#772

ARBITRATION DECISION

August 31, 2001

In the Matter of:

State of Ohio,)
Northcoast Behavioral Healthcare Systems,)
South Campus)
)
and)
)
Ohio Civil Service Employees Association,)
AFSCME Local 11)

Case No. 23-18-(01-01-16-0010)-01-09
Janis Glen, Grievant

APPEARANCES

For the State:
Linda Thernes, Labor Relations Officer
Andrew Shuman, Office of Collective Bargaining
Gene Briers, Human Resource Administrator
Gail McFarland, Administrative Assistant 2
Kevin Day, Mental Health Administrator 3
Quentin Geary, Police Chief, NBHS
Thomas Lemmon, Trooper, Ohio Highway Patrol
Mark Micco, Police Officer, NBHS
Lyle Roberts, Police Officer, NBHS
Theo Jarmol, Police Lieutenant (Retired), NBHS
Michelle Howd, Nurse, Case Manager

For the Union:
Robert Robinson, OCSEA Advocate
James D. Saunders, Attorney for Grievant
Janis Glen, Grievant
Eileen Chambers, Executive Secretary
Sharon Williams, Accounting Clerk 2
Charon Thompson, Purchasing Coordinator
Deborah Greer, TPW
Mary Ann Wilson, Training Officer
Anthony Slaby, Carpenter 2

Arbitrator:
Nels E. Nelson

BACKGROUND

The grievant is Janis Glen. She was hired by the Department of Mental Health in 1984. At the time of her termination she was a secretary at the South Campus of Northcoast Behavioral Healthcare Systems in the Community Support Network. The CSN is a group of community-based programs that are funded by local mental health boards. NBHS competes with other providers for contracts to provide services to the local boards.

The state contends that a series of events left the grievant very frustrated with her supervisor, Gail McFarland, and led up to the instant case. The record indicated that between May 27, 1999, and May 17, 2000, the grievant received an oral warning and two written warnings for tardiness. On May 17, 2000, in order to avoid being charged with being tardy, she requested personal leave of up to 15 minutes per day, if needed, to be used between May 18, 2000, and May 31, 2000. However, McFarland denied this request and two similar requests.

A controversy also arose concerning time off at Thanksgiving in 2000. On March 29, 2000, the grievant requested vacation on November 22 and 24, 2000, but her request was denied by McFarland. She renewed her request on October 10, 2000, but it was again denied. Eventually, she spoke to George Gintoli, the chief executive officer of NBHS, and Tom Cheek, the director of CSN, regarding time off at Christmas. The state contends that on Friday, November 3, 2000, the grievant left work without knowing whether her request would be approved.

The events leading to the grievant's termination began on Saturday, November 4, 2000. On that date, a message was left on McFarland's office voice mail. It stated:

> You're always unavailable bitch. I'll tell you what, I'm gonna dig your dog up, stick him in your bed. When you come home, that's what you can hump on. Ha, ha, ha. Bow, wow. (State Closing Statement, page 3.)

McFarland retrieved the message on Sunday, November 5, 2000, and concluded that it was from the grievant.

On Monday, November 6, 2000, McFarland played the tape for Cheek and Kevin Day, the associate director of CSN. Both Cheek and Day thought that the speaker was the grievant. Cheek contacted the NBHS Police to conduct an administrative investigation. On November 7, 2000, the Ohio Highway Patrol began a criminal investigation.

On November 7, 2000, the grievant was called to the NBHS Police Department to give a statement to the Highway Patrol. She was given her Miranda rights by Trooper Thomas Lemmon. NBHS Police Officer Mark Micco was also present during the questioning.

Later that afternoon, the grievant returned to the NBHS police department. She walked into the office of Chief Quentin Geary who was meeting with Trooper Lemmon. She asked for a copy of the voice mail message that she was accused of leaving for McFarland. Chief Geary and Trooper Lemmon answered that the tape was evidence in a criminal matter and that she could not hear it at that time. The state claims that the grievant responded by stating that "only the Caucasian police are allowed to hear the tape" and that when she was asked to explain what she meant she added, "you believe that all black people look alike, think alike and talk alike." When Chief Geary accused the grievant of calling him a racist, she retorted, "No, I am saying all Caucasians think the same way, it's in their upbringing."

On November 8, 2000, the NBHS police requested the grievant to provide a statement for its administrative investigation. The state claims that they explained that the statement was for an administrative investigation but the grievant refused to respond. Later, Cheek gave the grievant a verbal and written order to provide a statement but the grievant continued to refuse to do so.

On November 15, 2000, Lt. Theo Jarmol and Officer Micco came to the grievant's office to arrest her. They told her that she was being arrested for telephone harassment and searched her purse for weapons. As the grievant was escorted down the hallway, she stopped in the doorway of McFarland's office. She yelled, "I did not call you, bitch, and if I have a problem with you, I will slap the shit out of you."[1]

At the NBHS police department, the grievant called Officer Micco, Lt. Jarmol, and Trooper Lemmon "peckerwoods" and threatened to sue them and told them that she would like to "slap the shit out of all of you for being so stupid." The grievant was taken to Cuyahoga Falls where she was booked.

After returning to the facility, the grievant was asked by Lt. Jarmol to give a statement regarding her conduct earlier that day. She refused to do so and was placed on administrative leave for the balance of the day and the following day. On November 17, 2000, the grievant returned to work but was reassigned so that she would have no contact with McFarland.

A pre-disciplinary conference was held on December 4, 2000. The state indicated that on November 4, 2000, the grievant left a threatening message on McFarland's voice mail; on November 7, 2000, she interrupted Chief Geary and demanded to hear the tape

[1] Officer Micco recorded the entire arrest on a tape recorder he had in his pocket. He testified that he wanted a record of the arrest because the grievant had a habit of making racial complaints.

of the voice mail and suggested that he was a racist; on November 8, 2000, she refused to comply with an order to give a statement; and on November 15, 2000, she threatened McFarland while being escorted to the NBHS police department, called the police officers "peckerwoods" and stated that she would like to "slap the shit out of [them]," and refused an order to provide a statement about her conduct that day. It charged the grievant as follows:

> You are charged with violation of Center Policy Center Policies #03.10, #03.22 Failure of Good Behavior, Threatening, any employee and use of obscene, abusive or insulting language to coworkers, management; being disrespectful and/or engaging in heated arguments towards supervisors, coworkers; Acts of discrimination or insult on the basis of race, color, national origin; Insubordination, Willful disobedience of a direct order by a superior and failure to comply or cooperate with an administrative investigation. and Workplace Violence. (Joint Exhibit 1.)

On January 4, 2001, Michael Hogan, the director of the Department of Mental Health, informed the grievant that she was being removed. She was subsequently notified by the chief executive officer of NBHS that her removal was effective January 8, 2001.

The grievant filed a grievance on January 12, 2001. She charged that she was terminated without just cause and alleged violations of several sections of Article 24. The grievant asked to be returned to work and to be made whole and to have all the discipline removed from her file.

Prior to the grievant's termination, the state had sought to positively identify the grievant as the person who left the message on McFarland's voice mail. On January 23, 2001, the Law Enforcement Analysis Facility reported to Chief Geary that it had performed a "demonstration" of current speaker identification technology. This involved

comparing the message left on McFarland's voice mail system with voice recordings of several African-American employees at NBHS and the grievant. LEAF concluded:

> Based upon the samples provided ... we were not able to make a match of the suspect's voice to the unknown caller. This is not to say that the suspect is to be ruled out as the unknown caller, but that the SID [Speaker Identification Software] could not match the suspect to the unknown caller. (Management Exhibit 9, page 2.)

As a result, the criminal charges against the grievant were dropped.

The step three grievance hearing was held on February 8, 2001. On March 5, 2001, Linda Thernes, the step three designee, noted that although the grievant denied leaving the message for McFarland, she did not deny many of the other charges against her. Thernes concluded that the charges were serious and warranted removal.

The case was appealed to arbitration. The hearing was held on June 25, 2001. The state's written closing statement was received on July 13, 2001. The union's statement arrived on July 20, 2001.

ISSUE

The issue as agreed to by the parties is:

> Was the grievant removed for just cause? If not, what should the remedy be?

RELEVANT CONTRACT PROVISIONS

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.

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 or more oral reprimand(s) (with appropriate notation in employee's file);
B. one or more written reprimand(s);
C. a fine in an amount not to exceed two (2) days pay for discipline related to attendance only; to be implemented only after approval from OCB;
D. one or more day(s) suspension(s);
E. termination.

* * *

24.05 - Imposition of Discipline

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Disciplinary measures imposed shall be reasonable and commensurate with the offense and shall not be used solely for punishment.

STATE POSITION

The state argues that the grievant was removed for just cause. It points out that the grievant faced multiple charges for events that occurred over a period of 12 days. The state acknowledges that the grievant is a 16-year employee but stresses that the charges against her are very serious.

The state contends that prior to the incidents at issue, the grievant had become very frustrated with McFarland. It reports that she gave the grievant an oral warning on May 27, 1999, and written reprimands on December 13, 1999, and May 17, 2000, for tardiness. The state observes that McFarland also indicated in the grievant's July 6, 2000, evaluation that she had a tardiness problem. It indicates that McFarland denied the grievant's request for leave for up to 15 minutes per day.

The state reveals that McFarland also denied the grievant's requests for time off at Thanksgiving in 2000. It states that she then went to Gintoli and Cheek to plead her case. The state insists that the grievant left work on November 3, 2000, not knowing for certain whether her request for leave would be approved.

The state charges that on November 4, 2000, the grievant was guilty of a failure of good behavior. It claims that she left a voice mail message for McFarland that stated:

> You're always unavailable bitch. I'll tell you what, I'm gonna dig your dog up, stick him in your bed. When you come home, that's what you can hump on. Ha, ha, ha. Bow, wow.

The state admits that the grievant did not identify herself but maintains that testimony and evidence show that there was strong reason to believe that the grievant was the caller. It indicates that the grievant was aware that McFarland had a dog and that the dog had died. The state adds that McFarland had pictures of her dog so that the grievant knew what the dog meant to her. It stresses that Cheek and Day, who work with the grievant, testified that they believed that it was the grievant on McFarland's voice mail.

The state acknowledges that the results of the voice analysis were inconclusive. It points out that LEAF's report indicated that it could not determine with certainty whether the voice on the voice mail was that of the grievant. The state notes that Chief Geary testified that the problem was the quality of the tape recordings that were submitted.

The state rejects the union's argument that the grievant would have called McFarland at home rather than leaving a message for her at work. It contends that the grievant knew that McFarland would not be at work on a Saturday and intentionally called knowing that no one would answer. The state maintains that the grievant was not interested in a conversation but wanted to leave a hurtful and disrespectful message.

The state argues that on November 7, 2000, the grievant was insubordinate. It observes that Trooper Lemmon asked her to give a statement, told her that it was for the criminal investigation, and informed her of her Miranda rights but she refused to cooperate. The state claims that later that day the grievant entered Chief Geary's office and demanded to hear the tape recording of the voice mail message.

The state charges that when Chief Geary refused to let the grievant hear the tape, she engaged in behavior that constituted an act of discrimination or insult based on race. It states that she protested that only the Caucasian police were allowed to hear the tape. The state reports that she told Chief Geary that "you believe that all black people look alike, think alike and talk alike." It acknowledges that the grievant told Chief Geary that she was not calling him a racist but she added "all Caucasians think the same way, it's in their upbringing."

The state maintains that the grievant was insubordinate again on November 8, 2000. It points out that on that date Cheek ordered the grievant verbally and in writing to give a statement. The state claims that the NBHS police explained that the statement was for the administrative investigation but the grievant still refused to comply.

The state charges that on November 15, 2000, the grievant was guilty of the failure of good behavior. It states that when Lt. Jarmol and Officer Micco were escorting the grievant from her office to the NBHS police department for transportation to the Cuyahoga Falls police department for booking, she stopped at the door to McFarland's office and yelled, "I did not call you, bitch, and if I have a problem with you, I will slap the shit out of you." The state complains that the grievant also called Lt. Jarmol, Officer

Micco, and Trooper Lemmon "peckerwoods" and said that she would like to "slap the shit out of all of you for being so stupid."

The state contends that McFarland was fearful. It points out that Officer Micco felt that it was necessary to place himself between the grievant and McFarland because he was afraid that the grievant might try to harm her. The state notes that Michele Howd, a LPN who was in McFarland's office, testified that McFarland was frightened by the grievant's statement.

The state argues that the grievant is capable of violence. It reports that on October 4, 1998, the grievant threatened and attacked her husband. The state observes that the cut he received to his head required 12 stitches.

The state charges that the grievant was also insubordinate on November 15, 2000. It indicates that when she returned from the Cuyahoga Falls police department, Lt. Jarmol asked her to give a statement regarding her conduct that day. The state reports that she refused to comply with Lt. Jarmol's order.

The state rejects the union's charge that the grievant was the victim of disparate treatment. It contends that the cases cited by the union are not similar to the grievant's case. The state maintains that the cases are nothing more than nebulous charges of supervisory harassment. It indicates that the charges consist of things such as a supervisor touching an employee's arm or looking over an employee's shoulder. The state asserts that nothing is close to the grievant's behavior in the instant case.

The state concludes that the grievant's acts warrant her removal. It asserts that "to allow [the grievant] to return to employment with the state, sends a message that any behavior short of physical harm is acceptable." (State Written Closing, page 9.)

UNION POSITION

The union argues that there is not just cause to discharge the grievant. It states that just cause is the "backbone of the contract." The union claims that the state could not meet its burden of proof.

The union contends that there is no proof that the call on November 3, 2000, was for McFarland.[2] It maintains that all of the witnesses acknowledge that they had received calls that were not meant for them. The union points out that McFarland admitted that the grievant knew that she would not be at work and that she knew her home telephone number. It claims that the message indicates that the caller was expecting McFarland to be at work and was upset because she was not there. The union claims that the state considered these to be trivial issues and did not investigate them.

The union maintains that McFarland's rationale for the grievant's alleged call is seriously flawed. It points out that on November 3, 2000, the grievant talked to Gintoli regarding her request for time off at Thanksgiving and had been assured that her request would be approved. The union adds that McFarland acknowledged that when she had turned down the grievant's leave requests in the past, the grievant did not resort to unusual behavior.

The union charges that McFarland's claim that the grievant made the telephone call has much to do with the grievant's college degree. It asserts that she felt threatened by the grievant getting a college degree. The union notes that the grievant got her degree only a few days before the call. It insists that McFarland knew about the grievant's degree because she retrieved a fax about it for the grievant.

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[2] The record indicates that the call was made on November 4, 2000.

The union argues that there is no proof that the call was from the grievant. It acknowledges that McFarland and the other witnesses testified that the voice sounded like the grievant. The union points out, however, that Debra Grier testified that the recording sounded like many people and that she could not pick out the grievant's voice. It adds that the results of the voice analysis were inconclusive so that the criminal charges against the grievant were dropped.

The union rejects the state's claim that managers and the NBHS police were not told that McFarland had identified the grievant as the caller. It claims that "the subliminal accusation that the voice was the grievant's had [witnesses] selectively trying to make it the grievant." (Union Written Closing, page 2.)

The union challenges the state's questioning of the grievant's ability to deal with mental health boards, agencies, and customers. It points out that in every evaluation McFarland rated the grievant as above average in "dealing with the public." The union notes that comments on the evaluations report that the grievant was friendly and professional and was willing to assist callers.

The union argues that on November 7, 2000, the state did not proceed properly. It states that after Trooper Lemmon read the grievant her rights, he questioned her in conjunction with Officer Micco. The union indicates that administrative and criminal investigations are supposed to be conducted separately. It alleges that "attempting to take advantage of unsuspecting employees in this manner is not only deceitful but created the problem that arose late in the attempt for an internal investigation." (Union Written Closing, page 2.)

The union challenges the state's account of the grievant's request to hear the tape of the voice mail message. It points out that neither Trooper Lemmon nor Chief Geary testified that the grievant "barged in" or interrupted their meeting. The union notes that the grievant denies saying that only Caucasian police and managers were allowed to hear the tape of the voice mail message. It claims that the grievant said, "Y'all believe that all black people look, think and talk alike." (Union Written Closing, page 3.) The union states that "y'all" refers to the people who had listened to the tape. It stresses that when Chief Geary asked the grievant if she was calling him a racist, she immediately denied doing so.

The union argues that on November 8, 2000, the state did not clearly communicate to the grievant what it wanted her to do. It states that on cross-examination Cheek admitted that he was unaware that Officer Micco had questioned the grievant along with Trooper Lemmon. The union notes that Cheek also acknowledged that he did not give the grievant the Administrative Investigation Suspects Rights Advisement Sheet that would have provided total clarification of what it expected from her.

The union rejects Lt. Jarmol's testimony that the form was only a trial document. It observes that it comes from the Department of Mental Health and asserts that it is intended for all its facilities. The union notes that the word "trial" does not appear anywhere on the form. It claims that the purpose of the document is to prevent misunderstandings such as arose in the instant case.

The union questions the state's account of the grievant's arrest on November 15, 2000. It states:

> [The] first two lines [of Officer Micco's statement] shows that unknowing to the grievant [he] hid a tape recorder in his shirt pocket before coming to arrest

her. I believe their intent was to subtly embarrass and prod the grievant into a negative response One must wonder what officer Micco actions would have been had his tape not been on. That tape recorder put him on his best behavior. During the procedure, she was not allowed to call her attorney, and officer Micco hung up the phone even though Mark Micco couldn't recall doing so. He stated it was not the NBRS police case it was the patrol's case. However, even though Trooper Lemmon was in the building, it was NBHS police that took her to Cuyahoga Falls. Officer Micco's statements is precise in that it clearly show that the grievant got agitated by the impending arrest, the denial to make a call, searching her purse and then parading her past the staff and offices on the floor. The entire episode was designed to humiliate, embarrass and degrade the grievant. The purpose was to set her off and make it seem like she was this person management referred to in their opening statement. That was why officer Micco hid a tape recorder on his person and took her down the long hallway instead of the steps across from her office. While Gail McFarland said no one notified her of the grievant's impending arrest, officer Micco said he thought the chief had notified Ms. McFarland. Ironically, in joint exhibit 2, pg. 50 - lines 4 through 14 disputes that testimony. Ms. McFarland wrote "I heard loud voices just from down the hallway and I KNEW SHE WAS BEING ARRESTED FOR A HARASSING PHONE CALL SHE MADE. I asked Michele to move over and block my view of the hallway. I couldn't see [the grievant] but she stopped at my door and yelled something to the effect that I didn't call your house. If I had something to say I would say it to your face. I SHOULD slap the shit out of you. (However the taped recording clearly says WOULD NOT SHOULD). She continues with I did see officer Micco's head over the top of Michelle as she, [the grievant] went past Tom Cheek's office. There is no mentioned that the grievant attempted to enter her officer or that Officer Micco had to stand in between them as he testified. There never was a threat made to Gail McFarland. Again had the grievant been taken down the stairs adjacent to her office this outburst would not have happened, the embarrassment would not have taken place, however we feel it was something management counted on, to beef up weak charges. (Union Written Close, page 4.)

The union dismisses the state's second charge against the grievant for her conduct on November 15, 2000. It observes that contrary to the state's claim that the grievant refused to comply with an order to give a statement, Lt. Jarmol testified that the grievant gave a brief statement. The union insists that the second charge represents nothing more than a "stacking of charges."

The union contends that employees at NBHS are frustrated and feel that their efforts to have problems addressed are futile. It states that Anthony Slaby was unjustly forced into an employee assistance program despite numerous statements of support from staff members. The union points out that Charon Williams introduced letters of complaint and testified about her encounters with supervisors and the NBHS police but the state never addressed her concerns. It notes that Mary Wilson, the president of Chapter 1855, reported that a member called her because of threats and intimidation by a supervisor but nothing was done about it. The union asserts that the order of Magistrate Judge Patricia A. Hemann in Susan Bremiller v. Cleveland Psychiatry Institute, Case No. 1:94CV1151, May 23, 2001, shows that the state failed to address employees' legitimate concerns.

The union argues that the grievant's actions were in response to actions that she felt were demeaning and degrading and were a result of her status as a staff member and her color. It acknowledges that she may have acted "somewhat negatively" but notes that she apologized to those involved. The union maintains that the state should have looked for proof that the grievant made the call and that the call was intended for McFarland rather than "jumping the gun." It asserts that if the state had done so, the subsequent problems would have been avoided.

The union concludes that there is not just cause for the grievant's removal. It asks the Arbitrator to reinstate the grievant and to make her totally whole. The union further requests the Arbitrator to direct the state to deduct appropriate union dues from the grievant's back pay and to send it directly to the union's central office.

ANALYSIS

The grievant's removal is based on four charges. First, the state contends that she made a harassing call to McFarland on November 4, 2000. Second, it maintains that on November 15, 2000, she threatened McFarland and was disrespectful towards Lieutenant Jarmol, Officer Micco, and Trooper Lemmon. Third, the state claims that the grievant refused to give statements on November 7 and 15, 2000, despite being ordered to do so. Finally, it asserts that the grievant unjustly accused Chief Geary of being a racist.

The state's first charge against the grievant is very serious. Leaving harassing voice mail messages for a supervisor cannot be tolerated. In the instant case, the voice mail left for McFarland was particularly offensive.

The state, however, was unable to prove that the grievant made the call. Cheek and Day testified only that they thought that it sounded like the grievant. The state apparently recognized that such statements were not enough to sustain the charges against the grievant so it submitted a tape recording of the grievant along with the voice mail message to LEAF. This organization used an experimental technique to try to match the tape of the grievant with the voice mail. LEAF reported that the results were "inconclusive."

While the Arbitrator recognizes that the grievant may have been the one who left the message for McFarland, it is possible that she was not the one responsible. The state offered as a motive the fact that McFarland turned down the grievant's request for time off at Thanksgiving. However, given that McFarland had refused earlier requests for time off without any response from the grievant, it does not seem that another denial of a leave request would have provoked such a strong reaction.

Considering the above, the Arbitrator can only conclude that the state fell short of meeting its burden to prove that the grievant was the one who left the voice mail message for McFarland. This is particularly so given the fact that the charge against the grievant constitutes criminal activity.

The second charge against the grievant relates to the events that occurred on November 15, 2000, when Lieutenant Jarmol and Officer Micco arrested the grievant and escorted her to the NBHS police department. Given the testimony of the NBHS police and Cheek and the tape recording made by Officer Micco, there is little dispute regarding what happened. The grievant stopped in the door of McFarland's office and said, "I did not call you, bitch, and if I have a problem with you, I will slap the shit out of you."

The Arbitrator believes that this constitutes very serious misconduct. The grievant's statement appeared to be a real threat. McFarland testified that she felt frightened and Howd, who was in her office at the time, reported that McFarland was scared. Furthermore, Officer Micco testified that he felt that it was necessary to stand in the doorway between the grievant and McFarland.

The grievant's record indicates that the state and McFarland were not unjustified in being concerned regarding the grievant's behavior. The state introduced the report of the grievant's arrest for domestic violence. It indicates that she struck her husband over the left eye with a heavy mug that resulted in a laceration requiring 12 stitches.

The grievant's verbal assault did not stop with her comments aimed at McFarland. She also referred to the police officer as "peckerwoods" and threatened to sue them and told them that she would like to "slap the shit out of ... [them] for being so stupid."[3] Obviously, such behavior is unacceptable.

The context in which the grievant's behavior took place is also significant. The grievant is a secretary in the Department of Mental Health. As a long-time employee in such a setting, the grievant's behavior is especially inappropriate.

The Arbitrator recognizes the possibility that the grievant may have been wrongly accused of leaving the voice mail message and, as a result, was very upset. However, even if that were the case, threatening McFarland was not the way to resolve the problem and, in fact, would appear to support the conclusion that she was the one who made the call. Clearly, abusing the NBHS police and Trooper Lemmon, who were only doing their jobs, also constitutes serious misconduct.

The third charge is that the grievant refused orders on November 8 and 15, 2000, to give statements to the NBHS police. The record is clear that the grievant was ordered to give statements and refused to comply. The failure to obey a direct order is insubordination and repeated insubordination is a serious offense.

The union's claim that the grievant was confused regarding the administrative and criminal investigations must be rejected. The grievant had to know that the interview by Trooper Lemmon was a criminal investigation because he advised her of her Miranda rights which apply in criminal matters. The state's witnesses testified that in the

[3] Webster's Third New International Dictionary of the English Language, Springfield, Mass: Merriam-Webster, 1981, indicates that "Peckerwood" means a poor white and is usually used disparagingly. Examples of usage are shown in The Oxford English Dictionary Online.

administrative interviews the grievant was advised that her statement was being requested as part of the administrative investigation.

The union's contention that the grievant's refusal to cooperate should be excused because the state did not use the Administrative Investigation Suspects Advisement Sheet cannot be accepted. Lt. Jarmol testified that the form was used at North Campus on a trial basis but was never adopted. He reported that he had never used the form. The union provided no testimony to counter these claims.

The final charge is that the grievant wrongly accused Chief Geary of being a racist. While the grievant's comments could be interpreted as calling Chief Geary a racist, they could also be interpreted as more general claims regarding societal racism. The grievant, however, should have avoided language that would suggest a charge of racism.

The remaining issue is the proper penalty. While the Arbitrator appreciates that the grievant has 16 years of seniority, he cannot reinstate her. The grievant engaged in very serious misconduct when she directed threatening comments at her supervisor. An employer cannot accept such behavior especially given that it occurred in an office of the Department of Mental Health. The comments she directed at Chief Geary, Lieutenant Jarmol, Officer Micco, and Trooper Lemmon and her insubordination support the state's decision to discharge her.

Based upon the above analysis, the Arbitrator must deny the grievance.

AWARD

The grievance is denied.

Nels E. Nelson
Arbitrator

August 31, 2001
Russell Township
Geauga County, Ohio