

**IN THE MATTER OF
ARBITRATION BETWEEN**

-AND-

DECISION IN

**REMOVAL GRIEVANCE
DRC-2019-01276-03
(KELLI NOLAN)**

GRIEVANCE: The Grievance protests the Removal of Corrections Officer Kelli Nolan as lacking Just Cause.

HEARING: February 10, 2020
Marion Correctional Institution; Marion, Ohio

ARBITRATOR: David W. Stanton

FOR THE EMPLOYER

FOR THE UNION

Michael Tenney, Staff Rep.
Derek Urban, Staff Rep.
Roger Garver, Chief Steward
Kelli Nolan, Grievant
Kevin Evans, Corrections Officer

ADMINISTRATION

By email correspondence dated November 17, 2019, from the State of Ohio, Department of Administrative Services, Office of Collective Bargaining, the Undersigned was notified of his mutual selection from the Parties' permanent, rotating panel to serve as impartial Arbitrator to hear and decide Grievance No. DRC-2019-01276-03, concerning the Removal of Corrections Officer Kelli Nolan then in dispute between these Parties. On February 10, 2020, at the Marion Correctional Institution, 940 Marion-Williamsport Road, Marion, Ohio, an Arbitration Hearing was conducted wherein each Party was afforded a fair and adequate opportunity to present testimonial and/or documentary evidence supportive of positions advanced; and, where, the Grievant appeared and testified. The Evidentiary Record of this Proceeding was subsequently closed upon the Arbitrator's receipt of each Party's Post-Hearing Brief filed in accordance with the arrangements agreed to at the conclusion of the presentation of evidence and subsequently modified per agreement between the Parties. Accordingly, this matter is now ready for final disposition herein.

GRIEVANCE AND QUESTION TO BE RESOLVED

The following Grievance, Joint Exhibit 2, challenges the Removal of the Grievant, Corrections Officer Kelli Nolan, as lacking "Just Cause" as required in Article 24 of the Collective Bargaining Agreement; and, is set forth as follows:

Grievance: DRC-2019-01276-03

Grievant: Kelli Nolan

Grievant's Agency: DRC

Grievant's Union: Ohio Civil Service Employee Association (OCSEA)

Worksite: MRCI

Grievant's Classification Title:

Corrections Officer

Date of Hire: 6/11/2007

Years of Service: 10

Date Grievance Arose: 3/27/2019

Grievance Type: Discipline

Grievance Sub-type: Termination

Date of Termination: 3/27/2019

Contract Articles: 24, 24.01, 24.02, 24.06

Statement of Grievance:

On 3-27-2019 Officer Kelli Nolan was terminated from her job of Corrections Officer without just cause.

Resolution Requested:

Make member whole by immediately reinstating (sic) officer Kelli Nolan to her position at Marion Correctional Institution as a Corrections Officer same job, days off, and shift she had upon termination, re-pay any lost (sic) wages, missed overtime, missed holidays, any lost (sic) payments into OPERS, Union Dues, and insurance. Reward any state and institutional seniority time loss.

The Stipulated Issue for disposition by the Arbitrator is:

Was the Grievant, Corrections Officer Kelli Nolan, removed with Just Cause; and, if not, what shall the remedy be?

CITED PROVISIONS OF THE
COLLECTIVE BARGAINING AGREEMENT

The following provisions of the Collective Bargaining Agreement, Joint Exhibit-1, were cited and/or are deemed relevant herein as follows:

ARTICLE 5
MANAGEMENT RIGHTS

The Union agrees that all of the functions, rights, powers, responsibilities, and authority of the Employer in regard to the operation of its work and business and the direction of its work force, which the Employer has not specifically abridged, deleted, granted or modified by the express and specific written provisions of the Agreement are, and shall remain, exclusively those of the Employer.

Additionally, the Employer retains the rights to

1. Hire and transfer Employees, suspend, discharge and discipline employees.

ARTICLE 24
DISCIPLINE

24.01 Standard

Disciplinary action shall not be imposed upon an Employee except for Just Cause. The Employer has the burden of proof to establish Just Cause for any disciplinary action. In cases involving termination, if the Arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the Arbitrator does not have authority to modify the termination of an employee committing such abuse. Abuse cases which are processed through the Arbitration Step of Article 25 shall be heard by an Arbitrator selected from the separate panel of abuse case Arbitrators established pursuant to Section 25.05. Employees of the Lottery Commission shall be governed by ORC Section 3770.021.

24.02 Progressive Discipline

The Employer will follow the principles of Progressive Discipline. Disciplinary action shall be commensurate with the offense. Disciplinary action shall include:

A. One (1) or more written reprimand(s);

B. One (1) or more working suspension(s). A minor working suspension is a one (1) day suspension, a medium working suspension is a two (2) to four (4) day suspension, and a major working suspension is a five (5) day suspension. No working suspension greater than five (5) days shall be issued by the Employer.

If a working suspension is grieved, and the Grievance is denied, or partially granted and all appeals are exhausted, whatever portion of the working suspension is upheld will be converted to a fine. The employee may choose a reduction in leave balance in lieu of a fine levied against him/her.

C. One (1) or more day(s) suspension(s). A minor suspension is a one (1) day suspension; a medium suspension is a two (2) to four (4) day suspension, and a major suspension is a five (5) suspension. No suspension greater than five (5) days shall be issued by the Employer;

D. Termination.

ARTICLE 25 GRIEVANCE PROCEDURE

25.03 Arbitration Procedures

The Parties agree to attempt to arrive at a joint stipulation of the facts and issues to be submitted to the Arbitrator.

The Union and/or Employer may make requests for specific documents, books, papers, or witnesses reasonably available from the other Party and relevant to the Grievance under consideration. Such requests will not be unreasonably denied.

The Employer or Union shall have the right to request the Arbitrator to require the presence of witnesses and/or documents. Such requests shall be made no later than three (3) work days prior to the start of the Arbitration Hearing, except under unusual circumstances where the Union or the Employer has been unaware of the need for subpoena of such witnesses or documents, in which case the request shall be made as soon as practicable. Each Party shall bear the expense of its own witnesses who are not Employees of the Employer.

Questions of Arbitrability shall be decided by the Arbitrator. Once a determination is made that a matter is arbitrable, or if such preliminary determination cannot be reasonably made, the Arbitrator shall then proceed to determine the merits of the dispute.

Upon the Union's request, a Grievance that is automatically closed shall be reopened to allow arbitrability questions to be decided by the Arbitrator. The reopening of the Grievance does not constitute a waiver of a claim of a procedural defect.

The expenses and fees of the Arbitrator shall be equally be shared by the Parties.

The decision and award of the Arbitrator shall be final and binding on the Parties. The Arbitrator shall render his/her decision in writing as soon as possible, but no later than 45 days after

1. The conclusion of the hearing; or
2. The date written closings are due to the Arbitrator, unless the Parties' agree otherwise.

Only disputes involving the interpretation, application, or alleged violation of a provision of the Agreement shall be subject to Arbitration. The Arbitrator shall have no power to add to, subtract from, or modify any of the terms of this Agreement, nor shall he/she impose on either Party a limitation or obligation not specifically required by the expressed language of this Agreement.

If either Party desires a verbatim record of the proceeding, it may cause such a record to be made provided it pays for the record. If the other Party desires a copy, the cost shall be shared.

FACTUAL BACKGROUND

The operative facts which gave rise to filing of this Grievance, challenging the Removal of Marion Correctional Institution ("MCI") Corrections Officer, Kelli Nolan, are, except where otherwise indicated, essentially undisputed. The State of Ohio Department of Rehabilitation and Correction at its Facility in Marion, Ohio houses Inmates who are serving sentences levied by/through the State's Judicial System. Inmate safety and retention is maintained by Corrections Officers at this Facility.

The instant matter concerns the Removal of Corrections Officer Kelli Nolan, who was hired by the MCI on June 11, 2007 and served as a Corrections Officer since her Removal on March 27, 2019. At the time of her Removal she had approximately eleven (11) plus years of service and no active performance-related Disciplinary Action in her personnel file. As the

record demonstrates, she had participated on a number of Institutional Committees including the STG, CISM, EAC and Women in Corrections. She served Marion Correctional Institution and the Ohio Department of Rehabilitation and Corrections as a Staff Instructor teaching different classes at the Facility, as well as, the Corrections Training Academy, including Use of Force, OC Spray Certification, Defensive Tactics and Subject Control. She also served as a Field Training Officer for new hires and was a Temporary Working Level "TWL" Lieutenant and Storekeeper. According to the record, the Grievant was removed for allegedly violating the following rules of Standards of Employee Conduct "SOEC" as set forth in the Employee Conduct Manual as follows:

7. Failure to follow Post orders and Administrative Regulations, Policies, or written or verbal directives.
16. Misusing official position for personal gain, to include, but not limited to, the soliciting of bribes in the course of carrying out assigned duties.
21. Unauthorized use, release, or misuse of information.
24. Interfering with, failing to cooperate in or lying in an official investigation, or inquiry.
39. Any act that would bring discredit to the Employer.

The facts and circumstances giving rise to her Removal involved her relationship with a "very close friend" Micah "Kyle" McCoy who had been charged with certain criminal activity for which a criminal proceeding ensued. On December 14, 2018, the Grievant appeared at a day-long criminal trial in Marion County wearing her Ohio Department of Rehabilitation and Correction Officer uniform. The criminal trial which she attended involved her afore-referenced friend and Defendant who was accused of abducting a female acquaintance, holding her captive at gunpoint in her apartment and threatened to kill her and any Law Enforcement Officer who responded to this incident. During the course of this trial, photographs were taken and provided

into the evidentiary record wherein the Grievant is depicted sitting with the Defendant talking to him and his Attorney on breaks and sharing notes with him during the trial. The Grievant indicated she was not present at this hearing acting in any official capacity as a Corrections Officer, nor, as the Employer asserts, did she request permission from the Marion Correctional Institution or the Ohio Department of Rehabilitation and Correction to attend this criminal hearing in her Corrections Officer uniform. The Employer asserts that the Grievant did indeed have enough time following the end of her shift to change out of her uniform, or at a minimum, wear a sweatshirt or jacket to cover it during the course thereof.

At the conclusion of his trial, the Defendant was found guilty and a Pre-sentence Investigation was ordered, including a Report compiled by a Court-appointed employee to supply the sentencing Court background information about the convicted felon to include prior convictions, educational background, family situation, employment history and substance abuse and/or mental health issues, if present. That Report also includes a recommendation to the Court regarding sentencing and are relied upon by the Courts; and, the recommendations are typically adopted by the Court. The record demonstrates the Grievant contacted the County Employee assigned with writing the PSI for the Grievant's friend in this felony matter, whereupon she identified herself as an Employee of the Ohio Department of Rehabilitation and Correction.

The Sentencing Hearing occurred on December 27, 2018 and the Grievant read a "prepared statement" to the Court on the Defendant's behalf. At this proceeding, however, she did not appear in uniform during the statement. She identified herself as an Employee of the Ohio Department of Rehabilitation and Correction; acknowledged her relationship with the Defendant; and, as alleged by the Employer, made disparaging and insensitive comments concerning the victim, Law Enforcement, the case presented by the prosecution and the findings

of the Court. She referenced the State's hiring practices and requested the Court for a favorable sentence for her "very close friend" indicating "working in a Correctional facility, I don't feel he is going to do the Community any justice inside a Correctional Facility and, so I ask you to show him leniency".

Following this component of the Criminal Justice process and upon learning of the Grievant's involvement therein, the Administration at the Marion Correctional Institution initiated an Investigation whereupon an Investigator was assigned to ascertain that which was brought to the attention of Administration. During the course of the Investigation, the Grievant allegedly made false and intentionally misleading statements to the Investigator wherein she indicated she notified an Employee at the Marion Correctional Institution of her intentions to appear and provide Character testimony on behalf of her friend and allegedly asked what she should submit.

The Grievant testified she was asked by the Defendant's Attorney to give a brief background to include her employment to demonstrate her "credibility" as a witness before the Court and that she relied upon an article titled "Best Way to Write a Good Character Witness Statement" and similar documentation to prepare for her testimony before the Court. She indicated she stated her place of Employment as a means by which to demonstrate she had a career and was a productive member of society and any mention of her Employment was in the context of relaying her personal experiences with the Defendant. She also indicated that given her work experience in a Correctional Facility, she is careful about with whom she maintains friendships. She also indicated she had offered to provide guidance to the Defendant to apply for a position with the Ohio Department of Rehabilitation and Correction and the information provided was readily available via the State's website. She further testified she gave the

information she presented in Court based on her personal knowledge of the Defendant and her personal experience gained through her career in Corrections. She also indicated that whatever efforts she exhibited was to obtain information about the Court proceedings, the nature thereof, and what beneficial information she could provide to the Court throughout the Defendant's proceedings. She claims she did not attempt to deceive anyone, nor did she contact anyone involved in these proceedings on behalf of the Employer and/or the State. She maintained throughout the course of the Arbitration Hearing any of her actions engaged in were for the sole purpose of providing assistance for her close friend, who was standing trial for various, serious charges and in no way were her actions intended to deliberately bring discredit to the Employer.

The afore-referenced events resulted in an Investigation initiated by the Employer; the findings of which served as the basis of the Grievant's Removal in accordance with her alleged violation of Standards of Employee Conduct rules, 7, 16, 21, 24, and 39, respectively. The Grievant's Removal was effectuated on March 27, 2019 resulting in the instant Grievance being filed challenging the Removal as lacking Just Cause, in accordance with Article 24 of the Collective Bargaining Agreement. When the Parties' efforts to resolve this matter through the course of the negotiated Grievance Procedure proved unsuccessful, the Removal Grievance of Corrections Officer Kelli Nolan was appealed to Arbitration hereunder.

CONTENTIONS OF THE PARTIES

EMPLOYER CONTENTIONS

The Employer contends the Grievant was removed for Just Cause based on her violation of the Standards of Employee Conduct, Rules No. 7, 16, 21, 24 and 39, respectively, for the acts that occurred involving her "very close friend" during his Criminal Trial. In support thereof, the Employer emphasizes, contrary to the Union's assertions the Grievant's intentions were pure and

what she engaged in was unintentional in nature, such simply were not supported by the evidentiary record. The Grievant violated several serious rules of the Standards of Employee Conduct supported by the Grievant's admissions against interest. She demonstrated her intention to keep her very close friend out of prison at each juncture of his criminal matter. She attempted on three different occasions to leverage her position as a Corrections Officer based on, as she alleges, her credibility, notoriety and expertise in the eyes of the public and the Marion County Court System.

Moreover, she fabricated her actions during the Investigation and rather than acknowledge her wrongdoing, she attempted to deflect the blame by reporting she had informed Investigator Jeremy Hecker of her actions when he testified such simply did not occur. The Grievant failed to report that which she was required to and did not report that which she should have. Contrary to the Union's assertions to the contrary, the Employer will permit Staff to support their friends and loved ones who may be involved in the Criminal Justice System; however, the Grievant could have very easily benefited her friend without compromising her employment with ODRC. Warden Wainwright testified had the Grievant simply worn plain clothes to the Trial, not mentioned her Employer to the PSI Writer and refrained from identifying her Employer in open Court, this matter would not be at this stage.

There are numerous instances where the Grievant chose to reference her Employer, as she contends, to demonstrate her credibility as a witness and as advised by her very close friend's Attorney. Her actions and statements demonstrate a clear attempt to show the Court she was an expert in her field and had the knowledge about which she was testifying based on her Employment with the Ohio Department of Rehabilitation and Corrections. As a result of her deliberate, pre-prepared statements and intentional actions, the Grievant simply cannot be trusted

by the Department to perform duties attendant with her position as a Corrections Officer. She cannot be trusted as an Employee who will not seek personal gain based on her position; and, she cannot be trusted as an Employee who will tell the truth when confronted with very difficult situations. Her return to work would undermine the processes of the Criminal Justice System and the fundamental duties assigned to the Ohio Department of Rehabilitation and Correction which is an integral component of that system.

For these reasons, the Employer requests the Grievance be denied.

UNION CONTENTIONS

The Union contends the evidence of record simply does not demonstrate the discipline is substantiated by the facts as presented, nor progressive in nature. The discipline issued to the Grievant was punitive and the Grievant did not knowingly and/or willingly present herself to the Marion Municipal Court and/or to the Marion County Probation Department as a representative of the ODRC without authorization from the Agency as alleged. These allegations and assertions simply do not coincide with the evidence of record. The Grievant was clearly in the Courtroom to provide personal character witness testimony on behalf of her very close friend. Her testimony in Court was based solely on her personal life experiences, as well as, basic information the Agency posted on this very own hiring website available to the public. Her experiences she expressed were based on her personal knowledge of the Defendant, as well as, her personal experience gained through her career in Corrections. Based thereon, a reasonable person would not reach the conclusion the Grievant was attempting to deceive the Court to believe she was speaking on behalf of the Agency.

Additionally, the Union submits the Employer failed to conduct a full and impartial Investigation and relied largely on the subjective opinions of two witnesses to reach the

conclusion for her Removal. However, other witnesses visualized what occurred in the Courtroom during the times in question and were not called to testify. The Employer failed to interview or attempt to question either the Defendant's Attorney, or the presiding Judge as part of their Investigation. There is simply no evidence to support the Employer's assertion the Grievant contacted Heather Miller, the Marion County Probation Officer, to attempt to deceive her into believing she was called on behalf of the ODRC to seek leniency. That phone call made to that individual was personnel in nature to seek information about the Hearing process and to obtain information regarding her friend. It is simply unreasonable to conclude the Grievant was attempting to deceive Ms. Miller into believing she was contacting her on behalf of the Employer. Someone's mention of their place of Employment in a conversation simply does not equate to speaking on behalf of their Employer.

Moreover, the Employer provided no evidence to establish the Grievant was dishonest during any Investigation. She was fully cooperative and truthful in every aspect thereof and reported more information to the Employer than she was required. The Grievant reported to Investigator Jeremy Hecker she was going to attend and participate in a Court proceeding and acknowledged her requirement to obtain authorization. Her involvement therein simply was not to mislead the Court as alleged; she was there on behalf of her friend and expressed her opinions regarding him. Contrary to the Employer's assertion, there simply is no prohibition restricting an ODRC Employee from participating in, or attending, Court proceedings on their own time unless the Employee or the Agency are the subject of the Court proceeding which simply did not exist in this matter.

The Grievant admitted she was present in the Courtroom on December 14, 2018 while in uniform. She has never denied this fact. She did not participate in the Court proceedings on this

date in any way. The only date on which she participated in any Court proceeding was two (2) weeks later when she gave her verbal character witness testimony while dressed in personal clothing. The Grievant provided mitigation concerning her presence at the Courtroom while in her uniform, as well as, the fact she had misunderstood the Policy. The Employer normally enforces violations of this Policy with a minimal level of Discipline with respect to dress code violations. The discipline issued herein is simply not corrective and does not support the Removal of an eleven (11) year Employee with no active Discipline in her personnel file. At no time did her actions in December of 2018 bring discredit to this Employer. The Employer failed to provide any evidence to support this allegation, nor did her actions in any way compromise the Criminal proceedings. There were no charges brought against the Grievant, obviously there were none to bring. She did not violate any Rules and/or Policies regarding providing personal, character witness, testimony on behalf of her friend. The Marion County Assistant Prosecutor gave her opinion that such impacted the Criminal proceeding; however, no evidence other than her opinion was presented.

The Employer ignored Just Cause, it stacked multiple charges, relied upon broad and repetitive Rules and failed to consider mitigating and aggravating circumstances in its Removal of the Grievant without Just Cause and/or in recognition of progressive discipline. It failed to provide adequate proof of an Investigation based on integrity for which the Arbitrator must uphold the Grievance as submitted. The Employer failed to provide substantial evidence to support the discipline imposed. The issuance of disciplinary action was not progressive in nature or commensurate to the offense(s) alleged. The Grievant, an eleven and one-half (11 1/2) year Employee with no active performance-related discipline in her Record, did not warrant Removal.

For these reasons, the Union requests the Grievance be sustained; the Grievant be reinstated to her position as Corrections Officer at Marion Correctional Institution; the termination be stricken from her personnel file; she be awarded lost wages, less interim earnings subject to the appropriate deductions, including Union dues and all appropriate Pension contributions; all leave balances that would have accrued from the date of her removal be so credited; she suffer no loss in seniority; she be placed as an active Union Member in good standing; reimbursement for any medical, vision, or dental expenses the Grievant incurred since the date of her Removal that would have been otherwise covered under her Insurance Plan(s) less the appropriate deductibles and/or co-payments; and, the Arbitrator retain jurisdiction for sixty (60) days from the date of the Award to assist the Parties with any implementation issues that may arise.

DISCUSSION & FINDINGS

The disposition of this matter hinges upon the determination of whether the Employer has established Just Cause to effectuate the Removal of Corrections Officer, Kelli Nolan, for her actions concerning Criminal Court Proceedings involving, who she characterized, her "very close friend", Micah Kyle McCoy ("McCoy").

The Employer insists, based on the factual circumstances giving rise to this matter and its Investigation substantiating them, Removal was appropriate. It insists the Grievant, in an attempt to support McCoy, failed to comply with the cited Standards of Employee Conduct which were substantiated through the course of its Investigation. The Grievant's actions, in totality, warrant her Removal. She violated the five (5) work rules which served as the basis of her separation and her actions cast the Employer in a negative light and impacted its relationship with the Marion County Criminal Justice System in which it plays an integral role. Based

thereon, there simply exists no basis to conclude she cannot be trusted if she were to return to work.

The Union insists the matter in question simply did not give rise to Removal since the record does not demonstrate the discipline is substantiated by the facts as presented, nor is the level of Disciplinary Action progressive in nature. The Grievant did not knowingly or willingly present herself to the Marion Municipal Court or the Marion County Probation Department as a representative of the ODRC. Her presence in the Courtroom was to provide personal, character testimony on behalf of her very close friend and she was advised by his Attorney to discuss and identify herself with respect to the nature of her employment. There is no evidence to suggest she, in any way, attempted to cast a negative light on the Department of Corrections generally, or the Marion Correctional Institution, specifically. Additionally, the Employer failed to conduct a full and impartial Investigation and relied largely on the subjective opinions of two (2) witnesses to reach the conclusion for her Removal. Various other witnesses who participated in these Proceedings simply were not called and/or interviewed as part of the Employer's Investigation. The Union asserts, at no time did the Grievant contact anyone involved in this matter and relay to them she was in fact a member of the Corrections Department at this Facility. She was seeking information about the Hearing process to hopefully better equip herself for presenting character testimony. She was fully cooperative and truthful in every aspect of the Investigation. The Grievant, an 11-plus year Employee with no active performance-related Discipline in her personnel file simply did not warrant Removal.

The Parties' Collective Bargaining Agreement under which the Arbitrator's authority is recognized and conferred, at Article 24, titled "Discipline" recognizes in Section 24.01 titled, "Standard", "disciplinary action shall not be imposed upon an employee except for Just Cause".

Recognition of the time-honored Just Cause Standard places upon the Employer the Burden of Proof to establish the Grievant was indeed guilty of the wrong-doing which served as the basis for the Disciplinary Action imposed; and, that the Disciplinary Action imposed was commensurate with the nature of the infraction(s) committed while taking into consideration both aggravating and/or mitigating circumstances/factors.

The Grievant's Removal resulted from her involvement in a Criminal Trial involving, who she characterized, a very close friend. During the course thereof, she was alleged to have violated Standards of Employee Conduct including:

- No. 7 Failure to follow Post orders and administrative regulations, policies, or written or verbal directives;
- No. 16 Misusing official position for personal gain, to include, but not limited to, the soliciting of bribes in the course of carrying out assigned duties;
- No. 21 Unauthorized use, release, or misuse of information;
- No. 24 Interfering with, failure to cooperate in, or lying in an official investigation or inquiry; and,
- No. 29 Any act that would bring discredit to the Employer.

The criminal matter involving her “very close friend” occurred beginning on December 14, 2018 wherein the Grievant is depicted in photographs as being in the Criminal Court of Marion County wearing her Ohio Department of Rehabilitation and Correction Uniform. The evidence of record demonstrates she basically, other than being there in person, had no active participation in that Criminal Proceeding. She did, after this proceeding, at the sentencing aspect thereof, did provide a statement wherein she did indeed recognize her Employment with the Ohio Department of Rehabilitation and Correction as a Corrections Officer. According to the Grievant, she was advised to “personalize” the nature of her Employment to provide credibility with respect to that which she was providing to the Court concerning character testimony seeking

leniency for her friend. She is indeed depicted sitting with her friend, speaking to him and with his Attorney on breaks and seen sharing notes with him during the Trial. She testified she was not there in any “official capacity” as a Corrections Officer, nor was there any basis for anyone to draw that conclusion other than the fact she was in uniform. The Employer questioned why she could not have traveled approximately 10 (ten) minutes from the Marion Correctional Institution to her home to change clothes before the 8:30 Trial began, to which the Grievant indicated her Shift ended at 6:00 a.m. and she ran errands for which she did not provide any evidence to substantiate her claims for doing so.

Nonetheless, the fact of the matter remains the Grievant did not at any time during the December 14 Proceeding, other than appear in her uniform, assert herself as a member of the Corrections Department at this Correctional Institution. Ultimately, at the conclusion of the Criminal Proceeding, her friend, the Defendant, was found guilty. A Pre-sentence Investigation follows the conviction to supply a “sentencing recommendation” to the Court, including whether or not prior convictions existed, the individual’s educational background, family situation, employment history, substance abuse and/or mental health issues, etc. The Report includes a recommendation to the Court regarding sentencing which are, at times, adopted by the presiding Judge.

At this point of the process, the record demonstrates the Grievant did indeed contact a County Official assigned with writing the PSI for the Defendant in this felony matter. She did in fact identify herself as an Employee of the Ohio Department of Rehabilitation and Correction. Following these events, the Grievant appeared in personal clothing at the Sentencing Hearing on December 27, 2018 and provided a statement to the Court on the Defendant’s behalf. She did in fact identify herself as an Employee with the Ohio Department of Rehabilitation and Correction

and identified her relationship with the convicted felon. She concluded by requesting leniency for her friend which, in the opinion of the Arbitrator, did not cast the Employer in a negative light or brought discredit to the Employer, contrary to its assertions. The Record simply fails to support that assertion – no evidence of an adverse impact on the Employer was presented other than “opinions” as characterized.

Following the sentencing component of the Criminal Proceedings, the Employer was made aware of the Grievant's involvement in this matter and initiated an Investigation where the Employer alleges she made false and intentionally misleading statements to the Investigator concerning seeking permission to be involved with this criminal matter and inquired about what documentation was required. The Investigator testified he had “discussed” certain aspects of this with the Grievant and advised her to file an “Incident Report”. Moreover, Heather Miller’s Interview “notes” indicate she “kind of” felt or believed the Grievant was attempting to use her position to gain a favorable outcome for her friend. The Record simply does not support the deliberate and/or misleading conduct as alleged. Much of the Grievant's claims, as she asserts, were based on suggestions made by her friend’s Attorney concerning certain background information regarding her employment to establish her credibility as a witness before the Court. She stated she did so to demonstrate she was in fact a “career person” and a productive member of society and was made in context while relaying her personal experiences with the Defendant. The Record seems to suggest the Grievant’s actions may have been based on her lack of knowledge of her reporting obligations to her Employer and not a deliberate and/or willful violation of Policy. Her actions seem more negligent based on her lack of knowledge about the Criminal process than willful or deceitful actions in contravention of Policy. Additionally, providing certain background information in such matters is not uncommon and is often

requested by the presiding Judge to establish a nexus between a Character Witness and a Defendant.

The basis upon which the Employer effectuated Removal of the Grievant involved alleged violation of various Standards of Employee Conduct. While the Record seemingly suggests a reasonable person could draw the conclusion that indeed the Grievant's actions in certain ways may have been inconsistent with the cited Standards, which served as the basis of her Removal; another conclusion suggests she may have exhibited a lapse in judgement based on her involvement in this Criminal Proceeding involving her friend. Her actions herein were her First Offense and no evidence exists suggesting she had any other performance-related Disciplinary Action in her File. Nonetheless, was she negligent? Yes. Was her conduct worthy of Discipline? Yes. Did it warrant the Removal of an extensively trained and active Corrections Officer with 11 plus years of service? No. The Record simply does not support the conclusion her actions were willful or deliberately calculated to the detriment of the Employer. No evidence was provided whereby the "relationship" of the Employer with the County Criminal Justice System was adversely impacted. Nor does this Record suggest, this Employee would not "learn" from this matter or could not be further trusted as a Corrections Officer.

Arguably, she could have needed to run errands after completing her Shift at 6:00 a.m. prior to the Court proceeding with a time-sensitive Judge at 8:30 a.m. There simply does not exist a nexus between a person in a "work" uniform appearing in a Court Proceeding suggesting that individual is attempting to use that uniform to curry any kind of favor with the Criminal Justice System or to deliberately cause harm to her Employer - her error(s) in judgement occurred in her attempts to assist a "very close friend". This is not to suggest this individual is worthy of such, perhaps misplaced, dedication since he was found guilty of the Felony charge

levied. Disciplinary Action was appropriate; however, Removal was overly harsh and not consistent with the principles of Progressive Discipline for such correctable performance-related misconduct.

The “Penalties within the Discipline Process” as set forth in the SOEC Disciplinary Grid, recognizes Progressive Discipline wherein varying levels of Penalties are listed for 1st; 2nd; 3rd; 4th; and 5th Offenses. Each of the cited Standards which served as the basis for Removal involve performance-related misconduct, a First Offense starts at a Written Reprimand (7; 21; and, 39) up to Removal (16; 21; 24; and, 39). Performance-related misconduct is correctable, hence the acknowledgement of Progressive Discipline.

Importantly, the Grievant had no active performance-related Disciplinary Action in her File suggesting she was not considered or proven to be a problem Employee. She participated on various “committees” and served as an “Instructor” in several capacities. Such suggests she has earned the trust from her Employer increasing her retention value. The Arbitrator finds compelling, her 11-plus years of service as a Corrections Officer, who has served in many different capacities and has no performance-related active Disciplinary Action of in her file. Such, in the opinion of the Arbitrator, based on the application of the Just Cause Standard, as contractually recognized, is worthy of mitigation to temper her Removal. Based thereon the concept of mitigation, as recognized under Just Cause, is sufficient to warrant modification of the penalty imposed to include reinstatement to her previous position and shift without loss of Seniority.

The Grievant shall not be entitled to any other monetary entitlements; essentially, she shall be suspended without pay from the date of her Removal until she is reinstated. Such shall occur within seven (7) days from the date of this Opinion and Award. The time in question shall

be credited to her years of service and she shall not forfeit any seniority based thereon. Whether her Union acknowledges her as an “Active Member in Good Standing” is a matter of internal Union affairs and the Arbitrator lacks jurisdiction to compel that which the Union controls. The other means of remedy as requested by the Union herein are denied.

Accordingly, based on this evidentiary record, the Grievance of Corrections Officer Kelli Nolan is sustained in part; and, denied in part. The Arbitrator shall retain jurisdiction for a period of sixty (60) calendar days from the Award issuance date to assist the Parties with any remedial issues that may arise.

AWARD

The Grievance is Sustained in part; and, Denied in part.

David W. Stanton

David W. Stanton, Esq.
NAA Arbitrator

May 26, 2020
Cincinnati, Ohio