#1147

IN THE MATTER OF ARBITRATION

BETWEEN

OHIO REFORMATORY FOR WOMEN
MARYSVILLE, OHIO

AND

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

Arbitration Dates: November 12, 2015

Grievant David Strine: # 27-19(2012-08-29) 0280-01-03

BEFORE: Arbitrator Craig A. Allen

Advocate for the Employer:

Victor Dandridge
Labor Relations Administrator
Office of Collective Bargaining
100 East Broad Street - 14th Floor
Columbus, Ohio 43215-3607

Advocate for the Union:

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OCSEA, AFSCME Local 11
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I. HEARING

The hearing was held November 12, 2015 at OCSEA. The hearing commenced at 9:05 A.M.

The stipulated issue before the arbitrator is "Did the Employer violate the CBA by unreasonably refusing to permit the Grievant to rescind his resignation?"

II. STATEMENT OF THE CASE

This matter is not procedurally defective and is properly before the Arbitrator for a decision on the merits. The Grievant began his employment at the Ohio Reformatory for Women (ORW) on January 3, 2011.

The Grievant's last day of work was August 21, 2012. The Grievant resigned from his employment August 21, 2012 and later the same day rescinded his resignation. The Employer (ORW) had accepted the Grievant's resignation prior to his rescission.

On his last day of work the Grievant was a Corrections Officer (CO) assigned to second shift. His post was "Hale Walk-Off Officer" in Hale Cottage.

III. THE EMPLOYER'S CASE

The Employer's first witness was Ginine Michelle Trim. Ms. Trim is now employed by the Department of Youth Services (DYS) as Deputy Director of Facilities. On August 21, 2012, Ms. Trim was the Warden at ORW, which is the day the Grievant resigned.

Ms. Trim read Joint Exhibit (JX) 4 which is an E-Mail from Phillip Elms to Labor Relations and Human Resources saying the Grievant had resigned. Ms. Trim said this E-Mail was sent to her also. She said she was not at ORW when the E-Mail was sent. Ms. Trim testified

that she is authorized to accept resignations. Ms. Trim also testified that the Grievant's resignation E-Mail was sent August 21, 2012 at 5:36 P.M.

Ms. Trim next read JX 5 which was her response to Mr. Elms E-Mail at 6:28 P.M. approving the Grievant's resignation. Ms. Trim testified that between the notice of Grievant's resignation and her approval there was no information that the Grievant wanted to rescind.

On Cross-Examination Ms. Trim read JX6 and said the E-Mail list is : Captain, Major, Lieutenant, Labor Relations Officer and Human Resources, none of which are Union members. Ms. Trim also testified that the E-Mail was not sent to the Grievant. Ms. Trim said she is the only one authorized to accept resignations.

Ms. Trim was then given Exhibits U-1 and U-2 and testified that these are standard employee forms. U-1 is the form showing the hire date signed by the Grievant. U-2 is the resignation signed by the Grievant.

On Re-Direct Examination Ms. Trim read Page 97, Article 24.06 of the Collective Bargaining Agreement (CBA). She testified that the Employer must inform the Union if it is discipline. Ms. Trim then testified that there is nothing in the CBA that says the Union has to be notified of a resignation. She said the resignation was voluntary.

The Employer's next witness was Phillip Elms. Mr. Elms is now with DYS and is Superintendent at Circleville Correctional Institution. At the time of this incident Mr. Elms was at ORW.

Mr. Elms read JX3 and testified that it was Grievant's resignation and that he had witnessed it. Mr. Elms then testified that he presented the resignation to the Grievant and that he had accepted it. The resignation was effective immediately. Mr. Elms said the Grievant did not

rescind the resignation. Mr. Elms said he did not tell the Grievant to sign the resignation. Mr. Elms testified that the Warden was not at ORW then. The Grievant did not ask for any leave and left the institution.

Mr. Elms next read U-3 and testified it was a Notice posted to show the Grievant was not allowed back into the facility. The Notice was dated August 21, 2012 and posted on that date.

On Cross-Examination Mr. Elms testified that either he or Bartlett drafted the resignation.

IV. THE UNION'S CASE

The Union's first witness was the Grievant, David Woodrow Strine. The Employer's Exhibit M-1 was admitted showing that the Union's grievance concerning the events of August 20, 2012 was withdrawn.

The Grievant read JX9 and testified it was his time sheet for Wednesday, August 16, 2012 showing 16 ½ hrs. The Grievant testified that he resigned August 21, 2012 and had worked 2.95 hours before he was walked out. The Grievant said the proceeding three (3) days he had worked 16 ½ hours each. The Employer was granted a continuing objection to all questions about mental capacity to resign.

The Grievant testified that on August 21, 2012 he went to work. He said he went to briefing and roll call and then to Hale Cottage. This is regular routine for a CO.

The Grievant testified that a CO came to relieve him and told him to go to Investigator Elm's office. The Grievant said Elms and Bartlett were there along with the Union Steward, Ebau Nephew. The Grievant said Mr. Elms asked questions about a cell search. Mr. Nephew said "there may be discipline".

The Grievant then testified that Mr. Elms and Mr. Nephew left to have a conversation. Mr. Nephew came back and told the Grievant "resign or face criminal charges." Mr. Elms did not tell Mr. Nephew what the criminal charges were.

The Grievant testified that Mr. Nephew told him to take the resignation offer. "Don't know what they have on you".

The Grievant said Investigator Elms said: "Resign now or will pursue criminal charges. No way you'll go back to Hale Cottage today". The Grievant testified , "I knew I wasn't going back to Hale".

The Grievant said Mr. Elms brought the resignation in. He read JX3 which is the resignation that he signed. The resignation was also signed by Elms and Bartlett. Mr. Nephew was present. The Grievant said he turned in his equipment to Ms. Bartlett.

The Grievant read U-3 and said they took his ID and hung U-3 in the entry office. The Grievant testified that the Warden's initials were on U-3 but not her signature. C. Bartletts initials were also on U-3.

The Grievant then testified he was walked out and drove home to Marion. On the way home he talked to Lt. Shelly Crosby and others. He said he talked to his Mother who was a DRC employee. He said he got home around 7 P.M.

The Grievant read JX7 and testified that it was his E-Mail to rescind his resignation. He said he was: "experiencing mental anguish and duress". The Grievant said his was caused by the August 20, 2012 meeting and the August 21, 2012 meeting.

The Grievant then read JX8 which is an E-Mail from Roger Keller sent at 6:48 A.M. and no further E-Mail from anyone.

On Cross-Examination the Grievant testified that in the meeting with Ms. Bartlett and Mr. Elms that the Steward advised him to resign. He said he got home around 6:15 or 6:30. The Grievant testified that U-3 was hung by the entry way and that this was not unusual. The Grievant said he had no problem accepting the Steward's recommendation.

The Grievant testified that JX3 was his signed resignation which was effective immediately. He said his unemployment compensation was denied because of his resignation.

The Grievant read JX2 which is his grievance. The grievance refers to Article 24 of the CBA and he said he doesn't know of any other CBA Articles that apply. The Grievant then read JX4 which is an E-Mail from Phillip Elms saying the Grievant resigned at 5:36 P.M. and that Mr. Elms accepted his resignation.

The Grievant read JX5 which is an E-Mail from the Warden accepting his resignation August 21, 2012 at 6:28 P.M. This was before his rescission. He said JX7 is his rescission of his resignation at 9:37 P.M. and JX8 is Mr. Keller's response to his rescission. Mr. Keller's E-Mail does not say he will contact the Grievant. The E-Mail says the Grievant is a separated employee and the Warden has accepted his resignation. The Grievant then read JX8 which gives an Ohio Administrative Code (OAC) citation and said it says "may be reinstated".

The Union's next witness was James Adkins. Mr. Adkins is employed at ORW and was the Chief Steward at the time of the incident. Mr. Adkins filed the grievance for August 20, 2012 but not this one. Mr. Adkins was there for the Step 3 hearing.

Mr. Adkins read JX4 which is Mr. Elms E-Mail saying the Grievant has resigned changes schedules. Mr. Adkins testified that schedules change often because of sick leave, overtime and Podium Pick.

Upon Cross-Examination Mr. Adkins testified he was aware of the grievance. Mr. Adkins read JX2 and said he was familiar with the contract. Mr. Adkins testified that he can't say if any Contract Article covers resignation. He said he can't say no Contract Article applies due to arbitration decisions.

Mr. Adkins testified he was aware the Grievant was already working when he resigned. Mr. Adkins said there were not many resignations at ORW. He said that when there was a resignation management has to fill the job.

Upon Re-Direct Examination Mr. Adkins testified that adjusting the schedule in the middle of the day is an every day occurrence.

The Union's last witness was Vametra Carey. Ms. Carey is a CO at ORW and has been the Chapter President for 2 ½ years. Ms. Carey was not President when the grievance was filed but is familiar with the case.

Ms. Carey testified that she put in an information request. She received the EHOC Report showing the Grievant's start and end dates and the denial of unemployment compensation.

Upon Cross-Examination Ms. Carey read U-5 the Denial of Unemployment Compensation and said the second paragraph says the Claimant quit without Just Cause.

Ms. Carey testified that she has knowledge of the contract and no contract language covers this. The Union then stipulated this.

The hearing adjourned at 11:50 A.M. The parties agreed to file written closings by the Close of Business December 11, 2015.

V. OPINION AND AWARD

The Union had first proceeded with this grievance as a discipline case but then changed it to an issue case. The Union therefor has the burden of proof.

The parties have also agreed that there is no Article in the Collective Bargaining Agreement that the Union could cite in this case.

The parties have done an excellent job in the presentation of their respective cases.

The Union says on and around August 21, 2012 when the Grievant tendered his resignation from the Ohio Reformatory for Women (ORW), three hours after resigning the Grievant tried to rescind his resignation but the Employer refused to honor his resignation.

The Union filed a grievance under the CBA claiming that the Employer's refusal to allow the Grievant to rescind was an unreasonable exercise of its management authority as delineated in the agreement and arbitration awards decided under that agreement.

The Union says on August 21, 2012 the Grievant was assigned to the second shift in Hale Cottage. He was called to the investigator's office. Investigators Cindy Bartlett and Philip Elms and Union Steward, Evan Nephew, met him in the office. Elms told the Grievant the Employer was preparing to discipline him for a cell search he allegedly conducted inappropriately. Elms said the Employer was prepared to issue him with discipline for other misconduct as well, although Elms would not specify the events.

The Union argues that the Grievant was caught off-guard by this. He was tired from working double shifts. He was still rattled by an intense questioning to which he had been subjected on the previous day. The Union said it had filed a grievance concerning the Warden's conduct on the previous day but later withdrew it.

The Union says Elms took Nephew into the next office and then Nephew conferred with the Grievant. Nephew told the Grievant that Elms said if he did not quit immediately the Employer would file criminal charges the next day, although Elms would not say for what. Nephew said the Grievant should consider resigning. The Grievant told Elms he could see no alternative but to resign. Elms gives the Grievant a resignation notice. The Notice said the Grievant was resigning effective immediately.

The Union points out the Notice had four signature and date lines. The first signature line was for the Grievant. The second was for Ginine Trim, Warden, below the word accepted. The other two lines were for witnesses. The Union says the Warden did not sign that it was accepted because she was not in the institution. She signed the next day.

The Union argues that the Employer tried to obfuscate the wording of the resignation by having Elms testify he was empowered to "accept" the resignation but not "authorize" it.

The Union contends that a resignation is only effective upon "acceptance" by the member of management with authority to give full effect to resignations. A tender of resignation does not constitute legal acceptance.

The Union argues:"Instead such acceptances should be written and should involve some type of affirmative act which clearly indicates that the resignation has been accepted by one whom the public employer has authorized to accept employee resignations." Citing Ohio Dept. Of Rehabilitation and Corrections & OCSEA case No. 27-25 (96-12-02)-1169-01-09(1999) Brenda *Moyer*, Grievant (*Moyer*) at page 15 citing Davis v Marion Co. Engineer 60 Ohio ST 3 d 53 (1991).

The Union points out that the Warden testified, only she could accept a resignation.

Bartlett and Elms took away the Grievant's equipment and ID badge and escorted him from the facility. At 5:36 P.M. Elms sent an E-Mail saying "effective immediately David Strine has resigned .... adjust your schedules appropriately". He sent the E-Mail to a number of members of management, including Warden Trim. He did not send it to the Grievant or any Union officers.

The Union argues that the Grievant was confused and upset and telephoned his mother, who worked at North Coast Correctional Institution.

At 6:28 P.M. the Warden E-Mailed at recipients of Elm's 5:26 P.M. E-Mail "Resignation approved". No copy was sent to Grievant or any Union officer.

The Union argues that the Grievant realized he had made a mistake and at 9:27 P.M. he E-Mailed Human Resources Director, Roger Keller, Warden Trim, Union Chief Steward, James Adkins and others, rescinding his resignation. About nine hours later, at 6:48 A.M. on August 22, Human Resources Director, Keller, E-Mailed to Grievant "... resignation accepted by Warden Trim last night ...".

The Union argues that Keller was wrong about Trim accepting the resignation the previous night. The Union contends *Moyer* and the related cases state that acceptance is only valid when conveyed to resignee. *Moyer* at 15 *Davis* 60 Ohio ST 3 d at 53.

Keller's E-Mail was sent "reply all" to the same persons who had received Grievant's E-Mail the night before.

The Union argues that Keller later reported to the Ohio Department of Job and Family Services that Grievant resigned effective August 22, 2012.

The Union also argues that the Grievant had a right to rescind his resignation when he did and he was removed without Just Cause.

The Union says Chief Steward Adkins testified that three arbitration awards are the basis for the Union's grievance. These are *Moyer* OCSEA & State of Ohio, Dept. Of Job and Family Services Case No. (6-11-(20110406)-1027-01-09 (2012) (Tobias Williams, Grievant) *Williams* and OCSEA, AFSCME Local 11 & Ohio Dept. Of Rehabilitation & Corrections Case No. 27-11-(950623)-0337-01-03 (1996) (Sherri White, Grievant) *White.*

The Union contends these three awards establish a clear rule that an employee may rescind his resignation at any time prior to its effective date, provided the employer has not formally accepted the resignation.

The Union further argues that the Grievant's resignation was not voluntary. The Union contends the Grievant did not have sufficient mental capacity and had to have been given a reasonable opportunity to consider options and select a resignation date.

The Union asserts that rescission is permitted at any time until the employer conveys acceptance to the employee. The Union cites *Moyer* saying that if the CBA is silent the arbitrator must look to arbitral precedent and state regulations. The arbitrator looked at *Davis. Davis* "set a very high standard for the establishment of formal acceptance". An attempt to rescind is only valid where (1) it is made before the date the resignation is effective; and (2) it is made before the appointing authority accepts it. *Moyer* at 15 acceptance is not merely receipt of

the resignation, it is some kind of formal affirmative action, preferably in writing, that clearly communicates to the employee that the tender of resignation has been accepted. *Moyer* at 15, 19; *Davis* at 53; *Williams* at 21.

The Union says the one exception to the rule is where the employer acts in detrimental reliance on the employee's resignation.

The Union argues that *Moyer* and *Williams* hold that an employee's resignation must be voluntary. *Moyer* explains that employee's resignations are generally presumed to be voluntary, absent clear evidence to the contrary.

The Union argues the presumption can be rebutted if: an employer's coercion or deception ...directly or indirectly deprive(s) the employee of free choice by: (1) not giving an employee an alternative to resignation; (2) not assuring that the employee understood the choices in question; (3) not giving the employee a reasonable time within which to make an informed choice; (4) not permitting the employee to select the effective date to resign; or (5) not permitting the employee to obtain advice from Union representatives.

The Union further cites *Moyer* at 11 saying the presumption can also be rebutted if "physical, psychological, or emotional circumstances beyond the control of both the employer and the employee ... compromise(s) an employee's rational judgment capacity".

The Union argues that prior arbitration decisions are entitled to substantial deference if not changed in successive CBAs. The Union cites The Common Law of the Workplace Sec. 1.86 comment (1998): "If a decision has interpreted a contract provision prior to its renewal without

change in a subsequent agreement, it is considered as binding on the parties as part of what they intended by continuing the same language."

The Union contends that the Courts generally follow this rule. The Union cites *Inlandboatman's Union of the Pacific v Dutra Group* 279 F. 3d 1075,1079 (9th Cir. 2002) "arbitration awards themselves become part of the CBA in the broadest sense of the term and thus are an important element of the "common law of the shop".

The Union cites other federal court cases following *Inland* and says ".... the doctrine of *resjudicata* may apply to arbitrations with strict factual identities".

The Union further argues that *Moyer, Williams,* and *White* have "strict factual identities" with this case and should be treated as all but binding.

The Union asserts that the Grievant should be reinstated for two reasons. First, he rescinded his resignation before it was accepted by the employer. Second, his resignation was not voluntary because he was physically and emotionally impared, and because he was not given any option but to resign immediately.

The Union says it is undisputed that the Grievant resigned at 5:27 P.M. on August 21. Warden Trim testified that she alone had acceptance authority. The Employer claims that Trim accepted the resignation by E-Mail at 6:28 P.M. The Union argues that this E-Mail did not go to the Grievant or any other non-management employee.

The Union argues that the cases cited say the acceptance is only effective when communicated to the employee.

The Union contends that the Employer's position would deprive any employee tendering an immediate resignation with the right to rescind.

The Union argues the date the resignation was effective was not the very instant the Grievant signed his name. The Union says the effective date was the next day, August 22. The evidence of this is the Employer's submission to the Office of Unemployment Compensation saying the Grievant quit on 8/22/12. The Union also says the Grievant's Employment History Report (EHOC) says the effective date of his resignation was August 22.

The Union claims that the Employer's attempt to conflate "effective date" with "effective immediately" is a red herring. The effective date was August 22, 2012 and the Grievant's August 21, 9:37 P.M. rescission E-Mail was valid.

The Union argues that the Grievant did not resign voluntarily. The lodestar is the *Moyer* case. The Grievant testified that Elms said he would not return to Hale August 21 and if he did not resign he would face criminal charges. Elms presented the Grievant with a resignation notice about which he had no imput. The Grievant had no time to reflect and an opportunity to elect his date of resignation. The resignation was not voluntary.

The Union says the resignation was also not voluntary because he lacked the emotional and psychological capacity to think clearly. He was impaired from working several 16 hour days and under extreme duress due to the circumstances of the meeting and the lingering effects of browbeating he took in the Warden's office.

The Union argues the Grievant lacked "rational judgmental capacity". The Employer should have let him go home and discussed the matter the next day.

The Union points out that undoing the purported resignation would not have been a burden. Chief Steward Adkins testified that management adjusts schedules all the time.

The Union concludes that the Employer acted unreasonably by refusing the rescission. There is nothing on the record that suggests Warden Trim's acceptance was ever communicated to the Grievant. The Union also argues the Grievant lacked the capacity to resign in the first place.

The Union asks that the discharge be over turned and the Grievant be returned to work and be made whole.

The Employer argues that it has not violated any article of the CBA. The Employer points out that there is not one article in the CBA that the Union could cite. The Union originally attempted to use Article 24-Discipline of the CBA but the case was later treated as an issue case.

The Employer cites the case of *OCSEA/Ellen Jenkins* v State of Ohio Department of Youth Service Page 8 "The Grievant knowingly and voluntarily resigned. The Employer could have allowed a rescission but no contract provision so obligates them."

The Employer points out that the Grievant's decision to resign was discussed with his Union Steward, Evan Nephew. The Union Steward not only agreed with the decision he advised him to resign. The Employer argues that the Grievant followed the counsel of the Union and now the Union alleges that the Grievant was subject to mental anguish and duress while submitting his letter of resignation to the employer.

The Union did not produce any medical evidence or witness testimony to that effect. The testimony given certainly dictates that the decision was not a result of a lapse of thought. It is clear that the Grievant thought it best to follow the advice of his Union representative.

The Employer argues that without any coercion from the Employer the Grievant submitted his resignation to Investigator Elms at 5:37 P.M., turned in his equipment and left the institution fully aware that he was no longer an employee.

The Employer specifies the six steps it took upon receiving the resignation. Step 1: The resignation was accepted into possession of the institution by Phillip Elms. Step 2: The Grievant turned in his badge and State issued equipment. The Grievant was then escorted to exit the institution. As the Grievant left the institution a "No Admittance" memorandum was posted at the entry to the institution, to bar the Grievant from returning onto the grounds of the institution. Step 3: Mr. Elms contacted Warden Ginine Trim and other exempt personnel to inform them that the Grievant had resigned via an E-Mail at 5:36 P.M. on August 21, 2012. Mr. Elms directed the staff to make the necessary adjustments of schedules as a result of the resignation. Step 4: Warden Trim received the E-Mail sent from Phillip Elms and responded to the E-Mail at 6:28 P.M. As the designated authority of the agency Warden Trim issued an E-Mail that the Grievant's resignation was approved. Step 5: The Grievant sent an E-Mail addressed to the exempt staff at Ohio Reformatory for Women at 9:37 P.M. on the night of August 21, 2012. Step 6: Human Resource Manager, Roger Keller responded to the Grievant's E-Mail on the morning of August 22, 2012 at 6:48 A.M. Mr. Keller informed the Grievant that his resignation was accepted by Warden Trim the previous evening.

The Employer argues that the Grievant testified under oath that he was aware and acknowledged that Warden Trim had approved his resignation prior to his efforts to rescind. The Grievant also testified that his resignation declared that it was effective immediately. The Employer points out that the Grievant testified that he had not rescinded his resignation prior to it becoming effective.

The Employer cites *Davis v Marion City Engineer*, 60 Ohio ST 3d 53 (Ohio 1991) Page 1, which says 1) A public employee may rescind or withdraw a tender of resignation at any time prior to its effective date, so long as the public employer has not formally accepted

such tender of resignation. 2) Acceptance of a tender of resignation from public employment occurs where the public employer or its designated agent initiates some type of affirmative action, preferably in writing, that clearly indicates to the employee that the tender of resignation is accepted by the employer.

The Employer argues that it has fulfilled the criteria in this case. The Grievant by his own admission did not rescind his resignation prior to its effective date. The Grievant's resignation was effective immediately. It would be impossible for him to rescind prior to its effective date.

The Employer further acknowledges that the resignation was approved by Warden Trim's E-Mail prior to his attempt to rescind. The second requirement was met by the Employer. Warden Trim's E-Mail clearly approved the request in writing. The approval was effective on August 21, 2012 at 6:38 P.M. The Employer says the second requirement does not require the approval to be shared with the employee prior to its taking effect. The Grievant was informed of the status of his resignation on the morning of August 22, 2012 at 6:48 A.M.

The Employer cites the case of *OCSEA/Franco Lulianelli v. State of Ohio/Department of Taxation* Case No. 30-10-(91-02-25)-0242-01-14 Page 11. Arbitrator Hyman Cohen wrote "After reviewing the applicable published decisions on the subject of retraction of a voluntary resignation which is executed and tendered, it is not a violation of the Agreement for the State to refuse to accept the retraction of the Grievant's resignation under the circumstances presented in this case. Were I to do so, it would exceed my contractual authority. Perhaps, it might be the "nice thing to do", but this standard is not "a proper foundation for an arbitral award.

The Employer says the Union has pointed to the date that Warden Trim signed the actual

resignation as the official date of approval. The Employer argues that *Davis* requires the resignation to be accepted by the appropriate authority. It does not declare that the approval shall only be reflected on the letter of resignation. The Employer argues it is without question, that the evidence presented certified that Warden Trim did acknowledge and approve the Grievant's resignation on August 21, 2012 at 6:38 P.M.

The Employer cites *OCSEA/Christina T. Woods v. State of Ohio/ Department of Agriculture* 04-00 (05-11-22) 00 36-01-14 Pages 1-16. Arbitrator John Murphy ruled that the Grievant's attempt to rescind their resignation was properly denied even though the request to rescind was submitted on the same day as the resignation. Arbitrator Murphy ruled that it was clear that management had approved the resignation prior to receiving the request to rescind.

Arbitrator Murphy also ruled on Page 16 that "The Administrative Code creates a privilege on the part of the appointing authority to request a reinstatement. It does not create a legal duty upon the appointing authority to reinstate".

The Employer argues that the Union has failed to meet its burden and asks that the Grievance be denied.

The Arbitrator has reviewed the testimony and Exhibits. The Arbitrator has read the post arbitration briefs of the parties and the cases cited b both sides.

In the *Moyer* case the Grievant was under a Dr's care and, among other things was taking medicine that affected her judgment. However, the Arbitrator ruled that there was no independent medical evidence. In this case there is also no independent medical evidence or even any corroboration of Grievant's testimony that his physical or mental condition impaired his

judgment. In addition Elms denies any coercion so there is no preponderance of evidence that Grievant was coerced. The Grievant had filed a grievance concerning the Warden's conduct the day before but this grievance was withdrawn. In addition *Moyer* says "one who faces the possibility of discipline due to one's misconduct cannot resign under these pressures and subsequently use them to invalidate the resignation."

In addition *Moyer* says the rescission must predate the acceptance and the Employer can use a customary mode of communication to notify the Grievant.

In the *Williams* case the Employer failed to initiate some type of affirmative action that indicated to the Grievant that the resignation was accepted.

The *White* case concerns an oral resignation and is not relevant here.

The *Moyer* case says on Page 18 that employees do not have to be advised directly of acceptance.

The Union's argument about The Common Law of the Workplace concerns Arbitration Decisions interpreting contract provisions. This case is not covered by any Article of the CBA.

The evidence is clear that Warden Trim had the authority to accept the resignation and did so well before the rescission. There is no case law that says the Grievant has to be notified directly. In fact he was notified of the acceptance early in the morning of August 22.

The Union's argument that immediately really meant the next day is not persuasive. Words ordinarily have their common meaning. In any event the resignation was accepted several hours before the rescission. This is in accord with the Court and Arbitration decisions presented.

Also there is no requirement that the acceptance be instantaneous but only prior to the

rescission.

The evidence shows the Grievant was notified about nine hours after the acceptance of his resignation. The Arbitrator finds this time frame reasonable under the circumstances.

The Grievance is denied.

Entered at Ironton, Ohio this 29th day of December, 2015.

Craig A. Allen
Arbitrator