Ms. Williams but she observed no change in Mr. Coley's behavior.

Ms. Williams testified that she was unable to endure the abusive comments Mr. Coley was directing at her and so she sought out a physician to address Ms. Williams's anxiety. Ms. Williams testified that the physician prescribed medicine to Ms. Williams to calm her.

Ms. Williams testified that Mr. Coley was observed to refer to an inmate he had nicknamed “princess,” calling the inmate by that nickname, and Mr. Coley was observed to ring a bell on his desk to summon those inmates who heard the ringing.

Ms. Williams testified that Mr. Coley would often say to Ms. Williams: “Here comes your boyfriend,” referring to any male delivery worker who arrived at the warehouse. Ms. Williams testified that she asked Mr. Coley to stop this practice but this practice did not stop.

Ms. Williams noted that she had not known Mr. Coley prior to September, 2013 when they both reported to their positions at the Ohio Reformatory for Women. Ms. Williams testified that she had not wanted to be treated in the manner she was treated by Mr. Coley. Ms. Williams testified that since Mr. Coley has been gone from the Ohio Reformatory for Women Ms. Williams’s job has been really good and stress free. Ms. Williams testified that she could never work with Mr. Coley again.

Ms. Williams noted that when working in the warehouse at the Ohio Reformatory for Women inmates are present. Ms. Williams testified that inmates heard comments made to Ms. Williams by Mr. Coley and inmates had said that Mr. Coley’s comments had been inappropriate. Inmates had also said that they did not want to be around Mr. Coley because they felt uncomfortable around him. In this regard Ms. Williams referred to inmates Schooley and Truman.

Ms. Williams testified that through hard work inmate Schooley had secured a highly coveted gate pass, only to voluntarily turn back the gate pass. A gate pass confers a highly prized privilege, the authority to work outside the stockade walls. Ms. Williams testified that inmate Schooley had worked hard to secure the gate pass but had voluntarily returned it because she did not wish to work around Mr. Coley.

Under questioning by the Union representative Ms. Williams testified that she filed an incident report during the investigation of Mr. Coley's conduct by the Employer.

Ms. Williams recalled talking to her immediate supervisor on three occasions about how Ms. Williams was being treated by Mr. Coley.

Ms. Williams understood the term "cougar" as used by Mr. Coley in referring to Ms. Williams, compared Ms. Williams to a cat, perhaps even a stray cat, and Ms. Williams was offended by the comparison. Ms. Williams did not interpret being called a "cougar" to mean an older woman who is interested in dating younger men.

Ms. Williams identified Exhibit 7, page 135 as the January 21, 2014 incident report she filed as to Mr. Coley's behavior toward her. Under "Description of Incident:" the following appears:

Mr. Coley has on numerous occasions called me a cry baby, said I had no scruples in my head, there was no truth in me and that I do not, know how to do my job. He continues to tell me, I need to stop doing favors for everyone and do my own job. He was always calling the inmate workers out of their name (cougars, princess etc.). The inmates told me they felt very uncomfortable around him. He always is telling me, that he is tired of correcting my mistakes. He uses inappropriate language (cussing) at me in front of inmates. The tension is so thick, it can be cut with a knife.

Ms. Williams was asked whether she had ever cursed at work. Ms. Williams responded that she had. Ms. Williams was asked whether she had ever called an inmate by a nickname. Ms. Williams responded that she had not. Ms. Williams was asked whether she had ever referred to Dennis Coley as "Dad," and Ms. Williams answered that she had not.

Ms. Williams was referred to Union Exhibit 2, policy number 31-SEM-06, that has been effective since March 29, 2012, that establishes and defines grooming standards among employees

of the Ohio Department of Rehabilitation and Correction. Ms. Williams testified that under this policy she had been directed to remove her tongue ring when at work.

Ms. Williams was asked whether she had brought in homemade Danish pastries and shared them with inmates. Ms. Williams responded that she had not.

Susan Tracy

Susan Tracy has been employed by the Ohio Department of Rehabilitation and Correction for almost fifteen years. Ms. Tracy's present position is Case Manager at the Ohio Reformatory for Women, responsible for things outside the fence and the safety and well-being of inmates.

Ms. Tracy testified that on January 16, 2014 inmates Tammy Lewis and Terra Ellis came to Ms. Tracy's office, closed the office door, and told Ms. Tracy that they were uncomfortable working in the warehouse. The inmates told Ms. Tracy that Mr. Coley had made inappropriate remarks and had repeatedly asked inmates whether they would "do" the Holland truck driver. One of the inmates told Ms. Tracy that Mr. Coley had asked her to sing and the inmates recalled to Ms. Tracy comments by Mr. Coley to inmates about oral sex.

Ms. Tracy found the inmates credible and checked with other inmates who confirmed to Ms. Tracy that they had overheard Mr. Coley make inappropriate comments in the warehouse. Ms. Tracy was told that Mr. Coley does not treat inmates with respect and makes them feel uncomfortable.

Ms. Tracy talked to inmate Kara Schooley who had turned back a gate pass she had previously secured, a pass that allows an inmate to work outside the institution's walls. Inmate Schooley, when originally asked about why she had returned the gate pass, denied that there had been any particular reason. Two weeks later inmate Schooley told Ms. Tracy that inmate Schooley had returned the gate pass because she had not wanted to work around Mr. Coley.

Ms. Tracy testified that the inmates she talked to had spoken of being around Mr. Coley and being embarrassed, creeped out, debased, degraded, intimidated, trapped, and stuck.

Under questioning by the Union's representative Ms. Tracy was referred to Exhibit 5, pages 97-98, an inmate confidential statement dated January 16, 2015 from Tammy Lewis, an inmate at the Ohio Reformatory for Women. Ms. Lewis's confidential statement reads as follows:

Mr. Coley has called me trick before. My experience in working with him has been one of total disrespect toward women. I tried not to let him get to me by trying to ignore his actions but sometimes the tensions were so high it is unavoidable. He calls me a cougar, (I guess that's his definition of an older woman liking younger men) from what he says. I would tell him you don't know me. He made a statement to me the other day in regards to him going to marry inmate Schooley. Inmate Vance and I were walking across the field the other day and Mr. Coley made an inappropriate comment to inmate Vance about him having on his belt and giving her a whooping. I also remember recalling a conversation between him and inmate Truman (who is now at ...) about how much money would be enough for her if he was her sugar daddy. There is absolutely no way I would ever put up with working with someone like this outside the institution. I felt like I didn't have a choice in here because he's my superior (my boss). I also kind of felt like no one would believe us because we're just inmates.

Ms. Tracy was referred to an incident report, dated January 16, 2014, the day that the two inmates had come to Ms. Tracy's office to discuss Mr. Coley's behavior. This incident report, filed by Ms. Tracy on January 16, 2014, Exhibit 7, page 134, reads as follows:

I, CPS Susan Tracy, was in my office in Arn 1 on 1-16-14 when at approximately 9:00 am inmate Lewis 80493 and inmate Ellis 85483 came into my office and closed the door. Inmate Ellis then stated she was uncomfortable working at the warehouse and she needed to tell me why. Ellis stated that Mr. Coley had asked her to sing for him, had asked her if she would "do" a delivery truck driver and on another occasion stated her hair looked "ratchety". I went to all of the other Arn 1 warehouse workers and inquired if they had any inappropriate contact/conversations with Mr. Coley. Inmate Vance 84443 said she did not have any problems with him, but inmate Jones 76571 stated that Mr. Coley had been talking about an "Oprah" episode and young girls and oral sex. Inmate Lewis 80493 did not say any specifics at that time, but I told her to write up what had transpired in the past. Inmate Schooley 83464 had given up her gate pass last week, but she

had not mentioned any reason. I asked inmate Schooley if this is why she had given up her gatepass and she said “yes”. I asked her why she hadn’t told me the real reason, and she stated she didn’t want to get anybody in trouble. I told her this was unacceptable and she was to write up everything that was inappropriate.

I called Mr. Mohr who instructed me to keep all warehouse workers in Arn 1 and have them write up confidential statements as well as let the investigator know.

In her testimony at the arbitration hearing Ms. Tracy confirmed that Ms. Schooley had voluntarily given up her gate pass, and when approached sometime after that about the reason for this forfeiture, Ms. Schooley had admitted she did not feel comfortable working around Mr. Coley.

Ms. Tracy was referred to Exhibit 7, page 160, policy number 64-DCM-01, a policy most recently revised effective June 13, 2014 and formerly effective on July 8, 2010. This policy is applied to all persons employed by or under contract to the Ohio Department of Rehabilitation and Correction who interact with offenders. Under Section **IV. Definitions, Inappropriate Supervision**, the following appears:

Any continuous method of annoying or harassing an offender or group of offenders including, but not limited to, abusive language, racial slurs, and the writing of conduct/violation reports strictly as a means of harassment. A single incident may, due to its severity or egregiousness, be considered inappropriate supervision for purposes of this rule.

Ms. Tracy was referred to Exhibit 7, page 162, a copy of Ohio Administrative Code section 5120-9-31 - “The inmate grievance procedure.” Ms. Tracy confirmed that no grievance had been filed by an inmate about Mr. Coley prior to January 16, 2014.

Ronette Burkes

Ronette Burkes has been employed by the Ohio Department of Rehabilitation and Correction for fourteen years and, since October, 2013 has been serving as the Warden of Ohio’s

Reformatory for Women, first under an interim appointment, followed in November, 2013 by the permanent appointment under which Warden Burkes now serves.

Warden Burkes testified that the gender of inmates makes a difference and many women inmates have been traumatized prior to coming to the institution. Warden Burkes explained that there are between 2500 and 2600 inmates at the Ohio Reformatory for Women, with an average length of stay of two years and an average sentence of four years. Warden Burkes testified that many of the inmates at the Ohio Reformatory for Women have suffered from sexual, verbal, mental, financial, and/or physical abuse.

Warden Burkes testified that she recommended that discipline be imposed upon Mr. Coley following an investigation that indicated Mr. Coley had engaged in unacceptable behavior toward staff members and inmates. Warden Burkes testified that the punishment meted out to each inmate is the sentence of incarceration imposed by the sentencing court. Warden Burkes emphasized that while incarcerated at the institution inmates are not to be punished further. Warden Burkes pointed to training on anti-harassment, on appropriate relationships, equal employment opportunity, sexual harassment, victims' issues, domestic violence, and the Prison Rape Elimination Act. Warden Burkes testified that training is provided at a minimum annually and is provided upon hire. Warden Burkes testified that training at the institution includes gender-specific training wherein employees are notified that using inmate pet names is not appropriate. Warden Burkes testified that telling a co-worker that only whores wear ankle bracelets is inappropriate and asking inmates whether they would "do" a truck driver is inappropriate.

Warden Burkes testified that she had recommended the removal of Mr. Coley from his employment at the Ohio Reformatory for Women because of his abusive comments directed to staff members, because he bestowed nicknames on inmates, because he used the ringing of a bell

to summon inmates, because he made inappropriate comments to inmates, because he initiated a conversation about oral sex in front of inmates, and because his comments about tongue rings and ankle bracelets were inappropriate. Warden Burkes found the conduct of Mr. Coley to have been harassing. Warden Burkes referred to the consistency of statements from witnesses, noting that it was more than just one inmate and more than just one staff member who had observed Mr. Coley's misconduct.

Under questioning by the Union's representative, Warden Burkes agreed that people can change. Warden Burkes agreed that progressive discipline is used to encourage positive change. Warden Burkes noted that Mr. Coley had prior discipline, a written reprimand for a violation of Rule 8 issued December 3, 2013. Rule 8, as it appears on the disciplinary grid, reads: "Failure to carry out a work assignment, the exercise of poor judgment in carrying out an assignment." The disciplinary grid for a first violation of Rule 8 provides for a written reprimand or a one day suspension. Warden Burkes testified that the termination of Mr. Coley's employment was based on his behavior.

Warden Burkes was referred to Exhibit 7, page 157 which presents Rule 44 on the disciplinary grid: "Threatening, intimidating, coercing, or use of abusive language toward any individual under the supervision of the Department." A second offense that is a violation of Rule 44 on this disciplinary grid contemplates a disciplinary response that ranges from a five-day suspension to removal.

Katie Nixon

Katie Nixon has worked for the Ohio Department of Rehabilitation and Correction for ten years. In 2013 Ms. Nixon began serving as an investigator at the Ohio Reformatory for Women.

Ms. Nixon explained in her testimony at the arbitration hearing that in investigating allegations of rule violations at the Ohio Reformatory for Women it is often the case that inmates must be interviewed. Ms. Nixon noted that in interviewing inmates, inmates must be allowed to tell their stories. Ms. Nixon testified that when similar stories are heard from various inmates, greater credibility is ascribed to the information.

Ms. Nixon identified Exhibit 3, page 23 as the first page of the investigation report that was prepared and signed by Ms. Nixon about the allegations made against Mr. Coley.

At Exhibit 3, page 27 in the investigation report there is a synopsis of the written statement provided by inmate Tammy Lewis on January 16, 2014, and an interview that occurred on January 17, 2014. This summary includes inmate Lewis's statement that Mr. Coley had referred to her as "trick," and inmate Lewis's description of her experience in working with Mr. Coley as "total disrespect toward women." Ms. Nixon testified that in her conversations with other inmates Ms. Williams was always described as acting professionally.

During a follow-up interview on January 23, 2014, inmate Lewis is reported to have said that Mr. Coley gave his lunch, two sandwiches, an apple, and an orange, to inmate Lewis and inmate Jones because Mr. Coley did not want to be bothered with getting inmate lunches. Ms. Lewis also reported that Ms. Williams had brought in homemade Danish pastries and shared them with inmates. Ms. Nixon found the allegation about Mr. Coley providing his lunch to inmates credible. Ms. Nixon did not find credible the allegation of Ms. Williams sharing Danish pastries with inmates. See Exhibit 3, page 27.²

² At page 47 of Exhibit 2, Mr. Coley in his recorded interview on February 19, 2014 referred to a temporary worker, Ms. Fisher, bringing in donuts and coffee and sharing these with inmates.

Ms. Nixon testified that inmate Lewis had said that she felt ashamed and had not been sure about how to report what was happening. Inmate Lewis had described the warehouse as a preferred work area but had come to believe that to work there one had to put up with Mr. Coley's behavior.

Ms. Nixon testified that inmates told her that Mr. Coley's inappropriate comments were regular and common occurrences and Ms. Nixon was told that the inmates knew such statements were going to occur, that it had been a normal practice.

Ms. Nixon was referred to Exhibit 3, page 28 that presents a synopsis of the written statement provided by inmate Terra Ellis on June 16, 2014 and an interview provided on January 17, 2014. As reflected in inmate Ellis's written statement, Mr. Coley had made inmate Ellis feel "uncomfortable" through Mr. Coley asking inmate Ellis and other inmates if they "would have sex" with a delivery truck driver. Inmate Ellis reported that Mr. Coley had asked inmates if they "would do him in the trailer out back." Inmate Ellis told Ms. Nixon that Mr. Coley had referred to inmate Lewis as "trick" and "cougar" and called inmate Truman "princess."

Ms. Nixon recalled that most of the inmates she talked to had overheard Mr. Coley asking inmates whether they would "do" the Holland truck driver and many of the inmates heard Mr. Coley refer to any male delivery person arriving at the warehouse as someone's "boyfriend." Ms. Nixon testified that when she spoke to inmate Ellis on January 16, 2014 in Ms. Nixon's office inmate Ellis during this conversation had presented the demeanor of someone who felt victimized and harassed but did not know a way out.

Ms. Nixon was referred to Exhibit 3, page 28, part of the investigation report that presents a synopsis of the written statement from inmate Deanna Vance provided on January 16, 2014 and an interview that occurred on January 17, 2014. Inmate Vance had said that she had tried not to pay any attention to Mr. Coley and his "stupid stuff" but did report that she had heard Mr. Coley

refer to inmate Jones as “Cleopatra.” Inmate Vance stated in her written statement that Mr. Coley had claimed to have observed inmate Ellis, inmate Schooley, and inmate Vance “checking out” the Holland truck driver, and Mr. Coley had made a comment about the inmates “doing him and going out back.” Ms. Vance reported in her written statement that Mr. Coley had “twerked” against the warehouse wall while inmates were present and recalled a conversation between Mr. Coley and inmates about an Oprah show during which teenagers expressed their preference for “oral sex over kissing.” Inmate Vance stated in her written statement that when she heard this she walked away. Inmate Vance reported that Mr. Coley had been “mean to Ms. Williams.”

Also on page 28 of Exhibit 3 is a synopsis of a written statement provided by inmate Lorenthea Jones. Inmate Jones told Ms. Nixon on January 17, 2014 that the first day inmate Jones had worked at the warehouse Mr. Coley had discussed an Oprah show with inmates and this had made inmate Jones feel “awkward and uncomfortable.” Inmate Jones recalled to Ms. Nixon that the discussion had been about girls who would rather “give oral sex rather than kiss.” Inmate Jones recalled to Ms. Nixon that Mr. Coley would stare out of the office window at inmates in the warehouse and compliment inmates on their hair or how they looked. Inmate Jones recalled Mr. Coley commenting on how the Holland delivery driver was their “boyfriend” and asked if they wanted to take the driver to a trailer behind the warehouse and “do your thing.” Inmate Jones recalled Mr. Coley saying that: “He would set it up.” Inmate Jones recalled Mr. Coley calling her “Cleopatra” and “nigga.”

Ms. Nixon testified that inmate Jones told Ms. Nixon during inmate Jones’s interview that Mr. Coley had spoken to another inmate about how that inmate had been “bent over allowing me to hit from the back.” Inmate Jones reported seeing Mr. Coley position himself at a wall and saying: “[T]his is how you twirk it,” and started shaking his butt.”

Inmate Jones described Mr. Coley to Ms. Nixon as “very disrespectful.” Inmate Jones recalled occasions when Mr. Coley stood behind inmate Jones while she was scrubbing the floor positioned on her hands and knees. Inmate Jones stated that Mr. Coley had stared at inmate Jones and when he stood up he would suck his chest up and pull his belt real tight. Inmate Jones told Ms. Nixon that Mr. Coley would: “Just give orders” and was a “womanizer.” Inmate Jones recalled Mr. Coley telling her to wear her black belt because it would “make her butt bigger.” Inmate Jones recalled Mr. Coley arguing with Ms. Williams and treating Ms. Williams like “shit.” Inmate Jones stated that Mr. Coley would “belittle” Ms. Williams when things were not done on “his time” schedule.

Exhibit 3, page 29 presents a synopsis by Ms. Nixon of an interview and a written statement from inmate Kara Schooley. Inmate Schooley told investigator Nixon that on one occasion Mr. Coley was watching inmate Schooley unload a truck. Inmate Schooley had been bent over when she heard Mr. Coley say: “mm damn.” Ms. Schooley recalled Mr. Coley telling her that her hair looked “nice” and telling inmate Schooley: “I just love you.” Inmate Schooley told Ms. Nixon that this “freaked her out.” Inmate Schooley told Ms. Nixon that Ms. Schooley had felt very uncomfortable around Mr. Coley and inmate Schooley recalled Mr. Coley telling the inmates that they “could all take him back to the trailer” and had said that she, inmate Schooley, could “go first” because she was the “thirstiest, meaning desperate.” Inmate Schooley also recalled Mr. Coley referring to inmate Lewis as “Cougar.”

Inmate Schooley told Ms. Nixon that Mr. Coley had been very disrespectful toward Ms. Williams and to all the other women. Inmate Schooley stated to Ms. Nixon that inmate Schooley felt so uncomfortable around Mr. Coley that she had chosen to give up her gate pass.

Ms. Nixon referred to Exhibit 3, page 29 that contains a synopsis of a telephone conversation between former inmate Janet Truman, investigator Nixon, and case manager Wheeler on February 12, 2014. In Ms. Nixon's synopsis of this telephone conversation, Ms. Truman is reported to have been asked about the atmosphere at the warehouse at the Ohio Reformatory for Women when she worked there as an inmate. Ms. Truman responded that: "Everything was good, everyone got along." When Ms. Truman was asked about the interaction between Mr. Coley and Ms. Williams, Ms. Truman stated: "They argue one minute and joke the next." When asked how she had gotten along with Mr. Coley, Ms. Truman stated: "He can be hard to get along with sometimes, very sarcastic." Ms. Truman told Ms. Nixon that: "You just need [to] know him." Ms. Truman recalled that Mr. Coley had called inmate Truman "princess" and recalled that Mr. Coley would "ring a bell" and recalled: "[W]e just had fun."

Ms. Truman told Ms. Nixon and Ms. Wheeler that Ms. Truman, when an inmate working at the warehouse at the Ohio Reformatory for Women, had come to know that Mr. Coley drove to the institution from the Dayton area and lived with his parents. Ms. Truman stated to Ms. Nixon and Ms. Wheeler that she knew that Mr. Coley's father had Alzheimer's disease, and knew that Mr. Coley used to work at a different institution.

Under questioning by the Union's representative Ms. Nixon confirmed that former inmate Truman had been interviewed over the telephone. Ms. Nixon confirmed that inmate Lewis's written statement is at Exhibit 5, page 97; inmate Ellis's written statement is at Exhibit 5, page 103; inmate Vance's written statement is at Exhibit 5, page 107; and the written statement provided by inmate Jones is at Exhibit 5, page 111.

Ms. Nixon testified that none of the interviews of the inmates had been recorded. Ms. Nixon testified that the inmate confidential statements were written by the inmates and initialed, and the

written statements and the summaries of the interviews are within Ms. Nixon's investigation report.

Steven J. Machingo

Steven J. Machingo is an Auto Mechanic 2 who has been working at the Ohio Reformatory for Women for the past six and one-half years. Mr. Machingo confirmed that at Exhibit 4, page 70, a summary of an interview of Mr. Machingo by Ms. Nixon that occurred on February 13, 2014 at 11:40 a.m. is presented. At Exhibit 4, page 70 Mr. Machingo is noted as having been asked whether he had seen Mr. Coley yell or use obscene language toward staff members or inmates, and Mr. Machingo had responded that he had seen such conduct directed at inmates and a co-worker, having observed Mr. Coley yelling at Ms. Williams. When asked whether Mr. Coley had ever yelled or used obscene language toward Mr. Machingo, Mr. Machingo answered that Mr. Coley had acted that way toward Mr. Machingo on one occasion.

Mr. Machingo confirmed that at Exhibit 4, page 71 Mr. Machingo is reported to have responded during the February 13, 2014 interview that Mr. Machingo had observed Ms. Williams being visibly upset because of Mr. Coley. Mr. Machingo stated to Ms. Nixon that he did not know the particulars but he had heard Mr. Coley and Ms. Williams argue and had overheard Ms. Williams tell Mr. Coley that he should not talk to Ms. Williams like that, and heard Mr. Coley say he was going to talk to Ms. Williams however he wanted to. Mr. Machingo stated that he would help out at lunch and would notice Ms. Williams crying but said she did not want to talk about it.

Mr. Machingo confirmed that at Exhibit 4, page 72 Mr. Machingo is reported to have been asked to describe the working relationship of Mr. Coley and Ms. Williams. Mr. Machingo responded by saying that Ms. Williams had always been on pins and needles around Mr. Coley, that Ms. Williams had been a nervous wreck when working with Mr. Coley. Mr. Machingo

testified that the working relationship between Mr. Coley and Ms. Williams had been pretty bad. Mr. Machingo told investigator Nixon on February 13, 2014 that he did not always know what had transpired but he could see that Ms. Williams was upset; he could see when Ms. Williams had watery eyes.

Under questioning by the Union representative, Mr. Machingo confirmed that both Mr. Coley and Ms. Williams had been new to their respective jobs in the warehouse at the Ohio Reformatory for Women. Mr. Machingo recalled observing fighting and arguing between Mr. Coley and Ms. Williams. Mr. Machingo recalled that in front of inmates Mr. Coley had said to Mr. Machingo: "Do you have a thing for Ms. Williams?" Mr. Machingo responded: "No," and had been upset that Mr. Coley had said this in front of inmates. Mr. Machingo did not tell Mr. Coley that Mr. Machingo had been angered by what Mr. Coley had done. Mr. Machingo testified that he had made an effort to steer clear of Mr. Coley's area. Mr. Machingo stated that when he mentioned to Ms. Williams he had observed what had gone on between Mr. Coley and Ms. Williams, Ms. Williams had told Mr. Machingo that she did not want any trouble. Mr. Machingo confirmed that he filed no incident report.

Under redirect examination by the Employer's representative, Mr. Machingo recalled a lot of tension in the warehouse area when Mr. Coley and Ms. Williams were working there.

Under recross-examination by the Union's representative, Mr. Machingo testified that he believed it was a rule that inmates were not to be called by nicknames; inmates were to be called by their last names. Mr. Machingo testified that he had heard Mr. Coley refer to an inmate as "stupid," making this comment to the inmate.

Angela Mattox

Angela Mattox is a chief steward with the Union. Ms. Mattox assists in filing, pursuing, and tracking grievances.

Ms. Mattox was asked by the Union's representative whether any discipline other than the discipline imposed upon Mr. Coley had resulted from the investigation conducted by the Employer into allegations against Mr. Coley. Ms. Mattox testified that no other discipline had resulted from that investigation.

Under questioning by the representative of the Employer, Ms. Mattox confirmed that if an employee were to come to a Union steward and report abusive behavior being suffered while on duty, a report of the allegation would be required to be made.

Boniface Ogbonna

Boniface Ogbonna is the supervisor of the warehouse at Ohio's Reformatory for Women. Mr. Ogbonna was asked whether Ms. Williams had reported Mr. Coley's behavior to Mr. Ogbonna. Mr. Ogbonna testified at the arbitration hearing that Ms. Williams never mentioned to Mr. Ogbonna a problem with Mr. Coley, and if she had, Mr. Ogbonna would have taken action that would have included a report to Mr. Ogbonna's supervisor.

Under questioning by the Employer's representative, Mr. Ogbonna testified that Ms. Williams at no time had ever complained about sexual harassment. Mr. Ogbonna stated that Mr. Coley had found mistakes in deliveries and had called in Ms. Williams and had called her names that had upset Ms. Williams. Mr. Ogbonna noted that Ms. Williams had since calmed down.

POSITIONS OF THE PARTIES

Position of the Ohio Department of Rehabilitation and Correction, Ohio Reformatory for Women, Employer

The Ohio Department of Rehabilitation and Correction, Ohio Reformatory for Women, the Employer, recalls that the arbitration hearing that occurred on February 27, 2015 began with a discussion between the parties before the arbitrator about the Union's objection to the use of inmate written statements and summaries of inmate interviews by the Employer in its case in support of removal at the hearing. It is noted that the inmates addressed by the Union's objection are no longer wards of the state of Ohio and are no longer on parole. It is claimed that the Employer has no way of contacting these former inmates.

The Employer recalls that at the hearing it was determined by the arbitrator that the inmate accounts were to be allowed to be submitted to the hearing record and were to be assigned the evidentiary weight determined to be appropriate.

The Employer recognizes that the witness statements and interviews of former inmates at the Ohio Reformatory for Women present hearsay evidence. The Employer points out, however, that arbitrators are expected to possess the judgment necessary to determine the trustworthiness of hearsay evidence, so long as an opposing party has a fair opportunity and means to counter the testimony in an appropriate fashion. It is also the position of the Employer that the witness statements and interviews at issue under the Union's objection fall under an exception to the hearsay rule as they are records of regularly conducted activity. The Employer points out that the documents at issue under the Union's objection were prepared in the normal course of business, on official Ohio Department of Rehabilitation and Correction forms, with form numbers noted on the bottom left of each form.

The Employer contends that neither the Union nor the grievant was denied a fair opportunity and means to counter the information within the inmates' written statements. The arbitrator is reminded that the pre-disciplinary packet, a packet that included inmate statements, was provided to Mr. Coley prior to his pre-disciplinary conference at which Mr. Coley and his Union representative had had the opportunity to explain or rebut the statements in the packet, some of which Mr. Coley did explain or rebut and some of which Mr. Coley did not explain or rebut.

The Employer points out that at the arbitration hearing the grievant could have testified under oath and could have denied any of the statements contained in the former inmates' written statements or interviews. The Employer points out that the grievant chose not to testify at the arbitration hearing. The Employer argues that there is an absence of any evidence in the hearing record that contradicts the information presented within the former inmates' written statements and interviews.

It is contended on behalf of the Employer that the numerous accounts of Mr. Coley's misconduct are consistent with each other. It is contended that six inmates and three employees provided corroborating information to the effect that Mr. Coley regularly created a sexually hostile environment in which he engaged in bullying antics. The Employer urges the arbitrator to keep in mind when considering the accounts provided by former inmates, the risks that arise for inmates who exhibit the courage required to step forward and report a wrong to the authorities. Such inmates risk being branded "snitches" and being confronted with the hazards encountered when assigned such a status ("stitches for snitches").

It is the position of the Employer that Mr. Coley violated Rule 12A of the Standards of Employee Conduct, making obscene gestures or comments or false, abusive, or inappropriate statements. The Employer claims that this charge is supported by a number of written statements

and interviews, including a conversation prompted by Mr. Coley on the topic of oral sex in front of inmates. Other statements by Mr. Coley included calling inmates by pet names, such as trick, princess, Cleopatra, and sex kitten.

It is argued on behalf of the Employer that Mr. Coley violated Rule 44 of the Standards of Employee Conduct, threatening, intimidating, coercing, or use of abusive language toward any individual under the supervision of the Department. It is contended that a preponderance of evidence demonstrates that Mr. Coley created a sexually-charged, hostile work environment through threats, intimidation, coercion, and the use of abusive language toward Ms. Williams and inmates. The consistent testimony from staff and the corroborating written statements by inmates show Mr. Coley to have berated Ms. Williams to the point where Ms. Williams sought outside counseling. The Employer claims the grievant has been known to constantly use the word “Nigga,” referred to Ms. Williams as a whore, and yelled and screamed profanities at all females in his vicinity. The Employer contends that there is a preponderance of evidence in the hearing record indicating that the grievant regularly called Ms. Williams dumb and stupid, and the Employer notes that several staff members and inmates observed Ms. Williams to have been crying as a result of the berating she received from Mr. Coley.

The Employer contends that Mr. Coley violated Rule 45B of the Standards of Employee Conduct, without express authorization, giving preferential treatment to any individual who is under the supervision of the Department, or any individual within 6 months following their release from custody or supervision of the Department, but not limited to: (B) The offering, receiving, or giving of anything of value. The Employer argues that a preponderance of evidence in the hearing record shows Mr. Coley had complained about retrieving inmate lunches. When asked if he had given inmates his lunch, Mr. Coley had answered during his interview that he could not remember.

The Employer contends that two inmates received the lunch Mr. Coley had brought with him from his home and those inmates remembered precisely what they received when Mr. Coley gave them his lunch.

The Employer describes Waneitta Williams as a person who simply wanted to come to work and do her job. The testimony from Ms. Williams at the arbitration hearing contains the same substance found in the former inmates' written statements. The sexually-charged pet names, references to whores, the use of the word "Nigga," and propositioning sex between inmates and a truck driver all comprise abusive, inappropriate statements about which Ms. Williams had sought assistance from her direct supervisor and from a Union steward.

The Employer refers to the testimony provided by Katie Nixon, an investigator, who provided in her investigation report the corroborating written statements and interviews of former inmates Lewis, Ellis, Vance, Jones, and Schooley. The Employer recalls the testimony of Ms. Nixon and the information in Ms. Nixon's investigation report submitted on May 8, 2014 that indicate Mr. Coley had consistently created a hostile/sexual environment by talking about oral sex, by talking about inmates having sex with a truck driver, twerking, and telling inmates that they looked beautiful. The Employer notes that Mr. Coley admitted calling inmates by pet names, such as princess, Cleopatra, trick, cougar, and sex kitten. Mr. Coley referred to himself as a "sugar daddy" and the Employer notes that these comments were made to inmates and in front inmates. The Employer recalls Ms. Nixon's testimony to the effect that inmates who were not otherwise associated with each other provided similar accounts of Mr. Coley's inappropriate behavior.

The Employer refers to the testimony provided by Warden Ronette Burkes. Warden Burkes testified that employees must be sensitive to the special needs of female inmates. Warden Burkes

recalled in her testimony the training provided by the Ohio Reformatory for Women to all employees in an effort to provide an environment free from sexual harassment and bullying.

Warden Burkes in her testimony at the hearing spoke of her decision to terminate the employment of Mr. Coley. The Employer contends that concerns about a hostile work environment before the Equal Employment Opportunity Commission (EEOC) and a zero tolerance policy for sexual misconduct or sexual harassment of inmates under the Prison Rape Elimination Act (PREA) persuaded Warden Burkes that she had before her sufficiently egregious, substantiated misconduct to support discharge. It is noted the Warden's determination in this regard is within the range of discipline provided within the disciplinary grid for a second violation that involves a violation of Rule 44 or Rule 45B. It is contended that the discipline imposed in this case was proportional and commensurate with the offenses committed by the grievant.

The Employer recalls the testimony of Susan Tracy, a case manager at the Ohio Reformatory for Women, who recalled the gate pass that had been earned by former inmate Schooley, and the fact that inmate Schooley had given back her gate pass and subsequently explained to Ms. Tracy that inmate Schooley had turned back the gate pass because of Mr. Coley's sexual harassment and because of Mr. Coley's berating of Ms. Williams.

The Employer recalls the testimony of Steven Machingo, an Auto Mechanic employed at the Ohio Reformatory for Women. The Employer recalls that Mr. Machingo in his testimony testified of observing Mr. Coley yelling and using obscene language toward staff and inmates on several occasions. Mr. Machingo recalled observing Mr. Coley making Ms. Williams cry on several occasions and testified of walking away from the area when Mr. Coley got loud. Mr. Machingo described the relationship of Ms. Williams and Mr. Coley as Ms. Williams always being

on pins and needles when around Mr. Coley and Ms. Williams appeared to be a nervous wreck when working in the vicinity of Mr. Coley.

As to the testimony provided at the arbitration hearing by supervisor Boniface Ogbonna, a witness called to testify by the Union, the Employer contends that Mr. Ogbonna has not been truthful in his testimony because of Mr. Ogbonna's need to cover up his neglect of duty in failing to respond adequately to a clear case of harassment reported to him by Ms. Williams. It is the Employer's position that had Mr. Ogbonna properly supervised the warehouse at the Ohio Reformatory for Women Mr. Ogbonna could not have failed to be aware of the hostile work environment being created in the warehouse by Mr. Coley, as corroborated by the written statements and interviews of seven separate people. The Employer argues that Mr. Ogbonna ignored Ms. Williams's complaints about Mr. Coley but when the issues raised by Ms. Williams's complaints came to light, Mr. Ogbonna found it necessary to fashion a story that shielded him from blame for doing nothing to help a subordinate employee who was in need of assistance.

As to the remedy sought by the grievant in this arbitration case, the Employer argues that Mr. Coley retired from state service on November 1, 2014 and therefore any remedy ordered by the arbitrator in this case should be limited to the date of discharge, June 30, 2014, through the date of retirement, November 1, 2014. To order any other remedy, argues the Employer, would result in a windfall for the grievant as the grievant is not entitled to a remedy's compensation after October 31, 2014.

The Employer argues that if the grievant were to be reinstated to his former position he would continue to receive his retirement and receive wages too, a circumstance that creates a financial windfall premised on bad behavior.

The Employer argues that Mr. Coley's poor decision making, aggression, and lack of self-control will manifest itself again. It is contended that the grievant has engaged in a distinct pattern of sexually predatory behavior. The Employer contends that these frailties present an individual who should not be working in a women's prison. The Employer argues that the return of Mr. Coley to the institution would be wholly inappropriate and would put inmates and staff members at risk.

The Employer urges the arbitrator to find the grievant was removed for just cause and deny the grievance in its entirety.

Position of the Ohio Civil Service Employees Association, American Federation of State, County and Municipal Employees, Local 11, AFL-CIO, Union

On behalf of the grievant, Dennis Coley, the Ohio Civil Service Employees Association, American Federation of State, County and Municipal Workers, Local 11, AFL-CIO, the Union, reminds the arbitrator that Mr. Coley is a nineteen-year employee of the Ohio Department of Rehabilitation and Correction. As noted by the Union, Mr. Coley spent the majority of his career with the Ohio Department of Rehabilitation and Correction as a Food Service Manager 1 at the Trumbull Correctional Institution until he was displaced from his position due to the privatization of the Ohio Department of Rehabilitation and Correction's food service in the fall of 2013. Mr. Coley was placed in a Correctional Storekeeper position at the Ohio Reformatory for Women. Mr. Coley was placed on administrative leave from the Ohio Reformatory for Women effective January 16, 2014. Mr. Coley was discharged from his position on June 25, 2014.

The Union refers to the objection it made at the arbitration hearing to the use of written statements presented by the Employer in support of the Employer's case because of the Union's inability to cross-examine pieces of paper. The Union notes that the Employer submitted twelve written statements in support of its case from seven inmates and five staff members. The Union

notes that none of the interviews of these people were recorded, although the interview of Mr. Coley on February 19, 2014 was recorded. The Union claims it was refused the right to interview or investigate inmates about this matter; the Union was denied transcripts of the inmate interviews; the Union was forced to accept the state investigator's summary of those interviews. The Union objects to the admission of these written statements as evidence into the hearing record and points to the right of the grievant to confront and question witnesses called to testify by the other party in a disciplinary case, including a case of discharge. This right to confront one's accusers, argues the Union, is part of arbitral due process. The Union points out that the parties' Contract contains no language compromising a basic right among bargaining unit members to a full and fair hearing, and such a right includes the right of a bargaining unit member to confront and fully question an accuser.

The Union points to authoritative texts such as Fairweather's Practice and Procedure in Labor Arbitration, Fourth Edition, that states at pages 234 - 235: "...where the employer fails to produce a witness and instead attempts to submit written reports or affidavits, arbitrators generally find the evidence inadmissible on the grounds that, if admitted, the union would be denied its right of cross-examination..." As ruled by Arbitrator Ralph Rogers Williams:

Those discharged are entitled to confront their accusers at the hearing, and to cross-examine them.... Signed statements of employees charging another employee with an offense are not conclusive evidence and must be supported by proof.... A written statement which is not supported by the testimony of its maker may be used to corroborate other evidence that was subject to cross examination but it should not be considered where it only produces novel evidence, because one test which may be used to determine the credibility of a witness is the demeanor of the witness while he is testifying in the hearing.

The Union contends that the written statements created by the inmates present "novel" evidence and do not rise to the level of hearsay evidence as they are not sworn affidavits and there

is no separate quantitative proof or basis in testimony provided at the hearing for the arbitrator to admit these statements, even under an exception to the hearsay rule. The Union argues that to allow such evidence into the hearing record is to extend permission to the Employer to deny the Union the opportunity to determine the credibility of witnesses through cross-examination.

The Union refers to the three rules allegedly violated by the grievant – Rules 12A, 44, and 45B. The Union claims at page four of its post-hearing brief:

The heart of the case is an accusation that Mr. Coley has engaged in a pattern of sexual harassment toward both his co-worker Ms. Williams and the inmates. The accusation is insidious and contrived.

The Union notes that on January 10, 2014, according to Mr. Coley, he yelled at Ms. Williams after she would not leave him alone. See Joint Exhibit 4, pages 35 – 58.

On January 10, 2014 Mr. Coley stated that inmate Lewis was laughing and said to Mr. Coley that: “Mr. (sic) Williams was tired of his bipolar ass and she was going to get rid of you.” See Joint Exhibit 4, pages 35 – 58.

On January 16, 2014, inmates Lewis and Ellis reported to case manager Tracy that the inmates were uncomfortable working in the warehouse because Mr. Coley was conversing inappropriately. The Union notes that prior to January 16, 2014 there had been no inmate complaints about Mr. Coley; prior to January 16, 2014 there had been no inmate grievances filed against Mr. Coley; prior to January 16, 2014 there had been no incident reports filed about Mr. Coley.

The Union contends that no co-worker testified or included in a written statement that he or she had told Mr. Coley that his actions were rude, offensive, or inappropriate. The Union claims that Ms. Williams never filed an incident report or a harassment complaint, and at the arbitration

hearing the Union contends Ms. Williams showed herself to be aggressive, direct, and angry at Mr. Coley. The Union argues that Ms. Williams is not a person who would be afraid to speak up for herself.

The Union contends that the testimony from Ms. Williams is not credible.

The Union notes that Mr. Coley admitted to a potential violation of Rule 12 and gave a detailed explanation of the circumstances underlying this potential violation during his February 19, 2014 interview. See Joint Exhibit 4, pages 44 and 45. The arbitrator is reminded that Mr. Coley had been placed in a new environment, with a new job, and Mr. Coley had been in that position no more than four months. Mr. Coley was frustrated because he had received little in the way of training and his stress was amplified by leaving a long-held position and having to relocate to a new community. The Union points out that Mr. Ogbonna, in his statement, recalled counselling Mr. Coley and Ms. Williams about workplace issues, and recalled that after that day they had seemed to be getting along. See Joint Exhibit 4, pages 76 – 78.

The Union contends that Mr. Coley's truthful admission of events that could be used against him increases Mr. Coley's overall credibility.

The Union contends that beyond the potential Rule 12 violation, everything else alleged against Mr. Coley is nothing more than "shop talk." As an example the Union points to the incident between Mr. Coley and Mr. Machingo in which Mr. Coley had referred to Ms. Williams as Mr. Machingo's girlfriend. As described by the Union: "It was just one of those meaningless comments that people too often say." See Union's post-hearing brief, page 6. The Union argues that much of the conversation between Mr. Coley and co-workers and Mr. Coley and inmates was taken out of context. These conversations were conducted mutually between inmates and staff. As argued by the Union, topics were raised that appeared on television during afterschool hours, on Oprah

Winfrey's television show, and during prime time television hours for both old and young to freely consume without regard to appropriateness. The Union notes that the inmates are adult women and the Union argues that a reasonable person would not be expected to be offended by these topics.

The Union argues that there is no policy, work rule, or memorandum about the use of nicknames for inmates by staff.

The Union finds no evidence in the hearing record substantiating the alleged violations of Rule 44 and Rule 45B.

The Union claims that Mr. Coley did not retire from state service as he was removed from his position of employment on June 25, 2014, and his application for retirement was dated August 29, 2014. Mr. Coley has been allowed to avail himself of his accrued benefits, an action that would have been prohibited if not for Mr. Coley's unwarranted removal. This action between Mr. Coley and the Ohio Public Employees Retirement System (OPERS), argues the Union, has no bearing on the case herein.

The Union urges the arbitrator to sustain the grievance and grant to Mr. Coley a comprehensive remedy to consist of his return to his former position and shift; all wages restored including holiday pay; and restoration of vacation leave, personal leave, and seniority. The Union asks that all references in the Employer's files to the discipline imposed upon Mr. Coley in this case be ordered expunged, and any expenses for medical or dental treatments and for prescription drugs normally covered by Ms. Coley's health care benefits be reimbursed. The Union seeks an order that the grievant be made whole and be granted any other relief deemed appropriate by the arbitrator.

The Union requests that the arbitrator retain jurisdiction over this case for six months.

DISCUSSION

The parties' collective bargaining agreement, Joint Exhibit 1, in Article 24, section 24.01, presents the following language:

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...

The parties' agreed issue statement in this proceeding calls for a determination by the arbitrator on whether the grievant's removal from employment was for just cause.

Determining just cause requires the arbitrator to consider the adequacy of the notice provided to the grievant under the grievant's right to be apprised of the specific charges underlying the disciplinary action. The arbitrator considers the fairness and completeness of the investigation by the Employer of the events underlying the allegations of misconduct. The arbitrator also considers the opportunity provided to the grievant to explain and/or rebut the charged rule violations. At the arbitration hearing, the arbitrator is required to determine the admissibility of that which is offered by each of the parties as evidence to the hearing record on the question of just cause, or lack thereof.

In the case herein, much of the documentary evidence submitted on behalf of the Employer at the arbitration hearing was challenged by the Union as second-hand, unsubstantiated, unverifiable hearsay. The Union points to the interview of former inmate Janet Truman on February 12, 2014 over the telephone, an interview that was not recorded, not backed by a written, signed statement, and presented through the handwritten synopsis prepared by investigator Nixon of what had been said by Ms. Truman during this interview.

The Union points to the synopses of unrecorded interviews by investigator Nixon within her investigation report. The Union claims these are instances where the state's investigator prepared documents and submitted them as evidence that originated with inmates. The Union argues that such indirect, second-hand "evidence," in the absence of a witness who can be questioned by both parties, is properly excluded as unsubstantiated and unreliable.

The arbitrator shares the Union's concerns about investigative documents being presented in lieu of live witnesses. Live, sworn witnesses are able to provide direct testimony through answering questions from the party who called the witness to testify, and are also capable of answering questions from the other party, an opportunity for an adverse party to test through cross-examination the accuracy, reliability, and credibility of the information provided.

The notes taken by investigator Nixon during a telephone interview of Ms. Truman present descriptions of events that cannot be tested through questioning investigator Nixon. Ms. Nixon can speak to being told certain things by Ms. Truman over the telephone on February 12, 2014, but Ms. Nixon was not an eyewitness to the events described in the synopsis prepared by Ms. Nixon based on Ms. Truman's interview and therefore Ms. Nixon is not in a position to verify the events described in the synopsis of the February 12, 2014 telephone interview of Ms. Truman. To be able to test the accuracy of the events presented by Ms. Nixon as originating with Ms. Truman in the February 12, 2014 telephone interview of Ms. Truman, a questioner would have to have access to Ms. Truman.

The arbitrator finds, however, that there were eyewitnesses who testified at the arbitration hearing, witnesses who were cross-examined by the Union's representative, and witnesses who provided evidence that is not hearsay. The direct testimony from these eyewitnesses was fully open to questioning by the other party. The two eyewitnesses presented at the hearing by the Employer,

Waneitta Williams and Steven Machingo, provided testimony about what they observed of Mr. Coley's behavior at the warehouse at the Ohio Reformatory for Women between September, 2013 when he arrived and January 16, 2014 when Mr. Coley was placed on administrative leave.

The inmate written statements appear to have been prepared and initialed by the inmates who created them. While such written statements are, by definition, hearsay, they remain documents that appear to have been directly produced by inmates who signed and initialed their written statements. In these written statements inmates claim to have been eyewitnesses to the behavior of Mr. Coley at the warehouse. To the extent that witnesses Williams and Machingo presented testimony about certain events at the warehouse during the time period in question that are corroborated by written statements provided by inmates, the arbitrator considers the inmates' corroboration of the live testimony provided by the eyewitnesses who testified at the arbitration hearing. In this context the written statements provided by the inmates in January, 2014 do not present "novel" evidence but provide corroborating evidence in support of the veracity of related statements in the testimony of Ms. Williams and Mr. Machingo at the arbitration hearing, testimony that was open to cross-examination.

The arbitrator therefore grounds his determination of the grievance in this case upon the sworn testimony of Ms. Williams and Mr. Machingo, as well as the witnesses called to testify by the Union, Ms. Mattox and Mr. Ogbonna. As noted above, to the extent that the testimony of Ms. Williams and Mr. Machingo is supported by corroborating written statements from inmates, the arbitrator considers the corroboration. The arbitrator does not accept as credible those statements contained in the written inmate statements that do not relate to a subject addressed by the witnesses who testified at the arbitration hearing.

The just cause claimed to be possessed by the Employer for the discharge of the grievant, and the charges expressed in the disciplinary notice provided to Mr. Coley, refer to the violation of three rules in the Standards of Employee Conduct, Rule 12A, making obscene gestures or statements, or false, abusive, or inappropriate statements; Rule 44, threatening, intimidating, coercing, or use of abusive language toward any individual under the supervision of the Department; and Rule 45B, without express authorization, giving preferential treatment to any individual under the supervision of the Department, or any individual within 6 months following their release from custody or supervision of the Department, but not limited to: B. The offering, receiving, or giving of anything of value.

The testimony of Ms. Williams and Mr. Machingo, corroborated by written statements prepared by inmates in January, 2014, is unrebutted by any witness who testified at the arbitration hearing and is only contradicted by a recorded interview of Mr. Coley by the Employer on February 19, 2014. See Exhibit 4, pages 36 – 58. A preponderance of evidence in the hearing record shows Mr. Coley to have made abusive or inappropriate statements to co-workers and inmates. The berating of Ms. Williams that was corroborated by Mr. Machingo and inmates' written statements was verbally abusive toward a co-worker; the comments and statements by Mr. Coley to inmates that included pet names and comments about "doing" the Holland truck driver, and Mr. Coley's expressions of sexual attraction to and in front of inmates were inappropriate, and can reasonably be understood to be intimidating, abusive, or obscene, especially from the perspective of an inmate.

The arbitrator finds the Employer has presented a preponderance of evidence to the hearing record substantiating the grievant's violation of Rule 12A. It is noted that the disciplinary grid, Exhibit 8, page 154, for a second offense that is a violation of Rule 12A contemplates a five-day

suspension. A third offense that is a violation of Rule 12A on the disciplinary grid contemplates removal.

Rule 45B on the disciplinary grid refers to giving preferential treatment to an individual under the supervision of the Department. The Employer has charged in the Notice of Discipline letter dated June 25, 2014 that Mr. Coley violated Rule 45B by providing a lunch consisting of two sandwiches, an orange, and an apple to two inmates so as to avoid having to retrieve inmate lunches for those inmates working in the warehouse.

The arbitrator finds a single reference in the evidence presented to the hearing record about the provision of Mr. Coley's lunch to two inmates, in a synopsis of a follow-up interview on January 23, 2014 by investigator Nixon of inmate Lewis. The arbitrator finds no mention of this alleged preferential treatment in the testimony of Ms. Williams or Mr. Machingo. The mention by investigator Nixon of this charged event based on an unrecorded interview of an inmate who was not available for questioning by the Union presents "novel" evidence and is therefore not admissible to the hearing record. This charged violation of Rule 45B is not substantiated by a witness available for questioning by both parties. The arbitrator does not find in the hearing record sufficient evidence to conclude that a violation of Rule 45B has been proven.

The remaining rule charged by the Employer as having been violated by Mr. Coley is Rule 44, threatening, intimidating, coercing, or use of abusive language toward any individual under the supervision of the Department.

There is substantial testimony in the hearing record from both Ms. Williams and Mr. Machingo as to how Mr. Coley comported himself in relation to inmates, individuals under the supervision of the Department. The testimony of Ms. Williams and Mr. Machingo in this regard is corroborated by numerous written statements from inmate workers assigned to the warehouse

who were in a position to observe Mr. Coley's interaction with Ms. Williams and Mr. Coley's interaction with inmates. A preponderance of evidence provided by Ms. Williams and Mr. Machingo, corroborated by written inmate statements, describes Mr. Coley as a storekeeper who intimidated inmates and directed abusive language toward them. The constant references by Mr. Coley to "boyfriends" who are delivery truck drivers, the repeated questioning of inmates as to whether they would "do" the Holland truck driver, the comment to inmate Schooley on how desperate she was to go to an empty trailer at the back of the warehouse and engage in sexual activity, the grunts and groans emitted by Mr. Coley while standing behind an inmate who was unloading a truck or on her hands and knees scrubbing the floor, and the suggestion that the inmate wear a black belt to make her buttocks appear bigger, were threatening, intimidating, and abusive toward the inmates. This abusive language included raising oral sex as a conversation topic in front of inmates and treating inmates in a manner that emphasized their subservient status rather than their work. The ringing of the bell by Mr. Coley to summon those inmates within hearing distance of the ringing bell creates an atmosphere of master and servant that was reflected in other comments, gestures, and statements made by Mr. Coley to inmates under the supervision of the Ohio Department of Rehabilitation and Correction at the Ohio Reformatory for Women.

The arbitrator is not required to hazard an opinion about what prompted Mr. Coley to act abusively toward co-workers and inmates. The reasons underlying such misconduct do not have to be determined. The misconduct itself, if proven by a preponderance of evidence in the hearing record, substantiates a violation of Rule 44. The disciplinary grid shows that a violation of Rule 44 as a second offense calls for discipline in a range from a five-day suspension up to and including removal.

The arbitrator is persuaded that the Employer has presented a preponderance of evidence to the hearing record proving a violation of Rule 12A and proving a violation of Rule 44 based on the misconduct of Mr. Coley as charged in the June 25, 2014 Notice of Discipline. The arbitrator is charged with the duty of determining if rule violations have been substantiated by a preponderance of evidence, whether the discipline imposed by the Employer, in this case removal, is supported by the seriousness of the offenses proven.

The arbitrator finds that the misconduct engaged in by the grievant, proven by a preponderance of evidence in the hearing record, was egregious, harmful, intimidating, and abusive. The arbitrator finds the just cause required by Article 24, section 24.01 of the parties' collective bargaining agreement to remove the grievant from his employment has been substantiated by the Employer.

The Employer has substantiated the procedural and substantive requisites necessary to the removal of the grievant from his position of employment with the Ohio Department of Rehabilitation and Correction at the Ohio Reformatory for Women. The Employer has proven it possessed just cause for the removal of the grievant. The Employer did not violate the parties' collective bargaining agreement in removing the grievant from his position of employment. Accordingly, the grievance is denied.

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AWARD

1. The grievance giving rise to this proceeding is arbitrable and properly before the arbitrator for review and resolution under Articles 24 and 25 of the parties' collective bargaining agreement.
2. The Employer presented a preponderance of evidence to the hearing record proving that the grievant violated Rule 12A and Rule 44 of the Standards of Employee Conduct.
3. The Employer had just cause to remove the grievant from his employment at the Ohio Department of Rehabilitation and Correction, Ohio Reformatory for Women.
4. The grievance is denied.

Howard D. Silver

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Columbus, Ohio
April 27, 2015

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Decision and Award of the Arbitrator in the Matter of Arbitration Between the Ohio Civil Service Employees Association, AFSCME, Local 11, AFL-CIO and the State of Ohio, Department of Rehabilitation and Correction, Ohio Reformatory for Women, grievance number 27-19-20140702-0157-01-09, was served electronically upon the following this 27th day of April, 2015:

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April 27, 2015