

In the Matter of Arbitration Between the	:	Grievance Number: DRC-2018-01395-14
	:	
STATE OF OHIO, DEPARTMENT OF	:	
REHABILITATION AND CORRECTION,	:	
MARION CORRECTIONAL INSTITUTION,	:	Grievant: Carl Eugene “Gene” Brady
	:	
Employer	:	
and the	:	
	:	Dates of the Arbitration Hearing:
	:	March 27 and 28, 2019
	:	
OHIO CIVIL SERVICE EMPLOYEES	:	
ASSOCIATION, AMERICAN FEDERATION	:	
OF STATE, COUNTY AND MUNICIPAL	:	
EMPLOYEES, LOCAL 11, AFL-CIO,	:	Howard D. Silver, Esquire
	:	Arbitrator
Union	:	

DECISION AND AWARD OF THE ARBITRATOR

APPEARANCES

For: State of Ohio, Department of Rehabilitation and Correction, Marion
Correctional Institution, Employer

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PROCEDURAL BACKGROUND

This matter came on for an arbitration hearing on March 27, 2019 at 9:00 a. m. at the Marion Correctional Institution, 940 Marion-Williamsport Road East, Marion, Ohio 43302. At the hearing both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions. The first day of the arbitration hearing adjourned at 2:40 p. m. on March 27, 2019 with the completion of the presentation of the Employer's case-in-chief. A second day of hearing was convened on March 28, 2019 at 9:00 a. m. at the same location, and the hearing concluded on March 28, 2019 at 1:35 p. m. with the completion of the case presented by the Union.

Post-hearing briefs were filed by May 3, 2019 and exchanged between the parties by the arbitrator.

This matter proceeds under a collective bargaining agreement in effect between the parties from July 1, 2015 through February 28, 2018, Joint Exhibit 1.

No challenge to the arbitrability of the grievance has been raised in this case. Based on the language in the parties' collective bargaining agreement, the arbitrator finds the grievance at issue in this proceeding to be arbitrable and properly before the arbitrator for review and resolution.

STIPULATED ISSUE

Was the grievant, Carl Brady, removed from employment for just cause?

If not, what shall the remedy be?

PROCEDURAL ISSUE

Position of the Union

The Union points out that the events at issue in this proceeding were the subject of an investigation by both the Ohio Inspector General's Office and the Employer. The Union claims that if the Employer relied on the Ohio Inspector General's investigative report in reaching conclusions about disciplining the grievant, the grievant would have been entitled to Union assistance during the interview of the grievant by investigators from the Ohio Inspector General's Office. The Union points out that during the grievant's interview by the Ohio Inspector General's Office Mr. Brady was not afforded the opportunity to have the assistance of a Union representative. The Union notes that when the Employer's investigation into the events in question was carried out, Mr. Brady was afforded the opportunity to be assisted by a Union steward.

The Union claims that what has occurred in this case is a blending of two investigations - one by the Ohio Inspector General's Office and one by the Employer. The Union questions the fairness of the Employer relying on an investigation that did not afford the grievant the opportunity to be assisted by a Union representative, a right under the parties' collective bargaining agreement that, in the case of the interview of the grievant by the Ohio Inspector General's Office, the grievant had been denied.

Position of the Employer

The Employer points out that the Ohio Inspector General's Office does not operate from within the Ohio Department of Rehabilitation and Correction. The Employer emphasizes that the Employer exerts no control over the Ohio Inspector General's Office. The Employer notes that during the administrative investigation conducted by the Employer the grievant was afforded the opportunity to be assisted by a Union steward. The Employer claims that the materials gathered through the Employer's

investigation were the materials the Employer relied on in reaching conclusions about disciplining the grievant. The Employer points out that the two investigations were separate investigations, and while the Employer is fully accountable for the Employer's investigation, the Employer rejects the notion that it is to be held to account for an investigation conducted by an agency over which the Employer has no authority.

Reply of the Union

It is the Union's position that if the Employer relied upon the investigative materials gathered through the investigation conducted by the Ohio Inspector General's Office, the grievant had had a right under the parties' collective bargaining agreement to be assisted by a Union representative during the interview conducted by the Ohio Inspector General's Office, a right that was denied the grievant during the interview conducted by the Ohio Inspector General's Office.

STATEMENT OF THE CASE

The parties to this arbitration proceeding, the State of Ohio, Department of Rehabilitation and Correction, Marion Correctional Institution, hereinafter referred to as the Employer, and the Ohio Civil Service Employees Association, American Federation of State, County and Municipal Employees, Local 11, AFL-CIO, hereinafter referred to as the Union, are parties to a collective bargaining agreement in effect from July 1, 2015 through February 28, 2018, Joint Exhibit 1. Within the parties' collective bargaining agreement is Article 24 wherein at section 24.01 the language of this Article begins with the following two sentences: "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 language of Article 24, section 24.02 obligates the Employer to follow principles of progressive discipline and specifies that disciplinary action is to be commensurate with the offense.

The grievant in this matter, Carl Eugene “Gene” Brady, Jr., was hired by the Employer effective November 14, 1994. The grievant worked for the Employer for twenty-three and one-half years and has no prior discipline on his employment record.

At all times relevant to this proceeding, the grievant worked from a position classified Infrastructure Specialist 2 at the Marion Correctional Institution.

The job responsibilities of the grievant during all times relevant to this proceeding related to the roughly 500 computers being used at the Marion Correctional Institution by staff and, under limitations, inmates. Inmates at Marion Correctional Institution are not authorized to have access to the internet. Mr. Brady was the only Infrastructure Specialist 2 employed at the Marion Correctional Institution during the events in question.

On April 20, 2018, the grievant's employment was ordered terminated by the Employer under the charge that the grievant had violated five work rules found within the Department's Standards of Employee Conduct, Joint Exhibit 5. The work rules alleged to have been violated are: Rule 5 F, purposeful or careless acts that result in damage, loss, or misuse of state-owned or leased computers, hardware/software, e-mail, internet access/usage; Rule 7, failure to follow post orders, administrative regulations, policies, or written or verbal directives; Rule 36, any act or failure to act that could harm or potentially harm the employee, fellow employee(s), or a member of the general public; Rule 38, any act or failure to act not otherwise set forth herein that constitutes a threat to the security of the facility, staff, or any individual under the supervision of the Department, or a member of the general public; and Rule 39, any act that would bring discredit to the Employer.

A timely grievance was filed on behalf of the grievant; the parties' contractual grievance

procedure was implemented but the grievance remained unresolved between the parties; the unresolved grievance was directed to final and binding arbitration by the Union.

SUMMARY OF TESTIMONY

Greg Craft

Greg Craft has been employed by the state of Ohio for twenty-three years. For the past seventeen years of his employment by the state of Ohio Mr. Craft has served as an inspector at institutions operated by the Ohio Department of Rehabilitation and Correction.

Mr. Craft recalled that he was assigned to an investigation that involved the grievant, Mr. Brady. In fulfilling this work assignment Mr. Craft interviewed inmates, interviewed Mr. Brady, and reviewed an investigative report issued by the Ohio Inspector General's Office.

Mr. Craft referred to Joint Exhibit 10, an online article titled "Ghost in the Cell" written by Colin Lecher and published through the online publication "The Verge." This article first appeared online on October 10, 2017 and referred extensively to the Ohio Inspector General's investigative report about computer hacking by inmates while incarcerated at the Marion Correctional Institution.

Mr. Craft explained that the online article "Ghost in the Cell" described a program at the Marion Correctional Institution called the Green Initiative that included recycling, gardening, and aquaculture programming to be performed by inmates to prepare those inmates for gainful employment following release. Part of the Green Initiative at the Marion Correctional Institution involved a recycling program that had inmates disassembling used computers to harvest their components for reuse. This aspect of the Green Initiative was overseen by a not-for-profit corporation, RET3 Job Corp., Inc., operating from Cleveland, Ohio. The contact person on behalf of the institution for this recycling programming had been Randy Canterbury, a Training Officer. It was also understood that under appropriate

circumstances high value component parts that were separated by inmates could be used to construct computers for use at the institution.

Mr. Craft noted that at least two of the inmates working in the computer recycling program overseen by RET3 took advantage of their assignment to build, from parts recovered through the recycling program, two freestanding personal computers and stored these computers in a ceiling on the third floor of the institution in an area used by staff for computerized training designated P3.

The computers hidden in the ceiling at P3 at the institution were connected by cables that allowed a user of the contraband computer access to the internet. This access enabled an inmate at the Marion Correctional Institution to engage in identity theft and the inmate had intended to engage in tax fraud by filing false tax returns with claims for refunds over the internet.

During the time that the unauthorized internet access through the computer stored in the ceiling above P3 was occurring, the Information Technology Division at the Ohio Department of Rehabilitation and Correction alerted the Marion Correctional Institution that a computer in operation at the institution was exceeding its usage limits. This warning went out on July 3, 2015 and the Department advised the institution that it had also received seven hacking alerts for computers whose location at the institution at that time remained unknown. Shortly thereafter, information technology technicians at the central office of the Ohio Department of Rehabilitation and Correction determined that one of the computers had a name attached to it that included the sequence "lab9."

When the sequence name "lab9" was communicated to the Marion Correctional Institution, Mr. Brady knew that there was only one place in the institution at which a personal computer could be named in that manner, that being the staff computer lab on the third floor. Mr. Brady explained to the investigators from the Ohio Inspector General's Office that there were only six computers at that location, not nine, as suggested by the naming sequence "lab9."

Mr. Brady traveled to P3 but was at that time unable to locate the contraband computers. The Department's IT team then determined the particular switch and port to which the computer was connected. Mr. Brady, by following the cables emanating from the switch and the port identified, tracked the cables above the ceiling to a space above a small closet in a training room in P3. The closet has a drop ceiling. When a ceiling panel was removed a Dell computer tower was discovered.

According to page seven of the online article "Ghost in the Cell," Joint Exhibit 10, tab 8, page 191:

Brady alerted the staff, and a lieutenant squeezed into the cramped space, snapping photos to document what they'd found. A couple of inmates pulled down the computers, and carted them away. Brady later told investigators that he didn't realize just how troubling the discovery was. "It didn't click for me that, oops, this might be a crime scene until after we had found everything," he said. "And a couple days later, I went, "Aw, shit."

Mr. Craft pointed out that from the day Mr. Brady was first informed that there was an unauthorized computer being used at the institution, until that computer was located, was a period of ten days. Mr. Craft also noted that the central office of the Department had the location of the unauthorized computers analyzed by the Ohio State Highway Patrol and it had been determined that the location was a crime scene and any alteration of the crime scene after its discovery should have awaited the approval of authorized investigators. Mr. Craft testified that Mr. Brady should have known that the space above the closet in P3 in which the contraband computers were discovered was a crime scene and the scene should not have been disturbed at the direction of Mr. Brady upon its discovery.

Mr. Craft testified that during the investigation Mr. Brady had admitted that he had used generic tags on multiple systems and that this had been a violation of departmental policy. Mr. Craft pointed out that by using generic tags it is impossible to construct an accurate inventory.

Mr. Craft identified tab 5, pages 80 – 150 as the interview of Mr. Brady on January 10, 2017 by an Ohio State Highway Patrol Trooper and two investigators from the Ohio Inspector General's Office.

Mr. Craft noted that Mr. Brady had been asked about a software program that Mr. Brady had introduced to the institution to wipe clean computer hard drives. Mr. Brady had said that he had installed the program on the network and this software had been used by inmates to erase hard drives.

Mr. Craft testified that, in his opinion, there had been a lack of oversight of information technology equipment at the Marion Correctional Institution that had left the institution with an information technology security nightmare.

Under questioning by the Union's representative, Mr. Craft was referred to the online article “Ghost in the Cell” wherein the Ohio Inspector General's report is cited as describing Mr. Canterbury as the Marion Correctional Institution's designated contact person for the computer recycling program at the institution. Mr. Craft confirmed that it was Mr. Canterbury's computer password that was used without authorization by one or more inmates to access the internet through the contraband computers hidden in the ceiling.

Mr. Craft testified that the computers hidden in the ceiling above the P3 training room closet were placed there prior to June 1, 2015. Mr. Craft stated that inmate Johnston made the computers usable by employing Mr. Canterbury's password to log in.

Mr. Craft noted that the Department's Information Technology Division notified Mr. Brady of the switch being used by the unauthorized computers, and it was on that day, July 27, 2015, that Mr. Brady located the computers hidden in the ceiling. On July 29, 2015 Mr. Brady asked the Department what Mr. Brady was to do with the confiscated computers, and on July 30, 2015, under instructions to do so, Mr. Brady delivered the contraband computers to the central offices of the Department.

Mr. Craft confirmed that Mr. Brady was interviewed about these events on January 10, 2017.

Derek Green

Derek Green is an Infrastructure Specialist 2 employed at the Richland Correctional Institution. Mr. Green's responsibilities include the local area network, access, accounts, and equipment.

Mr. Green testified that maintaining an accurate inventory of information technology equipment is a matter of security. The use of fictitious or generic tags to identify equipment produces an inventory that is incapable of tracking its equipment.

Mr. Green testified that three years ago he was sent to the Marion Correctional Institution to clean up some wiring connected to computers used by inmates. Mr. Green found that inmates at the Marion Correctional Institution had had more access to computers than they should have had, and he found more computers located at the institution than the institution's records indicated had been authorized to be there.

Mr. Green noted that the access to computers that had been attained by inmates at the Marion Correctional Institution, an access beyond that which had been authorized by the institution, enabled inmates to access administrative programs relied upon by the institution. By gaining access to these programs inmates had gained the power to make changes to these programs. Mr. Green described this state of affairs as a recipe for disaster and said that on a scale of one to ten, what he discovered at the Marion Correctional Institution, in terms of a cyber security threat, rated a seven.

Lyneal Wainwright

Lyneal Wainwright is the Warden of the Marion Correctional Institution. Ms. Wainwright has been employed by the Ohio Department of Rehabilitation and Correction for nineteen years. Ms. Wainwright's employment history with the Department includes Recreation Director, Unit Manager, Unit Chief, Deputy Warden for Special Services, Deputy Warden for Operations, and for the past two

and one-half years, Warden of the Marion Correctional Institution.

When Ms. Wainwright became Warden at the Marion Correctional Institution an investigation was then on-going concerning computer issues, problems with asset management, and inmate access to computers that exceeded institutional limits. Warden Wainwright pointed out that many of the employees who had filled positions that had played a part in the computer problems that were being investigated had either retired, moved to another position, died, or left the employment of the Department. Warden Wainwright pointed out that, for example, Mr. Canterbury had left his employment with the Department of Rehabilitation and Correction for a contract position with RET3 Job Corp., Inc.

Warden Wainwright identified Joint Exhibit 3, found at tab 2, pages 3 – 4, as the notice of removal issued to Carl Brady on April 12, 2018 ordering the discharge to be effective April 20, 2018. This notice of removal charged violations of rules 5 F, 7, 36, 38, and 39. The second page of the notice of removal presents the following:

As an Infrastructure Specialist 2 at the Marion Correctional Institution (MCI), you were responsible for a computer recycling program designed to provide job skills to offenders. Without authorization you built computers to be used by inmates from materials, including but not limited to hard drives, intended to be recycled. You allowed unlicensed software to be downloaded, including software designed to hide internet browsing history. The inmates under your supervision, did without authorization, access the information systems of the Ohio Department of Rehabilitation and Correction (DRC), as well as the internet and engage in various unauthorized and illegal activities, including but not limited to: downloading of pornography; credit card theft, which involved the victimization of members of the general public; production of fraudulent inmate movement authorization passes to allow unauthorized offender access throughout the MCI prison complex; and access to inmate personal identification information in the DRC Offender Tracking System (DOTS). Further, you failed to properly secure the evidence of contraband computers.

As a result of your actions, an investigation was initiated into DRC's operation of MCI by the Ohio Inspector General's Office and an article critical of the way which DRC handled information technology security was published in the on-line technology news website, The Verge.

Warden Wainwright stated that she would expect the incumbent of an Infrastructure Specialist 2 position assigned to an institution to be aware of what was going on at the institution among its information technology assets and that such an employee would work to ensure that the rules of the institution and the Department relating to information technology were being followed.

Under questioning by the Union's representative, Warden Wainwright confirmed that in July 2015 she had not been the Warden at the Marion Correctional Institution.

Timothy Rayburn

Timothy Rayburn has been employed by the Ohio Department of Rehabilitation and Correction for thirteen years. Mr. Rayburn's work history with the Department includes eight years as a Corrections Officer, a promotion to the rank of Lieutenant that brought Mr. Rayburn to the Marion Correctional Institution where he served for three years, and a promotion to Captain that has brought Mr. Rayburn to the Ohio Reformatory for Women.

While serving as a Lieutenant at the Marion Correctional Institution Lieutenant Rayburn had taken photographs of the two computers found hidden in the ceiling above a training area at the institution. Lieutenant Rayburn was instructed to perform this picture taking by his superior, Major Grisham.

Mr. Rayburn explained that Marion Correctional Institution used an inmate pass system, with the passes generated by computers at the institution. These passes allowed inmates to access various areas of the institution and were intended to allow institutional staff to track inmates in the institution. Mr. Rayburn pointed out that if inmates were to gain access to a computer capable of printing out inmate passes, the inmates could determine for themselves where they could go in the institution. Such a security lapse, in the opinion of Captain Rayburn, is extremely dangerous.

Under questioning by the Union's representative, Captain Rayburn testified that when he had been instructed to photograph the computers hidden in the ceiling, Major Grisham had not described the location of the contraband computers as a "crime scene." Captain Rayburn testified that when he observed the computers hidden in the ceiling he had not thought at that time that he was looking at a crime scene.

Captain Rayburn recalled that when he had been a Lieutenant at the Marion Correctional Institution he had observed inmates on a computer unsupervised when the staff member responsible for such oversight had gone to a restroom. Captain Rayburn identified the staff member who had been in the restroom while inmates accessed a computer as Mr. Canterbury. Captain Rayburn recalled that this was the only time he had seen an unattended computer being operated by an inmate.

Captain Rayburn recalled that the space that had hidden two computers in P3 was the ceiling over a training area in which Mr. Canterbury was located and for which Mr. Canterbury had been responsible for providing oversight. Captain Rayburn recalled that the P3 training area was above the P2 area which was the location of mental health programming. Captain Rayburn recalled that an elevator connected P2 to P3, as well as to the training office on P1. Captain Rayburn recalled that inmates had been authorized to use this elevator.

Matt Williams

Matt Williams is an Information Technology Security Operations Manager for the Ohio Department of Rehabilitation and Correction. Mr. Williams worked at the Richland Correctional Institution for fourteen years, has worked from the central office of the Department for three years, and has served in his present position for one and one-half years.

Mr. Williams emphasized the importance of maintaining an accurate inventory of information

technology equipment and believes this to be a critical factor in mitigating information technology security problems at an institution. Mr. Williams noted that an accurate inventory of information technology assets allows staff to know where everything is located, and noted that an accurate inventory may not be based on fictitious identifying tags. Mr. Williams noted that the use of fictitious tags presents a security issue.

Mr. Williams testified that if an Infrastructure Specialist 2 were to observe a computer connected to the internet to which inmates had access, the Infrastructure Specialist 2 should treat that computer and its location as a crime scene. Mr. Williams testified that he had traveled to the Marion Correctional Institution on many occasions to look into the incident involving the two computers hidden in the ceiling. Mr. Williams recalled that when he came to the Marion Correctional Institution he found inmates there with access to computers that they should not have had access to, and there were inmates helping employees set up email accounts and other network features. Mr. Williams testified that Mr. Brady as an Infrastructure Specialist 2 should have caught the security issues as they arose and a failure to do so is a recipe for disaster.

Mr. Williams testified that it is the responsibility of an Infrastructure Specialist 2 to limit to the greatest extent possible “lateral movement,” that is, inmates authorized to have limited access to information technology expanding that access without the authority to do so. Mr. Williams describes an Infrastructure Specialist 2 as a gatekeeper for an institution as it relates to access by inmates to information technology and the internet. Mr. Williams described the situation at the Marion Correctional Institution as the worst information technology security situation he had ever encountered.

Vinko Kucinic

Vinko Kucinic has served as a Chief Information Officer for the past five and one-half years on

behalf of the Ohio Department of Rehabilitation and Correction and the Ohio Department of Youth Services at the Operations Support Center. Mr. Kucinic has worked for the state of Ohio for twenty-four years.

Mr. Kucinic recalled that on July 3, 2015 alerts had been received to the effect that there had been attempts at the Marion Correctional Institution to go to websites that were prohibited. Mr. Kucinic recalled that on July 17, 2015 another signal was received and notice of this was discussed with the (then) Warden of the Marion Correctional Institution. Mr. Kucinic recalled that on July 20, 2015 the central office of the Department of Rehabilitation and Correction had received additional information that was shared with Mr. Brady.

Mr. Kucinic recalled that by the time the security breaches in information technology were discovered at the Marion Correctional Institution, the situation was determined to be the worst information technology breach that had occurred within the Department, and this breach in security had received international attention, including postings on U-Tube.

Mr. Kucinic testified that the security breach at the Marion Correctional Institution in effect “gave the keys to the control room” to inmates. The network's access by inmates through this breach allowed the conduct of illegal activity online, permitted the downloading of pornography, allowed inmates access to the internet, permitted inmates to secure identity information, and allowed inmates access to hacking tools that were used against the Department. Mr. Kucinic described the computers discovered in the ceiling at the Marion Correctional Institution as rogue devices, running unlicensed programs that included the capability of erasing a user's tracks.

Mr. Kucinic described the incumbent of an Infrastructure Specialist 2 position at an institution operated by the Ohio Department of Rehabilitation and Correction as the subject matter expert at the institution on information technology policies and compliance at the institution with those policies. In

this regard Mr. Kucinic referred to policy 05-OIT-21, Inventory, Donation, Transfer & Disposal of DRC IT Hardware & Software. See tab 6, page 176. Mr. Kucinic explained that this policy describes what access is and is not allowed inmates, and Mr. Kucinic testified that this policy was violated at the Marion Correctional Institution by inmates accessing hardware and software.

Mr. Kucinic referred to Department Policy 05-OIT-01, Hardware and Software Management, that was violated, according to Mr. Kucinic, by allowing management tools to come into the prison and be accessed by inmates.

Mr. Kucinic referred to Department Policy 05-OIT-18, Malicious Software Code or Program Security Requirements, at tab 6, page 157. Mr. Kucinic testified that this policy was violated by allowing inmates access to system assets.

Mr. Kucinic referred to Department Policy 05-OIT-11, Inmate Access to Information Technology, tab 6, page 172, a rule that refers to protecting information technology system assets using appropriate security requirements. Mr. Kucinic stated that this policy was violated through unauthorized inmate access at the Marion Correctional Institution to computer hardware and software.

Mr. Kucinic testified that the security threat level at the Marion Correctional Institution due to inmate access to information technology that should have been off limits to inmates was very high, and this circumstance had been made particularly dangerous because inmates had actively assisted in network coordination at the institution, activities that when performed by inmates comprise a violation of departmental policies.

Under questioning by the Union's representative, Mr. Kucinic testified that policy 05-OIT-01, Hardware and Software Management, was violated by Mr. Brady by Mr. Brady bringing into the institution wiping tools, a violation of this policy. Mr. Kucinic stated that the installation of wiping software by Mr. Brady at the Marion Correctional Institution also violated policy 05-OIT-18, Malicious

Software Code or Program Security Requirements, and also violated policy 05-OIT-11, Inmate Access to Information Technology. Mr. Kucinic noted that policy 05-OIT-11, Inmate Access to Information Technology, sets out in detail in section VI(A)(1-14) what access is prohibited inmates, and in section VI(B)(1-5) what access inmates are allowed.

Mr. Kucinic identified Union Exhibit 1 as the interview of Mr. Kucinic by investigators from the Ohio Inspector General's Office that occurred on February 16, 2016. At page 26 of Mr. Kucinic's interview he stated the following:

... it's constant. And but, but I think we've, we've, you know, we've come a long way. We've taken many, many steps to address uh some of those issues. Um, you know, it, it --- we're, we're still working on a lot of them. We're, we're a big enterprise and we have many, many end points, many computers. Um, you know, we've got a couple um... 2 – 3,000. These are rough numbers, but 2 to 3,000 inmate computer. You know, we've had 8 to 10,000 staff computers. We've got uh thousands of end points in our, in our system, so uh, you know, we, we are taking steps. We're working closely with DAS to uh, you know, with Nathan and Dave Brown...

David Aldridge

David Aldridge is an inmate at the Marion Correctional Institution, inmate number 156785. Mr. Aldridge worked under the supervision of Mr. Brady at the Marion Correctional Institution for four years. Mr. Aldridge's work under the oversight of Mr. Brady included repairing computers, running cable, maintaining computers, and maintaining servers. Mr. Aldridge testified that Mr. Brady put Mr. Aldridge in charge of servers.

Mr. Aldridge testified that Mr. Brady had been aware that inmates were using the CCleaner software to erase hard drives. Mr. Aldridge stated that RET3 had been a computer repair and refurbishing company, and the CCleaner program was used in that work.

Mr. Aldridge testified that the servers were set up by Mr. Brady and Mr. Aldridge. Mr. Aldridge

noted that with appropriate passes, inmates had had access to computers and had “gone lateral.”

Mr. Aldridge testified that the computer recycling program operating at the institution had been overseen by RET3. RET3 would receive used computers for disassembly and Mr. Aldridge recalled that supervision in the RET3 recycling program had been lax. Mr. Aldridge recalled that: “... it had been easy to get stuff in and out of there.”

Mr. Aldridge testified that he passed a polygraph test and this is the reason he had not been transferred out of the Marion Correctional Institution.

Under questioning by the Union's representative, Mr. Aldridge agreed that in order to secure access to networks, a password is required.

Mr. Aldridge testified that the inmate computer network at the Marion Correctional Institution employed an independent server and pointed out that Department of Rehabilitation and Correction servers were not to be touched by inmates. The servers operated by the Department of Rehabilitation and Correction were restricted to staff members.

Mr. Aldridge recalled that Mr. Brady had been advised of the switch being used by the undocumented computers and from this identification cables were tracked to a ceiling in P3 wherein two computers were hidden. The computers were placed on a cart and Mr. Aldridge recalled that Mr. Brady was present as the computers were carted away.

Mr. Aldridge testified that in 2015 he had worked as a program aide in the Lifeline program, a network of about 100 computers authorized to be accessed by inmates for training purposes.

Mr. Aldridge stated that wiping clean recycled hard drives using the CCleaner had been a job assigned by RET3, a job assignment known to Business Administrator Rebecca Shafer; Training Officer Randy Canterbury, the institution's contact person for the RET3 recycling program; and Mr. Brady, the institution's IT person.

Nathan Norris

Nathan Norris has been employed by the state of Ohio for sixteen years and today serves as an Enterprise Security Manager within the Ohio Department of Administrative Services.

Mr. Norris participated in the investigation of the cyber-breaches that had occurred at the Marion Correctional Institution. Mr. Norris had been alerted that two computers had been found hidden in a ceiling at the institution. Mr. Norris found in his investigation that there had been a huge inmate network at the Marion Correctional Institution with a great deal of wiring and about 300 computers with access to the internet. Mr. Norris stated that the Ohio Inspector General's Office also conducted an investigation of the cyber-breaches at the Marion Correctional Institution.

Mr. Norris testified that an Infrastructure Specialist 2 is responsible for overseeing access to and use of information technology at an assigned institution, ensuring compliance with departmental rules, policies, and limits. Mr. Norris testified that neither imaging software nor wiping tools are to be provided to inmates for their use. Mr. Norris stated that Mr. Brady had been of the opinion that he needed CCleaner to carry out the programming demanded by the Lifeline program. Mr. Norris stated that this had not been the case. Mr. Norris stated that there were about 300 computers at the Marion Correctional Institution that had been using software for which neither the Department nor the state of Ohio held a license. Mr. Norris described what he had been found at the Marion Correctional Institution, in terms of inmate access to information technology, as a program "out of control."

Mr. Norris testified that inmates had used imaging software and wiping tools to which they had been given access to cloned computers constructed from disassembled parts from the RET3 recycling program. At page 44 in tab 4, Joint Exhibit 6, the Ohio Inspector General's April 11, 2017 report, the Ohio Inspector General found malicious software installed in the computers hidden in the ceiling at the Marion Correctional Institution to include CC Proxy, a proxy server for Windows, an internet access

proxy software; CCleaner, a freeware tool for system optimization, privacy, and cleaning; malicious tools for password-cracking, and software used for various other types of malicious activity.

Mr. Norris testified that the RET3 recycling program had purchased ninety-three computers for salvage but investigators could find less than ten RET3 computers, and also found about 300 computers at the Marion Correctional Institution not appropriately tagged. Mr. Norris testified that Mr. Brady had been aware that all computers at the Marion Correctional Institution required licenses and also knew that not all computers at the institution had had licenses. Mr. Norris testified that there were operating systems being used at the Marion Correctional Institution for which no license was held.

Mr. Norris testified that when an Infrastructure Specialist 2 becomes aware that there are computers being used at an institution that are not licensed, the Infrastructure Specialist 2 is required to report this circumstance and take those computers lacking licenses out of use. Mr. Norris stated that it is the responsibility of an Infrastructure Specialist 2 to find an unlicensed computer and either bring it into compliance or remove it from use. Mr. Norris stated that Mr. Brady had failed to perform up to expectations in his position as an Infrastructure Specialist 2 at the Marion Correctional Institution.

Mr. Norris stated that as an Infrastructure Specialist 2 Mr. Brady was supposed to be monitoring use and access to computers at the institution to which he was assigned. Mr. Norris noted that Mr. Brady raised no issue with anyone about computer access and use by inmates at the Marion Correctional Institution.

Mr. Norris noted that CCleaner is software that provides the capability to erase all history of activity on the internet and is used when a computer user does not wish to leave a trail for others to see where the user has gone on the internet. Mr. Norris stated that he found this CCleaner software installed on all 300 computers to which the inmates at the Marion Correctional Institution had had access, and Mr. Brady had said that he had brought the CCleaner software to the institution. Mr. Norris testified

that CCleaner is not allowed on staff network computers and is not allowed on any computer to which inmates have access.

Mr. Norris testified that when Mr. Brady found two computers hidden in the ceiling he should have treated that location as a crime scene. Mr. Norris noted that inmates were used to move the contraband computers down from the ceiling and Mr. Norris stated that this was inappropriate. Mr. Norris stated that it was also inappropriate for Mr. Brady to have relied on inmates for technical questions. Mr. Norris recalled Dave Brown, state of Ohio Chief Information Security Officer saying following his review of the information technology circumstances at the Marion Correctional Institution: "This is my worst nightmare manifested."

Carl Eugene "Gene" Brady, Jr.

Carl Eugene "Gene" Brady, Jr. was hired by the Ohio Department of Rehabilitation and Correction as a Corrections Officer in 1994 and served in that capacity for two years. For the following seven years, until 2003, Mr. Brady worked for Ohio Penal Industries as a Penal Workshop Specialist. Mr. Brady returned to a Corrections Officer position in 2003, and in 2004 was promoted to Network Administrator. His position was reclassified to Infrastructure Specialist 2. Mr. Brady was removed from his employment by the Employer effective April 20, 2018.

Mr. Brady testified that from July 2015 through April 20, 2018 he had remained on administrative leave.

Mr. Brady testified that when he was working at the Marion Correctional Institution as an Infrastructure Specialist 2 his direct and immediate supervisor had been Rebecca Shafer, the Business Administrator at the Marion Correctional Institution.

Mr. Brady recalled that the Marion Correctional Institution at one time had had very few

training programs available to inmates. As the number of inmate training programs grew at the institution and became more complex, the institution came to require better record keeping and moved to computerized systems for this reason. Mr. Brady recalled that the number and use of computers at the Marion Correctional Institution expanded exponentially.

Mr. Brady recalled that in his interview that had occurred in January 2017 he had said that there had been over 300 computers just in the Lifeline program at that time, and there had been more than 500 computers accessed by staff and inmates at the institution. Mr. Brady also noted that there was one Infrastructure Specialist 2 assigned to the Marion Correctional Institution – himself.

Mr. Brady explained that personal computers at the Marion Correctional Institution that were accessed by staff had internet access and intranet access within the Department's network. Mr. Brady stated that inmate access to computers was strictly limited, with no inmate access to the internet authorized and no inmate access to the Department's intranet network authorized.

Mr. Brady recalled that there was an area at the the institution, PNN, wherein video editing occurred to which inmates had had access.

Mr. Brady recalled that he was first made aware of an alert that had been received by the Department's central office on July 17, 2015.

Mr. Brady identified Union Exhibit 2 as Mr. Brady's interview that occurred on August 12, 2015 by Ohio State Highway Patrol Trooper John Warner.

Mr. Brady recalled that on July 21, 2015 he had directed an email to Jerry Rable asking that a tracer be run to determine the IP identifier indicating the last switch used. Mr. Rable at that time was an Infrastructure Specialist 2 at the Allen Correctional Institution. Mr. Brady testified that he, Mr. Brady, had attempted to run a tracer but had been unable to get past the main switch. Mr. Rable had made the same attempt and had run into the same problem.

Mr. Brady stated that on July 24, 2015 he received an email that identified the switch G10/16 to which a computer had been plugged into at noon. Mr. Brady recalled that he had initially misread the email as port 10. The following Monday morning Mr. Brady came to realize he had misread the message and this clarification prompted Mr. Brady to grab a ladder and direct two inmates, Mr. Watkins and Mr. Aldridge, to accompany him to the P3 training area, following cables in the ceiling from the G10/16 switch. The inmates and Mr. Brady discovered two computers in the ceiling at P3 on July 27, 2015.

Mr. Brady stated that area P3 was a staff training area for which Training Officer Randy Canterbury had been responsible.

Mr. Brady recalled that when the two computers in the ceiling at P3 were discovered, Mr. Brady contacted Major Grisham and advised him of what had been found. Major Grisham advised Mr. Brady that someone would be coming to that location to take pictures. A short time later Lieutenant Rayburn arrived and photographed the computers located in the ceiling. Mr. Brady recalled Lieutenant Rayburn telling Mr. Brady at that time that Lieutenant Rayburn had talked to a central office investigator, Mr. Hundley, and Lieutenant Rayburn had been advised to take the computers down from the ceiling and secure them. Mr. Brady recalled inmates handing down the computers from the ceiling and the computers being placed on a cart. Mr. Brady recalled cables in the ceiling at that location were pulled by inmates who were observed by Mr. Brady as they did so.

Mr. Brady recalled that on July 29, 2015 he had directed an email to Warden Jason Bunting, Mr. Kucinic, and Mr. Hundley that inquired about what was to be done with the two contraband computers. The following day, July 30, 2015, Mr. Brady directed an email to Mr. Kucinic stating that Mr. Brady would be coming to the central offices of the Department that day and could bring the computers with him if that was desired. Mr. Kucinic responded in the affirmative and Mr. Brady delivered the

computers to the Department's central offices by placing the two computers on the desk of Mr. Norris. Mr. Brady testified that he had had no further contact with these computers.

Mr. Brady was asked why he had brought inmates with him when he had been searching for the contraband computers. Mr. Brady stated that he had not known at that time what they were going to find.

Mr. Brady confirmed that he was aware of the Department of Rehabilitation and Correction's policy on crime scenes, stating that he had read the policy many years ago.

Mr. Brady was referred to Management Exhibit 1, the Ohio Department of Rehabilitation and Correction's crime scene policy. Mr. Brady pointed out that there is nothing within this policy that addresses identifying a crime scene as such. Mr. Brady noted that although the policy clearly instructs employees on what is to be done at a crime scene, how to recognize a crime scene under the policy is not mentioned. Mr. Brady testified that when he discovered the computers in the ceiling at area P3 he had not thought it to be a crime scene and he had received no direction from anyone that it was to be treated as a crime scene. Mr. Brady stated that at the time the computers hidden in the ceiling were discovered, it had been the standard operating procedure at the Marion Correctional Institution that when contraband was located it was seized, and an investigation was conducted as to the contraband either by investigators at the correctional institution or investigators from the Department's central office.

Mr. Brady pointed out that if he had come upon a scene where a rape or a stabbing had occurred, he would have notified his shift supervisor immediately and would have understood immediately that the scene was a crime scene.

Mr. Brady recalled that the Lifeline program at the Marion Correctional Institution was intended to teach inmates computer skills, how to write program code, and enable inmates to become computer

literate. Inmate Aldridge oversaw the server and computers used exclusively in the Lifeline program, computers that had no access to the internet or to the Department's intranet network.

Mr. Brady was referred to Union Exhibit 3, a page from CCleaner.com with the title: “What is CCleaner?” This web page describes CCleaner as a small, effective utility for computers running Microsoft Windows that cleans out the “junk” that accumulates over time; temporary files, broken shortcuts, and other problems. CCleaner is described as a tool that protects a user's privacy as it cleans out browsing history and temporary internet files, leaving the user less susceptible to identity theft. CCleaner is described as a tool that can clean unused files from various programs, saving hard disk space, removing unneeded entries, and helping to uninstall software that is no longer wanted.

Mr. Brady testified that CCleaner at the Marion Correctional Institution was used to wipe hard drives, deleting all information on a hard drive. Mr. Brady stated that it would also erase entries in the Registry file, the file that tells the operating system where everything is located . Mr. Brady stated that CCleaner at the Marion Correctional Institution was used in the Lifeline program and was also used in the RET3 recycling program. Mr. Brady noted that CCleaner was downloaded free of charge.

Mr. Brady was referred to tab 6, pages 153-156, the Ohio Department of Rehabilitation and Correction's policies, 05-OIT-01, 05-OIT-10, 05-OIT-11, 05-OIT-18, and 05-OIT-21.

As to policy 05-OIT-01, Hardware and Software Management, this policy describes a System Asset Coordinator as a person designated by the managing officer at the site to be responsible for maintaining accurate records and documentation pertaining to the purchase and inventory of hardware and software system assets utilized for Department of Rehabilitation and Correction business purposes. Mr. Brady identified Rebecca Shafer, the Marion Correctional Institution's Business Administrator and Mr. Brady's immediate supervisor, as the System Asset Coordinator designated as such at the Marion Correctional Institution by the institution's managing officer, the Warden.

Mr. Brady noted that within policy 05-OIT-01, in section V(6), the Department is to maintain an approved hardware and software system asset procurement list containing standard hardware and software configurations and components that are approved by the Department of Administrative Services, Office of Information Technology and are compatible with Department of Rehabilitation and Correction networks, infrastructure, and online information systems. According to this policy provision the Chief of the Department of Rehabilitation and Correction's Bureau of Information Technology Services is to update the approved list at regular intervals and distribute the list to all departmental technology staff members in the regions, at the Operations Support Center, and to all departmental System Asset Coordinators. Mr. Brady testified that he had never been provided with or saw a list of approved hardware and software issued under this policy.

As to policy 05-OIT-18, Malicious Software Code or Program Security Requirements, Mr. Brady denied that CCleaner qualified as a malicious software computer program. This policy defines malicious software code or program in section IV as:

Any software code or program that is intentionally inserted or included into an (sic) system asset without the knowledge of the authorized user with the intention of controlling, disrupting, corrupting, or otherwise causing harm, security breaches, or damage to the system asset. Malicious software codes or programs are also called malware, and examples include viruses, worms, Trojan horses, and trapdoors.

Mr. Brady testified that Rebecca Shafer, the System Asset Coordinator designated as such at the Marion Correctional Institution had been fully aware that CCleaner was being used at the institution.

As to policy 05-OIT-11, Inmate Access to Information Technology, Mr. Brady pointed out that within section VI(A) is a listing of prohibitions involving inmates, while section VI(B) lists inmate computer access that is permitted.

Mr. Brady described the RET3 recycling program as an electronics technology recycling

program that disassembled computers and electronic typewriters, dividing the disassembled parts among bins. Those computers found to be salvageable were to be refurbished and made available to schools. The inmates in the RET3 recycling program performed the disassembly work in a caged area. Mr. Brady testified that the RET3 recycling program was overseen by an RET3 employee.

Mr. Brady testified that while the RET3 recycling program had operated, the institution's designated contact person for this program had been Training Officer Randy Canterbury.

Mr. Brady testified that within the RET3 program hard drives were wiped clean but not through the use of CCleaner. The RET3 representative who oversaw the computer recycling program at the Marion Correctional Institution had been Kenneth Kovatch, and Mr. Kovatch had provided the software used to erase hard drives in the RET3 recycling program.

Mr. Brady recalled that the computer and typewriter recycling program overseen by RET3 sorted hard drives by size. Disassembled hard drives were placed in a locked box and an inventory sheet was maintained in the locked box.

Mr. Brady referred to tab 4, page 53 within the investigative report issued by the Office of the Ohio Inspector General, Joint Exhibit 6, wherein Mr. Canterbury is described as saying that the inmates working in the RET3 program at the Marion Correctional Institution "... kept the inventory of the stuff coming in and the stuff going out."

On the same page, page 53 in tab 4, Mr. Canterbury is quoted as acknowledging to investigators that when Mr. Canterbury's office was located in the P3 training room he had left inmates unsupervised for long periods of time. In Mr. Canterbury's words: "Well, they could be back there all afternoon." Mr. Canterbury is reported to have admitted that he also left inmates unsupervised in the RET3 recycling area.

The Ohio Inspector General's investigative report at tab 4, page 54, describes Mr. Canterbury as

transitioning from being a state of Ohio employee to becoming an RET3 contract employee.

Mr. Brady testified that based on the inventory maintained by inmates under Mr. Canterbury's supervision there is no way to determine an accurate estimate of the number of computers that came into the institution through the RET3 recycling program, or the number of refurbished computers that came out of the RET3 program.

At tab 4, page 50, from the Ohio Inspector General's investigative report, Mr. Kovatch of the RET3 program is quoted as telling investigators that Mr. Kovatch believed that RET3 had donated ninety-three computers to the Marion Correctional Institution in 2013, computers to be used in the Lifeline program. Mr. Kovatch recalled that each of these donated computers had had affixed to it an RET3 sticker. Mr. Kovatch is described as admitting that he had recently looked for the RET3 donated computers at the Marion Correctional Institution in the Lifeline area and found only six of the ninety-three computers he had expected to find there.

At the bottom of page 50 in tab 4 the following appears:

Kovatch told investigators that Brady had brought scrap from MCI to his company to be salvaged. Kovatch added that Brady had taken computer parts, memory, hard drives, and switches from his company. Kovatch said that he did not keep an inventory of items taken by Brady from his warehouse.

Mr. Brady testified at the hearing that he did receive parts from the RET3 program from a warehouse in Cleveland, parts that had been made available to Mr. Brady by Mr. Kovatch.

Mr. Brady identified Joint Exhibit 11, beginning at tab 9, page 200, as the contract between the Ohio Department of Rehabilitation and Correction and RET3 Job Corp., Inc., with the Warden of the Marion Correctional Institution, Warden Bunting, signing this contract on August 5, 2014, and Kenneth J. Kovatch signing for the contractor, RET3 Job Corp., Inc., on August 12, 2014. The first page of this

contract describes the Agency's desire "... to engage the Contractor to provide recycling, de-manufacturing, and refurbishing of computers and other electronics, training, and administration of certification testing to qualified offenders.

Mr. Brady was referred to the notice of removal and Mr. Brady confirmed that there was nothing in the particulars presented within the order of removal that refers to inventory issues. As to proper tagging at the institution, Mr. Brady testified that he gave each computer on the institution's premises the designation LL and a sequential number in providing a unique and appropriate tag for each computer. Mr. Brady testified that Business Administrator Shafer, the System Asset Coordinator at the Marion Correctional Institution, had approved this tagging method.

Mr. Brady was referred to Union Exhibit 4, the report of the Office of the Ohio Inspector General involving the Ohio Department of Rehabilitation and Correction, file ID number 2016-CA00032, with the date the report was issued presented as May 22, 2018. Joint Exhibit 6 is the investigative report of the Office of the Ohio Inspector General involving the Ohio Department of Rehabilitation and Correction, file ID number 2015-CA00043, with the date the report was issued presented as April 11, 2017.

Within the May 22, 2018 Inspector General's report, at page 15 of Union Exhibit 4, the subject of improper inventory control/no property asset tags was addressed. Investigators are reported to have found twenty-eight computers located at PNN at the Marion Correctional Institution that did not have a proper bar code label affixed to them. These computers did have a plain generic label identifying the computers as PNN01, PNN02, etc. An asset tag was listed for each computer but in place of a serial number a generic PNN-assigned number was used. This was done so that each computer could be replaced without changing the identification information attached to the computer, requiring the assignment of a new asset tag number. At Union Exhibit 4, page 16, Mr. Brady is quoted as saying on

January 10, 2017 in an interview:

I'll --- will take the heat for that one. We put just generic tags on them because we knew --- we dis... --- in discussions with Miss Shafer, uh I was told that any area where there was going to be a high turnover rate, I could use a, a (stutters), a tag that had the same basic information on it and le --- and just you changed the information in the database and leave the same number on the 15 pieces of equipment that we're gonna re --- replaced (sic) in the next year.

Mr. Brady testified that he had received no discipline based on how the computers at the Marion Correctional Institution had been tagged.

As to the online article: "Ghost in the Cell," Mr. Brady confirmed that at no time had he spoken to the author of this article or contributed in any way to this article.

Mr. Brady expressed the opinion that nothing could have been done to avoid the inmates hiding computers in the ceiling.

Under questioning by the Employer's representative, Mr. Brady was referred to tab 3, page 19 within an investigation summary report issued by the Chief Inspector of the Department of Rehabilitation and Correction dated January 11, 2018 wherein Mr. Brady is reported to have admitted that he set up the software directly on the server.

Mr. Brady was referred to tab 4, page 74 within the Ohio Inspector General's report wherein Mr. Brady was found to have failed to follow crime scene protection policies, and was also found to have failed to supervise inmates and protect information technology resources. The Ohio Inspector General's report stated that inmates were allowed unsupervised access to computers, to computer wiping and imaging software, to computer hardware parts, computer cables, power cords, and plywood boards, all of which were used to hide two computers in the ceiling. The Ohio Inspector General found that inmates had had numerous unsupervised hours to collect, transport, covertly install, and connect

computers to an unprotected network switch.

At tab 4, page 75 within the Ohio Inspector General's report it was determined that Mr. Brady had failed to follow state of Ohio asset management policies in violation of Ohio Department of Rehabilitation and Correction policy 05-OIT-21, Inventory, Donation, Transfer, and Disposal of DRC IT Hardware & Software.

Mr. Brady reiterated that when the two computers hidden in the ceiling were found he had not thought the location of those computers to be a crime scene.

Mr. Brady testified that he had brought parts back from RET3 but stated that this had been approved by the Business Administrator and System Asset Coordinator for the Marion Correctional Institution, Rebecca Shafer.

Under re-direct questioning by the Union's representative, Mr. Brady testified that it had been inmate Johnston who had constructed and placed the computers in the ceiling in P3 and the parts for those computers had originated in the RET3 computer recycling program.

Mr. Brady explained that PNN is the acronym for Prison Network News.

Kevin Stockdale

Kevin Stockdale was interviewed on March 3, 2016 within the Ohio Inspector General's investigation, file ID number 2015-CA00043. At the time of his interview Mr. Stockdale was serving as the Deputy Director of Administration in the Ohio Department of Rehabilitation and Correction. The interview of Mr. Stockdale appears in the hearing record as Union Exhibit 5. Mr. Stockdale had served as the Department's Budget Chief beginning in August 2008 and was promoted to Deputy Director for Administration in early 2015.

Beginning in July 2015 Deputy Director Stockdale was responsible for the Department's

information technology, finances, and construction.

At page 10 of the interview of Mr. Stockdale that occurred on March 3, 2016, Mr. Stockdale had said that he provided no instructions to Warden Bunting or to Infrastructure Specialist 2 Gene Brady.

Mr. Stockdale recalled in his testimony at the hearing herein that in 2008 there had been a substantial reduction in staff throughout the Department, including staff responsible for information technology. Greater access to computers by inmates was being recommended but with the decrease in staff, interest in issues involving information technology security increased.

Brian Hill

Brian Hill began working as a Corrections Officer within the Ohio Department of Rehabilitation and Correction in 1999, and in 2003 accepted a promotion to Network Administrator at the Grafton Correctional Institution. In 2016 Mr. Hill became a Regional Information Specialist for the Lima Adult Parole Authority region.

Mr. Hill recalled that he had been assigned to assist in remediation activities at the Marion Correctional Institution. With the help of the Ohio Department of Administrative Services, each connection (port) at the Marion Correctional Institution was labeled. Mr. Hill stated that this work began in 2016 and took two years to complete.

Mr. Hill recalled that in 2015 the Marion Correctional Institution had undergone a shakedown of inmate computers and pornography had been discovered on computers in the PNN area at P3. Mr. Hill recalled a shakedown of the Lifeline computer training program. Mr. Hill recalled that the Marion Correctional Institution had had more computers to which inmates had been granted access than had been the case at other institutions. Mr. Hill recalled that when he had served as an Infrastructure Specialist 2 at the Grafton Correctional Institution there had been an increase in the number of

computers to which the inmates had access and it had been difficult to keep up.

Mr. Hill testified that it used to be at the Marion Correctional Institution that the computers to which staff had access were completely separate from the computers to which inmates had access. Mr. Hill testified that today, both are using the same computer hardware.

Mr. Hill testified that an authorized user's account is necessary to gain access to the Department's network to which staff members have access. Mr. Hill explained that inmate networks had user accounts created separately and solely for the inmate's network.

Mr. Hill explained that PNN at the Marion Correctional Institution included audiovisual equipment, postings, visuals created for the agency, and desktop publishing capabilities. Mr. Hill testified that today, there is much greater control over computers to which inmates have access, and Mr. Hill stated that the information technology security breaches that occurred at the Marion Correctional Institution are today held up at training sessions as an instructive bad example.

Mr. Hill testified that the application CCleaner does not fall under the definition for malicious software code or program as provided in departmental policy 05-OIT-18. Mr. Hill pointed out that CCleaner is issued free of charge.

Mr. Hill testified that he had never viewed the approved list of hardware and software referenced in policy 05-OIT-01, and testified that the location of the computers hidden in the ceiling did not constitute a crime scene.

Under questioning by the Employer's representative, Mr. Hill confirmed that inmates should not have had access to and control over servers. Mr. Hill stated that this is a violation of departmental policy.

Mr. Hill stated that the insecure circumstances at the Marion Correctional Institution involving information technology took two and one-half years to correct. Mr. Hill emphasized that inmates are

not to be used to set up accounts.

Jason Bunting

Jason Bunting began his employment by the Ohio Department of Rehabilitation and Correction as a social worker in 1997, moved to a case manager position in 2001, became a unit manager in 2002, served as a Deputy Warden of Operations beginning in 2007, and from November 23, 2011 through September 9, 2016 served as Warden at the Marion Correctional Institution. Mr. Bunting left the Ohio Department of Rehabilitation and Correction for a position with the Ohio Department of Developmental Disabilities in December 2016.

Mr. Bunting identified tab 19, pages 418 to 428 as the work performance evaluation of Mr. Brady as an Infrastructure Specialist 2 for the period June 5, 2012 to June 4, 2013. This was an annual performance evaluation in which Mr. Brady was rated to be an employee in good standing who satisfied the requirements of his position. At tab 19, page 425 Ms. Shafer is identified as a rater and Mr. Brady is described by Ms. Shafer as doing a good job managing the network and all of the peripheral items attached to it.

Mr. Bunting identified Union Exhibit 6 as the classification specification for the state of Ohio classification series for Investigator. Mr. Bunting stated that an investigator at the Marion Correctional Institution served as a liaison to the Department's central office investigators and to the Ohio State Highway Patrol on illegal activity at the institution.

Mr. Bunting identified Union Exhibit 7 as an interview of Mr. Bunting conducted on January 21, 2016 presented in the Ohio Inspector General's report, file ID number 2015-CA00043. Within this interview Mr. Bunting referred to a telephone call he had received from Deputy Director Stockdale about excessive computer use by two specific users at the Marion Correctional Institution, identified to

Warden Bunting as being Training Officer Randy Canterbury and the institution's Infrastructure Specialist 2, Carl Eugene Brady. Mr. Bunting recalled speaking to Mr. Brady and being told that they were searching for the unauthorized computers at the institution. Mr. Brady notified Warden Bunting that Mr. Brady was working on narrowing down the locations of the contraband computers. Mr. Bunting recalled that the Department's central office had directed Mr. Brady to locate the contraband computers.

Under questioning by the Employer's representative, Mr. Bunting identified tab 3, page 5 as the pre-disciplinary hearing officer's report concerning Carl Eugene Brady, dated March 1, 2018.

POSITIONS OF THE PARTIES

Position of the Ohio Department of Rehabilitation and Correction, Marion Correctional Institution, Employer

The Employer understands that just cause must be proven to uphold the discharge of the grievant and this issue is what is to determine the outcome of this proceeding. The Employer acknowledges that the grievant had provided nearly twenty-four years of service to the Ohio Department of Rehabilitation and Correction and had received no prior discipline.

The Employer grounds the discipline imposed upon the grievant in alleged violations of work rules, in particular: rule 5 F, damage, loss, or misuse of state owned or leased computers, hardware/software, e-mail, internet access/usage, for which a first violation is to give rise to a written reprimand or a one day working suspension; rule 7, a failure to follow post orders, administrative regulations, policies, or written or verbal directives, for which a first violation is to give rise to a written reprimand or a one day working suspension; rule 36, any act or failure to act that could harm or potentially harm the employee, fellow employees, or a member of the general public, for which a first

violation may give rise to discipline ranging from a two-day working suspension to removal; rule 38, any act or failure to act or commission not otherwise set forth herein which constitutes a threat to the security of the facility, staff, any individual under the supervision of the Department, or a member of the general public, for which a first violation may give rise to discipline from a two-day working suspension to a removal; and rule 39, any act that would bring discredit to the Employer, for which a first violation may result in discipline ranging from a written reprimand, to a one day working suspension, to removal.

The Employer concedes that this a very complicated and technical case. Because of this case's complexity the Employer has relied on highly educated, highly experienced subject matter experts in the field of information technology and cyber security. The Employer notes that it has also relied on the very thorough and fair investigation the Employer conducted in reaching a determination about the level of discipline to impose. The Employer urges the arbitrator to do the same, arguing that upon a fair and detailed review of the evidence in the hearing record the arbitrator will find that the Employer did have sufficient just cause to discharge the grievant and the grievance should be denied.

The Employer argues that the Union would have the arbitrator believe that the grievant is a victim of circumstance, having done the best he could under a demanding administration and circumstances that became increasingly difficult. The Union, argues the Employer, would have the arbitrator believe that everything the grievant did was either at the direction of a supervisor or with the full knowledge and approval of a supervisor. The Employer argues that such a portrayal of the grievant's conduct is not accurate.

As to the Union's contention that the grievant is the only individual to have received discipline for the events and circumstances at the Marion Correctional Institution that involved information technology breaches dating from July 2015, the Employer points out that all other parties who had been

investigated as having played a role in the security breaches discovered at the Marion Correctional Institution in July 2015 were no longer employed by the Ohio Department of Rehabilitation and Correction through retirement, or death, or transfer to a different agency. In the case of former Warden Bunting, Mr. Bunting accepted a voluntary demotion and then departed the Ohio Department of Rehabilitation in December 2016. The Employer points out that former employees who are no longer under the jurisdiction of the Ohio Department of Rehabilitation and Correction are not subject to discipline by the Department. The grievant, Mr. Brady, is the only person still employed by the Ohio Department of Rehabilitation and Correction who had been investigated in the Marion Correctional Institution's security breaches dating to July 2015, and therefore the only employee subject to discipline by the Employer.

The Employer emphasizes that in 2015 Mr. Brady had been the subject matter expert in all matters relating to information technology at the Marion Correctional Institution. The Employer claims that it relied on Mr. Brady's expertise in information technology to guide the institution in its projects and programs that relied on technological assistance. The Employer points out that at no time did the grievant raise any objection or express any concern to any co-worker or administrator about how information technology was being administered at the Marion Correctional Institution.

The Employer points out that former Marion Correctional Institution Warden Jason Bunting, when serving as the Warden of the Marion Correctional Institution, had instructed Mr. Brady that Mr. Brady was to do what Mr. Brady needed or wanted to do so long as what Mr. Brady did remained in compliance with departmental and institutional policies and rules, and did not get the institution into any form of trouble.

The Employer points out that witnesses called by the Employer to testify at the arbitration hearing and one of the witnesses called by the Union to testify, Mr. Hill, expressed their alarm over the

depth of the problems uncovered at the Marion Correctional Institution as to information technology security and the very real threats posed by the information technology security breaches discovered at this institution.

As to the Union's procedural argument concerning the interview of the grievant by investigators from the Ohio Inspector General's Office, the Employer points out that in the investigation overseen by the Employer all rights under the parties' collective bargaining agreement were afforded the grievant and as investigator Craft confirmed at the hearing herein, he relied on the Ohio Inspector General's report but he conducted an independent investigation and reached his own conclusions based on the Employer's investigation. The conclusion reached by the Employer based on the Employer's own investigation was that the grievant had been responsible for not securing institutional technological safety nets.

The Employer recalls the testimony of investigator Greg Craft who determined based on the Employer's investigation that the grievant had pirated software, made CCleaner accessible to inmates at the Marion Correctional Institution, and failed to properly inventory computer parts coming to and going out of the various work areas at the institution. Mr. Craft concluded that had the grievant followed departmental policies, inmates would not have had such easy access to parts necessary to build computers nor enable inmates to circumvent information technology limits. Mr. Craft pointed out in his testimony that by providing CCleaner to inmates, these inmates were able to erase their digital footprints thereby making an investigation into what was occurring among inmates more difficult.

The Employer recalls the testimony of Mr. Green who testified that fictitious (generic) identification tags are never to be used on computers or equipment within the Department because the use of such fictitious (generic) tags makes maintaining an accurate inventory of equipment impossible.

Mr. Green also testified that as an Infrastructure Specialist 2 it is never appropriate to allow

inmates access to administrative functions and rights. Such access could result in changes to the system determined by inmates. Mr. Green noted that one of the computers found in the ceiling at P3 had within it administrative rights.

Also recalled is the testimony from inmate David Aldridge who stated that within the inmate network, the Lifeline program, inmate Aldridge had been granted access to servers with the knowledge and approval of Mr. Brady.

The Employer recalls the testimony from Warden Wainwright, the Warden of the Marion Correctional Institution for the past two years. Ms. Wainwright became the Warden of the Marion Correctional Institution at a time when the investigations of computer security breaches at the institution were ongoing. Warden Wainwright confirmed that, except for Mr. Brady, all of the people who had been the focus of the investigation had retired, or died, or left the employ of the Ohio Department of Rehabilitation and Correction. Warden Wainwright stated that the investigation determined that the Marion Correctional Institution had not been in compliance with basic computer policies. Warden Wainwright testified that she expects an Infrastructure Specialist 2 assigned to an institution to understand what computers are on hand and to be able to account for all information technology assets.

The testimony of Matt Williams is recalled who today works as an Information Technology Security Operations Manager for the Department and remains a bargaining unit member. Mr. Williams testified that he believed the discharge of the grievant to have been justified by the grievant placing fictitious tags on computers at the institution thereby not only violating multiple departmental policies but allowing inmates to operate in an an environment that was not adequately monitored, threatening the safety and security of the institution.

The Employer recalls the testimony of Mr. Williams to the effect that Mr. Brady had given

inmates access to networks at a level beyond that which one would expect, a level of access to which the inmates were not authorized. This was, in the opinion of Mr. Williams, a breach in the safety and security at the institution and enabled inmates to move “laterally” from servers while avoiding detection.

Mr. Williams's testimony is recalled wherein he compared the function of an Infrastructure Specialist 2 assigned to an institution to that of a “gate keeper” for purposes of cyber security.

The Employer recalls the testimony of Nathan Norris, an employee of the Ohio Department of Administrative Services responsible for monitoring technological issues at Ohio Department of Rehabilitation and Correction facilities. Mr. Norris testified at the hearing herein that his review of servers and computers utilized by the inmate population at the Marion Correctional Institution revealed “a tool box of nefarious activity.” Mr. Norris testified that other Infrastructure Specialists 2 from other institutions were surprised that the Marion Correctional Institution had encountered the kinds of problems that were discovered there. Mr. Norris recalled that his review of many of the computers used by inmates at the Marion Correctional Institution revealed that the computers had within them imaging software but without the license needed to operate it lawfully. Mr. Norris understood this to be engaging in pirating software.

The Employer recalls the testimony of Captain Rayburn who, while serving as a Lieutenant at the Marion Correctional Institution in July 2015, was directed to photograph the space and computers in the ceiling at P3. The Employer argues that because of Lieutenant Rayburn's lack of experience in information technology he did not identify the space he was photographing as a crime scene. The Employer argues that Mr. Brady, as an Infrastructure Specialist 2, was much more familiar with the dangers posed by unauthorized information technology, had been serving as the information technology subject matter expert at that location, and should have recognized the scene as a crime scene and

handled the scene accordingly.

Captain Rayburn explained the pass system at the Marion Correctional Institution, spoke of what would result from allowing inmates access to computers capable of printing inmate passes and the catastrophic effects that circumstance would have on institutional safety and security.

The testimony from Vinko Kucinic is recalled when he said at the hearing that had the grievant followed the policies of the Department then in place, inmates at the Marion Correctional Institution would not have been able to commit such egregious activities. Mr. Kucinic testified that the Marion Correctional Institution was the only institution to have had information technology security problems of this magnitude. Mr. Kucinic identified the grievant as one of the causes of these problems.

The testimony from inmate David Aldridge is recalled in which he confirmed that he had been placed by Mr. Brady in charge of security over the servers used by the inmate network. The Employer points to the dangers inherent in placing an inmate in charge of any aspect of security at an institution.

As to the testimony provided by the grievant at the arbitration hearing, the Employer claims that the grievant has admitted to many of the allegations made against him. The grievant has attempted to minimize the risks arising from those actions and to redirect the blame to administrators at the institution. The Employer points out however that the grievant has admitted to having known the policies of the Department, to having failed to make a report to anyone concerning issues related to inmate access to computers at the institution, and introduced to the institution, without authority to do so, the CCleaner software that allowed inmates to erase their histories of computer use. While the Union claims that the grievant was operating under “his house, his rules,” the Employer points to the testimony of former Marion Correctional Institution Warden Jason Bunting who recalled directing Mr. Brady to comply with all policies of the Department in carrying out his job responsibilities. The Employer claims that it has proven that the grievant carried out his duties in a lax manner and that as a

direct result of actions and inaction by the grievant, several threats to the safety and security of the institution arose.

As to the testimony provided by Brian Hill, a witness called to testify by the Union, Mr. Hill confirmed in his testimony that although certain downloaded software might be free, as was the case with the CCleaner download, the reason the Department requires purchasing software is so that it may be tracked. Mr. Hill confirmed that simply because software is offered free of charge does not mean that it is free of risk or belongs in a correctional setting. While Mr. Hill believes that there were too many problems at the Marion Correctional Institution to assign all of the blame to the grievant, the Employer argues that such a view should be met with some skepticism and should not shield the grievant from accountability for his acts of omission and commission.

It is noted that former Warden Jason Bunting, following the end of his tenure as Warden at the Marion Correctional Institution on September 9, 2016, accepted a position that was considered a demotion, and then resigned from the Ohio Department of Rehabilitation and Correction effective December 13, 2016. The Employer points out that the demotion and resignation of Mr. Bunting occurred before the Employer's investigation had been completed.

The Employer claims that the grievant failed to affirmatively inform the Warden and the Ohio State Highway Patrol of the potential dangers he had uncovered through the discovery of the computers in the ceiling on July 27, 2015.

The Employer claims that the totality of the grievant's actions illustrate an unacceptable disregard of safety and security at the Marion Correctional Institution and substantiate the just cause needed to uphold the removal of the grievant.

The arbitrator is urged by the Employer to 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

The Union reminds the arbitrator that the grievant in this proceeding was a twenty-three and one-half year employee of the Ohio Department of Rehabilitation and Correction with no prior discipline on his work record when the discharge of the grievant occurred. The Union points out that the grievant was well liked by fellow employees and respected by superiors and inmates. The Union complains that the grievant was nonetheless removed effective April 20, 2018 for a first offense of alleged rule violations. The Union contends that it has proven in this case that the discipline imposed upon the grievant is not supported by just cause.

The Union argues that the Employer failed to follow principles of progressive discipline as required by agreed language in the parties' collective bargaining agreement. The Union complains that the Employer ignored evidence and mitigating factors to reach the faulty conclusion that Mr. Brady was the only employee at the Marion Correctional Institution who's actions or lack thereof contributed to inmates placing two hidden contraband computers in the ceiling in the P3 area and the inmates' illegal and unauthorized use of these computers.

The Union understands that the Employer accuses the grievant of six allegations of misconduct, namely: two hidden computers in the ceiling and their illegal and unauthorized use; failing to secure a crime scene; allowing the use of CCleaner at the institution by inmates; the use of computer parts from the RET3 recycling program; an improperly kept inventory of state information technology assets; and bringing discredit to the Employer.

The Union points out that in 2015 the Marion Correctional Institution went from being a prison with minimal information technology devoted to inmate programming to being an institution with over 500 computers designated for inmate use. During this period of time the number of staff computers at

the Marion Correctional Institution also increased exponentially. The Union points out that testimony from Mr. Brady and Mr. Hill was to the effect that the Marion Correctional Institution and the Grafton Correctional Institution likely had more total computers than most other institutions in the state of Ohio.

The Union emphasizes that while the Marion Correctional Institution had one of the highest number of computers for both staff and inmates in the state of Ohio, Mr. Brady was the only Infrastructure Specialist 2 assigned to this institution. The Union contends that the increased workload was simply beyond the capability of any one Infrastructure Specialist 2. The Union claims that the Employer ignored this obvious and unreasonable increase in workload, failing to view it as a mitigating circumstance in determining the discipline to impose on the grievant. The Union claims that it was well known within the Department that there was too much work at the Marion Correctional Institution for any one Infrastructure Specialist 2 and that Mr. Brady had inherited systemic information technology problems that had had no connection to Mr. Brady.

The Union claims that the Ohio Department of Rehabilitation and Correction was clearly embarrassed by a very high profile event that left the Department looking to “save face” by blaming a scapegoat, in this case Mr. Brady. The Union points out that no other Marion Correctional Institution employee had been disciplined or investigated. The only employee disciplined for these circumstances and the only employee investigated as the cause of these circumstances, argues the Union, was Mr. Brady.

The Union points out that Mr. Brady had had no responsibility for the two computers hidden in the ceiling at P3. Mr. Brady played no part in making those computers operational and had had no connection to their illegal and unauthorized construction and use by inmates. The Union points out that the Ohio Inspector General found that the hidden computers had come through the RET3 recycling

program and it is noted that Mr. Brady had had little to no involvement in the RET3 recycling program. The Union points out that the contact person on behalf of the Marion Correctional Institution in relation to the RET3 recycling program had been Training Officer Randy Canterbury.

The Union points out that the contraband computers were constructed by inmate Johnston from parts originating in the RET3 recycling program, a program for which Mr. Brady had no responsibility. The Union notes that the contraband computers were transported through the institution and moved to P3 using an elevator in an area over which Mr. Brady exercised no control. The computers ended up in the ceiling of an area over which Training Officer Randy Canterbury had been responsible.

The Union points out that the hearing record reflects that Mr. Canterbury left inmates unsupervised in the P3 area for long periods of time and had been lax in his supervision of inmates working in the RET3 recycling program. The Union contends that while the mismanagement by Mr. Canterbury is glaringly obvious, Mr. Canterbury's shortcomings do not serve to support the discipline imposed on Mr. Brady. The Union argues that the Employer has presented no evidence that connects the placement and use of the two contraband computers in the ceiling at P3 to any action or failure to act on the part of Mr. Brady.

The Union argues that the hearing record does not support discipline against the grievant based on an alleged failure to identify a crime scene at the location of the contraband computers in the ceiling at P3. The Union points out that the policy on crime scenes followed by the Ohio Department of Rehabilitation and Correction presents substantial instructions on how a crime scene is to be handled but no indication of how to identify a location as a crime scene. The Union points out that Brian Hill at the arbitration hearing testified that the location of the contraband computers had not qualified as a crime scene under the Department's policy.

The Union points out that Mr. Brady requested directions on numerous occasions as to what to

do with the computers that had been seized and eventually Mr. Brady was instructed to bring them to the Department's Operations Support Center by Mr. Kucinic, and this instruction was carried out by Mr. Brady.

The Union claims that there was no training provided on the Department's crime scene policy and points out that Mr. Brady handled the contraband computers that were discovered on July 27, 2015 in the ceiling at P3 as all contraband is treated upon discovery at the institution; the contraband was seized and secured and transported to an appropriate location.

The Union points out that while the Department was aware of computer alerts received on July 3, 2015, Mr. Brady was not advised of an information technology problem at the Marion Correctional Institution until July 17, 2015, and ten days later, with additional information provided by the Department, Mr. Brady located the two contraband computers in the ceiling at P3 on July 27, 2015. The computers were moved at the direction of Mr. Kucinic and others in the Department; the Union argues there is simply no basis upon which to discipline the grievant based upon his handling of the scene where the rogue computers were located or for the manner in which the computers were secured upon their discovery.

As to the CCleaner software that had been installed at the institution at the direction of Mr. Brady, the Union contends that there has been no violation of policy because the CCleaner download does not qualify as malware under the Department's policies. The Union contends that the Department has failed to provide the approved list of hardware and software that is required by the Department's policy. The Union points out that Mr. Brady had never before been disciplined based on how he had managed information technology assets at the Marion Correctional Institution, and it is the position of the Union that the allegations of wrongdoing put forward by the Employer are opinion-based only and not supported by a preponderance of the evidence in the hearing record.

As to the use of parts in the RET3 computer recycling program, it is noted that Mr. Kovatch, Mr. Canterbury, and Ms. Shafer were fully aware that Mr. Brady had been using parts from the RET3 computer recycling program to refurbish and repair computers used in the PNN area at the institution.

The Union notes that the Employer has described Mr. Brady in this proceeding as the subject matter expert at the Marion Correctional Institution regarding information technology. The Union points out, however, that it had been Rebecca Shafer who had been designated by the managing officer of the Marion Correctional Institution as the institution's System Asset Coordinator, the official title of the person ultimately responsible for all matters of procurement of information technology assets at the institution. The Union argues that Mr. Brady had had no authority to purchase or otherwise procure information technology assets for the Marion Correctional Institution absent authorization from Ms. Shafer.

The Union argues that it is unreasonable to discharge an employee with a long history of service and an excellent work record for alleged violations of procurement policies about which his direct supervisor had been fully aware, had approved, and had lodged no complaint against.

The Union emphasizes that the two contraband computers came from parts in the RET3 computer recycling program, not from the PNN or Lifeline programs. The Union argues that it is unfair to make Mr. Brady a “fall guy” for a program over which Mr. Brady exerted little to no control.

As to the inventory maintained by Mr. Brady at the Marion Correctional Institution among information technology assets located there, the Union claims that this allegation was not raised until after the removal of the grievant. The Union points out that there is no mention of an inventory issue in the particulars set out in the notice of removal issued to Mr. Brady, and the Union claims that it is not reasonable to allow such a charge, so important to a proceeding of this type, to be made while failing to present this charge in the notice of removal.

The Union emphasizes that Business Administrator and designated System Asset Coordinator, Ms. Shafer, had been fully aware of the inventory tagging system used by Mr. Brady and had approved of its use, although as reported by the Ohio Inspector General, Ms. Shafer had been aware that the institution was going to fail an audit standard because of the inventory tagging system that was being used. See Union Exhibit 4, page 17.

The Union points out that because Ms. Shafer had been fully aware of the inventory tagging system used by Mr. Brady, and had made no effort to change that system even though Ms. Shafer knew the system would fail a standard audit, it is not now reasonable to hold Mr. Brady accountable for something that management had been well aware of for a long period of time and had done nothing to change.

The Union points out that in the RET3 recycling program under the supervision of Mr. Kovatch and Mr. Canterbury, inmates had been assigned the responsibility for maintaining an inventory of hard drives coming into the institution. The Union points out that this arrangement forced the Marion Correctional Institution to rely upon the word of inmates working in the RET3 computer recycling program. Again, the Union contends that Mr. Brady was not responsible for the RET3 program and should not be held to account for a clear breach in security in that program, making inmates responsible for maintaining an inventory of hard drives coming into that program.

The Union argues that there is no evidence in the hearing record to indicate that Mr. Brady contributed in any way to discrediting the Employer. The Union acknowledges that the computers found in the ceiling at P3 may have been an embarrassment to the Department but those computers were in no way connected to the grievant.

The Union also points out that there is clear evidence in the hearing record indicating that Mr. Brady played no role in the preparation of the online article in question, having neither communicated

with the author of the article nor provided input of any kind to this online publication.

The Union points out that Mr. Brady was not the only employee at the Marion Correctional Institution mentioned in the article “Ghost in the Cell,” and the Union contends that it is unreasonable and an instance of disparate treatment to single out Mr. Brady as the employee who brought discredit to the Department and the Marion Correctional Institution based on a wide variety of activities and circumstances at the institution to which Mr. Brady had had no connection. The Union argues that this issue does not rise to an offense that can support removal for a first offense.

The Union reiterates that during the interview of Mr. Brady by investigators from the Ohio Inspector General's Office, Mr. Brady had requested Union assistance and this request had been denied. The Union argues that this denial was a violation of a right expressed in the parties' collective bargaining agreement and should have served to exclude the Ohio Inspector General's report from consideration by the Employer in determining the discipline to be imposed upon the grievant.

The Union urges the arbitrator to sustain the grievance in its entirety; order the grievant reinstated to the position of Infrastructure Specialist 2 at the Marion Correctional Institution retroactive to April 20, 2018; order the expungement of any and all references to the discipline imposed upon Mr. Brady from the employment records of the grievant maintained by the Employer; order that the grievant be compensated for all lost wages minus any interim earnings and appropriate deductions, including Union dues and appropriate OPERS contributions; order the restoration of all leave balances that would have accrued to the benefit of the grievant from April 20, 2018; order the restoration of all lost seniority to the grievant; place the grievant as an active Union member in good standing; order the Employer to pay for any medical, vision, or dental expenses incurred by the grievant since the date of removal that would have been covered under an insurance plan had the removal not occurred, and the arbitrator is requested to retain jurisdiction over his award for a period of sixty days.

DISCUSSION

The arbitrator turns first to the procedural issue raised by the Union concerning the refusal by the Ohio Inspector General's Office to allow Union assistance to Mr. Brady as Mr. Brady was interviewed. The arbitrator notes that during the investigation conducted by the Employer, the grievant's request for Union assistance while being questioned was honored, and the Employer's investigation presented no violation of the parties' collective bargaining agreement in this regard.

The arbitrator understands the argument from the Union to be that the Employer may not rely on investigative reports that were not prepared in compliance with express language in the parties' collective bargaining agreement. The Ohio Inspector General's Office is not a party to the parties' collective bargaining agreement, the Agreement to be applied in this proceeding. Under the parties' Agreement the arbitrator is without authority to enforce provisions in the parties' collective bargaining agreement upon an entity that is not a party to the collective bargaining agreement.

The arbitrator notes with approval that the Union representation rights expressed within the parties' collective bargaining agreement were honored by the Employer in the Employer's investigation, and this compliance persuades the arbitrator that the Employer did all that it could or was required to do in reference to Union assistance during an investigation overseen by a party to the collective bargaining agreement to be applied in this proceeding.

As to any reliance by the Employer upon the Ohio Inspector General's investigative reports, the arbitrator does not find a basis upon which to nullify the action by the Employer based on that reliance. There is testimony in the hearing record from Investigator Craft and others who testified that the determination made by the Employer as to whether to discipline the grievant, and if so at what level, were decisions grounded in information gathered through the Employer's investigation. One of the

information sources included in the Employer's investigation was the work product of an external agency, the Ohio Inspector General's Office, and the assimilation of the reports from the Ohio Inspector General's Office into the Employer's investigation does not persuade the arbitrator that the Employer committed a contractual violation based on the Employer's investigation or the Employer's reliance on the Ohio Inspector General's investigative reports.

The arbitrator declines to resolve the grievance at issue herein upon the procedural issue raised by the Union and overrules the procedural objection made by the Union as it relates the Ohio Inspector General's interview of the grievant.

Turning to the merits of the grievance, the written notice provided to Mr. Brady by the Employer about the reasons for the discharge include identification of the work rules alleged to have been violated by Mr. Brady and a narrative of alleged misconduct ascribed to Mr. Brady. The work rules alleged to have been violated describe purposeful or careless acts that result in the misuse of state-owned computers, hardware/software, email, and internet access/usage, rule 5 F; failure to follow policies or written directives, rule 7; acting or failing to act in such a manner as to harm or potentially harm the employee, a fellow employee, or a member of the general public, rule 36; any act or failure to act that constitutes a threat to the security of the facility, staff, or any individual under the supervision of the Department or a member of the general public, rule 38; and any act that brings discredit to the Employer, rule 39.

The narrative presented in the notice of removal begins with an identification of the classification of the position filed by the grievant, Infrastructure Specialist 2, a position assigned to the Marion Correctional Institution. The notice of removal charges that Mr. Brady was responsible for a computer recycling program at the Marion Correctional Institution, the computer recycling program operated through a contract with RET3 Job Corp., Inc.

The hearing record indicates that RET3 Job Corp., Inc. had designated Kenneth Kovatch as the RET3 employee responsible for overseeing the computer recycling program at the Marion Correctional Institution. The institution's designated liaison to the computer recycling program operated by RET3 had been Training Officer Randy Canterbury. The Union has argued in this case that the grievant had little to no authority over the RET3 recycling program at the institution, having had almost no connection to this program. The Employer argues that the grievant was the subject matter expert at the Marion Correctional Institution for all things relating to computer hardware and software, and because of the nature of the grievant's position at the institution and because of the nature of the computer recycling program being operated at the institution by RET3, the computer recycling program remained within the orbit of the grievant's information technology responsibilities at the institution.

The narrative presented in the notice of removal issued to the grievant charges that without authorization the grievant built computers to be used by inmates from materials that included but were not limited to hard drives intended to be recycled.

There is in the hearing record a preponderance of evidence indicating that on various occasions Mr. Brady brought scrap computer parts from the Marion Correctional Institution to RET3's warehouse in Cleveland, Ohio and brought back to the institution from the RET3 warehouse, with the approval of Mr. Kovatch, a variety of refurbished salvaged computer parts including memory boards, hard drives, and other computer hardware components. Regrettably, neither Mr. Kovatch nor Mr. Brady recorded what parts had been provided to Mr. Brady at the RET3 warehouse and no record was created about what parts were brought into the institution by Mr. Brady. This circumstance leaves us no way of knowing at this time what computer components were brought back to the Marion Correctional Institution by Mr. Brady, who had had access to those parts at the Marion Correctional Institution, and how those parts were used at the institution.

The arbitrator finds no evidence in the hearing record indicating that the grievant knew about or participated in the construction of the rogue computers found in the ceiling of P3 on July 27, 2015. It is just as evident to the arbitrator that any ambiguity attaching to how salvaged parts brought to the institution by Mr. Brady were used at the institution results from the inadequate record keeping concerning these parts. This inadequate inventory function is a violation of departmental policy and is emblematic of a major obstacle to keeping track of computer hardware at the Marion Correctional Institution during the first half of 2015.

The narrative in the order of removal charges the grievant with allowing unlicensed software to be downloaded, including software designed to hide internet browsing histories. This charge is admitted by the grievant, explaining that he downloaded CCleaner to computers at the institution but points out that this was done with the full knowledge and approval of System Asset Coordinator and Business Administrator Rebecca Shafer, Mr. Brady's immediate supervisor.

The Union and the grievant, as well as a witness in this proceeding, Mr. Hill, point out that the download of CCleaner was free and this software application was intended to be downloaded and used without the necessity of a formal license. The Employer responds to this assertion by pointing out that whether a download is free is not a factor that addresses whether the software application is appropriate to a correctional setting.

The installation by Mr. Brady of CCleaner into the server operating in the inmate computer network at the Marion Correctional Institution allowed inmates through the use of CCleaner to erase their histories of computer usage. There is testimony in the hearing record from Mr. Norris and others to the effect that the 300 computers to which inmates had had authorized access at the Marion Correctional Institution, the inmate computer network there, had on each computer the downloaded capability of erasing its user's tracks through CCleaner.

The hearing record does not provide an explanation as to how the capability to erase a computer user's history contributes to information technology security among inmates at a correctional institution. CCleaner is not permitted to be installed in computers used by staff members at the institution; a separate hard drive wiping program was used in the computer recycling program operated by RET3, software that had been provided for this purpose by Mr. Kovatch; other than Mr. Brady's assertion, there is no other indication of an approval or notice of the installation of CCleaner in a server connected to computers to which inmates had access.

The direct participation by the grievant in installing a downloaded application that appears on its face to complicate information technology security among inmates at the Marion Correctional Institution is proven and presents a troubling event overseen by the Marion Correctional Institution's information technology expert.

The narrative within the order of removal charges that inmates under Mr. Brady's supervision did, without authorization, access information systems of the Ohio Department of Rehabilitation and Correction, and accessed the internet and engaged in various unauthorized and illegal activities through the unauthorized access that was available to inmates, including downloading pornography; credit card theft, a theft that victimized a member of the general public; the production of fraudulent inmate movement authorization passes allowing unauthorized inmate access to all parts of the institution; and unauthorized inmate access to inmate personal identification information.

A preponderance of evidence in the hearing record substantiates that which has been alleged in the narrative in the order of removal concerning downloading pornography, credit card theft, and the very real threat of catastrophic security breaches at the institution that would be made possible by unauthorized inmate access to information technology systems at the institution and unauthorized access to the internet.

There is no evidence in the hearing record that indicates the grievant engaged in the illegal activity that relates to downloading pornography, credit card theft, etc., and there is no reason to believe based on evidence in the hearing record that the grievant had been aware of these illegal activities as they occurred.

It is just as evident to the arbitrator, however, that the information technology environment at the Marion Correctional Institution by the first half of 2015 had devolved to a state in which inmate access to departmental networks and inmate access to the internet, both of which had been strictly prohibited by the policies of the Ohio Department of Rehabilitation and Correction, occurred and were even unintentionally encouraged, by the noncompliance with policies of the Department as they relate to inventory of information technology assets, tagging of institutional hardware, supervision of the movement of and use of computer components within the institution, and a failure to maintain a clear separation between what aspects of information technology the inmates at the institution were permitted to access and what information technology at the institution the inmates were prohibited from accessing. Examples of prohibited activities that occurred under the oversight and knowledge of Mr. Brady were inmate access to a server in the inmate computer network and the access provided to CCleaner to inmates, making securing a history of inmate computer usage at the institution more difficult.

The arbitrator finds less definitive evidence that the Department's administrative networks had been breached by inmates at the institution but the hearing record presents a persuasive picture of inmate access to the internet and other administrative aspects of the Department that only heightened the risk of harm to the security and safety of the institution.

The narrative in the order of removal charges the grievant with failing to properly secure evidence of the contraband computers. The arbitrator finds insufficient evidence in the hearing record

to substantiate this claim. The Employer has urged the arbitrator to find that Mr. Brady failed to treat the location of the contraband computers as a crime scene and therefore opened himself to discipline for this error.

The hearing record, however, shows Lieutenant Rayburn arriving at the location of the contraband computers while the computers had not yet been touched. A ceiling tile had been removed at the direction of Mr. Brady but the location of the computers and the scene at that location was otherwise unchanged by anything ordered or done by the grievant.

Mr. Brady upon the discovery of the computers in the ceiling at P3 immediately contacted Major Grisham at the institution who advised Mr. Brady to expect the arrival of someone to photograph the contraband computers and the space where the computers were hidden. No mention of a crime scene was made nor were other instructions about how to handle the scene communicated to Mr. Brady.

When Lieutenant Rayburn arrived at P3 to photograph the computers and the space in which they were hidden, Lieutenant Rayburn told Mr. Brady that Lieutenant Rayburn had talked to Mr. Hundley, an investigator assigned to the central office of the Department. Lieutenant Rayburn explained to Mr. Brady that Lieutenant Rayburn had been instructed by Investigator Hundley to secure the contraband computers and move them to an appropriate location at the institution.

The Employer's argument that the discovery of the contraband computers should have been understood to present a crime scene and handled accordingly is not supported by the evidence in the hearing record nor by express language in the Department's policy on crime scenes. Mr. Brady made every effort to act appropriately upon the discovery of the rogue computers on July 27, 2015 in the ceiling at P3, treating the computers as contraband. There is nothing in the hearing record to indicate that Mr. Brady violated any policy or any instruction as to how to handle this contraband upon its discovery.

The arbitrator finds no basis upon which to discipline the grievant for his handling of the scene containing the contraband computers.

The narrative in the order of removal refers to an article that appeared online in The Verge, and noted that the article had been critical of how the Department of Rehabilitation and Correction had handled information technology security at the Marion Correctional Institution.

The grievant has testified in this proceeding that he had not communicated with the author of the online article nor had he contributed in any way to the preparation of the article.

While the grievant is not accountable for the preparation or publication of the article in question, he is responsible for an information technology environment at a correctional institution operated by the Ohio Department of Rehabilitation and Correction that enabled the commission of felonies by offenders incarcerated at that institution. The embarrassment and discredit arising from the public perception of an Ohio prison facility being allowed to become the source of serious criminal activity affecting directly members of the general public, including identity theft, credit card theft, and income tax fraud, is an embarrassment to the Department that was earned through negligence and lack of vigilance.

The information technology environment at the Marion Correctional Institution by the first half of 2015 had reached a level of risk based upon unauthorized inmate access to information technology that enabled felonious criminal activity by inmates incarcerated at the Marion Correctional Institution. Absent an escape, it is difficult to imagine a greater breach of security as it relates to members of the general public, and hard to imagine a greater blow to the reputation for security of the Department and the institution.

The sorry state of information technology security attained by mid-year of 2015 at the Marion Correctional Institution was not solely caused by the actions or failures to act by the grievant. Mr.

Canterbury, Mr. Kovatch, and at least one very inventive and very determined inmate at the Marion Correctional Institution played direct roles in the lack of security at the institution among information technology capabilities. Also playing a major role in this circumstance was the virtual explosion of computer use and computer equipment at the institution without an accompanying increase in the personnel assigned to keep watch on this technology. All of these players and factors played a role in producing the Marion Correctional Institution's state of security or lack thereof among the institution's information technology assets and access to these technology assets by inmates. While the grievant was by no means the only person who contributed to the failings of information technology security at the Marion Correctional Institution, the grievant did play a featured role in fostering the state of information technology security at the institution from his position as the IT expert at the institution. The grievant's contributions to the security situation at the Marion Correctional Institution were made through failing to maintain an inventory of hardware and software at the institution in a manner required by the policies of the Employer, introducing CCleaner to the institution and making it widely available to inmates at the institution, and authorizing inmate access to the server used in the inmate computer network. As the subject matter expert for information technology at the Marion Correctional Institution, Mr. Brady may be called to account for the state of information technology security at the institution to which he had been assigned. The central role of the grievant as an Infrastructure Specialist 2 at the Marion Correctional Institution, particularly because he was the only Infrastructure Specialist 2 at the Marion Correctional Institution, was to be vigilant about and compliant with departmental policies as they relate to inmate access to the internet and to information technology generally at the correctional institution.

The activities of the grievant that have been proven by a preponderance of evidence in this proceeding indicate negligence and a failure to perform to a satisfactory level of what is required of the

position filled by the grievant at the time of the events in question.

As to the disparate treatment claim made by the Union, such an issue requires employees who are similarly situated. The nature of the grievant's expertise and the absence of other culpable employees in the employ of the Employer at the time of the grievant's discipline leaves the arbitrator unpersuaded that the grievant has been treated in a disparate manner in comparison to similarly situated employees.

The arbitrator finds that the grievant's misconduct that has been proven in this proceeding is sufficiently serious to be determined commensurate with the level of discipline imposed.

For the reasons stated above, the arbitrator finds the Employer did have just cause to remove the grievant effective April 20, 2018, and therefore the arbitrator denies the grievance in its entirety.

AWARD

1. The grievance at issue in this proceeding is determined by the arbitrator to be arbitrable under the parties' collective bargaining agreement.
2. The Employer has presented a preponderance of evidence to the hearing record proving that the Employer possessed just cause to remove the grievant from his employment effective April 20, 2018.
3. The grievance is denied.

Howard D. Silver

Howard D. Silver, Esquire
Arbitrator
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Columbus, Ohio
June 12, 2019

CERTIFICATE OF SERVICE

I hereby certify that duplicate originals of the foregoing Decision and Award of the Arbitrator in the Matter of Arbitration Between the State of Ohio, Department of Rehabilitation and Correction, Marion Correctional Institution, Employer, and the Ohio Civil Service Employees Association, American Federation of State, County and Municipal Employees, Local 11, AFL-CIO, Union, grievance number DRC-2018-01395-14, Grievant: Carl Eugene Brady, was served electronically upon the following this 12th day of June, 2019:

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Columbus, Ohio
June 12, 2019