

#1217
Rec'd 4/21/2023

Thomas J. Nowel, NAA
Arbitrator, Mediator, Fact Finder
Lakewood, Ohio

IN ARBITRATION PROCEEDINGS PURSUANT TO
AGREEMENT OF THE PARTIES

Arbitration Proceedings Between:)	OCSEA/ARB/
)	Schwendeman/
State of Ohio Department of Rehabilitation and)	DRC-2022-05896-
Correction. Noble Correctional Institution)	09/Removal
)	
and)	ARBITRATION
)	OPINION AND
Ohio Civil Service Employees Association,)	AWARD
AFSCME Local 11)	
)	DATE:
Re: Grievance No. DRC-2022-05896-09)	April 21, 2023
Schwendeman Removal.)	

APPEARANCES:

Tim Watson, Staff Representative, for OCSEA, AFSCME Local 11: James Adkins, Labor Relations Officer 3, for the Ohio Department of Rehabilitation and Correction and Victor Dandridge for the Office of Collective Bargaining.

INTRODUCTION

This arbitration arises pursuant to a collective bargaining agreement between the State of Ohio and the Ohio Civil Service Employees Association, AFSCME Local 11. The Union represents various classifications across a number of State of Ohio Departments and Agencies including the Department of Rehabilitation and Correction. The Grievant, who is the subject of this matter, was employed at the Noble Correctional Institution in southern, Ohio, approximately 25 miles north of Marietta, Ohio. The Grievant, Bradley Schwendeman, was terminated from his position of Storekeeper 2 at Noble Correction Institution on August 19, 2022. The Union appealed the termination by way of Grievance No. DRC-2022-05896-09. The grievance was denied by the Employer, and the Union appealed the termination to arbitration.

The arbitrator was selected to hear the arbitration pursuant to Article 25 of the collective bargaining agreement. The arbitration hearing was conducted in the administrative offices at Noble Correctional Institution on March 7, 2023. Each party had full opportunity to present their cases including witness testimony, video review and exhibits. Post hearing briefs were submitted, and the record of hearing was closed on April 7, 2023. The arbitrator indicated that the award would be rendered no later than May 10, 2023. On April 12, 2023, the arbitrator requested a transcript of the audio recordings which were taken during the investigative interviews. The thumb drive, which contained the audio of the interviews, would not operate or download on two of the arbitrator's computers. The thumb drive and audio of the interviews had been identified as a joint exhibit by the parties. The Employer provided audio downloads by way of email with agreement of the Union. The arbitrator was then able to download the audio of the interviews.

WITNESSES

TESTIFYING FOR THE EMPLOYER:

Jay Forshey, Warden
Jared McGilton, Investigator
Jajuon Poindexter, Inmate
George Cooper, Inmate
Christopher Lewis, Inmate
Jordan Husk, Inmate
Mark Ray, Inmate
Timothy Pitchford, Inmate
Brenda Hughes, Storekeeper 2

TESTIFYING FOR THE UNION:

Bradley Schwendeman, Grievant

RELEVANT PROVISIONS OF THE AGREEMENT

Article 24 – Discipline

24.01 – Standard

Disciplinary action shall not be imposed upon an employee except for just cause. The Employer has the burden of proof to establish just cause for any disciplinary action. In cases involving termination, if the arbitrator finds there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have authority to modify the termination of an employee committing such abuse. Abuse cases which are processed through the Arbitration step of Article 25 shall be heard by an arbitrator selected from the separate panel of abuse case arbitrators established pursuant to Section 25.05. Employees of the Lottery Commission shall be governed by ORC Section 3770.21.

24.02 – Progressive Discipline

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

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

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

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

d. Termination

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

The deduction of fines from an employee's wages shall not require the employee's authorization for withholding of fines.

If a bargaining unit employee receives discipline which includes lost wages, the Employer may offer the following forms of corrective action:

1. Actually having the employee serve the designated number of days suspended without pay.
2. Having the employee deplete his/her accrued personal leave, vacation, or compensatory leave banks of hours, or a combination of any of these banks under such terms as may be mutually agreed to between the Employer, employee, and the Union.

24.07 – Imposition of Discipline

The Agency head or designated Deputy Director or equivalent shall make a final decision on the recommended Disciplinary action as soon as reasonably possible after the conclusion of the pre-disciplinary meeting. The decision on the recommended disciplinary action shall be delivered to the employee, if available, and the Union in writing within sixty (60) days of the date of the pre-disciplinary meeting, which date shall be mandatory. It is the intent to deliver the decision to both the employee and the Union within the sixty (60) day timeframe; however, the showing of delivery to either the employee or the Union shall satisfy the Employer's procedural obligation. At the discretion of the Employer, the sixty (60) day requirement will not apply in cases where a criminal investigation may occur and the Employer decides not to make a decision on the discipline until after disposition of the criminal charges.

The employee and/or Union representative may submit a written presentation to the Agency Head or Acting Agency Head.

If a final decision is made to impose any discipline, including oral and written reprimands, the employee, if available, and Union shall be notified in writing. The OCSEA Chapter President shall notify the Agency Head in writing of the name and address of the Union representative to

receive such notice. Once the employee has received written notification of the final decision to impose discipline, the disciplinary action shall not be increased. Disciplinary measures imposed shall be reasonable and commensurate with the offense and shall not be used solely for punishment.

ISSUE

The parties stipulated to the following issue before the arbitrator. "Was the Grievant, Bradley Schwendeman, removed for just cause? If not, what shall the remedy be?"

JOINT STIPULATIONS

1. The grievance is properly before the Arbitrator.
2. The Grievant was hired on March 8, 1999.
3. The Grievant had the following discipline on his record prior to Removal.
Written Reprimand; Rule 8; May 11, 2021
4. The Grievant received the Standards of Employee Conduct.
5. The Grievant was issued a Removal on August 19, 2022.
6. The Removal was issued for a violation of the following work rules:
 - Rule 12: Making obscene gestures or statements, or false, abusive, or inappropriate statements.
 - Rule 24: Interfering with, failing to cooperate in, or lying in an official investigation or inquiry.
 - Rule 36: Any act or failure to act that could harm the employee, fellow employee(s) or a member of the general public.
 - Rule 50: Any violation of ORC 124.34. . . and for incompetency, inefficiency, unsatisfactory performance, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of such sections or the rules of the Director of Administrative Services or the commission, or any

failure of good behavior, or any other acts of misfeasance, malfeasance, or nonfeasance in office.

7. Alleged violation of Article 24 of the Collective Bargaining Agreement between the State of Ohio and The Ohio Civil Service Employees Association.

GRIEVANCE

Statement of Grievance: On August 19, 2022 Mr. Schwendeman was removed of his position as a store keeper 2. For violating the following rules of the employee code of conduct 12A 24 36 & 50.

Resolution Requested: To be made whole.

BACKGROUND

The Grievant, Bradley Schwendeman, had been employed by the Ohio Department of Correction and Rehabilitation for over 23 years at the time of his termination. He was hired by the Department on March 8, 1999. At the time of his termination, the Grievant was classified as a Storekeeper 2, and he served at Noble Correctional Institution in southern, Ohio. His personnel record included one written reprimand.

On June 14, 2022, Inmate Jones was directed to retrieve spray pumps from the vault located in the facility's commissary. When he arrived at the commissary, he contacted Brenda Hughes, a Storekeeper 2. Ms. Hughes entered the vault first followed by Inmate Jones. Inmate Jones was holding the door, but he released it as the spray pumps were located behind the door. The door closed and automatically locked leaving both the Inmate and Ms. Hughes locked in the vault. The vault contains various supplies and is not a particularly large room. Ms.

Hughes attempted to unlock the door, but keys in her possession did not work. Ms. Hughes was in possession of a “man down” application, but she did not utilize it.

In the past, Ms. Hughes had served as a Correction Officer at the prison. She was attacked by an inmate and suffered significantly from the trauma of the incident which led her to move into a Storekeeper position. The Grievant was aware of this history and incident. Ms. Hughes began to panic as she was locked in the vault with an inmate. She began to pound on the door and kicked it in an attempt to draw attention to the fact that the vault door had closed and locked.

During this time, the Grievant was seated in the commissary scanning various items and products to be distributed to inmates for purchase. The vault was in close proximity to the area in which the Grievant was scanning, and inmates were working on the distribution process. It is noted that the arbitrator visited the commissary and the vault on the day of the hearing.

The Employer states that a number of inmates approached the Grievant and told him that Ms. Hughes was locked in the vault, and she was pounding on the door in attempt to attract his attention to open the door. Video of the Grievant and his work area illustrate that the Grievant was laughing and smiling during the time Ms. Hughes was in the vault. The Employer claims that the Grievant was aware that Ms. Hughes and Inmate Jones were locked in the vault, but he failed to take action to open the door for a period of time.

Ms. Hughes and Inmate Jones entered the vault at 8:15:25 am. The Grievant looked at the vault when they entered. The door closed and locked at 8:15:37 am. The Grievant spoke with Inmate Poindexter, laughed and continued scanning various items. The Grievant continued to speak with a number of inmates working in the commissary. At 8:19:49, Inmate

Lewis spoke with the Grievant who stopped scanning and walked toward the vault. He is seen opening the vault door at 8:20:03, and Ms. Hughes left the vault at 8:20:20.¹ Ms. Hughes and Inmate Jones were locked in the vault for over four minutes.

Ms. Hughes was traumatized and went to a restroom in an attempt to overcome her stress. She approached the Union chapter president at the end of the workday who advised her to think about what action, if any, she may wish to take. The following day, she filed an Incident Report with management. Warden Jay Forshey came into possession of the Incident Report on June 15, 2022, and he assigned Institution Investigator Jared McGilton to conduct an investigation. Mr. McGilton viewed the video tape of the commissary work area which showed the incident. He interviewed Ms. Hughes, a number of inmates who were working in the commissary at the time, the Grievant and others. He conducted investigatory interviews with some inmates on two occasions.

The Grievant was placed on administrative leave, and he received notice of a pre-disciplinary meeting on July 20, 2022. The hearing was conducted on July 25, 2022. Investigator McGilton had completed the investigatory interviews at this point. The Grievant was charged with violations of Rule 12; Rule 24; Rule 36; and Rule 50.² The hearing officer determined that there was just cause for discipline in that the Grievant was aware that Ms. Hughes was locked in the vault with an inmate, which posed the possibility of a serious threat to her safety, and that he refused to come to her aid and unlock the door. Instead, he laughed about the incident and ignored the inmates who told him that Ms. Hughes required his

¹ Based on video of the commissary area.

² See Joint Stipulation No. 6 for description of rule violations.

immediate assistance. The Grievant received notice of termination of employment effective August 19, 2022, signed by Warden Forshey.

The Union grieved the termination on August 19, 2022. A grievance meeting was conducted on September 7, 2022, and the grievance was denied on September 14, 2022. The Union appealed the matter to arbitration following the exhaustion of the grievance process. The arbitration hearing was conducted on March 7, 2023 at the Noble Correctional Institution.

POSITION OF THE EMPLOYER

The Employer states that Inmate Jones accidentally closed the door as he and Ms. Hughes entered the vault. The door automatically locked. Ms. Hughes attempted to unlock the door, but her keys did not work. She became frantic and banged on and kicked the door and screamed in order to attract the Grievant's attention who was seated not far from the vault. The Grievant intentionally left her in the vault with the inmate for over four minutes. The Employer states that the Grievant's failure to open the door placed the safety and life of Ms. Hughes in jeopardy. The Warden testified that he can no longer trust the Grievant to assist a co-worker who is in danger.

The Warden testified that the Grievant's relationship with inmates is extremely friendly, and, due to this, the Grievant had become dangerously complacent. The Employer has emphasized the excessively friendly relationship with inmates as being unprofessional and not what is expected in a correctional facility and environment. Inmates referred to the Grievant by his first name, Brad. The Grievant had been issued a written reprimand for allowing inmates to shop at the commissary without authorization. The Grievant also allowed inmates to steal and

consume commissary products. The Grievant's employment could have been terminated at the time, but the Warden gave him a second chance.

The Employer cites the Standards of Employee Conduct which specifically requires employees to respond to situations which jeopardize the safety and security of the institution as well as the lives of staff members. Inmate Poindexter notified the Grievant that Ms. Hughes was locked in the vault. The Grievant denied knowing that Ms. Hughes was locked in the vault during his first interview with Investigator McGilton. This was a dishonest response and was the first lie the Grievant told. The Grievant was not cooperating with the investigation by giving incomplete and evasive responses to questioning. Video showed the Grievant turn and observe Ms. Hughes enter the vault although he denied that he saw her during the investigation. He also denied stating that Ms. Hughes had keys to the vault door. This was another untruthful statement.

Inmate Poindexter notified the Grievant a second time that Ms. Hughes was locked in the vault and was pounding on the door. The Grievant smiled and took no action to unlock the door to the vault. The Employer states that Inmate Poindexter notified Inmate Lewis that Ms. Hughes and an inmate were locked in the vault and that Ms. Hughes was pounding and kicking the door in an attempt to have it opened to let them out. Inmate Lewis approached the Grievant and told him of the situation. The Grievant finally walked to the vault and opened the door. Over four minutes had transpired during which time Ms. Hughes screamed and pounded on the door to alert the Grievant she required assistance. Inmate Husk was working next to the Grievant and confirmed that Inmate Poindexter informed the Grievant twice that Ms. Hughes was locked in the vault. Inmate Pitchford also confirmed that Inmate Poindexter notified the

Grievant twice regarding the situation. Inmate Cooper was interviewed by the Employer and stated that he also notified the Grievant that Ms. Hughes was locked in the vault. The Grievant, during his interview, stated that he did not recall having a conversation with Inmate Cooper. The Employer asserts that this was another false statement. Inmate Ray stated, during his interview, that he was standing next to the Grievant and that everyone in the area could hear Ms. Hughes pounding on the vault door. The Union's chapter president stated that, when he met her at the end of the day, he thought she was going to have a meltdown.

The Employer states that Investigator McGilton testified that Ms. Hughes and Inmate Jones were in the vault for over four minutes and that it only takes a few seconds for an inmate to murder an employee. There are a number of unfortunate examples of such incidents. The Employer states again that inmates should not address employees by their first names. It is clear that the Grievant's relationship with inmates was too close, inappropriate and personal.

The Employer states that Inmates Poindexter, Husk, Pitchford, Cooper, Lewis and Ray all testified, during the arbitration hearing, that the narratives of the incident and their involvement were a true account of their interviews. Their statements went unchallenged by the Union on cross examination.

The Employer reminds the arbitrator of the trauma Ms. Hughes experienced in the past when attacked by an inmate. The Grievant was aware of the incident but left her in the vault with an inmate in any event. Ms. Hughes, while locked in the vault, heard Inmate Poindexter tell the Grievant that she was locked in the vault with an inmate and was unable to open the door. She heard the Grievant laugh. When the Grievant finally left his station, he only opened the door a few inches and peeked inside. The Employer states that she feared for her life while

locked in the vault with the inmate. Inmate Jones, who was locked in the vault with Ms. Hughes also heard inmates notifying the Grievant that they were accidentally locked in the vault. The Employer argues that the responses of the Grievant, following the incident, were completely dishonest. The Employer points out that Ms. Hughes was not familiar with Inmate Jones and was, therefore, not aware of his character or reason for incarceration.

The relationship the Grievant established with inmates has caused him to lose all sense of safety and security with his co-workers. The Grievant 's failure to act could have resulted in the death or injury of Ms. Hughes. He has shown no remorse for his actions, and he has impaired the employee-employer relationship. The Grievant was dishonest throughout the investigation and during the arbitration hearing. The Employer argues that there was just cause for the termination of the Grievant's employment. The arbitrator should deny the grievance in its entirety.

POSITION OF THE UNION

The Union states first that Ms. Hughes was aware that Inmate Jones was a Level 1 inmate, the least restrictive, due to the manner in which he was dressed. As a Level 1 offender, the Inmate was deemed to be safe and trustworthy. Further, he stepped aside into a corner, away from Ms. Hughes, when the door locked behind them. Ms. Hughes was aware that she had a key to unlock the vault door from the inside. She had signed for it on April 5, 2022.

During the arbitration hearing, Investigator McGilton read the interview narratives from the various Inmates, who had been interviewed, into the record. Then the inmates entered the hearing room and testified briefly that the narratives were an accurate reflection of their

statements made during the investigative interviews. The Union states that the printed narratives were not transcripts of the actual interviews. The Union states that the written narratives do not necessarily reflect what was stated during the interviews. The Union argues that the Investigator posed leading statements and questions in order to gain the responses he desired. The Investigator threatened certain inmates, who were interviewed, with lock up. The Union argues further that two interviewed inmates were sent to lock-up when their responses did not reflect exactly what the video depicted. When released from lock-up, "in the hole," two inmates gave the investigator the responses he desired. The Union states that, with any questioning during an investigation of this nature, the individual should give an account of what they may have remembered. Further, the narratives presented at arbitration include only the investigator's perception of what the various inmates stated during the interviews.

Inmate Bones was interviewed twice. The narrative indicates that he was aware that Ms. Hughes was locked in the vault and needed assistance. But during his initial interview, he stated that he had not heard anything. He was placed in "the hole" and then changed his story following the incarceration. The Union states that Inmate Bones spent 20 days in "the hole," but his responses were clear that he did not hear other inmates state to the Grievant that Ms. Hughes was locked in the vault.

The Union states that the narrative of the investigative interview of Inmate Cooper does not reflect exactly his actual responses. When Inmate Cooper attempted to make response to a question, the Investigator spoke over him not allowing him to complete his response. The Investigator's narrative states that Inmate Cooper heard the pounding on the vault door, but the actual response during the interview indicates that he did not hear Ms. Hughes in the vault.

When Inmate Husk was interviewed by the investigator, he was threatened with placement in “the hole” if he lied or played games. He was threatened a second time as he responded to questioning by the Investigator. The Union also challenges the narrative from the interview of Inmate Poindexter. The Inmate never stated, during the interview, that Ms. Hughes began yelling and pounding louder although this statement appears in the Employer’s narrative.

The Union argues that the Employer has not provided proof that the Grievant violated Department policy. He acted immediately when he became aware that Ms. Hughes was unable to exit from the vault. He also knew that she possessed keys to the inside of the vault door. The Grievant was aware that Ms. Hughes possessed a man down application, and she did not utilize it. The Union states that Ms. Hughes wished to blame the Grievant for her failure to open the door. She testified that Inmate Jones was not a threat. She was angry and embarrassed. She never referenced any flashbacks to the incident she experienced as a Correction Officer. She did not seek professional assistance and waited until the following day to mention the incident to supervision.

The Grievant never believed that Ms. Hughes was in any danger. He believed she was in the vault to prepare for a scheduled inventory audit. The Grievant never made obscene gestures based on Rule 12 A which alleged violation was added following the pre-disciplinary hearing, and he never gave false statements. The Union states that the Grievant received good performance evaluations during his 23 ½ years of employment. There was no evidence to indicate that he had issues or problems with co-workers. The Union states that the Grievant

did not believe that Ms. Hughes may have been in any danger since she possessed both the inside door key and man down warning device.

The Union states that the Employer never demonstrated that the Grievant heard Ms. Hughes banging on the vault door. The inmates testified that it is noisy in the commissary as there are three operating radios and people consistently moving around and walking through the area.

The Grievant has good performance evaluations. His 23 ½ years of good performance were not considered when the Employer terminated the Grievant. The Grievant was terminated immediately, and, if the Employer believed he violated Department policy, a lesser disciplinary penalty was not considered. The Grievant has never had issues or been accused of not assisting co-workers.

The Union states that the Employer, as part of the discipline imposed on the Grievant, alleges that the Grievant has established a relationship with inmates in the commissary which is in violation with protocol as they call him by his first name, Brad. A number of inmates, who were interviewed by the Employer, stated that they have a difficult time saying his last name. The Union states that the Grievant works closely with his supervisor. She had been aware that inmates called him by his first name and never corrected it. It was never addressed in the Grievant's performance evaluations. There was no evidence produced at the arbitration hearing that this was not permitted or that use of first name by an employee was a violation of policy.

The Union requests that the arbitrator sustain its grievance in behalf of Grievant Schwendeman. This includes reinstatement of the Grievant to his position of Storekeeper 2 at

Noble Correctional Institution and that the termination be removed from his personnel record. The Grievant should be paid for all lost wages including overtime opportunities and the restoration of all leave balances. The Union requests that the Grievant have the ability of buy back leave balances which were cashed out at the time of the termination and a restoration of seniority. The Union asks further for payment of medical expenses which may have been incurred since the termination in addition to retirement contributions and lost Union dues. The Union states that the Grievant should be returned to his shift and post and that he be made whole.

ANALYSIS AND OPINION

The Employer has charged the Grievant with being too friendly with inmates with whom he works in the commissary. The Employer indicated this factor during the hearing and emphasized it in its post hearing brief. It is noted that the Grievant was not specifically charged with being on overly friendly terms with inmates. During the investigative interviews of the inmates, who were in the commissary at the time Ms. Hughes and Inmate Jones were locked in the vault, the Investigator makes reference to the overly friendly relationship between the Grievant and inmates as they called him by his first name, Brad, as opposed to Mr. Schwendeman. One or two of the inmates responded that the Grievant's last name was difficult to pronounce. Another stated that he had been introduced to the Grievant as Brad. The Employer argues the level of familiarity allowed by the Grievant in his relationship with the inmates working in the commissary violated protocol and professionalism. The Grievant was not terminated specifically for this alleged lapse in appropriate protocol. Furthermore, the

Grievant was never counseled by the Employer regarding this matter, and performance evaluations did not reflect an excessive familiarity with inmates and their use of his first name as being a negative aspect of his behavior and performance. And perhaps the Grievant's last name was not easy to pronounce by the co-worker inmates in the commissary. This aspect of the Employer' case is therefore deemed to not be relevant.

The Union has argued that the investigation of the incident was not conducted in a fair manner. The Union suggests that the written narratives, as composed by Inspector McGilton, did not accurately reflect what was stated by those inmates who were interviewed by him. The narratives were presented as joint exhibits. They were composed by Inspector McGilton. They were not transcripts of the actual responses from the investigative interviews. They were, therefore, somewhat subjective. The arbitrator was provided with a thumb drive which contained the audio recordings of the interviews of the inmates. The arbitrator was unable to download the recordings, and, by agreement of the parties, he was provided with the recordings in a format which was attached to individual emails. This allowed the arbitrator to listen to fifteen individual interviews conducted by the Investigator. The Union's claim, that the narratives do not accurately reflect actual responses from those who were interviewed, has limited merit. In some cases, the Investigator utilized leading questions. But the more problematic aspect were the threats made to inmates who did not provide responses expected by the Investigator.

The Union argues that threats were made during the interviews that inmates would be placed in solitary ("the hole"). Inmate Bones was working near the Grievant when Ms. Hughes and Inmate Jones were accidentally locked in the vault. During his interview, his responses were

vague, and he indicated that he generally did not hear what had taken place. He was subjectively asked what he thought were the Grievant's perceptions. The Investigator determined that he was not forthcoming during the interview, and he was placed in solitary for approximately 20 days as the Union has indicated. When he was released, Inmate Bones was interviewed again, and his responses were considered satisfactory. On June 30, 2022, Inmate Bones stated to the Rules Infraction Board "I never lied because I told him both days that I did not know anything."

Inmate Lewis, who had been working in the back of the commissary, was interviewed on June 15 and again on June 16, 2022. The Investigator believed that the Inmate's responses during the second interview did not match his statements during the first interview. The Investigator charged the Inmate with lying. Inmate Lewis was placed in solitary for an undetermined period of time.

Inmate Pitchford was interviewed by the Investigator. There were questions regarding the use of the Grievant's first name and a suggestion by the Investigator that he had a special relationship with the Grievant which was somewhat threatening. This is an interview in which leading questions were posed to the Inmate.

Inmate Husk was interviewed by the Investigator. He had been working next to the Grievant during the incident. He stated during the interview that he did not hear Inmate Poindexter make a statement to the Grievant regarding Ms. Hughes being locked in the vault. The Investigator stated to the Inmate that he was "not in trouble yet" that he had better tell the truth. He stated to Inmate Husk that he was lying and insinuated that the Grievant

provided him with special favors. As the Union has suggested, the Investigator attempted to put words in the mouth of Inmate Husk.

At the end of each interview, the Investigator stated to each inmate that they were not to discuss the interview and responses with other inmates. But in a closed society such as a state correctional institution, word travels fast. The placing of the two inmates in solitary certainly became common knowledge which impacted the inmate interview process. The interviews regarding what the Grievant did or did not do when Ms. Hughes and Inmate Jones were locked in the vault are not issues of a criminal matter nor specific violations of prison conduct. The interviews concerned an employee personnel matter pursuant to rules promulgated as guidelines for correctional facility staff and also in conjunction with the collective bargaining agreement. Placing inmates in “the hole” after not obtaining hoped for responses on the part of the Investigator regarding an employee personnel matter is problematic as was the making of threats to interviewees during the investigation. Inmates are not free to walk away at the end of the day. They are incarcerated. Their rights are limited. There is pressure to behave in a certain manner otherwise privileges may be lost as well as desirable work assignments such as staffing and administering the commissary. The approach of the Investigator had a chilling effect on the investigative process. The credibility of inmate testimony is oftentimes open to question, as experienced by this arbitrator, in cases involving discipline or termination of a correctional facility employee. Responses to interviews and testimony from inmates must be weighed carefully. The threats and punishment meted out in this case have tainted the Employer’s investigation. Except for Ms. Hughes’ testimony, all other Employer witnesses were inmates. Inmates Poindexter, Cooper, Lewis, Husk, Ray and Pitchford

testified during the arbitration hearing that they stood by the narratives of their investigative interviews which were composed by the Investigator. They did not testify further, and none of the inmate witnesses testified regarding conversations they may have had with the Grievant regarding Ms. Hughes and Inmate Jones being locked in the vault.

During the arbitration hearing, the arbitrator toured the commissary and stepped into the vault. He observed the seat the Grievant occupied during the incident while he scanned items to be purchased by inmates. The distance between the scanning area and vault is fairly short. Video evidence suggests that the Grievant should have been able to observe Ms. Hughes and Inmate Jones enter the vault, but he was busy scanning items, and evidence suggests that the Grievant may not have initially noticed the door close to the vault. Regardless of the tainted approach to the investigative interviews, evidence indicates that Inmate Poindexter notified the Grievant that Ms. Hughes and Inmate Jones were locked in the vault and that Ms. Hughes was knocking on the door in an effort to alert those outside the room that she required assistance. Inmate Poindexter indicated, during his interview, that the Grievant did not take the issue in a serious manner. Inmate Poindexter then notified the Grievant a second time. The Grievant took no immediate action. Video evidence supports Inmate Poindexter's account as provided during his investigative interview.

Information obtained from Inmate Jones during the interview was credible. He had entered the vault and was holding the door open. When he reached for the spray bottles, which were located behind the door, he released the door which closed and automatically locked. Inmate Jones realized the potential concern of an employee and inmate being locked together in a small room. He appropriately moved to a corner of the room away from Ms.

Hughes. During his investigative interview, Inmate Jones stated that he could hear individuals outside the vault stating that he and Ms. Hughes were locked in the vault. He could hear the scanner operated by the Grievant. Inmate Jones stated during his interview that, when the Grievant opened the door, he was laughing.

Ms. Brenda Hughes testified during the arbitration hearing. She confirmed that the Incident Report, which she composed the day following the incident, was accurate. When the door to the vault accidentally closed, she attempted to open it with keys she had been issued, but she was unable to open the door. She then began to shout and kick the door in an attempt to notify the Grievant that his assistance was needed to open the vault. Evidence indicates that she heard Inmate Poindexter state to the Grievant that she was locked in the vault. She heard the Grievant laugh and continue scanning. She stated that, after a period of time, the Grievant finally opened the door, just a crack at first, and was laughing. Ms. Hughes testified that being locked in the vault with an inmate was frightening. She testified that she had flashbacks to the time she was physically attacked by an inmate.

There is a preponderance of evidence that the Grievant was aware that Ms. Hughes was locked in the vault with Inmate Jones and that he failed to act when notified, in violation of policy. This is based particularly on the investigative interviews of Inmates Jones and Poindexter and statements and testimony of Ms. Hughes. There is a dichotomy of obtained evidence. The investigation was tainted based on the heavy handed approach of threats, leading questioning and the actual placing of two inmates in isolation when responses were not what the Investigator wished to hear. But on the other hand, there is sufficient evidence to indicate that the Grievant knew his co-worker and an inmate were locked in the vault for

approximately four minutes. Enough time for the safety of Ms. Hughes to be jeopardized. The Grievant knew the appropriate response but failed to act. Instead he displayed sophomoric behavior as if engaging in a prank.

The Employer has charged the Grievant with dishonesty based on his responses to his investigative interviews. The Grievant's responses were vague and confusing as illustrated in the narrative produced by the Investigator. The arbitrator did not receive the recording of the Grievant's investigative interview in order to compare it to the narrative. The narrative states that he defended his lack of response "by stating Mrs. Hughes had keys that would open the vault, so he didn't think he needed to help her." The Grievant testified under oath during the arbitration hearing that he did not, at first, realize that Ms. Hughes and the Inmate were trapped in the vault. He testified that he did not hear her knocking on the door. The Grievant challenged portions of the narrative of his interview with the Investigator. Although the Grievant's responses during the interview were vague, there is insufficient evidence to conclude that he was intentionally dishonest during the interview process.

The Grievant has been employed by the Department for nearly 23 ½ years. His personnel record indicates that the record of discipline is limited to a written reprimand. The Employer argued that the previous violation could have resulted in termination of employment. Nevertheless, the record speaks for itself. A written reprimand is a written reprimand and was the only discipline in the Grievant's record. The Union submitted two years' worth of performance evaluations. The form is lengthy and covers many aspects of the Grievant's employment and responsibilities. Every entry indicated that the Grievant either meets or exceeds expectations. A statement in the 2022 evaluation is as follows. "Brad meets in this

area. He continues to display a professional and courteous demeanor when interacting with staff, Inmates and public.”

The failure to release Ms. Hughes and Inmate Jones from the vault in a timely manner was a serious violation of policy, but the Employer failed to consider the many years of productive service to the Department by the Grievant and recent performance evaluations when the decision was made to discipline the Grievant. The termination of the Grievant’s employment was, therefore, not for just cause. There is inconclusive evidence that the Grievant violated Rule 12 (A) or Rule 24. Rule 50 is a catch-all statement taken from the personnel portion of the Ohio Revised Code, Section 124. The Grievant clearly violated Rule 36 when he failed to release Ms. Hughes and Inmate Jones from the locked vault in a timely manner. He did not know of the character and background of Inmate Jones. Ms. Hughes safety could have been jeopardized. The Department’s Disciplinary Grid allows for a 2 day suspension up to Removal for a Rule 36 violation. It is determined that the Grievant, based on his 23 ½ years of satisfactory performance, is reinstated to the position of Storekeeper 2 at Noble Correctional Institution but with no back pay. It is emphasized that the failure to release Ms. Hughes and the Inmate from the vault immediately upon knowledge of their predicament was a serious violation of Rule 36.

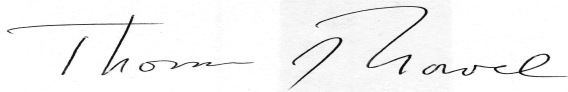
AWARD

The termination of the Grievant’s employment was not for just cause. The Grievant, nevertheless, violated Rule 36 when he failed to release Ms. Hughes and Inmate Jones from the

vault in a timely manner. Given the circumstances, this was an egregious violation as the safety and health of the Grievant's co-worker could have been jeopardized. The grievance of the Union is granted in part and denied in part. The termination is modified to reinstatement with no back pay pursuant to the just cause principle as contained in Article 24 of the collective bargaining agreement between the parties. The Grievant is reinstated to the position of Storekeeper 2 at Noble Correctional Institution and to the shift and post on which he served at the time of his termination no later than two pay periods from the date of this Award. The personnel record of the Grievant will reflect the modified discipline as being a disciplinary suspension.

The arbitrator retains jurisdiction for a period of sixty days from the date of the Award for purposes of remedy only.

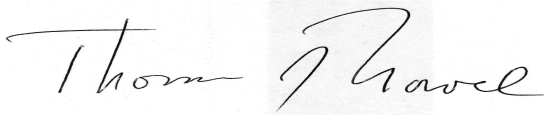
Signed and dated this 21st day of April 2023 at Lakewood, Ohio.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a light-colored background.

Thomas J. Nowel, NAA
Arbitrator

CERTIFICATE OF SERVICE

I hereby certify that, on this 21st day of April 2023, a copy of the foregoing Award was served by electronic mail upon James Adkins, Labor Relations Officer 3, for the Ohio Department of Rehabilitation and Correction and Noble Correctional Institution; Tim Watson, Staff Representative, for the Ohio Civil Service Employees Association, AFSCME Local 11; and Victor Dandridge for the Ohio Office of Collective Bargaining.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a white background.

Thomas J. Nowel, NAA
Arbitrator

