

non-represented employee, offered her the opportunity to have a representative of her choosing to accompany her to the pre-disciplinary meeting (Agency Ex.23).

One (1) day prior to convening the pre-disciplinary meeting and just one (1) day following the letter of notification of said meeting from Harris, Patricia Ogren, Superintendent of SOGS by letter dated August 29, 2001 informed Grievant she was being suspended with pay pending completion of an investigation into the allegations of having violated DOC's work rules, #1, #2, #6, and #13. Although Ogren apprised Grievant she was to remain away from work during hours of work from Monday through Friday, she nevertheless was expected to attend the pre-disciplinary meeting scheduled to convene the following afternoon (Agency Ex.23).

By letter dated August 30, 2001, Ogren informed Grievant she was being "terminated" from her probationary appointment as Supervisory Youth Counselor effective September 1, 2001. Ogren further informed Grievant that the "termination" was due to misconduct involving "poor judgment" on her part which had the potential to result in severe harm to an offender assigned to the school's care. Ogren noted that, under usual circumstances, a severe disciplinary penalty would have resulted from her actions which occurred on August 11, 2001, but because she was on probationary status in her position as Supervisory Youth Counselor, the action being taken was to "remove" her from this position. However, Ogren further noted that since she held permanent status in a DOC position lower than supervisor, she had the right to return to her last position at SOGS as a Youth Counselor A and that she was effectively being restored to that position (Agency Ex.15).²⁶ **In her testimony at hearing, Ogren conceded that this disciplinary action involved terminating Grievant from her position as a Supervisor and not terminating her from her employment with the DOC** (p.135, Tr. Vol. I).²⁷ However, Grievant asserted in her testimony that she voluntarily returned to her position as Youth Counselor A, and that, in so doing, her return did not constitute a disciplinary action as

²⁶ The Arbitrator takes judicial notice of the fact that the action taken by Ogren as indicated in her written notice of August 30, 2001 was predicated on findings associated with the allegations of Grievant's conduct with respect to the incident of August 11, 2001 only, even though the pre-disciplinary meeting was to consider a second incident that occurred on August 19, 2001. However, in her testimony Ogren asserted that had Grievant not had permanent status as a Youth Counselor, a bargaining unit position, the disciplinary action taken based on multiple rules violations stemming from both the August 11th and the August 19th incidents would have resulted in termination of her employment from the DOC. The implication therefore of this testimony is, that even though Ogren made no reference in the written notice to Grievant of the August 19th incident, nevertheless that incident was apparently factored into the decision by Ogren to end Grievant's probationary period and to return her to the Youth Counselor A, position (Tr. Vol. I, p.150).

²⁷ Since the word "termination" as it relates to one's employment status is deemed to be a 'term of art' among those in the labor-management community, the Arbitrator queried Ogren as to the use of this term in her letter to Grievant dated August 30, 2001. In that verbal exchange, Ogren concurred that as used in her letter to Grievant, the term, "termination" under the circumstances surrounding Grievant's situation was synonymous with her "failure" to successfully complete her probation for the position of Supervisory Youth Counselor as a result of having violated multiple work rules in connection with the two (2) incidents as set forth in Harris' August 28, 2001 letter to Grievant and that what actually occurred as a result of the action taken was that Grievant **reverted** to her lower permanent and prior position as Youth Counselor A (Tr. Vol. I, pp. 149-150).

such, in that she was not given either a verbal or a written reprimand in connection with the alleged incidents of August 11, 2001 and August 19, 2001 (Tr. Vol. I, pp. 85-86).²⁸

The record evidence reflects that one (1) month after her return to her permanent status position of Youth Counselor A, Grievant was alleged to have violated DOC's Work Rule #13 prohibiting the conduct of "intimidating, interfering with, harassing (including sexual or racial harassment), demeaning, or using abusive language in dealing with others" (Agency Ex. 18). According to the written record evidence, Grievant's alleged conduct occurred on September 29, 2001, and involved verbal comments she made to a shift supervisor. A pre-disciplinary meeting was convened on October 12, 2001 to glean the fact circumstances of the incident after which, by letter dated October 22, 2001, Grievant was informed that it was the Agency's determination she had clearly overreacted to the situation in question and, as a result, her overreaction resulted in the harassment of management staff when management was attempting to provide her with the correct answer to her request to take a vacation day several days hence. In so finding, the Agency apprised Grievant that her intimidating conduct was in violation of Work Rule #13 in Category B and, that because it was her first violation of a Category B offense, she was being issued the disciplinary action of a written reprimand. Additionally, Ogren, who issued this letter notifying Grievant of the Agency's disciplinary action asserted that the imposition of the Written Reprimand was consistent with DOC, Division of Juvenile Corrections guidelines for employee discipline. Ogren advised Grievant that should she feel the disciplinary action taken against her was unjust, she had the right to appeal through the contractual grievance procedure according to Article IV of the Collective Bargaining Agreement. With respect to this advisement, the record evidence reflects that the Union, on behalf of the Grievant, filed a written grievance claiming the Written Reprimand was not for just cause and sought as the remedy, to make the Grievant whole.²⁹

The record evidence reflects that on June 6, 2002, Grievant was issued an official Verbal Reprimand for her failure on May 25, 2002 to complete inventory sheets during her shift on the Stepping Up unit, a violation of Work Rule #2, Category B which states, "failure to follow policy or procedure, including but not limited to the DOC Fraternalization Policy and Arrest and Conviction Policy" (Agency Ex.16). The record evidence further reflects

²⁸ Perusal of the DOC's Work Rules (Agency Ex. 23), although not explicit in referencing precise actions that constitute discipline in redressing situations involving "Prohibited Conduct", other than the disciplinary action of discharge, nevertheless, if considered in the general context of progressive disciplinary actions, **reversion** to a lower rated position as a result of a failure to complete a probationary period in a position deemed to constitute a promotion, for any reason, would not be deemed to fall within the ambit of a disciplinary action. As additional support for Grievant's view that her return to her permanent status position of Youth Counselor A, did not constitute a disciplinary action is the fact that no grievance was filed by her contesting the action of prematurely ending her probationary period for the position of Supervisory Youth Counselor. However, under the revealed circumstances of the situation that resulted in her unsuccessful completion of her probationary period for the position of Supervisory Youth Counselor, it cannot be asserted, as Grievant has so asserted, that her return to the lower rated position of Youth Counselor A, was **voluntary**.

²⁹ The Arbitrator notes that this written grievance was submitted on November 9, 2001, yet the date the Agency returned its answer denying the grievance was April 2, 2002, five (5) months later (Agency Ex.19).

that Grievant signed this disciplinary action in acknowledgement she had committed this violation.³⁰

The record evidence also reflects that prior to her having infringed Work Rule #2 on May 25, 2002, Grievant was involved in an incident that occurred on May 21, 2002 for which she was charged with having violated Work Rules # 2 and # 13. The essence of this charged misconduct as described in the written notice of discipline (Agency Ex.17), pertained to a personality conflict Grievant had with a co-worker who was the lead person she worked with on the Stepping Up unit and that the fall-out from their encounters while working in the unit, which consisted of unprofessional outbursts by Grievant, impacted adversely on the unit's population of twelve (12) girls to the point that some of the youths were supporting Grievant and other of the youths were supporting the lead worker. The incident that culminated in Grievant being issued a Written Reprimand for having violated Work Rules # 2 and # 13, occurred at a meeting convened by Grievant's immediate supervisor on May 21, 2002 with both the Grievant and Lead Worker to specifically address their personality conflict. According to the account of what transpired at this meeting as recorded from the fact circumstances revealed at the pre-disciplinary meeting held on May 31, 2002, is that Grievant engaged in the following conduct directed at the lead worker, to wit: she made verbal objections characterized as "very loud"; she exhibited inappropriate and intimidating body language; and she "rolled her eyes". The supervisor who convened the meeting was said to have lost control of the meeting by failing to quiet the proceedings which occasioned several staff members to approach the participants to investigate the "disturbance". It was noted at the meeting that the Supervisor stressed to Grievant and the Lead Worker the many attempts by her and other Management staff to assist them both with their issues which included the holding of three (3) conflict mediation sessions without success that is, without achieving a positive outcome. In her written notice to Grievant dated June 20, 2002 apprising of the issuance to her of the Written Reprimand, Superintendent Ogren stated that harassment and unprofessional behavior will not be tolerated at SOGS, that all workers have the right to work in a non-hostile work environment and to be treated professionally and with respect. Ogren further stated that Grievant had failed to exercise self-control and behaved in an unprofessional manner towards her supervisor and co-worker and, additionally, she interfered with their ability to perform their duties. Ogren apprised that as this was Grievant's third violation of Category B Work Rules within a twelve (12) month period, she was being given a Written Reprimand for infracting Work Rules # 2 and # 13 consistent with DOC, Division of Juvenile Corrections guidelines for employee discipline. Ogren advised Grievant that should she feel this disciplinary action was unjust, she had the right to appeal through the contractual grievance procedure in accord

³⁰ While on the surface this failure to complete an inventory sheet does not appear to constitute a significant violation of the DOC's Work Rules, Grievant's explanation through testimony indicates otherwise. According to Grievant, the stepping up unit is a severe mental health unit, populated by girls ranging in age between 12 and 16. The import of keeping track of the number of such items as spatulas and spoons by way of an inventory sheet is that such items can be used by the girls as weapons to do physical harm to themselves. Grievant explained that the night of the shift she, as a member of the unit's staff team forgot to complete the inventory sheet was a night the team was dealing with some suicide attempts (Tr.Vol.I,pp.97-98).

with Article IV of the Master Collective Bargaining Agreement.³¹ Ogren apprised Grievant that this Written Reprimand was being placed in her personnel file.

The record evidence reflects that Grievant applied for a promotion to the position of Correctional Sergeant and, as a result, she was sent to train for the position at the DOC's training center located in Oshkosh, Wisconsin on or about October 2, 2002. As with other promotion positions applied for by her such as Supervisory Youth Counselor, once accepted for training for the Correctional Sergeant position, Grievant entered into another probationary period of six (6) months. Grievant testified that in order to complete her training for this position, she had to pass a physical fitness examination comprised of three (3) separate tests, to wit: perform a number of sit-ups; perform a number of push-ups; and do a run of two (2) miles. Grievant testified that she failed to pass the two (2) mile run thereby resulting in a failure to successfully complete her probationary period and rendering her ineligible for the Correctional Sergeant position. As a result, Grievant returned to her permanent status position as Youth Counselor at SOGS in November of 2002 (Jt.Ex.5 & Un.Ex.2).

Prior to her leaving SOGS to train for the promotion position of Correctional Sergeant, Grievant made application on September 12, 2002 for the position of Correctional Officer at the Chicago MCC facility of the BOP (Jt.Ex.2). On September 17, 2002, Grievant submitted to a Pre-employment interview for this BOP position conducted by Sharon Benefield, the then Assistant Human Resource Manager at MCC Chicago which consisted of Grievant responding to numerous written questions and her answers recorded by Benefield and to which Grievant initialed each of her recorded answers (Jt.Ex.3). For the purpose of this arbitration, the following pre-employment questions and the answers provided by Grievant are deemed to be the most relevant.

Under Section A. Employment History

Q. Has the applicant been dismissed or resigned in lieu of dismissal from any job?

A. **No**

Q. Has the applicant been disciplined (suspended, reprimanded, etc.) in former or Current civilian employment?

A. **No**

The record evidence reflects that sometime between September 17, 2002, the date she was administered her pre-employment interview and November 19, 2002, the date she provided answers to a "Supplemental Questionnaire for Selected Positions" (Jt.Ex.4), the Agency made an offer of employment to the Grievant for the applied for position of

³¹ The Arbitrator notes this arbitral proceeding is devoid of any written evidence indicating that Grievant contested the issuance of this Written Reprimand through the contractual grievance procedure.