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IN THE MATTER OF ARBITRATION

BETWEEN

**STATE OF OHIO
DEPARTMENT OF YOUTH SERVICES
SCIOTO JUVENILE CORRECTIONAL FACILITY**

AND

**OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION
LOCAL 11
AFSCME. AFL-CIO**

Arbitration Date: November 4, 2013

Grievant Jessica Williams: # 35-07-20130301-0008-01-03

BEFORE: Arbitrator Craig A. Allen

Advocate for the Employer:

Larry L. Blake
Department of Youth Services
51 N. High Street, Suite 101
Columbus, Ohio 43215

Advocate for the Union:

Jennie Lewis
OCSEA, AFSCME Local 11
390 Worthington Rd., Suite A
Westerville, OH 43082

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OCSEA OFFICE OF
GENERAL COUNSEL

I. HEARING

The hearing was held at the Scioto Juvenile Correctional Facility on November 4, 2013. The hearing commenced at 9:00 A.M. The joint issue before the arbitrator is “Was Jessica Williams removed from her position without Just Cause? If so, what shall the remedy be?”

Testifying for the Scioto Juvenile Correctional Facility (“the Employer”) were Nina Belli, Investigator for the Chief Inspector’s Office Department of Youth Services; Dr. Valerie Alloy, Mental Health Administrator, Department of Health and Addiction; Shawn Anders, Program Administrator II Indian River STG Program; Dion Baines, Youth Specialist at the Facility; Keith Williams, Operations Administrator; William Samuels, Youth Specialist; and Malinda Lawrence, Youth Specialist.

Testifying for the Ohio Civil Service Employee’s Association, Local 11 AFSCME (“the Union”) was Jessica Williams, the Grievant.

II. STATEMENT OF THE CASE

On February 28, 2013 a grievance was filed by Jessica Williams saying she was unjustly removed from her position. The Grievant seeks to be reinstated as a Youth Specialist and to have all monies, leave balances, and seniority time reinstated to current levels. The Grievant was removed for violations of Rule 3.03P, leaving work area without permission (post position); Rule 5.01P, failure to follow policies and procedures; Rule 5.27P unauthorized or inappropriate contact or correspondence with youth/family and Rule 5.28P, failure to follow work assignment or the exercise in poor judgment in carrying out an assignment.

III. THE EMPLOYER'S CASE

The Employer's first witness was Nina Belli. Ms. Belli is an Investigator for the Chief Inspector's Office, Department of Youth Services. Ms. Belli has a BA Degree in Social Work from Ohio State University. Ms. Belli worked at the Columbus City Prosecutor's Office with Misdemeanors and Trial Preparation. She also worked with the Franklin County Prosecutor's Office on Felony Cases and also worked with the Columbus Police.

Ms. Belli has been in her current position for five (5) years and has investigated five thousand (5,000) cases altogether, two hundred of which have been with the Department of Youth Services.

Ms. Belli read Exhibit Tab 5 page 3 and said it was her investigation. She said the Grievant was displaying gang signs. Ms. Belli started her Investigation September 10, 2012 and finished it November 23, 2012. Ms. Belli testified that in preparing her report she gathered documents, AMS Reports, Witness statements, Log Books and interviewed Youth Holmes and Smith. Exhibit Tab 5 Page 4 is her list of witnesses. Ms. Belli also consulted STG Coordinators (Security Threat Group).

Ms. Belli testified that Keith Williams told her that Progress School had five (5) Youth Specialists, two (2) in each school and one (1) floater. They were to monitor Youth Transportation and see that the Youth were properly restrained. Ms. Belli testified that the Youth Specialist had to stay on Post. The Cedar Unit Youth Specialist was never to be over in the school.

Ms. Belli said Youth Specialist Samuels reported issues with the Grievant. Youth

Specialist Samuels told Ms. Belli that the Grievant left the Unit to go to the school to see Youth Holmes at the school. As Youth Holmes was in school the Grievant had to tell Youth Holmes his room was being moved.

Ms. Belli testified that the Security Video shows the Grievant leaving and going to the school. The video shows the Grievant doing hand signs.

Ms. Belli testified that she interviewed Shawn Anders who is the STG Coordinator. Mr. Anders said the Grievant was displaying gang signs while talking to Youths Holmes and Smith.

Ms. Belli interviewed Dr. Alloy who told her that September 5 in the afternoon Youth Holmes reported feelings for a female staff member. Dr. Alloy decided that the Grievant was the female staff member. Ms. Belli said the Grievant, Youth Holmes and Youth Smith had a triangle going. Youth Holmes and Youth Smith had rooms side by side. The Grievant would stand at the room doors and have conversations with Youths Holmes and Smith.

Dr. Alloy said the Grievant was flirtatious. The Grievant had her hand on her hip, her hip out, and was talking quietly. Dr. Alloy said when the Grievant left on Administrative leave that Youths Holmes and Smith were upset and threatened to assault Staff who caused it.

Ms. Belli testified that she interviewed Youth Specialist Dion Baines, Exhibit Tab 5 Page 7. Dion Baines told Ms. Belli that the Youth referred to the Heartless Felons gang and the Grievant never told them to stop, and never wrote them up. Youth Specialist Baines said the Grievant had a girl friend relationship with Youth Smith and sang and danced for him. Youth Specialist Baines said the Grievant called Youth Smith "Polo", his gang name and called Youth Holmes "Killer". The Grievant left often without the Supervisor's permission. There was no

radio traffic or phone calls for permission to leave. Youth Specialist Baines said co-workers are to say they are leaving but the Grievant never did.

Ms. Belli then read Tab 5 Pages 17 and 18 which is her interview with Malinda Lawrence. Youth Specialist Lawrence said the Grievant leaves the Unit frequently. Staff radio her to get her whereabouts and Operations doesn't know where the Grievant is. Youth Specialist Lawrence called the school and the Grievant was there. Youth Specialist Lawrence saw the Grievant talking to Youths Holmes and Smith. The Grievant was laughing and giggling. The Grievant sings and wiggles her body.

Ms. Belli testified that the video evidence shows Youth Smith in Orange. The class room is in Progress School. Youth Smith is in hand restraints called "gator cuffs". Ms. Belli testified the Video shows the Grievant coming in and talking to Youths Holmes and Smith. The Grievant brings a chair over and sits between them. The Grievant has her back to the other Youth in the Progress School Class room.

Ms. Belli looked at Exhibit Tab 8 which is a still photo from the Video. Ms. Belli testified that she consulted with the Department of Rehabilitation and Corrections ("DR&C") and got photographs of the Heartless Felons gang sign. Ms. Belli said the photograph shows Grievant giving the gang sign.

Ms. Belli testified that she interviewed Youth Specialists Hill and Young and Mr. Wheeler, the teacher. Ms. Belli looked at Exhibit Tab 8 Page 2 Frame 1141 and said it shows the Grievant making the gang sign of the Heartless Felons. The Youth were not upset at this time. Ms. Belli also interviewed other Youth in the classroom. Ms. Belli said the Grievant arrived at

1330 hours and left after 1400, which was after normal working hours. The Grievant's shift ended at 2. Ms. Belli talked to Youths Smith and Holmes.

Ms. Belli testified that Exhibit Tab 5 Page 13 is the Youth Smith Interview. Youth Smith said the Grievant was a mentor. The Grievant talked to him at his door and goes to the Progress School and talks to him in class. Youth Smith said he was a member of the Heartless Felons and his rank was God Son. Their sign was fingers being crossed. Ms. Belli said this information was consistent with what she received from DR&C.

Ms. Belli read Exhibit Tab 5 Page 16 which is her interview with Youth Holmes. Youth Holmes said the Grievant talks to him at his door. Youth Holmes said he writes poems and gives them to the Grievant for feedback.

Ms. Belli then said on September 5 the Grievant goes to Progress Class room. The Grievant talked to Youths Holmes and Smith. Ms. Belli testified that the evidence was that the Grievant was joking around with fingers curled towards her palm and her thumb out. Youth Holmes told Grievant not to do it as it was a gang sign. The Grievant did it again. Youth Holmes told her of another gang sign. Ms. Belli said this matches the description of the Heartless Felons sign.

Ms. Belli was then referred to Exhibit Tab 5 Page 20 and testified these are photographs of signs and the Grievant.

Ms. Belli was then read Exhibit Tab 5 Page 23 which is her conclusion, and testified that gang signs are substantiated. DR&C Coordinator Kucinic said STG is gang activity. Ms. Belli testified that the Grievant's leaving her Post without authorization is substantiated. Ms. Belli said

she reviewed the Grievant's time slips for September 5 and the Grievant clocked out at 2:48 P.M.

On Cross-Examination Ms. Belli testified that Shawn Anders said "talk with Hands" is more fluid. Ms. Belli said Mr. Kucinic did not mention whether or not there were females in the Heartless Felons. Ms. Belli then said the other Youth in the room did not see gang signs.

Ms. Belli then testified there is a walkway between the Cedar Unit and the Progress school. Co-workers said the Grievant left the Unit often. Ms. Belli was asked, "Why was not the issue raised prior to September 5"? Ms. Belli testified she did not ask some of them. Youth Specialist Williams said she had called the Ops Manager.

The Employer's next witness was Dr. Valerie Alloy, Mental Health Administrator for the Department of Health and Addiction. Dr. Alloy has a Masters and a PhD in Clinical Psychology. She has more than twenty (20) years experience. Dr. Alloy testified that she had worked at this facility for three and one-half (3 ½) years as a Psy. Asst. 2. She said her duties were to work under Supervision and to offer direct services on Progress Unit. Dr. Alloy said Ms. Belli interviewed her. Exhibit Tab 5 Page 60 is her interview with the Investigator. Dr. Alloy testified she knows the Grievant as she worked with her on the Progress Unit for six (6) months.

Dr. Alloy testified that she saw no sexual contact with Youth. She also testified that she saw no gang signs and no contraband.

Dr. Alloy read Exhibit Tab 5 Page 60 and testified that Youth Holmes had feelings for a Department of Youth Services female. Dr. Alloy told the Youth about the Rules. The Youth said he would throw fluids on Staff for the way they treated the female. The Youth did not identify the female.

Dr. Alloy testified that her office faced the Unit. She said she saw Youth spend a lot of time with the Grievant.

Dr. Alloy then read Exhibit Tab 5 Page 141 and said these are Staff Notes in Log Books. She testified she thought this was a threat so she wrote it in the Log Book.

Dr. Alloy read Exhibit Tab 5 Page 61 and testified that both Youth Holmes and Youth Smith were getting feelings about Grievant. Youth Holmes was displaying jealous signs and Youth Smith was at the door the entire time the Grievant was on the Unit. Dr. Alloy testified that both Youth Holmes and Youth Smith were upset when the Grievant went out on Administrative leave.

Dr. Alloy read Tab 5 Page 62 and testified she told the Unit Manager of threats. The Grievant was soft and flirtatious. Female Staff were told to keep a good distance and to make the Youth keep their shirt on.

On Cross-Examination Dr. Alloy read Tab 5 Pages 61 & 62 and testified she started to see a triangle because Youth Holmes verbalized it. Dr. Alloy testified she spoke with female staff about Youth having their shirts off. Dr. Alloy was asked: "Did you raise the issue with the Grievant about shirts off?" Dr. Alloy replied that she talked to the Grievant. Dr. Alloy then testified that she was on watch on another Youth by Youth Holmes room.

The next witness was Shawn Anders. Mr. Anders is a Program Administrator II at Indian River in the STG Program. Mr. Anders has been with the State about thirteen (13) years. He has been at DR&C for twelve (12) years in charge of the STG Program. Mr. Anders has been at Indian River for about thirteen (13) months.

Mr. Anders tracks STG matters, does Staff investigations and interviews STG Youth. He identifies Youth in gangs. Mr. Anders said the Department of Youth Services has a Data Base on Youth STG.

Mr. Anders then read the two (2) pages of Exhibit Tab 9. Mr. Anders testified that Darnell Smith was an Under Boss of the Heartless Felons and President of Blank Heart. Youth Holmes is a Sergeant in the Heartless Felons. Mr. Anders said the gangs use nick names but the Staff are not allowed to use gang names. The Heartless Felons are the largest gang in DYS. FOF means Friend of Fam which means do favors.

Mr. Anders says the Gangs have a Code. Displaying gang signs doesn't always get a recognition. Mr. Anders reviewed the Video and said the signs were not usual but were Heartless Felons signs.

On Cross-Examination Mr. Anders testified that gang signs have to be done a Certain Way. Signs with the hand down could be disrespect. He testified he doesn't think there are any females in the Heartless Felons.

Mr. Anders said there is usually a response to gang signs and he doesn't recall seeing a response to gang signs on the video.

Mr. Anders read Tab 5 Pages 183 - 186 and said these are photographs of hand signs. Mr. Anders testified he saw the Grievant give the Young Gunners sign which is shown in a photograph on Page 85. He said the Grievant was not cracking her knuckles.

The Employer's next witness was Dion Baines. He is a Youth Specialist at the facility. Youth Specialist Baines has a Bachelor's Degree in Criminal Justice from Tiffin University. He

is a Use of Force Instructor and knows the Grievant.

Youth Specialist Baines read Exhibit Tab 5 Page 39 which is his interview. He said he worked with Grievant on the Progress Unit. He said on September 5 Youth Holmes room was moved. Youth Specialist Baines testified that he got information from Dr. Alloy that Youth Holmes may assault Staff. He said he found a container of urine in Youth Holmes room. Youth Specialist Baines testified that Youth Holmes and Youth Smith fed off each other.

On September 5 Youth Specialists Baines, Samuels, and the Grievant were assigned to the Unit.

Youth Specialist Baines read Tab 5 Page 40 and said the Grievant was off the Unit from 8:25 to 9:50 A.M. The Grievant left again when Youth Holmes room was moved. Youth Specialist Baines testified that he and Youth Specialist Samuels never left the Unit. Youth Holmes confronted Youth Specialist Baines when he got to the door and said; "Why did you move my room?" Youth Specialist Baines said someone had to tell him.

Youth Specialist Baines reads Tab 5 Page 30 and testified it tells of Grievant's relationship with Youths Holmes and Smith. He then read Tab 5 Page 41 and said Grievant had a boyfriend girlfriend relationship with Youth Smith. Youth Specialist Baines testified that the Grievant and Youth Specialist Samuels were friends so they didn't do it much while Samuels was there. The Grievant called Holmes "Polo" and Smith "Killer".

Youth Specialist Baines read Tab 5 Page 42 and testified that the Grievant would sing and dance in front of Youths Holmes and Smith. He asked; "Why do these Youth get extended time off?" Youth Specialist Baines said the Grievant ignored other Youth.

Youth Specialist Baines read Tab 5 Page 43 and testified that Youths Holmes and Smith sang group songs to the Grievant and they were STG behavior.

On Cross-Examination Youth Specialist Baines read Tab 5 Page 42 and said there was no inappropriate sexual contact. Youth Specialist Samuels was on a thirty (30) day leave. The Unit is a heavy security group.

Youth Specialist Baines said he talked to the Grievant and wrote the Youth up several times during this time period. He doesn't recall if Youth Holmes went to School on September 5. Youth Specialist Baines testified that he didn't think Staff could take Youth outside. He said no other Youth went outside and he never saw the Grievant display gang signs.

The next witness was Keith Williams. Mr. Williams attended Westchester Community College and Columbus State. In 1998 he started in the Youth Correction Unit. Mr. Williams was a Substance Abuse Counselor and started with the Department of Youth Services in 2002. Mr. Williams came to this facility in 2012 as an Operations Administrator. His job is to review Management Systems as well as Security Tools and Equipment. Mr. Williams reviews videos of different Units and reviews overtime budgets.

Mr. Williams testified that Cedar and Sycamore Units were the most aggressive. One Unit had to be restricted while the other Unit was less restrained. He said the AMS system is a mechanism used to monitor events in the Community. This documents who was notified such as parents, Ohio State Patrol, and Guardians. Notification is required of incidents. Mr. Williams testified that the AMS keeps data on Youth violence.

Mr. Williams read Exhibit Management 2 and said it is the AMS report on Youths

Holmes and Smith. The AMS report follows the Youth where ever they go. He testified that Scioto had incidents with Youth at the Progress School. He said there are three (3) Posts on Cedar Unit which are not the same Post as those at Progress.

Mr. Williams read Exhibit Tab 5 Page 44 and said it was his statement to Inspector Belli. He then read Exhibit Tab 5 Page 46 which shows changes in school assignments. There are to be five (5) Youth Specialists in the school.

Mr. Williams testified that the Youth Specialist assigned to Cedar and Sycamore Units are to stay there. He then testified that Youth Holmes was not on the Unit to find out about moving his room.

Mr. Williams then read Exhibit Tab 5 Page 25 and said it is the AMS incident code for gang related issues. The report is dated September 7 and the incident was September 5. He testified that the issue was sensitive so he wanted to verify it. The report says the Grievant was making gang signs.

Mr. Williams testified that he reviewed the video and it looked like gang related signs. He also testified that the Grievant left her Post without permission.

On Cross Examination Mr. Williams was asked; "Did you see any response to gang signs?" He said, "The Youth displayed back". He was then asked, "Did the Grievant ever report problems with Youth Specialist Samuels?" Mr. Williams testified, "If she did it was after September 5." He said he didn't recall if anyone asked him to address staff concerns about other staff.

On Re-Direct Examination he was asked, "Did Grievant file a report about issues with

Youth Specialist Samuels prior to September 5?" His answer was "No".

The Employer's next witness was William Samuels. Youth Specialist Samuels has been here eight (8) years. His job is to maintain safety and security and to direct Youth. Youth Specialist Samuels testified that he knows Grievant as co-worker and friend. He said he never saw any gang signs.

Youth Specialist Samuels read Exhibit Tab 5 Page 28 and said it was his statement. He said there was a note given to Mr. Williams. He testified he moved Youth Holmes room when Youth Holmes was at school.

Youth Specialist Samuels was shown exhibit Tab 5 Pages 132 & 133 and said it was the Cedar Unit Log Book. He testified it read Youth Holmes refused to go to school and Youth Smith went to school. Both Youth were off Unit when Youth Holmes' room was searched and moved. Youth Specialist Samuels testified that only he and Baines knew about moving Youth Holmes' room. He then testified that Grievant told Youth Holmes about moving his room. Youth Specialist Samuels testified that Grievant left to see Youth Holmes and no one else left.

Youth Specialist Samuels then read Exhibit Tab 5 Page 31 and said we have to pickup Grievant's responsibilities. He then read Exhibit Tab 5 Page 32 and testified Baines talked to him about the Grievant. He then testified that the Grievant told Youth Holmes about his room being moved.

On Cross-Examination he testified that Youth Specialist go to school when there was no one on the Unit. He said there was a one on one on the Unit.

On Re-Direct Examination Youth Specialist Samuels testified that Adams was on the

Unit and the Log Book shows other Youth on the Unit.

The Employer's last witness was Malinda Lawrence. She has a Masters in Sociology and Criminology. She has been here several years. Ms. Lawrence read Exhibit Tab 5 Page 123 and said it was her statement. Ms. Lawrence testified she knows Grievant as a co-worker on Cedar unit. She said there was no inappropriate sexual conduct.

Ms. Lawrence read Exhibit Tab 5 Page 123 and testified that the Grievant and Youth Smith had a relationship which was more than the usual staff relationship. She said the relationship was more toned down with Youth Holmes.

Ms. Lawrence read Exhibit Tab 5 Page 124 and testified that Grievant would sing to the Youth. The Grievant and the Youth would tease her. Ms. Lawrence testified that the Youth would look through the cuff ports and there would be lots of laughing and giggling. Youths Holmes and Smith would sing rap. She said Cedar was her regular Unit.

On Cross-Examination Ms. Lawrence testified that she worked with the Grievant for about six (6) months. She said there was a one on one at the Unit which was two (2) doors down from Youth Smith.

IV. UNION'S CASE

The Union's only witness was Jessica Williams, the Grievant. Ms. Williams was on Cedar Unit on September 5. Ms. Williams testified that on the morning of September 5 Youth Holmes did not go to school. She said Youth Holmes was angry with Youth Specialist Samuels. Ms. Williams testified that Samuels said; "Keep up the negative behavior and I will move your

room.” Youth Holmes then went to school.

Ms. Williams then testified that Ms. Young said Youth Holmes was getting agitated. The Grievant then went to see Youth Holmes. Ms. Williams then testified that Youth Holmes was in gator cuffs and he got calmer as she talked to him. She said Youth Smith and Youth Bell were in the area. Ms. Williams said she told Youth Holmes to focus on himself and not on other things. Youth Holmes stayed at the school.

Ms. Williams denies knowing any gang signs. She testified she cracks her knuckles and talks with her hands.

Ms. Williams then testified that she contacted Mr. Fort. Ms. Williams read Exhibit Tab 10 and said it is Mr fort’s report. She said she found Mr. Fort on the Internet and sent him the entire Pre-Disciplinary Report including the still shots.

Ms. Williams testified she spoke to Mr. Fort on the phone and that he sent her this document. She said Mr. Fort says she is not affiliated with a gang. She never put in any work and is not in their Jurisdiction. Ms. Williams also testified that she had no sexual contact.

Ms. Williams then testified that she had a one on one with Youth Michael Norton. She said Youths Holmes and Smith were there at the doors. Progress School is across a walkway. Ms. Williams testified she was supposed to be at Progress school as a floater. She then said Youth Holmes and Youth Smith made no gang gestures. Ms. Williams denies singing and dancing. She said she cleans the Unit on Saturday and has the radio on.

On Cross Examination Ms. Williams testified she sent Mr. Fort the Pre-Disciplinary packet and still photos and sent no information about street activity.

Ms. Williams read Exhibit Tab 5 Page 101 and said it was her interview. On Page 104 she said she was professional and acted as a mentor. Ms. Williams then read Pages 105 and 106 and testified she plays songs on the radio and sings along but denies hearing Youth Holmes and Youth Smith sing rap.

Ms. Williams then testified that she tries to get the Youth to keep their cuff ports closed. She said she makes them keep their hands on their heads so they won't jack off. The Youth are locked behind doors so she doesn't feel threatened.

Ms. Williams testified that on September 5 Youth Smith had his cuff port open. She said she wrote him up over a statement made about Youth Specialist Samuels. She said she made no hand signals and Staff can report within twenty-four (24) hours.

Ms. Williams testified that on September 5 she left about an hour late. She said she did not report the incident about Samuels. She was placed on Administrative leave on September 8.

Ms. Williams testified that Youth Specialist need to know the Youth's past. She said she has written up Youth Holmes and Youth Smith. Ms. Williams then testified that Youth Specialist go back and forth between the Unit and the school. She said she went to see the Youth as he was agitated and Ms. Young was leaving as she got there.

Ms. Williams referred to Exhibit Tab 5 Page 92 and said Youth Holmes said he didn't know why she came over. She said Youth Holmes had lotion and was using it to get out of the cuffs. Ms. Williams testified she was there to assist the teachers and Youth Specialist.

Ms. Williams testified she knew there would be an issue at the school but she did not contact Operations and did not log it in. She said she did tell second shift Staff.

Ms. Williams read Exhibit Tab 5 Page 56 and said it was Teacher Williams statement. It says Ms. Young was coming out as she was going in. She said she knew Youth Holmes was agitated over moving his room.

Ms. Williams testified that the atmosphere between her and Samuels was really hostile. She said she reported to Mr. Carter on September 4 about problems with Samuels. Ms. Williams then testified that the Log Book says the room was moved at 1:58. The school staff were gathered around Youth Holmes. The school staff was new and not familiar with Youth Holmes. Ms. Williams testified she doesn't know how Youth Holmes knew his room was being moved. She said there was a urine container found in Youth Holmes room. Ms. Williams said it was important to tell Staff of threats. Ms. Williams said when Samuels came back she told him to watch it.

Ms. Williams then testified that Youth Smith was upset over Youth Holmes being moved. She said Samuels and Baines shut her out. She was then shown slides and clips about gang signs.

Ms. Williams was shown Exhibit Tab 8 Frame 156 and she said she was cracking her knuckles. She then said neither Youth Holmes nor Youth Smith said anything about hand movements. Ms. Williams testified Youth Holmes never talked to her about gang signs or rival gangs.

Ms. Williams then read Exhibit Tab 5 Page 80 which is Youth Smith's statement. She said she didn't know Youth Smith was upset until she got there. She then said Samuels kept telling Youth Holmes his room would be moved.

On Re-Direct Examination Ms. Williams testified Youth Holmes never came out of the cuffs. She told school staff and second shift. Ms. Williams said she de-escalate the situation. She said her relations with Samuels were tenuous. Ms. Williams testified she reported it to the Operations Manager.

The hearing adjourned at 2:45 P.M.

The Parties agreed to file Written Closing Arguments by the close of business November 18, 2013. The Parties agreed to serve each other.

The Advocates have done an excellent job presenting their respective cases.

V. OPINION AND AWARD

The Employer points out in its Closing Argument that the Grievant was removed for violations of : Rule 3.03 P Leaving work area without permission (post position), Leaving post without permission of the supervisor. Rule 5.01 P Failure to follow policies and procedures (specifically ODYS Policy 103.17 - General Work Rules). Rule 5.27 Unauthorized or inappropriate contact or correspondence with Youth/Family. Corresponding with or accepting correspondence from Youth under ODYS supervision or a Youth's family, except as part of the employee's job responsibility for official work purposes, unless authorized to do so by the appropriate managing officer.

Engaging in any unauthorized personal or business relationship(s) with any individual currently or formerly under the supervision of the ODYS, or friends or family of the same.

Residing with any individual currently or previously under the supervision of the ODYS without express authorization of the Director. Aiding and abetting any unauthorized relationship.

Rule 5.28 P Failure to follow work assignment or the exercise in poor judgment in carrying out an assignment. Failure to perform assigned duties in a specified amount of time or failure to adequately perform the duties of the position or the exercise in poor judgement in carrying out an assignment.

The Employer asserts that on September 5, 2012 the Grievant left her assigned post and went over to the Progress School and while there displayed gang signs to two known gang members.

The Employer argues that the Union asserted in its opening argument that “On the morning of September 5, 2012, Youth Holmes was having behavioral issues and was kept off the Unit instead of being sent to class. Early in the afternoon, it was decided to send him to class. The Grievant had reservations about that decision and expressed them to her co-workers. She was over-ruled and Youth Holmes was sent to school.”

The Employer argues that the Union presented no documentary evidence (i.e. Log Book Entry) or testimony other than the Grievant to support this contention.

The Employer contends the Grievant left her post without the permission of a supervisor. The Grievant testified on direct examination that they used to go over to the school when there were no other Youth on the Unit.

The Employer points out that the Cedar Unit Log Book shows four (4) Youth on the Unit in the morning and three (3) in the afternoon.

The Employer says on direct examination, Keith Williams, Operations Manager reviewed the incident and the video and the Grievant left her post without permission. Operations Manager

Williams also testified that Youth Specialist assigned to Cedar Unit are not to be in the Progress School without permission from the Operations Manager or the Unit Manager. Due to the high volume of incidents on those Units and the Youth being assaultive we don't want to limit the number of staff.

The Employer then cites the Grievant's testimony. "Do you get permission to go over to the Progress Unit School before you go over there? If not, why not? The Grievant replied "No, because we never get permission to go over to the school. If we get called over there for a problem we (staff) will go over there and try to resolve the problem before a signal gets called."

The Employer denies that there is any evidence that Youth Holmes was trying to slip out of his cuffs. The Grievant provides: "at the so called date in question the Youth was trying to slip out of his cuffs and was asking the teacher for lotion. The Youth was mad because his room was being moved and was agitated. So I was over there in the school so I could talk to the Youth."

The Employer also points out that while the Grievant says staff were gathered around Youth Holmes when she entered the school, the video evidence shows no conversation with the teacher or the other two Youth Specialists.

The Employer also argues that the video evidence does not support the contention that the Youth was trying to slip out of his cuffs or asked the teacher for lotion.

The Employer also argues there is no documentation or witness testimony from staff to attest to the specific reason why the Grievant was in the Progress Unit School on the afternoon of 9/5/12.

The Employer argues that the reason the Grievant went to the Progress Unit School on

9/5/12 was to see Youth Holmes. The Grievant admitted this on Cross-Examination. The Employer points out this statement contradicts her testimony that she went to the school “to prevent any problems on Cedar Unit between staff” and “she went to check on Youth Smith and then Youth Holmes who was upset about his room being moved.”

The Employer cites Dr. Alloy. Dr. Alloy provides a note in the Unit Log Book on September 5, 2012: “Youth Wm. Holmes 217667 had liquid in his room and planned to wet staff up. He admits to being under the influence of his emotion regarding female staff.” Dr. Alloy further adds, “I observed the female staff YS J. Williams was spending a lot of time at Holmes and Smith’s room doors and both Smith and Holmes appeared to be developing an emotional attachment towards Williams that goes beyond the customary/professional/staff/Youth role. This was evident by Holmes wanting to assault YS Samuels and the material to do so in Holmes room. Holmes told me this during our 9/5/12 session.”

Youth Holmes testified that his room was moved because he was about to wet YS Samuels up and Samuels found a carton in his room with liquid in it.

Youth Holmes also said he was in the school when he heard a female staff say on the telephone that his room was to be moved.

The Grievant testified that Youth Specialist Samuels told Youth Holmes he was moving his room when he walked him over to the school.

Youth Specialist Dion Baines provides, “also Williams left off the Unit shortly after me and Samuels were moving Holmes’ room.”

Youth Specialist Samuels testified, “As I was moving Holmes’ room, I saw Williams

watching me, leaning around near the podium. Then I saw Williams leave out the back door.” He also said he believed the Grievant told Youth Holmes his room was being moved “without a doubt.”

The Employer disputes the Union contention that the Grievant has no knowledge of gangs. The Employer cites the testimony of Shawn Anders that the Heartless Felons are the biggest gang in DYS. Also Youth Smith is an “Under Boss” and Youth Holmes is a “Sergeant”. The Grievant testified she didn’t know Youth Holmes was in a gang but had an inclination Youth Smith was.

The Employer contends that it never said the Grievant belonged to a gang but did use gang signs. The “Expert” evidence offered by the Union had no opportunity for Cross-Examination and its authenticity is questioned.

The Employer says the evidence is that the Grievant did display gang signs while in the presence of two (2) known gang members at Progress Unit School.

The Grievant says she talks with her hands and is in the habit of cracking her knuckles. The Employer says the video shows a gang sign. The Employer also cites the testimony of Youth Holmes who testified that Grievant twice made the gang sign for the “Hoolies.”

The Employer also disputes the Union’s argument that the Grievant had six (6) years of service saying she actually had four point five (4.5) years.

The Employer says the discipline imposed was commensurate with the offense and progressive with the ODYS work rules and practice.

The Union says that on September 5, 2012, Youth Holmes was having behavioral issues

and was kept on the Unit instead of being sent to school. Early in the afternoon it was decided to send him to class. The Grievant had reservations about the decision and expressed them to her co-workers, YS Samuels and YS Baines. She was over-ruled and Youth Holmes was sent to school. The Grievant suspected the Youth would not behave any better in class than he had on the Unit and went to check on him. She found the Youth in a corner attempting to remove his handcuffs with lotion he had obtained from the teacher. The Grievant stayed with the Youth to talk him out of making a bad decision.

The Union disputes the Employer's allegation that the Grievant used gang signs. The Union argues that the Grievant talks with her hands and is in the habit of cracking her knuckles. The Union says the Grievant does not belong to a gang nor has any knowledge of gangs.

The Union argues that it presented documentation from an expert in gang activity who reviewed the information provided and opined that the Grievant did not use gang signs with the Youth. The Union also argues that the Youth did not throw gang signs.

The Union also argues that not one of the Employer's witnesses stated that gang signs were ever displayed by the Grievant in their presence. There was also no testimony that the Grievant had any physical/sexual contact with Youth Holmes or Youth Smith.

The Union also asserts that YS Baines and YS Samuels both testified it was necessary to move Youth Holmes because of the discovery of a container of urine in his room. However, the urine was found while they were removing the Youth's belongings so the discovery could not have predicated the move.

The Union then argues that the employer could only offer speculation about who

informed Youth Holmes of the move. According to YS Baines' testimony only he and YS Samuels knew about the move. The Grievant left at 1:30 P.M. and the Log Book shows the move at 1:58 P.M. Youth Holmes said he over heard staff say he was to be moved, not that the Grievant told him.

The Union says there were Youths that displayed unacceptable behavior towards the Grievant and they did nothing to discourage the behavior nor did they report it. YS Baines stated he and other staff did nothing when they saw inappropriate behavior from the Youths.

The Union also points out that Dr. Alloy testified she observed the Grievant for three weeks and never saw any gang signs, contraband or inappropriate/sexual contact. She also stated that the Grievant "would talk with her hands/arms, like normal people do, and move them around in a fluid motion. I didn't see Williams do any type of gang signs or gestures."

The Union also says that when the Grievant was asked about getting permission to go to the Progress School she stated it was a common occurrence for Staff to go to the school to de-escalate a situation before a signal was called. She stated that on the date of the alleged incident she went over to the school to speak to Youths about their behavior and making good choices. She also stated that she was off the Unit because of the tenuous relationship she had with YS Samuels. She had previously contacted an Operations Manager to mediate a situation with YS Samuels just days prior to the incident.

The Union argues that Grievant did not use gang signs at the school and asks that the grievance be granted.

It seems clear to the Arbitrator that the Grievant left her assigned Post without permission.

By the Grievant's own testimony and the testimony of others staff were to stay on the Unit when Youth were there. The evidence is that on September 5, 2012 there were four (4) Youth in Cedar in the morning and three (3) in the afternoon. In addition Operations Manager Williams delineated the reasons for Staff to stay on Cedar Unit and testified the Grievant left her Post without permission.

The evidence is also clear that the Grievant gave gang signs to the Youth at the Progress Unit School. The video shows this and the testimony of Youth Holmes confirms it.

The evidence of the Union's expert is not persuasive. At best he was provided but part of the evidence. In addition the Employer had no opportunity to Cross-Examine him. In addition it is not credible that the Grievant had no knowledge of gangs. Whether she had been at the Facility six (6) or four point five (4.5) years she had been there long enough to be aware of gangs. After all she worked on Cedar Unit.

The Arbitrator also credits the testimony of Dr. Alloy that the Grievant's relationship with Youths Holmes and Smith was not the normal Staff/Youth relationship.

There is a conflict in the evidence as to whether the Grievant told Youth Holmes of his room being moved. The evidence is YS Baines and YS Samuels knew about the move. There is twenty-eight (28) minutes difference in time from the time the Grievant left Cedar Unit and the time the Log shows the move occurred. However, YS Samuels says the Grievant saw the move and left Cedar Unit. Based upon Dr. Alloy's testimony as to the relationship between the Grievant and the Youth the Arbitrator believes the Grievant did tell Youth Holmes.

The Grievance is denied.

Issued at Ironton, Ohio this 27th day of December, 2013.

Craig A. Allen

Craig A. Allen
Arbitrator