VOLUNTARY LABOR ARBITRATION

In the Matter of:

AFGE LOCAL 506

-and-

FMCS NO. 2017-04606

DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF PRISONS,
FEDERAL CORRECTIONAL COMPLEX
COLEMAN, FLORIDA

ISSUE: NICKTALYA RAWLS
DISCIPLINE

STEWART W. SAVAGE, ARBITRATOR

ISSUED: FEBRUARY 21, 2023

PLACE OF HEARING: COLEMAN, FLORIDA

DATES: DECEMBER 7, 2022

ARBITRATOR: Stewart W. Savage

APPEARANCES:

FOR AFGE LOCAL 506:

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| JOSE ROJAS | REPRESENTATIVE |
| NICKTALYA RAWLS | GRIEVANT |
| FERNANDO LOPEZ | UNION |
| CARR | LEIUTENANT |
| ANTHONY SHIPPEE | CORRECTIONAL COUNSELOR |

FOR FCC COLEMAN:

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| TED BOOTH | ASSISTANT GENERAL COUNSEL |
| LORI WILSON | HUMAN RESOURCES |
| RONALD EVANS | LEIUTENANT |
| DAN TAYLOR | CAPTAIN |

**Statement of Issue: Was the Agency's 30-day suspension of Nicktalya Rawls taken for just and sufficient cause and to promote the efficiency of the service, and if not, what shall be the remedy?**

## RELEVANT CONTRACTUAL PROVISIONS

### ARTICLE 30 – DISCIPLINARY AND ADVERSE ACTIONS

**Section a.** The provisions of this article apply to disciplinary and adverse actions which will be taken only for just and sufficient cause and to promote the efficiency of the service, and nexus will apply.

...

**Section b.** ...Adverse actions are defined as removals, suspensions of more than fourteen (14) days, reductions in grade or pay, or furloughs of thirty (30) days or less.

**Section c.** The parties endorse the concept of progressive discipline designed primarily to correct and improve employee behavior, except that the parties recognize that there are offenses so egregious as to warrant severe sanctions for the first offense up to and including removal.

**Section d.** Recognizing that the circumstances and complexities of individual cases will vary, the parties endorse the concept of timely disposition of investigations and disciplinary/adverse actions.

## BACKGROUND

FCC Coleman is the largest prison complex consisting of Five institutions. The Grievant was a G2 Housing Unit Officer at USP-2. It is alleged that on May 30th, 2017, the Grievant did not act in a way that was consistent with her training and her duties as a federal law enforcement officer (R.7). It is alleged that the Grievant's actions were captured on video (R.7). The Agency contends that the Grievant witnessed two inmates fighting in front of her housing unit and failed to respond to that emergency in the proper way (R.7).

The SIS Lieutenant testified that he did investigate a failure to respond allegation against the Grievant (R.24). He recalled that he reviewed the video footage of the May 30th, 2017, incident of two inmates fighting in the courtyard (R.26). He noted that the Grievant was standing outside the unit slider door when the inmate fight started (R.27). He observed that the Grievant went inside the unit and allowed the inmates to come out of the unit (R.27). He said she did not take her radio out and call for assistance (R.27). He concluded that two other staff members came out from the other unit and responded to the fighting (R.28).

The Lieutenant testified that he concluded that the Grievant did not respond to the incident (R.30). Instead, he said, she escaped into the unit, behind the wall (R.30). He explained that responding to an incident is a basic job (R.30). He testified that a housing unit officer is to interject (R.31). He said the Grievant was to call for assistance, tell the inmates to stop and clear the area (R.31). He concluded the Grievant did none of those steps and instead went into the sally port (R.31).

The Lieutenant believed the responding officers used their gas to separate the fighting inmates (R.32). He said the responding officers were not expected to physically engage the inmates (R.32).

On cross-examination, the witness was asked to look at one of the videos. He agreed that it looked as if the Grievant was reaching for her radio or her gas (R. 37). The Lieutenant said that hitting the body alarm would be alerting the staff to the emergency (R.38). He noted that the two staff members at G2 did not respond to the incident, and he said one should have responded (R.44). He also said that he observed inmates were coming toward the incident as it happened, and the two staff members did not stop them from leaving G2 (R.45).

Captain Taylor testified that the correctional officers were trained at the Correctional Academy (R.49). He noted that officers working the housing unit are not armed (R.50). The officers do carry a chemical, non-lethal spray (R.50). The captain noted that the post orders are the directives for working their post throughout the day (R.51). There is a quarterly review and the staff sign for their training (R.52). The captain could not recall the specific May 30, 2017, incident regarding the Grievant (R.54). He acknowledged that he was the proposing officer who signed the proposal letter (R. 56). He said it had been prepared through HR and that he signed the letter (R.56).

The captain testified that the response procedures are clear for an inmate fight (R.58). He said the responses are incident driven (R.59). He noted that the main goal is isolation, containment and secure the area (R.60). He noted that housing unit officers go inside and there are first responders and second wave responders (R.60). He pointed out that there is an incident commander who gives the orders (R.60).

On cross-examination, the captain identified the 583 form for the May 30th, 2017, incident (R.63). He acknowledged that the form indicated a call for assistance was made, and agreed that the Grievant may have hit her body alarm to alert the need for emergency response (R. 63-64). The captain was certain that the form 583 was completed within 48 hours of the incident (R.73).

The captain testified that he signed the proposal letter dated August 14, 2018 (R.65). He agreed on cross-examination that he had not interviewed the Grievant about the incident, he had not

reviewed the Grievant's personnel file, or her length of service, and he had not considered any Douglas factors (R.65-66). He pointed out that the final decision is to the warden and that the Grievant was given the opportunity to present her case prior to the warden's decision (R.67-68).

The HR manager testified that HR creates the proposal letter and the decision letters (R. 76). She explained that it is her practice to have the supervisor review all of the evidence and to participate in the proposal letter (R.76). She was not familiar with the May 30th 2017 incident that involved the Grievant as she was not at Coleman at that time (R 78). However, in preparation for the arbitration, the witness read the file and she testified that she agreed with the discipline as it was consistent with past practice and other charges and decisions (R.78-79).

The Operations Lieutenant testified that he could not recall the May 30th, 2017 fight or any conversation with the Grievant after the incident (R.87-88). He recalled that he never counseled her (R. 88). On cross-examination, the witness agreed that a body alarm is a proper response to an emergency (R.89, 91). He noted that a report is usually issued by the staff members who placed their hands on the inmates (R.91).

The vice president at USP2 testified that it was the Union's position that the Grievant activated her body alarm at 7:44 a.m. and she was the first responder who took the lead action (R.101). He said this was the correct response under the post orders (R.101). The witness said he requested the video as part of the investigation, but the video was never provided despite four requests (R.102-103). After observing the video, the Union witness testified that he had 15-years experience as a correctional officer and he saw no fault in the Grievant's response to the fight (R.113).

A correctional counselor testified that he was the SIS lieutenant at the time of the May 30th, 2017, incident (R.123). He was present on that date and he watched the altercation from the video (R.129). He acknowledged that he was not aware that the Grievant had activated her body alarm (R.

124). He estimated the fight lasted 10-15 seconds (R. 124). He recalled that the Grievant stayed in one position the whole time (R.126). The witness said he would have responded to the altercation (R.127). He believed that he would have covered the two responding officers, and he would have possibly used his MK-4, and he would have given directions to control the situation (R. 126-127).

The Grievant testified that she had eight years of work with the bureau (R.136). She said she had not received any discipline and her evaluations were excellent and outstanding (R.141).

The Grievant said she was the housing officer for Gulf-2 (R.136). She was standing outside the unit watching inmates go to the chow hall, and she saw an inmate hit another inmate (R. 136). She said she took a step back because the striking inmate was known to have weapons (R.136).

She said she hit her body alarm and said there was a fight in G-2 (R. 136). Her partner went out front and told the inmates to stop fighting (R137). The Grievant said it was so quick and then the unit was locking down (R. 137).

She testified that the alarm alerts the control room that staff needs assistance (R. 137). The alarm shows where she was located at Gulf-2, and that there is a disturbance and she needed assistance (R. 137). She testified that she had been trained to not respond by herself but to wait until adequate staff is available (R138). The Grievant believed the incident lasted 20-30 seconds and ended when the staff responded to her alarm (R139).

The Grievant said she spoke with her operations lieutenant at the end of her shift and asked him whether she had done everything correctly (R. 139). Her lieutenant told her she was good! (R. 140). The Grievant pointed out that she believed she acted according to her training and would have acted in the same fashion (R. 143). The Grievant agreed that she had not signed the acknowledgment form on her quarterly post orders (R 142).

On cross-examination, the Grievant said she felt her inmate traffic was under control (R. 147). During the incident, she said she was focused on the safety of her partner and had tunnel vision

(R.147). She said she was never scared during the incident (R. 153). She said they were trained so that one officer is outside and the other officer was inside, and it didn't matter which officer was at a particular location (R.152-153). The Grievant denied that she was hiding behind the wall (R. 167). Instead, she said she put herself in a safe place and she let control handle the situation (R. 167). She recalled the unit door was locked down after the two inmates were cuffed (R. 148). She said there was no lock down until the scene was safe (R.149).

The Grievant said that she had responded to other emergency situations (R. 155). She recalled that she had sprayed inmates several times and cuffed inmates (R. 155). She said inmates usually do get down when instructed (R. 155). She noted that she has never wrestled with an inmate (R. 155).

The Grievant did not recall meeting with the warden (R.151). She said that she was shocked when she received the proposal letter (R. 162). When she did receive her proposal letter from the captain, she said he did not discuss it with her or give her any counseling (R. 161). She did recall writing an affidavit about the incident in September 2017 when she met with the SIS lieutenant (R. 170).

## AGENCY'S POSITION

The Agency argued the Grievant was charged with two offenses: Failure to Respond to an Emergency and Failure to Sign Post Orders. It is said that the grievant committed the conduct as charged. The Warden, it is noted, considered all of the Douglas factors and his decision of a 30 day suspension was for the efficiency of the service, and within the bounds of reasonableness. The suspension, it is stated, was for "just and sufficient cause" and in accordance with the parties collective bargaining agreement.

The Agency argues that the video evidence clearly identified that the grievant failed to take any action to respond to a fight in front of her housing unit. The grievant went inside of the unit, it is said, and she did not use her radio to get further assistance, and she allowed inmates to move freely into the courtyard rather than secure her unit. At least ten additional inmates moved through the unit, it is noted, and the grievant did not tell the inmates to stop fighting or prevent inmates to move closer to the fight. The grievant was not required to physically engage the inmates, it is argued, yet she was equipped with OC Spray and she could have sprayed toward the inmates.

It is pointed out that both Captain Taylor and Lt. Shippee concluded that the grievant did not respond to the situation as she should have. The Agency emphasized that the grievant failed to ensure inmates were secured.

The Agency argues that a law enforcement officer is held to a higher standard of conduct. In this case, it is said, the misconduct impaired the efficiency as the failure to respond jeopardized the security of the institution, and the lives of staff and inmates. It is said that the Agency proved the nexus between the charged conduct and the efficiency of the service.

The Agency further contends that the 30-day suspension was reasonable and consistent with the table of penalties. The grievant could have been removed from service for her inaction. This penalty, it is said, was a mitigation and was consistent with penalties within the last two years. The Agency argues that the Department of Justice must be able to exercise wide discretion in controlling the work related conduct within the prison system.

The Agency also submits that the Warden considered all of the Douglas factors and gave considerable weight to the first factor, the nature and seriousness of the offense in relation to the Grievant's role as a law enforcement officer. The Warden stated that the grievant failed to

respond immediately, effectively, and appropriately during the emergency situation. This misconduct, it is said, struck at the very heart of the Agency's mission.

The Agency cited each Douglas factor and noted that the work history, discipline record, potential for rehabilitation were all in the Grievant's favor. The Agency submits that is the basis for a penalty of 30-day suspension rather than removal. However, under factor five, it is said, the Warden did lack confidence in the Grievant and considered a 30-day suspension as the appropriate response. It is stated that there is a required deference to the agencies to determine the appropriate penalty in discipline matters.

The Agency concludes that it met its burden of proof. The grievant committed the conduct as charged, it is claimed, and the Warden considered all relevant Douglas factors and his decision of a 30-day suspension was within the bounds of reasonableness. The Agency requests that the Warden's decision be upheld and the grievance should be denied.

**UNION'S POSTION**

The Union contends that the Agency must prove by preponderance of the evidence that the employee committed the conduct charged. It is argued that Shippee's memorandum was wrong and the investigation failed to recognize that the Grievant activated her body alarm. Pursuant to post orders, it is said, the Grievant followed the post orders by using her body alarm to summon help and then covered her area. Shippee, it is said, testified about his personal opinion about how the Grievant should have responded. That witness agreed that correctional judgment would vary under their particular circumstances, it is noted, and that the Grievant's response could be different than his because her response was based upon her judgment.

The Union also claimed that the operations lieutenant had told the Grievant that she had done everything correctly, and that there was no need for her to write a memorandum. That witness, it is noted, testified that hitting the body alarm was a proper response to the emergency.

The Union also argued that the SIS lieutenant contradicted his investigation. His investigation was limited to the video without any audio, it is claimed, and he concluded that the Grievant never took out her radio and called for assistance. However, it is said, the witness was asked to review the video during the arbitration hearing, and he agreed that it did appear as if the Grievant reached for her radio or her gas. The Union submits that this witness did not exercise due diligence in his investigation because he should have known that the Grievant did activate her body alarm.

The Union further contends that the captain on that date testified that the Grievant's activation of her body alarm was a response to the emergency.

The Union argues that the Grievant followed her post orders. She did not engage the inmates until adequate staff arrived to contain the situation. She stepped back and immediately activated her body alarm which alerted all staff of the emergency. The inmates who were leaving the housing unit, it is said, were on their way to eat. It is the Union's view that it was extremely difficult to abruptly stop the inmates in their movement from the unit.

The Union submits that the Grievant had never been disciplined for failure to respond to an emergency. It is said that she had responded to emergencies in her three years prior to the incident without any issue. It is also argued that she had no issues regarding her responses to emergencies in the four years after this incident.

The Union also argues that the captain had signed the proposal letter without considering any Douglas factors. The captain testified that he signed the letter without any investigation. It

is argued that he should have interviewed the Grievant, viewed the video, and reviewed the Grievant's disciplinary and performance histories. In the Union's view this is a violation of the due process just cause standard. This proposal letter was written by Human Resources, it is said, and this letter circumvented the due process rights of the Grievant as the proposing official had no involvement in the writing of the proposal letter.

The Warden's decision letter is also rejected by the Union. It is noted that the Warden did not testify and this limited the Union's full and robust defense. The Union questioned whether the Warden had reviewed all of the pertinent Douglas factors because the Grievant had continued to work for 16 months before the decision letter. In the Union's view, the Warden failed to follow progressive discipline of reprimand for an alleged first offense. In addition, the investigation had ended in October 2017, and a proposal letter was not issued until August 14, 2018.

The Union also argues there is no nexus between the proven conduct and the efficiency of the service. The Grievant activated her body alarm and responded according to her training. In this case, it is said, the efficiency of the service was not affected.

The Union further contends that the penalty was not reasonable. Instead of a disciplinary action, it is said, the Grievant should have been counseled by a supervisor and addressed the issue in a performance evaluation.

The Union concludes that the thirty (30) day suspension was not for just cause. The Union requests that the Grievant should be awarded back pay, and her disciplinary record should be cleared.

## OPINION AND AWARD

The Arbitrator has been asked by the parties to determine whether the Agency's 30-day suspension of Nicktalya Rawls had been taken for just and sufficient cause to promote the efficiency of the service. First, the Agency must explicitly identify the law, rule, regulation, or contract provision that may have been violated. Second, the Agency must prove the Grievant committed conduct that violated the law, rule, regulation, or contract provision. The arbitrator will not substitute his judgment for the judgment of the Agency. Under this Collective Bargaining Agreement, it is the Agency who lawfully directs the employees in accordance with federal statute, federal regulation, negotiated program statements, and the collective bargaining agreement.

This arbitrator has judged the credibility of witnesses and considered their testimony together with all of the documentary evidence introduced by the parties. This opinion is based upon all the authorities and presented facts. This Arbitrator's award determination is drawn from the essence of the contract after reading the collective bargaining agreement, review of the record and all of the authority cited in the hearing and post hearing briefs.

The right to take disciplinary action is explicitly granted to management but it is limited by the just and sufficient cause provision, the concept of progressive discipline, and the necessity for a timely disposition of investigations and disciplinary actions.

The Warden suspended the Grievant for thirty (30) calendar days. He said the charges were Failure to Respond to an Emergency and Failure to Sign Post Orders. The Warden noted that the Grievant took full responsibility for her failure to sign the post orders. However, the

Grievant denied that she failed to respond to the emergency. The Warden found that the Grievant failed to respond to the emergency. However, he did not testify at the hearing. His decision letter did not cite which testimony or evidence he relied upon to make his finding that the Grievant did not respond to the emergency.

This is not a case in which the basic facts were simple or clear. The observations of the Agency witnesses were wholly disputed by the Union. Rarely are witness accounts polarized as they were in this case. In addition, there was the substantial passage of five years between the incident and the arbitration hearing. Witnesses were asked to recall the details of a less than one-minute occurrence. Furthermore, the human resource person and the Warden who participated in the critical disciplinary decision did not testify.

It is the evidence that is a condition precedent to a determination of misconduct. Under the circumstances of this case, the arbitrator is faced with ambiguity after ambiguity in the evidence. The principal witness in the May 30th, 2017, incident was the captain who signed the proposal letter. Captain Taylor issued the form 583 which is a report of the incident. He wrote in the form that "staff called for assistance due to an inmate on inmate fight". However, at the arbitration hearing, the Captain could not identify which staff member called for assistance. There is no excuse for this ambiguity in his memo or in his recollection. The Captain could offer no explanation because he testified that he did not "recall the actual incident." (R.54).

The Captain also testified that he signed the proposal letter but he denied having any role in its preparation and said that it was prepared for him to sign (R.55). The proposal letter reports that the Grievant did not respond. Further, the letter states the Grievant didn't address the needs of the inmates. Again, the Captain could not provide any evidence to support the conclusion that

the Grievant did not respond. Further, there was no explanation of what evidence he relied upon to make the determination that the Grievant did not meet the needs of the inmates.

The Human Resource Manager was equally as ineffective as a direct witness to the incident. She did not write the proposal letter or the Warden's determination letter. In fact, this HR Manager was working at a different location.

The SIS witness testified that he could not recall how the case was referred to him (R24). He believed his review was caused by a report of failure to respond. However, the witness had no personal knowledge of the incident. He did not interview any witnesses. His testimony was based upon his detailed study of the three video camera angles for the May 30th, 2017 incident. The timeline was from 7:44 am to 7:46 am. There was no audio. From these videos, the witness concluded that the Grievant did not call for assistance and she did not tell the inmates to stop fighting (R.31).

The Agency's case is built upon the video evidence. However, it is my determination that the video evidence is limited in probative value as it does not include the audio. The SIS Lieutenant testified there was no call for assistance. His testimony is directly rebutted by the Agency records. Form 583 report states that there was a call for assistance. It states that "staff called for assistance at 7:44 a.m. due to an inmate on inmate fight on the North Side Compound."

The SIS lieutenant's analysis lost its probative value when he was wrong regarding the substantive fact that the Grievant made no call for assistance. The Lieutenant's video analysis should have begun with a review of the incident report. In addition, he should have interviewed the Grievant. The allegation that the Grievant took no action is the decisive fact in this disciplinary determination. I am convinced that the SIS Lieutenant was wrong in his determination that the Grievant did not call for assistance.

The call for assistance is the critical fact in this case. Yet, there is no explanation in the Lieutenant's video analysis of who called for assistance. The evidence is clear and convincing that the Grievant did immediately activate her body alarm. It was she who instructed the control officer that a fight had started, and she gave the location and participants. It was her immediate response that led to the waves of responding correction officers who quickly subdued the fighting inmates. It was the Grievant who made the call when she observed the fighting and the Grievant identified the location and identified that it was two inmates who were fighting.

The Lieutenant's video analysis was also misleading that there were no commands issued by the correction officers. Officers Parker and Rawls were observed working as a two-member team. The video does not pick up the fact that there were commands. The Grievant said that Parker gave commands to the inmates to stop fighting. The agency had no testimony to rebut the Grievant's testimony that they gave commands to the inmates to stop fighting.

I am persuaded that the Grievant's explanation is consistent with the video evidence. She immediately hit her body alarm and said there was a fight in G-2 (R. 136). This alarm let the control room know her location and she gave notice that staff needed assistance. It is the role of the control room to coordinate the waves of staff response. The video evidence confirms that there was an immediate response. Staff entered the courtyard in waves that quickly subdued the fight.

By all accounts, the correction officers were expected to make an immediate response. The post orders were that the command center was to be notified immediately. The correction officers were to issue commands to the inmates. The correction officers were to secure the area and secure their personal safety. The correction officers were not permitted to physically engage

with the inmates. The correction officers were to wait for the first and second waves of responding officers who would subdue the prisoners.

The evidence presented is compelling that the Grievant's first reaction was wholly consistent with her training. She triggered her alarm so that the control room was alerted to the fact that staff needed assistance. The alarm showed the exact location. Additionally, the control room was advised of the type of disturbance.

The Grievant's explanation was consistent with the video as she claimed Parker went out front and told the inmates to stop fighting. There was no audio to confirm this command, however, the video did show the two-members were performing as a team. The Grievant said she was focused on the safety of her partner and had tunnel vision (R.147). She said she was never scared during the incident (R. 153). She said they were trained so that one officer is outside and the other officer was inside, and it didn't matter which officer was at a particular location (R.152-153). The Grievant denied that she was hiding behind the wall (R. 167). Instead, she said she put herself in a safe place and she let control handle the situation (R. 167). The Grievant's explanation is credible.

The video by itself is troubling from the perspective that it appears as if the Grievant did stand behind the wall and she appeared to permit inmates to walk past her and into the yard. However, this video evidence is explained by the Grievant. She said the inmate traffic was normal as they were headed toward breakfast. She testified that the inmates were not out of control and these inmates did not contribute to the fight. Indeed, this visual was consistent with the Grievant's view that they would not secure the location until the fight had been subdued. In fact, the video showed staff running through her door and past the Grievant and into the yard at

7:45.21 a.m.. The Grievant is persuasive that the unit doors could not be locked down until after the inmates were cuffed. She said there was no lock down until the scene was safe (R.149).

Just cause requires that misconduct must be identified by the Agency and recognized by the employee. In this case, the contemporaneous incident memorandum would have raised the issue of failure to respond. However, the memo written by the captain does not raise any issue suggesting there was misconduct. The Grievant testified that she spoke with her operations lieutenant at the end of her shift and asked him whether she had done everything correctly (R. 139). Her lieutenant told her she was good! (R. 140). I am convinced that the Grievant believed she acted according to her training and she would have acted in the same fashion under similar circumstances.

The parties cite *Douglas v. Veterans Administration*, 5 MSPR 280 (1981) in their briefs and agree the deciding officials must consider these factors when reviewing and making penalty determinations and ensuring that those determinations are reasonable:

> (1) The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated; (2) the employee's job level and type of employment, including supervisory or fiduciary role, contact with the public, and prominence of the position; (3) the employee's past disciplinary record; (4) the employee's past work history, including length of service, performance on the job, ability to get along with fellow workers, and dependability; (5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties; (6) consistency of the penalty with those imposed upon other employees for the same or similar offense; (7) consistency of the penalty with any applicable agency table of penalties; (8) the notoriety of the offense or its impact upon the reputation of the agency; (9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question; (10) potential for the employee's rehabilitation; (11) mitigating circumstances surrounding the offense such as unusual job tensions,

> personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and (12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

After considering the record as a whole, I am convinced that the failure to prove misconduct obviates the necessity of a consideration of whether the Agency considered the Douglas factors. If the Grievant had failed to respond to the emergency, it would have been a serious offense. However, it is my finding that the Agency did not prove the Grievant committed the offense, therefore, there is no necessity for this Douglas examination.

In addition to the just cause requirements, the Union cites the CBA provision for progressive discipline. It is stated that the goal of discipline is to correct and improve behavior. There is a finding that the Grievant Failed to Sign Post Orders. The Warden noted that the Grievant took full responsibility for her failure to sign the post orders. The factual circumstances support the Union's view that the Grievant would have corrected or improved her signing of post orders. There is an expectation of counseling for this type of neglect, and a written counseling is the appropriate first disciplinary step for the failure to sign the post orders.

The last contractual argument was the timeliness of the disciplinary action. This CBA does mandate a timely disposition of the investigation and timely disciplinary action. There is no time table set forth in the CBA. Cases that are measured in years are very much affected by the passage of time. In this case, the length of time definitely impacted the Agency's ability to prove its case. However, each case will vary and the delay was not entirely upon the Agency. Bottom line is there was no showing that the delay was harmful to the Grievant's case.

For all of the reasons set forth above, and after carefully considering the terms of the collective bargaining agreement and all of the evidence and the arguments and briefs of the

advocates, it is my finding that the Agency did not prove that the Grievant failed to respond to the emergency of May 30, 2017. Therefore, the grievance is sustained. The Grievant shall be awarded her 30 days of pay for her unjust suspension. A written counseling is the appropriate first disciplinary step for the Grievant's failure to sign the post orders.

## AWARD

This arbitrator has judged the credibility of witnesses and considered their testimony together with all of the documentary evidence introduced by the parties. This opinion is based upon all the authorities and presented facts. This Arbitrator's award determination is drawn from the essence of the contract after reading the collective bargaining agreement, review of the record and all of the authority cited in the hearing and post hearing briefs.

For all of the reasons set forth above, and after carefully considering the terms of the collective bargaining agreement and all of the evidence and the arguments and briefs of the advocates, it is my finding that the Agency did not prove that the Grievant failed to respond to the emergency of May 30, 2017. Therefore, the grievance is sustained. The Grievant shall be awarded her 30 days of pay for her unjust suspension. A written counseling is the appropriate first disciplinary step for the Grievant's failure to sign the post orders. The arbitrator retains jurisdiction to assist in the implementation of this award.

Issued:

Fort Myers, Florida

February 21, 2023

Stewart W. Savage, Arbitrator