

IN THE MATTER OF THE ARBITRATION BETWEEN

GRIEVANCE NO.: 27-23-20110208-0008-01-03

The Ohio Civil Service Employees
Association, AFSCME Local 11

GRIEVANT: Robert L. Hughes

AND

Ohio Department of Rehabilitation and Correction
Ross Correctional Institution

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DOSEA-OFFICE OF
GENERAL COUNSEL

OPINION AND AWARD

ARBITRATOR: Meeta Bass Lyons

AWARD DATE: December 6, 2011

APPEARANCES FOR THE PARTIES

MANAGEMENT:

Jackie Sebastian, Labor Relations Officer, First Chair

Christopher Lambert, Second Chair

Jackie Milsom, Office of Collective Bargaining

UNION:

David Justice, Ohio Civil Services Employees
Association, AFSCME Local 11, First Chair

Mike Henness, Chapter President

Grievant, Robert L. Hughes, Jr.

PROCEDURAL HISTORY

The Ohio Department of Rehabilitation and Correction, Ross Correctional Center is hereinafter referred to as "Employer". The Ohio Civil Service Employees Association, AFSCME, Local 11 is hereinafter referred to as "Union". Robert L. Hughes is the Grievant.

Grievance No. 27-2320110208-0008-01-03 was submitted by the Union to Employer in writing on March 2, 2011 pursuant to Article 24 of the parties' collective bargaining agreement. Following unsuccessful attempts at resolving the grievance it was referred to arbitration in accordance with Article 25, Section 25.03 of the 2009-2012 Collective Bargaining Agreement.

Pursuant to the collective bargaining agreement between the Union and Employer, the parties have designated this Arbitrator to hear and decide certain disputes arising between them. The parties presented and argued their positions on September 14, 2011 in Chillicothe, Ohio. During the course of the hearing, both parties were afforded full opportunity for the presentation of evidence, examination and cross-examination of witnesses, and oral argument. Witnesses were sequestered during the hearing. The parties submitted the following Joint Exhibits:

1. 2009-2012 State of Ohio –OCSEA Contract
2. Grievance Trail
 - a. Grievance
 - b. Step3 Response
3. Disciplinary Trail
 - a. Notice of Discipline served February 4, 2011
 - b. Hearing Officer's Report
 - c. Pre-Disciplinary Packet
 - d. Investigation Q & A's
 - i. Robert Hughes
 - ii. Carol Hardesty
 - iii. Daniel Cook
 - iv. Jerri Garman

- v. Jackie Welch
- vi. Amanda McGraw
- vii. Inmate Robert Thomas
- viii. Inmate McDonald
- e. Pictures of Camp
- f. Pictures of Items confiscate
- g. Thumbnails pictures from locked files.

The hearing record was closed on October 14, 2011.

The parties stipulated that the grievance and arbitration were properly before the Arbitrator. The parties did stipulate to the issue as follows: Was the Grievant, Robert Hughes, terminated for just cause? If not, what shall the remedy be?

PERTINENT PROVISIONS OF THE 2009-2012 AGREEMENT

ARTICLE 24

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 25.04. Employees of the Lottery Commission shall be governed by ORC Section 3770.02(1).

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 oral reprimand(s) (with appropriate notation in employee's file);
- b. One (1) or more written reprimand(s);
- c. 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 balances in lieu of a fine levied against him/her.

- d. 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) day suspension. No suspension greater than five (5) days shall be issued by the Employer;

- e. Termination.

Disciplinary action shall be initiated as soon as reasonably possible, recognizing that time is of the essence, consistent with the requirements of the other provisions of this Article. An arbitrator deciding a discipline grievance must consider the timeliness of the Employer's decision to begin the disciplinary process. ...

24.06 – Imposition of Discipline

The Agency Head or designated Deputy Director or equivalent shall make a final decision on the recommended disciplinary action as soon as reasonably possible after the conclusion of the pre-disciplinary meeting... Disciplinary measures imposed shall be reasonable and commensurate with the offense and shall not be used solely for punishment...

Article 24.10 is stated in the Grievance Form but was not prosecuted.

PROCEDURAL ARGUMENT

Union objects to the admissibility of the sexually explicit photographs of the wife of Grievant which were located in a locked file on the personal cell phone of Grievant. The investigator informed Grievant and his union representative that if he did not consent to the release of the pictures, the investigator would obtain a warrant for said information. After taking a recess to privately discuss the request with his Union representative, Grievant consented to the release of the photographs. It is the position of the Union that the consent given by Grievant to unlock the file and release the information was obtained by deception, intimidation and coercion, and therefore should be deemed inadmissible under constitutional law principles. After review of the union closing arguments, there was no cited authority to support its position that the exclusionary rule applies to civil and administrative matters.

The Just Cause Standard requires a fair investigation of the employee conduct. There are underlying allegations that Grievant showed sexually explicit photographs of his wife from his cell phone to a coworker. These allegations make the photographs a subject matter in this investigation. The photographs on his phone are relevant and material to the allegations made, and are therefore admissible to support a fair investigation of the charges.

Further as previously discussed at the arbitration hearing, ODRC policy provides the Director of the Ohio Department of Rehabilitation and Correction with the authority to issue subpoenas, and the Ohio State Patrol with the authority to obtain warrants for production of documents. The investigator relying on the same case law cited by the Union testified that he was advised by his legal department that a warrant would be necessary to view the locked files of Grievant on his personal computer, if he did not consent. Whether or not the warrant is issued is a determination by the

Judge. The investigator had the ability to secure the information through further process, subpoena or warrant. Those other avenues were taken because Grievant consented to the release of the file. There was no deception but a disclosure that in order to obtain the information a warrant will be obtained. There was no violation of the Collective Bargaining Agreement.

The personal photographs are material and relevant to the underlying administrative investigation. However at the arbitration hearing there was no evidence that these personal photographs which were locked in the cell phone were actually exhibited to anyone on the facility. Union objection to the admissibility of the evidence because there was no evidence is sustained in part. With the exception of the photograph of the erect penis taken on state premises, no weight is given to said evidence to support the charges.

BACKGROUND

Grievant is a twelve and half year employee with the State of Ohio at the Ross Correctional Institution. Grievant was hired on June 22, 1998. Grievant was employed as a correction officer at the time of his removal. He was assigned as the visiting shakedown officer at the Ross Correctional Camp (RCC) three days week, Saturday, Sunday and Monday, and then worked the remainder of his standard work week at the main institution. At the main institution Grievant worked visiting, provided transportation trips and escorts or wherever other special duty relief was needed.

RCC housed minimum security inmates. These inmates were assigned duties to work the farms, community service crews or assigned jobs at the institution. These inmates had greater access to the community. These inmates were assigned work details that had intermittent supervision. The inmates were afforded a lot more contact with visitors. Generally there was no supervisory staff at the location. Supervisors were assigned to the main institution, and had to walk to the facility. Due to the layout of the facility, staff knew when a supervisor was approaching the facility.

As a shakedown officer, Grievant was responsible for conducting pat or strip searches of inmates during visits, and for other assigned post duties. On August 23, 2010, the shift supervisor of Grievant expressed concerns that Grievant was not performing his duties, that he was regularly bringing a cell phone to work, and that he regularly listened to music on his MP3 player. A surveillance camera was installed to monitor the performance of Grievant. Employer conducted the surveillance from September 21 through October 23, 2010. Grievant was on duty seven of the thirteen surveyed days. On October 23, 2010 Employer observed a live feed from the surveillance camera. Grievant was observed with a cell phone several times.

A supervisor confronted Grievant and confiscated his cell phone and MP3 player. Grievant was placed on administrative leave pending investigation.

During the investigations it was found that Grievant regularly brought his cell phone to work. Grievant hooked his personal MP3 player into speakers that were already in the work area, and he listened to music. Allegations surfaced that Grievant showed other coworkers and contract workers sexually explicit pictures on his phone. Grievant admitted that he showed two female contract workers a picture mail of a penis. Sexually explicit pictures of the wife of Grievant were found in a locked file on his cell phone. Grievant took a sexually explicit picture of his erect penis using his camera phone while on state time, on state premises. There were also allegations that Grievant acted in an inappropriate manner with female contract workers.

Employer removed Grievant from employment on February 4, 2011 for violations of Standards of Employee Conduct, Rule 7, Failure to follow post orders, administrative regulations, policies or written or verbal directives, Rule 30C While on duty or on state owned or leased property, the unauthorized conveyance... or possession of contraband, Rule 13 Improper Conduct, Acts of discrimination or harassment on the basis of..sex, Rule 24 Lying in an official investigation or inquiry and Rule 50 Any violation of ORC 124.24...and for incompetence, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of such sentences or rules of the Director of Administrative Services or the commission, or any failure of good behavior, or any other acts of misfeasance, malfeasance or nonfeasance in office. At the time of removal, the grievant had no active discipline on his employment record. His prior evaluations were meets to exceed.

The Union filed its grievance on March 2, 2011 alleging a violation of Article 24 and any other applicable articles of the Collective Bargaining Agreement. The grievance was not resolved within the procedure established by the collective bargaining agreement, and was properly advanced to arbitration.

POSITION OF EMPLOYER

Employer contends Grievant violated the Standard of Employee Conduct. Grievant had knowledge of the general and post orders. Grievant failed to search inmates as required by his job. Grievant brought in his personal cell phone and MP3 player, contraband under DRC policy, on a routine basis into the prison camp and used it while at work. Grievant did not use the phone to simply make calls or text but showed sexually provocative images saved on his phone to female contractors and another corrections officer. Grievant took a sexually explicit picture of his erect penis using his camera phone while on state time, on state premises. Grievant was dishonest in his investigatory interview. There is just cause for his removal.

Employer contends that no disparate treatment exists. Grievant not only used his cell phone for calls or texts; he took explicit pictures of himself, sexually harassed female contract workers and show compromising pictures of his wife to another coworker.

Employer contends that the action of Grievant betrayed the trust that an employer must have in its employees and calls into question his commitment to the mission of the organization. It was for this egregious misconduct that Employer contends Grievant was removed for just cause pursuant to the Collective Bargaining Agreement.

Employer requests that Grievance No. 27-23-20110208-008-01-03 be denied.

POSITION OF UNION

Union contends Employer violated the contract when they did not meet the standards of just cause for the discipline imposed. The disciplinary measures imposed were unreasonable and not commensurate with the offense and were used solely for punishment. Employer failed to address the behavior when it was first discovered, but instead delayed the correction in order to stack the charges. At the time of his removal, Grievant had over twelve (12) years and seven (7) months of service and had no prior discipline of record.

Union contends disparate treatment. The cell phone of another officer was seized the same day as the cell phone and MP3 player of Grievant. That officer received a 2-day working suspension for violation of Rules 7 and 30C.

Union contends that the allegations of inappropriate and unwanted sexual comments were not substantiated. Grievant had shown a picture mail of a penis to a coworker and two vending company workers, no one complained. The contract worker testified that she assumed it was a joke. She made allegations against another staff member alleging sexual harassment when she felt harassed and lost her job as a result. The other contract worker seemed to be undisturbed and uncaring about the incident. Allegations of inappropriate conduct were untimely made. There was no violation of the Rule 13 and 50, and therefore no just cause for discipline.

Union requests that Grievance No. 27-23-20110208-0008-01-03 be sustained, and Grievant be returned to his position as a correction officer with the appropriate discipline of record, lost pay beyond the appropriate discipline, minus the normal deductions and leave and vacation he would have accrued, and his seniority be reinstated.

DECISION

Article 24.01 of the 2009-2012- Collective Bargaining Agreement provides in pertinent part that "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 just cause standard of review requires consideration of whether an accused employee did in fact violate or disobey a rule or order of management. If a violation is proven, other considerations relate to fairness and whether the severity of disciplinary action is reasonably related to the seriousness of the proven offense and the employee's prior record.

Grievant is charged with multiple violations of ODRC Standards of Employee Conduct. The first charge is for violation of Rule 7: Failure to follow post orders, administrative regulations, policies or written or verbal directives. Grievant is assigned as the visiting shakedown officer, a permanent post, at RCC. The post orders for RCC visiting, DRC 1795 rev.12/2008, describe the security procedures to be used when working the Ross Correctional Camp in order "to maintain security and control of the facility, to protect staff, public and inmates and to provide for the safe, secure and orderly operation of the camp". The responsibilities of the shakedown officer include but are not limited to the strip search porters, process inmates into the camp by performing a pat search of each inmate and obtain their inmate's ID, record the inmate's items, give inmate's ID, personal item form and title to the desk officer and advise the inmate is ready for visit, strip search inmates leaving visiting area, compare the inmate's personal items form with personal items and titles, return his inmate ID and titles, and collect all inmate personal item forms and to the desk officer's log sheet. The video surveillance demonstrates that Grievant did not do any pat down searches and he strip searched some inmates but

not all inmates. Some inmates retrieved their own ID's. There was very little compliance to his post orders.

Correction officers working a permanent post must sign the Post Assignment sheet daily indicating that the local post order was read once in the last seven days, the officer is familiar with the general post order and the required sections of the Post information Manual have been reviewed daily. (Emphasis added) The investigator testified that the video tapes showed that On October 23, 2011 Grievant took the post orders from the shelf, signed them and returned them to the shelf. This process took approximately eleven 11 seconds. Grievant did not read his post orders. Grievant in response to investigation question, when was the last time you read your post orders, responds approximately 4 weeks ago from today. This would mean around October 12th Grievant read his post orders. Grievant would have to read the post orders on or about October 16th to be in compliance. The investigator in his memorandum to the warden on November 17, 2010 writes "When interviewed Hughes said he did sign the book and review the post orders one week prior to the day he was removed from his post." The investigator testified that he did not independently verify if Grievant read the post orders within seven days of signing the document. The investigator only discussed the post orders at the hearing. There was insufficient evidence that Grievant failed to read the required sections of the Post Information Manual which is required to be read daily.

Employer has demonstrated that Grievant failed to comply with his post order by conducting pat down and strip searches in compliance with ODRC policy.

Grievant is charged with a violation of ODRC Standards of Employee Conduct Rule 30C, While on duty or on state owned or leased property the unauthorized conveyance..., or possession of... contraband: Employer has issued a policy to address entry procedures into the institution, RCI Number 3.1, effective September 24, 2007. The policy applies to all RCI employees, contractors, visitors and volunteers. In accordance with the policy, non-departmental cell phones and electronic equipment are not permitted to enter the facility without the written authorization of the Warden or his designee. It is not disputed that Grievant regularly brought his cell phone and MP3 player to the RCCC. Grievant told the investigator that he did not know that the same rule applied to RCC. The policy makes no distinction from the facility and main institution. Said items are contraband pursuant to policy. Employer has established that Grievant violated said policy.

Grievant is charged with a violation of ODRC Standards of Employee Conduct Rule 13, Improper Conduct- Acts of discrimination or harassment on the basis of sex. Initially, Grievant admitted that he showed two female contract workers a picture mail of a penis (not his penis). The two female contract workers testified at the arbitration. According to their testimony, the two female workers entered into his office, Grievant and his coworker were laughing. The one female worker was new and was introduced to Grievant. On her way out Grievant gave her the phone to view the picture, and she gave the phone to her coworker who then viewed the picture, and handed it back to Grievant. Grievant then flipped to the next picture in the cycle, and then passed the phone again. The one female worker testified that they then left because "she knew where this was headed". Grievant then showed her the second image of a woman breasts, and she made a comment about the opinion of his wife if she knew, and Grievant responded that his wife sent the picture mail. There was no evidence that the pictures were of his wife's breasts. Neither of the female contract witnesses were

presented for identification purposes any of the photographs taken from the locked personal files of Grievant. Grievant testified that when the two female workers entered the area, he and the other officer were laughing and viewing the picture, and one worker asked what so funny and he showed them.

Both female workers testified that they felt uncomfortable working around Grievant, but no complaints were ever filed. The one female worker who had filed a sexual complaint against another correction officer felt that the conduct of the Grievant was different than the other officer. She felt that it was a joke.

The investigator testified that he approached the three contract workers and the other correction officer about the pictures during the investigation; they did not approach him. The shift supervisor had once again told him that he had information. The joint exhibits contain witness statements that Grievant showed other potential witnesses sexually explicit pictures and pictures of his wife. However, these witnesses did not testify. The Grievant disputed the validity of these statements throughout the process. The potential witnesses did not appear before the arbitration to determine their credibility and veracity. Therefore the statements are of no probative value.

Acts of harassment based upon sex whether verbal, visual or physical generally are unwelcomed advances which create a hostile work environment. There was insufficient evidence to support this rule violation. But, Grievant is charged with a violation of ODRC Standards of Employee Conduct Rule 50, Any violation of ORC 124.24...and for incompetence, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of such sentences or rules of the Director of Administrative Services or the

commission, or any failure of good behavior, or any other acts of misfeasance, malfeasance or nonfeasance in office. It is not disputed that Grievant showed two female contract workers and a coworker a picture mail of a penis around February of 2010. Grievant took a sexually explicit picture of his erect penis using his camera phone while on state time, on state premises on June 13, 2010 as discussed below. This conduct represents a failure of good behavior.

Grievant is charged with a violation of ODRC Standards of Employee Conduct Rule 24, Lying during an official investigation. The investigator testified that Grievant was untruthful during the official investigation. Grievant stated that he read the post orders, and from the observation of the investigator on October 23, 2010 he did not. By his signature, Grievant is acknowledging that he read and reviewed the post orders. The form, DRC 1223, actually requires the correction officer working a permanent post to sign daily indicating that the local post order was read once in the last seven days. It was not necessary for Grievant to have read the post on October 23rd, if in fact he had read the post orders in the last seven days, October 16, 2010. The investigator in his memorandum to the warden on November 17, 2010 writes "When interviewed Hughes said he did sign the book and review the post orders one week prior to the day he was removed from his post," and later in the same memorandum writes, "I asked him when he last read the post orders. He said four weeks ago, four weeks from today, or one week before being placed on administrative leave." In his question and answer statement of November 8, 2011, the investigator asked the following question:

Question: When was the last time you read your post orders?

Answer: Approximately 4 weeks ago from today.

There was no evidence introduced that Grievant failed to read the post order to rebut this answer, and support the allegation that he was dishonest in response. The dishonesty may have arisen in the signing of the form, but not in the response during the investigation.

The investigator stated that he was untruthful when he said he pat and strip searched all inmates. Grievant was asked a couple of different times the same question, and responded differently. When initially asked Grievant responded yes he does every inmate. After being reminded of his responsibility to pat search the inmates and then asked about pat searching of the inmates, he said not all the time. He told the investigator that he probably pat searched six or seven a day. The surveillance camera showed no pat searches. Some inmates were strip searched and others were not. In his written question and answer statement, the investigator asked the following question:

Question: How do you process inmates coming in and out of the visiting shakedown:

Answer: Upon arrival I take inmates ID record name number and lock check for belts what type of shoes, "ripes" , watches, glasses, jewelry, coats, pat down coats "hade" inmates turn out all pockets raise pants legs and shirt. Upon leaving do full clothes and body strip search.

Is this a dishonest answer? No, this is the manner that is prescribed by his post orders. The problem is that Grievant did not process the inmates during the period of the surveillance in this manner.

Grievant was evasive in his response most likely to avoid discipline. Nonetheless, the responses were untruthful.

Grievant stated that he did not show sexually explicit pictures to anyone at RCC during work hours. This is untrue. Grievant actually admitted showing the pictures of the penis (not his) to the correction officer and two female contract workers.

Grievant initially denied that Grievant took a sexually explicit picture of his erect penis using his camera phone while on state time, on state premises. Grievant admitted that the photograph was of his penis but stated it may have been taken at other establishments, and named two lodges. The investigator then visited these establishments to take pictures of their floor patterns. The floor patterns of the correctional institution are a unique pattern, and are depicted in the photograph with the erect penis of Grievant. The photograph was taken at the facility.

Grievant was untruthful in his responses during the official investigation. Employer has proven that Grievant violated Rule 24.

In summary, the Arbitrator is persuaded and finds that Employer satisfied its burden of proving that the Grievant violated the Standards of Employee Conduct, Rule 7, Failure to follow post orders, administrative regulations, policies or written or verbal directives, Rule 30C While on duty or on state owned or leased property, the unauthorized conveyance... or possession of contraband, Rule 24 Lying in an official investigation or inquiry and Rule 50 ...and for any failure of good behavior... There is just cause to discipline.

The next issue is to determine the appropriateness of the remedy. If an arbitrator is persuaded that the discipline imposed was within the bounds of reasonableness, she may not impose a lesser penalty. This is true even if the arbitrator would likely have imposed a different penalty in the first instance. On the other hand, if an arbitrator is persuaded the punishment imposed by management was beyond the bounds of reasonableness, she must conclude that the employer exceeded its managerial prerogatives and impose a reduced penalty. In reviewing the discipline imposed on an employee, an arbitrator must consider and weigh all relevant factors including the employee's seniority, prior work record and the seriousness of the misconduct.

For violation of Rule 7, the potential discipline for the first offense ranges from a written reprimand to a one-day suspension. For violation of Rule 24, the potential discipline for the first offense ranges from a two-day suspension to Removal. For violation of Rule 30C, the potential discipline for the first offense ranges from a two-day suspension to removal. For violation of Rule 50, the potential discipline for the first offense ranges from a written reprimand to removal. Grievant had no active discipline on his records and was removed on his first offense.

Summary discharge in lieu of corrective discipline of the employee is deemed appropriate for serious offenses. The most egregious infraction by Grievant is the failure to follow post orders, and the rule provides for a written reprimand to a one-day suspension. RCC had minimal security and therefore posed the greatest risk to safe operations of the institution. Pat and strip searches are necessary security measures for the institution. For this period of surveillance. Grievant was not performing his job duties. But of equal concern, is the Employer taking no action to correct said behavior once it became known. There were no discussions with supervisors and Grievant. The surveillance camera is installed, and Grievant is observed with his cell phone and not conducting pat and strip searches during his shift but no action is taken to correct his behavior. Employer provided no warning to Grievant to correct the behavior. The investigator testified that he wanted to establish a pattern of his work ethic and the manner in which he did his job. This position does not allow for correction when the discipline is removal.

These actions were the recent actions. However the incident with the contract workers occurred in February 2010, with no one making a complaint. The hearing officer found that there was no neglect of his duties when he was taking that picture of his erect penis in the restroom stall on June 13, 2010. The institution was doing a full count. There was no evidence of what cause the erection. Masturbation should warrant discipline. Grievant

was not cross examined. Grievant was dishonest in his responses in the official interrogation. Outside of the normal investigation process, the dishonesty did not impact the operations of the institution.

Grievant has been employed by ODRC for twelve and half (12 ½) years. His evaluations at the main institution were meets to exceed.

There is no disparate treatment. This investigation was not based solely on the normal use of the cell phone. The issues with the misconduct of Grievant also included the showing of sexually explicated pictures to coworker and contract workers. Grievant and the other officer are not similarly situated.

In summary, the evidence persuades the Arbitrator that Grievant violated the aforementioned work rules, as alleged by the Employer, and there is just cause to discipline. Removal, however, was excessive as a punishment as to be beyond the Employer's managerial prerogatives. The Arbitrator must therefore sustain in part Grievance no. 27-23-20110208-0008-01-03.

AWARD

After a full review and consideration of all documents and arguments presented, as well as the testimony of witnesses, and the post hearing briefs of the parties, Grievance No 27-23-20110208-0008-01-03 sustained in part. There is just cause to discipline the Grievant, and the appropriate remedy is a twenty day (20) day suspension with a performance based last chance agreement.

Grievant is reinstated to his position as a correction officer, and is awarded back pay less the period of suspension, no overtime, premium pay for missed holidays, less earning or other compensation, less normal deductions and union dues, and restoration of his seniority, benefits and health insurance. All leave balances be restored, including those that would have been accrued or restored to date.

The Union has requested that the award mandate the Employer to provide for the disciplinary investigative records to be placed in the Grievant private file as provided for in DR&C policy 330ERD-01. It is the opinion of this Arbitrator that such an award is outside the scope of her authority.

December 6, 2011

 /s/ Meeta Bass Lyons
Meeta Bass Lyons, Arbitrator
Steubenville, Ohio