



time she was called to a meeting with two correctional officers on the 3<sup>rd</sup> of July, 2008 and whether during the course of that meeting she was not advised or informed either in advance thereof or during the course of the meeting of her right to Union representation. The issue as further developed is whether the grievant was denied the right to representation in violation of Article 6, Section F, of the Master Agreement between the parties and in violation of federal law. The second issue that was developed during the course of the hearing on March 12, 2009 was whether or not grievant Kullman's privacy rights were violated by an alleged disclosure to her fiancé who was allegedly approached by one of the officers who conducted the meeting with Grievant Kullman on July 3, 2008 and disclosed the contents thereof and thus in violation of her privacy rights.

The Union's position in this matter is that on July 3, 2008, Grievant Kullman arrived to work 15 minutes prior to the beginning of her normally scheduled shift and that she was told at that time by SIS Technician Kirk Barker that SIS Lieutenant Robert Fortiz wanted to speak with her in the SIS offices. The Union's position is that Lieutenant Fortiz's primary job duties are to investigate allegations of misconduct involving inmates at the institution. The Union contends that Officer Kullman reported as directed and upon arrival found Lieutenant Fortiz and in addition SLA Officer Al Mendez waiting for her to arrive. Officer Mendez's primary duties, according to the Union, are to investigate allegations of misconduct involving federal employees at the institution which would include of course Grievant Kullman. Upon arrival Officer Mendez asked grievant to sit and then proceeded to question her regarding allegations of misconduct that she was alleged to have committed. During the course of the investigation interview Officer Mendez sat immediately in front of her behind his desk while Lieutenant Fortiz remained standing. The Union contends that at the start of the investigation interview of Officer

Kullman that Officer Mendez wanted to ask her some questions regarding some very serious issues that had been brought to his attention, namely that she had been accused apparently by inmates through a process called "drop notes" of bringing contraband into the prison which specially in this instance involved cigarettes and telephone cards. The Union's position is that Officer Mendez informed grievant that it was important that she answer his questions completely and honestly in that her answers could determine her future employment at the institution as well as to whether or not she would be brought up on possible charges. The Union contends that Grievant Kullman was troubled by these warnings because she had no prior knowledge of any allegations of misconduct. In addition, Officer Kullman had recently requested a family hardship transfer to Pollack, Louisiana with her fiancé, Senior Officer Joel Walters. The position of the Union is that Grievant Kullman was fearful this investigation would delay the transfer. The Union further contends that she was vigorously interrogated about bringing contraband into the prison for disbursement to inmates and asked her if that information was correct. The Union claims that Officer Kullman at this point, in fear of losing her job, broke down and began crying and that in spite of that Officer Mendez vigorously pursued the questioning. Grievant Kullman's answers vigorously denied the suggestion and contention that she had brought in contraband into the prison for delivery and disbursement to inmates and Officer Kullman continued to vigorously deny and even offered to take a lie detector test. The Union goes on to contend that after 30 minutes of questioning Lieutenant Mendez finally relented and informed Grievant Kullman that some undisclosed inmates had made these allegations and that he did not believe them and was dropping the matter. Officer Mendez likewise directed Ms. Kullman not to disclose or discuss this meeting with anyone. Grievant Kullman asked to be able to go home because she was visibly and physically upset and it would be not in her best interest to report to

work but Officer Mendez directed her to report to work. The Union further goes on to allege that Officer Mendez later on the same day while responding to an unrelated incident in a different part of the complex approached Senior Officer Walters, Grievant's fiancé and discussed what had happened during the investigation meeting. Further that Officer Mendez disclosed the nature of the allegations raised against Officer Kullman and that the fact that she had gotten upset and that he was not proceeding the matter any further. Prior to hearing this information Officer Walters had not spoken to Officer Kullman according to the Union position. In spite of the contention of Officer Mendez on July 3, 2009 several months later Grievant Kullman was again brought in to speak to Mendez regarding the very same allegations but on this occasion there was a Union Representative with Kullman inasmuch as on this occasion Officer Mendez gave notice of an official investigation of the allegations of misconduct raised against her. Again, at this time though the Agency found that Officer Kullman engaged in no misconduct. As a result of this investigation Officer Kullman and Officer Walters' transfer to Louisiana was delayed for several months awaiting the outcome of the investigation process. The Union, therefore, believes that Officer Kullman's "Weingarten" rights were violated and that she is entitled to relief because the Agency failed to provide her with notice of her entitlement to have a Union representative with her at the time of the initial meeting of July 3, 2008 and that in addition her privacy rights were violated because Officer Walters was approached by Lieutenant Mendez and informed and advised of the prior meeting of that date with his fiancé, Officer Kullman.

The Agency's position is however that sometime in May, 2008 the Grievant and her fiancé, Officer Walters, requested a transfer to SCC Pollock. The grievance stated the reason for the transfer request was for her and her fiancé to be closer to her fiancé's son who lived in Pollock, Louisiana. On July 3<sup>rd</sup> the Agency suggested at approximately 3:45 p.m. and prior to

Grievant Kullman beginning her evening watch shift (4:00 p.m.-midnight) at the FCC Tucson, the Grievant was asked by Officer Baker to come down to the SIS, Special Investigation Services, office by Lieutenant Fortiz and by SIA, Special Investigative Agent, Al Mendez. The Agency suggested that a discussion took place for approximately 15 minutes between the Grievant and Officers Fortiz and Mendez. The Agency suggests that Grievant did not request a Union Representative be present prior to or at any point during the discussion. The discussion as alleged by the Agency resolved around rumors obviously or apparently instigated by inmates involving the Grievant and possible introduction of contraband such as tobacco and calling cards into the institution. When the discussion ended the Grievant went back to work and finished her shift. According to the Agency as a result of the continuing rumors involving the Grievant and possible contraband introduction an official investigation was opened up and conducted in the months following the July 3<sup>rd</sup> discussion between the Grievant and Officers Mendez and Fortiz. As a part of this investigation the Agency conducted an official examination during which the Grievant provided a signed Affidavit with her Union Representative, one Phil Koesdal, being present. Ultimately the results of the official investigation exonerated Officer Kullman and no charges were brought against her and she received no discipline. Subsequent to the investigation the transfer request was approved and she was reassigned to FCC Pollock on or about February 1, 2009. The Agency suggests that while the Union alleges the violation of the Master Agreement when it failed to notify the Grievant of her right to an attorney or to provide her with a Union Representative or to decline providing testimony against herself. As to the unauthorized information being disclosed to Officer Walters the Agency's position is that neither was the case and that her "Weingarten" rights were not violated inasmuch as the July 3, 2008 meeting was just that, a meeting and not a formal charge and that under "Weingarten" she was not entitled to

a representative at that initial meeting because she did not meet the requisite elements. The Agency believes that the Grievant and Union are not entitled to any relief as a result of the Grievance filed and the matter going on to arbitration for resolution.

The arbitration process was undoubtedly required in this controversy for no other reason than the parties have a very different view and opinion as to the significance of the July 3, 2008 meeting between the Grievant Kullman and the two officers of the Agency. When Officer Kullman was directed to go to the office of Lieutenant Fortiz she apparently had no idea as to what the meeting was to be about or had no idea of the significance of the same and, thus, walked into that meeting with no idea as to the potential or possible outcome of the same. There is no disagreement between the parties that the Agency acknowledged that it had not met the requirements of the Collective Bargaining Agreement for more than a year by giving notification, either by posting or by the delivery to each employee of their "Weingarten" rights. Likewise, there is no dispute that the Union has some obligation and responsibility to inform its members as to what their rights are under certain and given circumstances. Likewise, it is undisputed and not argued that Officer Kullman is a Union officer or Union official and participates regularly in the filing of grievances or in the representation of fellow employees in disciplinary matters. Officer Kullman had not been in the system that long probably to rise to the level of union official and had probably, other than her initial indoctrination training, had not been exposed to what her rights were in the event she was called upon to give information or meet with officials regarding her performance and her conduct. This arbitrator believes that Officer Kullman walked into that meeting not knowing what to expect and ultimately was required and forced to respond to very serious matters that were being inquired about by the two officials as to her performance and conduct the answers to which by her could result in

significant discipline if not the lose of her position. The Agency at no time either when Grievant Kullman met for the first time with Officer Barker, who told her to go to this meeting, or during the actual meeting with the two officers was ever told or was it suggested to her that the matters were serious and that significant discipline could be afforded against her depending upon her answers. Likewise, it was never mentioned to her during the meetings with the two officers that she could stop the process at any time and ask for representation or that her answers could or would amount to possible admissions against interest. Now whether Officer Kullman should or should not have asked for representation in the opinion of this arbitrator is irrelevant because it is acknowledged by Officer Mendez that if she answered the questions during this proceeding admitting possible violation that the process would stop and the meeting would not go forward. To this arbitrator this is like suggesting locking the door after the horse is stolen. If she answered against her own interests there is no doubt that she would have been disciplined and the process would have gone forward and she possibly could have lost her job. In view of her lack of knowledge as to what this meeting was about and walking into it blind, there is no doubt that she probably was too flustered and upset to even consider asking for a Union Representative or someone to be there on her behalf. Thus, it is the opinion and decision of this arbitrator that Ms. Kullman's "Weingarten" rights were violated and that the Agency violated the agreement between the parties and that no meeting should have gone forward without her first being informed and advised of her entitlement and right to be represented either by a Union Representative or by an attorney. The fact that no disciplinary action came as a result of that meeting is irrelevant and immaterial because there is no doubt if she had acknowledged or admitted that she had provided cigarettes or calling cards to the inmates that she would have been probably removed from her position and possibly even criminally charged. It would be the

recommendation of this arbitrator to the Agency throughout from here on out when a meeting like this is to be scheduled or held the employee should be informed that there are some questions that will be asked that could possibly have serious consequences and that if the employee would like he or she may have a Union Representative present during the course of that meeting. The fact that this was not "an official investigation" again is not significant nor has no bearing in the result and decision of this arbitrator.

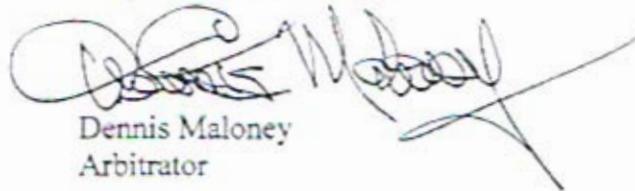
Now having said all of that, nevertheless the Grievant sustained and received no disciplinary action and no criminal proceeding or any other action was taken against her and the Agency has acknowledged and agreed that the time she spent during this interview is to be compensated for and it is the opinion of this arbitrator that that has been accomplished and if not so is directed to be accomplished at this time.

Now as to the issue of the privacy violation. It is credible from this arbitrator's view point and position that there was no privacy violation. There is no doubt and the probable truth of the matter is that when Officer Kullman regained her composure after the July 3, 2008 meeting that she called her fiancé and told him of what had happened and when her fiancé later that day by accident came across Officer Mendez that he made the inquiry as to what had gone on and why the meeting had to be held and conducted and that Officer Mendez did not approach him or disclose to him any of the contents or results of the meeting. Therefore, the claim for privacy violation is denied. While the legal arguments and presentations of both parties were well presented they are hardly by this arbitrator found to be persuasive. This is just fundamentally a lack of good sense and good judgment in dealing with employees under stressful circumstances and conditions. Whether the Union erred in not notifying Ms. Kullman of her rights or whether the Agency erred nevertheless both were at fault but she should not be denied

relief because of their oversights and omissions. Therefore, again, it is the decision of this arbitrator that Ms. Kullman's "Weingarten" rights were denied and violated and that the remedies sought have already been accomplished and that the privacy claim is without justification or merit and it is again respectfully denied.

DATED this 2<sup>nd</sup> day May, 2009.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dennis Maloney", with a long, sweeping horizontal stroke extending to the right.

Dennis Maloney  
Arbitrator