

#1166

IN THE MATTER OF ARBITRATION

BETWEEN

**STATE OF OHIO
DEPARTMENT OF NATURAL RESOURCES**

AND

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

Arbitration Dates: December 12, 2017

Grievant Cynthia Pettit: # DNR-2017-01477-14

BEFORE: Arbitrator Craig A. Allen

Advocate for the Employer:

Nicholas R. Spolarich
Labor Relations Officer
Office of Human Resources
2045 Morse Road
Columbus, Ohio 43229
Nicholas.Spolarich@dnr.state.oh.us

Advocate for the Union:

Deborah Bailey
Staff Representative
OCSEA, AFSCME Local 11
390 Worthington Rd., Suite A
Westerville, OH 43082
dbailey@ocsea.org

RECEIVED / REVIEWED
FEB 20 2018
OCSEA - OFFICE OF
GENERAL COUNSEL

I. HEARING

The hearing was held December 12, 2017 at Maumee Bay State Lodge. The hearing commenced at 9:00 A.M.

The stipulated issue before the arbitrator is "Was the Grievant, Cynthia Pettit, removed for just cause? If not, what shall the remedy be?"

II. STATEMENT OF THE CASE

The Grievant was removed from her position as Financial Associate on April 15, 2017.

The Grievant was removed for a violation of the Ohio Department of Natural Resources (ODNR) Disciplinary Policy (C2) Failure to follow the written policies, procedures, or directive of the Director/ Division/ Office and D (1) Failure of good behavior.

III. THE EMPLOYER'S CASE

The Employer's first witness was Andrew Thompson. Mr. Thompson is the Park Maintenance Supervisor here. He said he reported to Lesley February 17, 2017. Mr. Thompson said he opened the office early in the morning and the Grievant arrived at 10 A.M. He testified he came back to the office at 12:45 P.M. and the office was locked. The sign on the door said: "Closed from 1 - 2".

Mr. Thompson said he opened the office and the Grievant had signed out for 1 - 2 P.M. Mr. Thompson testified he was surprised at the time sheet and contacted Lesley Fruchey.

Mr. Thompson read Tab D page 14 which is the Grievant's time sheet.

Mr. Thompson testified that on the day Grievant left she said: "Not like I'm going to shoot up the place".

On Cross-Examination Mr. Thompson testified that he supervises park maintenance. He said he called Lesley Fruchey, Grievant's supervisor because his supervisor was in a meeting.

Mr. Thompson has been here for one year. Mr. Thompson testified he saw the Grievant when she returned but had no conversation with her as he didn't want to cause problems.

The Employer's next witness was Lesley Fruchey. Ms. Fruchey has been the Financial Associate Supervisor since May 2015. She has been the Grievant's supervisor since May 2015. Ms. Fruchey says Mr. Thompson reports by E-Mail.

Ms. Fruchey testified she called the Grievant in and she arrived at 10 A.M. She then testified that Mr. Thompson left and returned at 12:45 to find the Grievant was gone. Ms. Fruchey reported the situation to her supervisor.

Ms. Fruchey then testified that the office atmosphere was very tense. Ms. Fruchey testified that after the merger of Parks and Watercraft some employees were unhappy and the Grievant wanted everything to stay the same. Ms. Fruchey said the Grievant continued to do the same basic job and others had more change. She said the Grievant resisted everything.

Ms. Fruchey testified she reviewed the time sheet rules in person and also by E-Mail. Employees were advised to keep accurate time. Ms. Fruchey read Tab D page 15 which is an E-Mail to all staff on October 12 about sign in - sign out procedure. She said Tab D page 14 is Grievant's time sheet.

Ms. Fruchey testified that she gave the Grievant the notice that she was placed on administrative leave. She said she read it to her and gave it to her. Ms. Fruchey testified the Grievant said: "Don't worry I won't shoot up the place".

She said she was shaken up by the comment.

On Cross-Examination Ms. Fruchey testified the Grievant was upset and crying when she got notice of administrative leave.

Ms. Fruchey said she supervises seven (7) employees which are in different offices. Ms. Fruchey testified she was here most of the summer and into the Fall of 2016 because of the office situation. When she was gone she got phone calls and E-Mails about Grievant's conduct.

Ms. Fruchey testified she got an E-mail that there was a camera in the Grievant's work space. Her supervisor told her to stay away.

Ms. Fruchey said she was copied on an E-Mail that went to the Director's Office. She testified that she did nothing.

Ms. Fruchey was referred to Tab E and read the definitions of acceptable behavior and inappropriate behavior. Ms. Fruchey was asked: "Is a camera over your desk without your knowledge going to impact productivity?" She said: "No". She said with knowledge of it, "Yes". Ms. Fruchey also testified that the Grievant's attitude was she was making herself a victim.

Ms. Fruchey said she asked the Grievant to find the paper work for a cash audit. The Grievant said she couldn't find it. Ms. Fruchey testified that she found it on top of a file. Ms. Fruchey said the Grievant made it clear she didn't like her.

Ms. Fruchey testified that the Grievant was not a good employee. Ms. Fruchey said the first year she came late to the job so she gave every employee a "meets expectations" on their performance evaluations. After that the Grievant got no good ratings and 2016 was all bad.

Ms Fruchey read Exhibit Union 1 which is Chad German's evaluation of Grievant from June 2013 to June 2014. She also read Exhibit Union 2 which is the Grievant's evaluation from January 2015 to December 2015.

Ms. Fruchey then read Exhibit Union 3 which is her evaluation of the Grievant from January 2016 to December 2016. Ms. Fruchey testified that every week negative things happened.

Ms. Fruchey testified that the Grievant walked off when she tried to talk with her. She said there was no counseling as Grievant walked off. Ms. Fruchey also testified the Grievant was disciplined for lack of competency. Ms. Fruchey said she did a Performance Improvement plan for the Grievant but cannot recall the details.

Ms. Fruchey said there was no conversation before the Grievant's comment about "shooting up the place". James and Andy were there. James is an officer.

On Re-Direct Ms. Fruchey said she had no involvement with the camera. Ms. Fruchey testified that the Grievant sent an E-Mail saying "there is a camera in my office". She said there was no camera footage used.

Ms. Fruchey testified that her performance evaluation of the Grievant Exhibit Union 3, was reviewed by the Director in March 2016. She said this was a draft.

The Employer's next witness was Captain James Frias. Captain Frias is in the Northwest District and has been in law enforcement twenty-three (23) years with ODNR.

Captain Frias was present to serve the Grievant with her Notice of Administrative Leave. Captain Frias testified the Grievant gathered her personal belongings and said: "Don't worry, I

won't shoot up the place". Captain Frias said this was not a good time to say this and it was not appropriate.

Captain Frias is an instructor and teaches officers and schools about Active Shooters.

On Cross-Examination Captain Frias says he is armed and has arrest powers. Captain Frias testified the Grievant was crying and he did not think she was a serious threat. He said the Grievant left and he did not do a report as he never knew her to be violent.

On Re-Direct Captain Frias testified that before the Grievant's comment it was stressful. Captain Frias testified he gave his supervisor notice of Grievant's comment and it was a very concerning statement.

The Employer's next witness was Richard Corbin. Mr. Corbin is the Deputy Chief of the Division of Parks and Watercraft. He was the investigator in this case. Mr. Corbin was a State Trooper for twenty-five (25) years. He also worked at the Office of Collective Bargaining and the Department of Jobs and Family Services and the Department of Agriculture. He has been at ODNR for several years.

Mr. Corbin testified there were a number of allegations concerning the Grievant. Mr. Corbin read Tab D page 4 which is his Investigation Report in Date Order. He said the Grievant falsified her time sheet.

Mr. Corbin further testified that discipline is based upon the case and removal was appropriate. He said the Grievant's behavior over time was bad. Mr. Corbin said: "People do shoot up the work place". Mr. Corbin testified he became aware of the camera afterwards.

On Cross-Examination Mr. Corbin said he has been with the State thirty-four (34) years. He read Tab A which is the Termination Letter. Mr. Corbin then read Tab E page 4 which is ODNR's Discipline Policy. Mr. Corbin testified that the penalties for Neglect of Duty range from a verbal reprimand to termination. Mr. Corbin testified that violations over a period of time and previous discipline leads to removal.

Mr. Corbin then read Tab E page 5 which is Failure of Good Behavior and page 1 which is Inappropriate Behavior. Mr. Corbin testified the Grievant wouldn't respond to anything and was a constant interruption in the work place.

The Employer's next witness was Scott Sharpe. Mr. Sharpe is the Assistant Chief of the Division of Wildlife. Mr. Sharpe was manager of thirteen (13) parks in this District.

Mr. Sharpe testified he was aware of the camera. He said he spoke to HR about the Grievant and it was an option to put a camera in the office. Mr. Sharpe testified that the intent was to observe the Grievant's activity on a day to day basis. Mr. Sharpe also testified that less drastic options were to do a time study by Grievant or monitor her computer activity. Mr. Sharpe also told Ms. Fruchey to spend more time with the Grievant. Law enforcement had installed the camera. Mr. Sharpe testified that after one (1) or two (2) days the camera was discovered by Chad German and the Grievant.

Mr. Sharpe then testified that management had tried lots of things with the Grievant but she disobeyed direct orders.

On Cross-Examination, Mr. Sharpe testified he let the officers in the building to install the cameras. Mr. Sharpe was asked about Employee Improvement plan and said it depends upon

the employee.

The Employer's last witness was Paula Staudinger. Ms. Staudinger is a Financial Associate and has been here twenty-three (23) years. Ms. Staudinger testified she works in the same building as the Grievant. She said before the merger she worked some with the Grievant but after the merger they did not work together.

Ms. Staudinger testified that in March 2016 she heard the Grievant talking about having a gun and was nervous around her after that. Ms. Staudinger was in the office when the Grievant was placed on administrative leave.

Ms. Staudinger testified that in June she was in Applebee's with her husband and daughter. The Grievant and her husband were there. She said the Grievant's husband stared at her. Ms. Staudinger testified that the husband said: "Paula how are you" and raised his arms in a threatening manner. She said her daughter was scared.

On Cross-Examination Ms. Staudinger said she is in the Union. She said she was part time for twenty-two years and is now full time.

Ms. Staudinger testified she reported by E-Mail about Grievant talking about having a gun. She did not file a safety report.

IV. THE UNION'S CASE

The Union's only witness was, the Grievant, Cynthia Pettit, the Grievant. The Grievant is a Financial Associate and has been here nineteen (19) years.

The Grievant testified that before the merger everyone got along. The Grievant said the problem started after the merger. The secretary retired and she was forced to do that job as well

as her own job. She said she never got an Employee Improvement Plan.

The Grievant testified that her office had a tile roof and the camera was over her desk. It looked like a pin drop in the tile. She testified they were talking about painting her office and Chad German saw the camera. The Grievant does not know how long the camera was there.

The Grievant testified that Roxanne got the ladder and Chad went up the ladder and saw the camera. The Grievant said she changes clothes in the office for after work events. The Grievant said employees were not to talk about the camera.

The Grievant testified she did not leave before 1 P.M. and returned at 1:30 P.M. which is half an hour for lunch. She said she had no conversation with the maintenance supervisor about her time.

The Grievant testified she was upset about the Administrative Leave Letter. She was shocked and crying. The Grievant said she was finished with the front office and started to the second office when Andy startled her. She said she saw James and was assuring him it wasn't going to happen. It was not a threat.

The Grievant testified she doesn't own a gun and never shot one. The Grievant said the Park Manager slammed the door in her face.

The Grievant testified she was at Applebee's first. She said Paula was staring at her. The Grievant says her husband just said: "Hi Paula".

The Grievant testified she lives in the area and usually has lunch with her parents.

The Grievant said Paula was unwilling to help and Lesley micro-managed her. She said Lesley and Paula spent time talking about personal matters.

The Grievant testified she competed with Paula for the full time position.

The Grievant said she had no support from management. She said she came in early one day. Scott told Lesley to write her up for it. The Grievant testified she was yelled and screamed at. She said this caused her to get medical treatment for anxiety and high blood pressure which she never had before. She takes Propranolol, Enderal, Duloxetine Hul ER 60 milligrams. The Grievant said she never had these problems before and said Exhibit Union 4 was her FMLA Notice.

The Grievant testified that the camera made it worse. She thought there was another cameras.

On Cross-Examination, the Grievant testified that Roxanne and German were there when the camera was found in October, 2016. She said she was removed for incidents in 2017.

The Grievant testified that she was aware that the full time process was reviewed by the Union.

The Grievant testified that she was written up for arriving early and this event started the investigation.

The Grievant testified she was aware of Paula's earlier statement and that's why she was reassuring James.

The hearing adjourned at 11:50 A.M.

The parties agreed to submit written closing arguments by January 23, 2018.

V. OPINION AND AWARD

The Employer says the Ohio Department of Natural Resources (ODNR) manages 74 State Parks spread throughout the state. The grievant, Cindy Pettit, was employed as a Financial Associate assigned to the ODNR Division of Parks and Watercrafts' Maumee Bay State Park. Ms. Pettit was removed from employment effective April 15, 2017 for "Failure to follow the written policies, procedures or directive of the Director/Division/Office and Failure of good behavior". OCSEA filed a grievance regarding the removal on April 19, 2017.

The Employer contends the decision to terminate the Grievant's employment was due to two specific infractions. The first occurred on February 17, 2017. Park Maintenance Supervisor, Andrew Thompson, testified at the Arbitration hearing that on that date he arrived at the park office at 12:45 P.M. and found a sign in the window stating the office was closed from 1:00 P.M. to 1:30 P.M. Finding this odd, Mr. Thompson looked at his cell phone to verify the time and then entered the building.

The Employer argues that inside he found that the Grievant had signed out, listing 1:00 P.M. as her departure time. Mr. Thompson recognized the discrepancy and promptly reported it to the Grievant's supervisor.

The Employer says OCSEA and ODNR stipulated in this matter that the grievant had active discipline (three-day working suspension) on record at the time that she was removed. In fact, she had active discipline on file related to time and attendance issues (failure to follow Policy).

The Employer argues, the Grievant's supervisor, Lesley Fruchey, testified to the fact that

she reminded all staff as recently as October 12, 2016 of the ODNR Work Schedules, Time & Attendance and Pay Policy. This policy states that employees are to maintain time-keeping records that comply with the Fair Labor Standards Act and “specific times of the day that the employee begins and ends work on any given day, including time which the employee must sign-in and sign-out for periods of non paid activities” i.e. unpaid lunch break. The Employer says on October 12 Ms. Fruchey E-Mailed all her staff, including the Grievant, a link to the policy and reminded them of the requirements of appropriately signing in/out of work. The Employer argues the Grievant had clear notice of the expectations in this matter.

The OCSEA advocate introduced three performance evaluations and the Employer argues that their relevance is unknown.

The Employer argues that the most recent evaluation (union Exhibit 3) captures the supervisor’s growing concern with both the Grievant’s work product and attitude in the office, noting her aversion to communication and taking direction.

The Employer says the second infraction committed by the Grievant was when she made the comment, “Don’t worry, I’m not going to shoot up the place”. The Employer says she stated that moments after being served notice that she was being placed on administrative leave for the duration of the ongoing administrative investigation.

The Employer argues there is no rationalization for a comment like this in the work place in even the best of times. The Employer further argues this was a moment in which an individual was being removed from the workplace due to allegations of misconduct.

The Employer points out that Captain Frias Testified that many times in his career he has been asked to be present as individuals were removed from the work place. He stated that these are always tense and unpredictable situations. The Employer contends this was a disgruntled employee who simply had to have the last word. The Employer says Captain Frias testified to his expertise in the areas of work place threats. Captain Frias does not only study this topic but he educates other ODNR employees and other members of the community on work place violence scenarios. The Employer points out Captain Frias said this was a very concerning matter and had to be taken seriously.

The Employer cites a Columbus Dispatch Article from a few weeks after the arbitration. The article sais that two federal government employees were murdered by a subordinate who was facing disciplinary action at work. The Employer argues that this is a recent example of why comments such as the Grievant's cannot be taken lightly and are not acceptable in the work place.

The Employer says the Grievant had recently served a three day suspension and then another investigation began after Mr. Thompson reported the February 17 lunch break sing-out issue.

The Employer argues that the Grievant's conduct and attitude continued to worsen until management could no longer afford to have her in the office, which is why she was placed on paid administrative leave. The Employer argues that refusing to go quietly, the Grievant had to have the last word. She had to defy and intimidate. ODNR has zero tolerance for that behavior.

The Employer argues that the Grievant's peer and co-worker, Paula Staudinger, testified that this was not the first time the Grievant made a reference to guns at work.

The Employer also argues that months after being removed, the Grievant and her husband continued to attempt to bully Ms. Staudinger and family, including a young child.

The Employer says the OCSEA stated numerous times throughout the arbitration that the Grievant was subject to harassment at the hand of management but the Employer argues they were unable to offer any evidence of said treatment.

The Employer says the OCSEA advocate stated that the ODNR appropriately video recorded the Grievant in her office. The Employer argues no camera was involved in any capacity in the investigation and subsequent removal is based off two infractions, both occurring in February of 2017. The Grievant testified to the fact that a former employee by the name of Roxanne Roth was present with her on the date that the Grievant discovered a camera in her office. The Employer argues that upon Cross-Examination, the Grievant acknowledged that Ms. Roth retired in November 2016.

The Employer argues that cameras are irrelevant to this topic. The Employer contends that the notion of a camera being involved in this matter is nothing but a smoke screen intended to detract attention from the Grievant's actions.

The Employer argues the totality of the circumstances involved in this matter show an employee who was unwilling to correct her behavior and was constantly defiant towards supervision. In the workplace change is inevitable.

The Employer argues the Grievant's disciplinary trail quickly progressed to the level wherein the only option left was to remove her from employment. The Grievant was issued a three day suspension on February 3, 2017. The Employer argues that approximately two weeks after that discipline was imposed, she again violated the Work Schedules, Time & Attendance and Pay Policy.

The Employer also argues as management investigated that infraction, the attitude and demeanor of the Grievant became progressively worse. The Employer contends the Grievant's behavior escalated to a point where operations were better served by removing the Grievant from the office. The Grievant was placed on paid administrative leave on February 28, 2017. The Employer argues the distractions produced by the Grievant dominated the work time and attention of Ms. Fruchey and Mr. Sharpe.

The Employer argues that by making the comment: "Don't worry, I'm not going to shoot up the place", the Grievant took managements concerns to a whole new level. OCSEA presented the comment as a frustrated person blowing off steam, or venting. The Employer argues that it sees it as a defiant employee with disdain for her work place or her co-workers.

The Employer argues the Grievant was removed for just cause.

The Union argues that the Employer's testimony was bogus and unjust. The Union says the alleged offenses are not commensurable with the imposed discipline of termination. The Union argues the Grievant approaching 20 years of dedicated service as a Financial Associate with ODNR was dismissed over infractions not withstanding her good work record or chance to improve communication with her Supervisor, Lesley Fruchey.

The Union argues the Grievant did not receive progressive discipline under Article 24 of the Collective Bargaining Agreement nor was she given an opportunity to correct any communication or work issues with her Employer.

The Union argues that its' exhibits show the Grievant had a very good work record with favorable performance evaluations until she received a new Supervisor, Lesley Fruchey. The Union argues that when the performance evaluations began to change managements solution was to secretly film the employee instead of establishing a constructive Performance Improvement Plan.

The Union argues that Financial Associate Supervisor, Lesley Fruchey, testified she did not think the Grievant was worthy of PIP. The Union also argues the Grievant was simply written off and targeted for dismissal almost immediately when Lesley Fruchey became her Supervisor in May 2015.

The Union says after the merger of the two ODNR Departments, Watercraft and Parks, the office became tense due to Fruchey's management style. The Management Team created a distrustful work environment and the integrity of the Management Team became questionable in the eyes of long term employee, Cindy Pettit.

The Grievant was asked to do two jobs and fulfill her duties as a part time 30 hour per week Financial Associate and perform the duties of the vacant full-time Front Desk Receptionist position. The Union argues the Grievant just wanted Management to be fair.

The Union also argues that the Grievant did not pose a threat to anyone at Maumee Bay State Park. Supervisor Fruchey and Police Captain, James Frias, both testified that when the

Grievant was told she was being terminated the Grievant became completely distraught, tearfully crying and uttering a weak, poorly chosen irrational remark telling the managers not to worry about her, she would not shoot up the place.

The Union argues that the Grievant did not present a serious threat to become violent and this was verified by the Police Captain's testimony indicating the Grievant was not a threat and he did not think it was necessary to write a report on the incident. The Union says when the Grievant was told to leave the premises she cooperated.

The Union argues the Police Captain was clear in his testimony that he did not believe the Grievant to be an active threat at that moment when the comments were made nor did he believe the Grievant ever was a threat at any time during her employment at Maumee Bay.

The Union contends that the grievant had a good reason not to trust management. Her intuitive feeling about being entrapped by the management team of bullies manifested into reality when the Grievant discovered a hidden camera above her desk. The Employer claimed they installed the camera to monitor the Grievant's work. The Union argues these deceptive methods of managing employees are unconstitutional and an invasion of privacy.

The Union then argues the alleged violation of ODNR Policy #DNR-OHR-0005 Work Schedules, Time and Attendance Records and Pay Policy stating the Grievant left her work area 15 minutes prior to signing out at 1:00 P.M. is simply the Grievant's word against Park Maintenance Supervisor, Andrew Thompson. The Union says the Employer would go to any length to create false allegations as reasons to discipline the Grievant.

The Union also argues that the alleged violation of ODNR Disciplinary Policy D (1) - Failure of good behavior is a matter of interpretation. The Union says it was clear to the Grievant that she was not favored by the newly merged Management Team and she knew they could not be trusted. It is not Unreasonable for the Grievant to desire Union representation when she was called in to speak with Management.

The Union also contends that other allegations of Failure of good behavior regarding the comment not to worry about her shooting up the place was dramatically taken out of context and not serious enough for the Police Captain to document the incident in writing or file a report.

The Union argues the Grievant was not a toxic force causing co-worker, Paula Staudinger, to walk on egg shells. The Union says the truth of the matter is that Lesley Fruchey's inability to manage the employees and ODNR management's tactics created a depressing, competitive work environment. Whereas, both women desperately waited close to 18 years at Maumee Bay before a 40 hour full time job became available.

Ms. Staudinger testified she was selected for full time employment over the Grievant about one year prior to the Grievant's termination. The Union says all of this placed stress on the Grievant and she had to seek medical care for depression and anxiety.

The Union says the Grievant dealt with management intimidation and bullying as best as she could. The Grievant became depressed and submitted an FMLA report based upon her doctor's recommendation. She is treating her illness with two major daily prescriptions, Propranolol (80 mg) and Duloxetine (60 mg).

The Union says Propranolol is a beta-blocker which affects the heart and circulation blood

flow through arteries and veins. It is used to treat her tremors, angina (chest pain), hypertension (high blood pressure), heart rhythm disorders, and other heart and circulatory conditions. It is also being used to treat and/or prevent heart attack, and to reduce the severity and frequency of her migraine headaches.

Duloxetine is a selective serotonin and norepinephrine reuptake inhibitor antidepressant. Duloxetine affects chemicals in the brain that may be unbalanced in people with depression. Duloxetine is being used to treat her major depressive disorder as well as her general anxiety disorders.

The Union argues the case is clear, the discipline was not progressive, the discipline was not for just cause and the discipline was not commensurate with the offense. The Union also argues no corrective measures were imposed to help the Grievant succeed in the newly merged division. The Union contends the Employer's motives are without a doubt lacking integrity especially since they resorted to such tactics as hidden cameras to address work concerns with the Grievant.

The Union says Scott Sharpe, Assistant Chief of Division of Wildlife and Supervisor, Lesley Fruchey, made the decision to have the secret camera installed in the Grievant's private office. Sharpe's testimony was that his motive was to figure out the employee's duties. He admitted that less drastic options by the Employer could have been used.

Richard Corbin, Deputy Chief of Parks and Watercraft Investigator, has extensive labor relations experience and recommends the level of discipline for employees.

The Union argues that certainly a more progressive level of discipline could have been

imposed, giving the Grievant a chance to correct any problems at work. He was aware that the camera was installed to watch the Grievant work. The Union argues that no camera footage was shown because there is no evidence that the Grievant did not satisfactorily perform her work. The only thing camera footage would have shown would be to expose the Employer of invasion of privacy by secretly filming the employee at work doing her job and then at the end of her shift, changing her work clothes into exercise aerobic apparel.

The Union argues that termination was not the only way to deal with the Employer's inability to communicate effectively with the Grievant. The Union further argues that dismissal and lack of a Performance Improvement Plan were punitive, not corrective nor progressive measures to enhance work performance. The Grievant should have a second chance because she was terminated without just cause.

The Union ask that the grievance be sustained and the Grievant be made whole in every way.

The Arbitrator has reviewed the testimony of the witnesses, the exhibits and the closing arguments of the Advocates. The Advocates have done a fine job in presenting the positions of their respective parties.

The parties have stipulated that the Grievant had active discipline on her record at the time of her removal. The first infraction occurred on February 17, 2017 with the time sheet discrepancy. Mr. Thompson discovered the discrepancy and reported it. The Union argues that this is merely Mr. Thompson's word against the Grievant's and is part of the Employer's scheme against the Grievant. The Union has no evidence to support this allegation.

The Employer's evidence is clear that all staff were reminded of the time keeping policy October 12, 2016.

The Union has argued that the Grievant had good performance evaluations until she received a new supervisor, Lesley Fruchey, and the Management Team "became questionable in the eyes of the Grievant".

The problem for the Grievant is that the Employer has the right to manage the business. Two of the basic rules of the workplace are: an employee must obey a lawful order and work first, then grieve.

The evidence is clear that the Grievant was upset and resentful about the merger. Contrary to the Union's assertion, the Grievant was a toxic force in the work place.

The parties dispute the significance of the camera. The evidence is clear that there was a camera but there the evidence stops. The Arbitrator cannot speculate as to what the camera might have recorded as no such exhibit was placed in evidence.

The Union has argued that the Grievant's comment: "she would not shoot up the place" was not a serious threat. The evidence is that Captain Frias did not file a report. The problem for the Grievant is that others viewed it as a threat.

The discipline is for just cause and is progressive.

The grievance is denied.

Issued at Ironton, Ohio this 19th day of February, 2018.

Craig A. Allen
Craig A. Allen
Arbitrator