ARBITRATION DECISION NO.:
610

UNION:
OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:
Bureau of Workers Compensation

DATE OF ARBITRATION:
May 3, 1996

DATE OF DECISION:
July 12, 1996

GRIEVANT:
Nicole Adams

OCB GRIEVANCE NO.:
34-33-(95-05-0l)-0066-01-09

ARBITRATOR:
Jonathan Dworkin

FOR THE UNION:
Brenda Goheen, Advocate
Lori R. Collins, Staff Representative

FOR THE EMPLOYER:
Kim A. Brown, OCB Advocate
Patrick W. Morgan, BWC Advocate

KEY WORDS:
Discipline Not Even-handed
Just Cause
Mitigation
Removal
Threats (Making)
Verbal Abuse of Co-Worker

ARTICLES:
Article 24 - Discipline
§ 24.01 - Standard
§ 24.02 - Progressive Discipline

FACTS:

The grievant, a Compensation Claims Specialist for the Ohio Bureau of Workers Compensation, was discharged for fighting with and threatening a co-worker. The dispute between the grievant and the co-worker began over a fax intended for another employee. The grievant verbally attacked the co-worker in the work area. The grievant and the co-worker then engaged in a loud confrontation in the restroom where both

employees exchanged threats and vulgar insults. The grievant pointed her finger in the co-worker's face. The co-worker attempted to slap the grievant's hand away and prevented the grievant from leaving the restroom. In response, the grievant threatened to bring back a .38 and shoot the co-worker. Other employees intervened and ended the fight before either combatant was harmed. Management learned of the altercation and a three day investigation was launched. Following the investigation the Employer issued recommendations for the removal of both employees. The Employer's recommendations were affirmed in the pre-disciplinary hearings and both employees were removed. However, the Union settled the co-worker's grievance with a rigorous last-chance agreement.

EMPLOYER'S POSITION:

The Employer argued that the grievant's demeanor at the pre-disciplinary hearing did not warrant a penalty less than discharge. The Employer compared the co-worker's demeanor at her pre-disciplinary hearing with the grievant's demeanor to support its contention. The Employer noted that the co-worker was remorseful, she acknowledged that her behavior was unacceptable and explained why she had acted in such a manner. The Employer argued that the grievant's failure to appreciate or admit that she had done anything wrong showed that she was incorrigible. In other words, corrective discipline was unlikely to have a corrective effect upon the grievant.

UNION'S POSITION:

The Union argued that management must identify the aggressor to discipline an employee for fighting. The Union contented that the grievant was not the aggressor and her removal should not be sustained. The Union noted that the grievant did not go to the restroom to confront the co-worker, she did not renew the argument and she did not throw the only punch involved in the confrontation. The Union argued that the grievant was the victim of the co-worker's aggression. The Union admitted that the grievant should not have told the co-worker that she was going to "blow her away with a .38", but argued that those were merely empty words without an underlying meaning or intent. The Union argued that the grievant was afraid for her safety and the safety of her unborn child. The Union conceded that the grievant's threat should not be overlooked, but argued that she was provoked by the co-worker's aggression.

ARBITRATOR'S OPINION:

The Arbitrator agreed with the Union's contention that when contemplating discipline for fighting, an employer ordinarily has to distinguish between the aggressor and victim. The Arbitrator stated that just cause requires management to carefully estimate degrees of fault. In this case the grievant inflamed the co-worker's anger by skillfully insulting and debasing the co-worker. Furthermore, the grievant's threat to shoot her adversary was aggression. Thus, the Arbitrator found it incomprehensible for the Union to argue that the grievant was an innocent victim. The Arbitrator concluded that both the grievant and the co-worker were aggressors and each were equally guilty for what occurred.

The Arbitrator held that the Employer did not have just cause to remove the grievant. The Arbitrator stated that just cause requires an employer to attempt to salvage employees who are salvageable. To determine salvageability, an employer must consider every potentially mitigating and aggravating factor. The Employer, in this case, based the grievant's removal entirely on her misconduct and the negative aspects of her work record. From May 1990 through August 1993, the grievant had accumulated a number of disciplines for attendance related problems which included two written reprimands, a one day suspension, a three day suspension, three ten day suspensions and a six month EAP referral. Notwithstanding the grievant's disciplinary record, the Arbitrator considered the positive aspects of her work history. The grievant's attendance improved for more than one year following the EAP referral, most of her evaluations were at or above standards and she acknowledged that the gun threat was wrong. Contrary to the Employer's position, the grievant was not required to demonstrate remorse. Rather, all that is required is that an employee show realization that his/her misconduct was wrong. The Arbitrator also found that despite the threat, there was absolutely no evidence that the grievant was inclined to violence. The Arbitrator concluded that the grievant's statement was made in the heat of the moment, that the grievant was not a violent person and that it was not probable that she would point a gun at a person. Thus, the Arbitrator held that, under the

circumstances, the discharge was too severe to comply with just cause.

AWARD:

The grievance was sustained in part. The grievant was reinstated, but without back pay or restoration of benefits. However, the grievant's award included full, unbroken seniority.

TEXT OF THE OPINION:

OCB-OCSEA VOLUNTARY GRIEVANCE PROCEEDING
ARBITRATION OPINION AND AWARD

Arbitration Between:

STATE OF OHIO
Ohio Bureau of Workers Compensation

-and-

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, OCSEA/AFSCME Local 11

Case No.:
34-33-950501-0066-01-09
Decision Issued:
July 12, 1996

FOR THE EMPLOYER
Kim A. Brown, OCB Advocate
Patrick W. Morgan, Agency Advocate
Richard DeStefano, Office Manager
Monica White, Witness
Dorothy Meade, Witness
Gary O'Neal, Observer

FOR THE UNION
Brenda Goheen, OCSEA Advocate
Lori R. Collins, Staff Representative
Tanya Clayborn, Chief Steward
Nicole Adams, Grievant
Nancy Booker, Witness
Lori Young, Witness
Mary Dill, Witness
LaTina Forte, Witness

Jonathan Dworkin, Arbitrator
101 Park Avenue

Amherst, Ohio 44001

THE ISSUE

Grievant, a Compensation Claims Specialist for the Ohio Bureau of Workers Compensation, received discharge for fighting with and threatening a coworker. was the penalty for just cause?

Petty bickering between Grievant and another employee turned into a loud, ugly confrontation when the two faced each other later in the women' s restroom. The employees exchanged threats and vulgar insults. Grievant pointed a finger in Monica's (her adversary's) face; Monica tried to slap it away with a roundhouse blow, and barred Grievant from leaving the restroom. In response, Grievant threatened to bring back her .38 and "blow Monica away." Other employees intervened and ended the fight before either combatant was harmed.

Supervision learned of the incident and launched a three-day investigation. Written statements were obtained from Grievant, Monica, and witnesses to what had occurred. Subsequently, the Employer issued recommendations for both employees, removals. The recommendations were affirmed in predisciplinary hearings. Monica's discharge was May 19; Grievant's was April 28, 1995. Both employees grieved.

The Union settled Monica's grievance with a rigorous last -chance agreement. It was for a two-year term and included enrollment in an Employee Assistance Program (EAP). A clause in the settlement acknowledged that Monica would be summarily discharged if she violated any work rules during the two years.

Grievant either was not offered or did not accept a last-chance settlement like Monica's. Her grievance proceeded to arbitration and was heard May 3, 1996 at Columbus, Ohio. The issues presented were whether the Employer had just cause for the removal and whether the discipline met the following requirements in Article 24 of the Collective Bargaining Agreement:

ARTICLE 24 - DISCIPLINE

24.01 - Standard

Disciplinary action shall not be imposed upon an employee except for just cause. The Employer has the burden of proof to establish just cause for any disciplinary action.

. . .

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);

. . .

D. One or more day(s) suspension(s);
E. termination.

When the arbitration hearing began, the Union withdrew a potential just-cause question. It stipulated that although Monica received last-chance reinstatement, disparate treatment is not at issue.

FACTS AND CONTENTIONS

Besides Grievant and Monica, the State and Union both called several witnesses. In view of the amount of testimony, it is surprising that there was not more disagreement over the facts. There were, of course, discrepancies, but they were minor. For the most part, the evidence was undisputed. In the Arbitrator's judgment, it will not be productive to burden this decision with a recital of what each witness said and an

explanation of his thought processes for resolving what were insignificant evidential conflicts. It should be sufficient to note that he tried to weigh the evidence conscientiously and that the process resulted in the following factual findings:

Workplace quarrels frequently start over inconsequential trivialities. The fight between Grievant and Monica fit the mold. It was rooted in fax messages that a coworker did not receive. On the morning of March 14, 1995, Nancy, a Claims Specialist who worked with Monica and Grievant, was expecting faxes. What she was waiting for were not official messages related to Agency business. They were the kinds of cartoons and "humorous" platitudes that constantly circulate in offices. There is hardly a worker in a fax-equipped office who is not familiar with them. Almost without exception, they are racist or sexist. The faxes Nancy anticipated were sexist, with men as the objects of derision. One of them exemplifies the others. In bold, hand-drawn letters filling an entire page, it said: “PMSallows a woman once a month to act like men do every day.” As is common with this genre of faxes, the ones sent to the Agency for Nancy did not identify the sender or intended recipient. Monica happened to be at the fax machine first. As the f axes were not addressed to anyone, she took them and showed them around.

Suspecting that a coworker had taken her faxes without permission, Nancy went to Grievant’s cubicle to complain. In loud voices, obviously intended to be overheard, Grievant and Nancy talked about "noseyass people who can' t mind their own business.” The comments hit their mark; Monica overheard and was offended. She went to Nancy, who was at her desk, and admitted taking the faxes. She said she was sorry, but that there was no name or anything showing they belonged to anyone. Nancy rebuffed the explanation and ordered her to leave. Then Monica went to grievant, intending to give the same explanation. Grievant was less abrupt, but more insulting. She spoke to Monica with palpable nastiness and obvious dislike, lecturing her as one would lecture a bad child. The written statement Grievant voluntarily provided Management tells the story:

> She [Monica] then came to my desk . . . and started bugging me again. She started out saying "first of all this is none of your business." I told her I really didn't want to hear it and again asked her to leave me alone. She kept running her mouth. I said, "Monica the whole problem is you need to mind your own business, the fax had no business being carried around by you. It wasn't yours, bottom line.” She then said it had no one's name on it. I asked her what kind of sense this made. I told her my car keys don't have my name on them; this doesn't give just anyone the rightto drive my car. I told her the fax was sent here for a reason. Apparently the person expecting the fax knew to look for it. Monica knew this fax was not meant for her. I told her she is just too nosey and I wish she would just leave me alone.[1]

Grievant won the skirmish, but the battle was not over. Monica was seething when she returned to her desk. A little while later, Grievant left her cubicle, announcing that she was going to the bathroom. Monica followed..[2] As Grievant described it, Monica "stormed" into the bathroom shouting: "Don't you ever front me like that!"

It seems Grievant is more articulate than Monica; at least she is more facile with insulting remarks. Still. treating Monica like a child, she responded: "Get out of my face. I don't have time for your immaturity.” That only fueled Monica' s anger. She became vulgar, shouting, "Fuck you!” When Grievant mockingly ignored her and tried to leave, Monica threw her weight against the door, barring egress (Monica is a much larger woman than Grievant) . She also bumped Grievant, challenging her to "COME ON." That is when Grievant madethe remark that the Employer found intolerable -- requiring the discharge penalty:

> **Before I'd waste my time fighting you, I'd just as soon blow you away with my .38.**

Monica lost control completely. Pointing her finger in Grievant's face, she screamed repeatedly: "BLOW ME AWAY. COME ON, BLOW ME AWAY!” Her shouts were interspersed with vulgarities. Other women in the room tried to break it up. Before they could, Grievant pointed her finger in Monica’s face and uttered

another nasty insult. Monica took a hard swing at Grievant's finger, trying to slap it away. The blow missed Grievant but hit an innocent bystander.

According to the Employer, Grievant's demeanor at her predisciplinary hearing made it unthinkable that a penalty less than discharge might be warranted. Monica had been remorseful at her hearing. She was truly sorry for what she had done and admitted that her behavior had been unacceptable. Also, she explained why she became so unrestrained when Grievant threatened to blow her away. Two months earlier, her grandfather shot her grandmother to death. Monica was traumatized by the tragedy, and was privately seeking therapy when Grievant made the threat. The Union made an impassioned plea for Monica, and Management was swayed. Even so, the Employer was notlenient toward her. She received a harsh, forty-five-day disciplinary suspension and was reinstated only after she executed an austere last-chance agreement.

Grievant's attitude at her predisciplinary hearing stood in stark contrast to Monica' s. Although the Employee admitted that she should not have said anything about a gun, she claimed to be a wholly innocent victim. According to her statements, Monica was the aggressor; Grievant only tried to avoid confrontation. From the Employer' s perspective, Grievant's failure to appreciate or admit that she had done anything wrong showed that she was incorrigible -- that corrective discipline was unlikely to have a corrective effect.

More to the point, the Employer argues that it cannot retain an employee who threatens to kill another. As witnessed by workplace tragedies that have occurred, especially in the federal sector, no employer can take the risk of dismissing gun threats. For that reason, the Acting Office Director who made the initial removal recommendation did not try to distinguish between aggressor and victim. In his mind, the distinction was "irrelevant."

* * *

The Acting Director's irrelevancy comment pinpoints the difference between the Employer's and Union's positions. The Union contends that identifying the aggressor is indispensable to discipline for fighting. That is, of course, correct. A very large volume of pub-lished arbitral decisions supports the view. An employee who participates in but does not start a fight, whose major offense is to be in the way of another's fighting words, belligerence, or assault, may be blameless. At least he or she ordinarily is held less culpable than the aggressor. The point was made in a recent dispute between these parties, which was decided by Arbitrator David Pincus.[3] Pincus cited a published, private sector decision by Arbitrator Raymond Roberts as establishing reliable criteria for evaluating discipline cases stemming from fights. In *Alvey, Inc.,* 74 LA 838, Roberts held:

> . . . not all employees guilty of fighting are necessarily subject to discharge for a first offense. There may be mitigating circumstances and fighting, being in the nature of an assault, is subject to certain recognized defenses as follows:
>
> 1. An employee may be an innocent and injured victim of an unprovoked assault and not, himself, engage in aggression or hostility. In such a case, the victimized employee has engaged in no wrongful conduct and must be regarded as innocent.
>
> 2. Self Defense. When an employee engages in only as much hostile conduct as is reasonably necessary to defend himself from aggression and uses no more force than is reasonably necessary for that purpose, he will generally be found not guilty of fighting or assault. This is a defense of justification which is a complete defense.
>
> 3. Provocation. When an employee is the victim of provocation which is foreseeable to provoke an ordinarily reasonable person to a heat of rage and aggression, the conduct of that employee may be excused (as opposed to justified) either partially so as to mitigate against the fulldegree of penalty, or

completely, so as to mitigate against any penalty whatsoever.[4]

As the Union sees it, the disciplinary misconduct was what took place in the women's restroom. The Union urges that this Employee was not the aggressor there by any stretch of the imagination. She did not go to the restroom to confront her adversary. Monica did that. She did not renew the argument. Monica did that, too. Grievant only tried to leave the scene and take herself away from a disagreeable situation, but Monica blocked her way. There was only one assault, a roundhouse punch or slap and it was Monica who threw it.

Under the circumstances, the Union is at a loss to understand why Grievant, the victim of Monica's aggressions, was punished so severely. Admittedly, she should not have told Monica that she was going to blow her away with a .38. But it was an empty threat -- just words without underlying meaning or intent. Grievant did not, and does not, own a gun. It is unimaginable to the Union that her words contained a threat to move the inconsequential squabble to the level of fatal violence. Grievant allegedly uttered the statement because she was afraid of Monica's bullying. She was doubly afraid because she was pregnant. She feared not only for her safety but also for her unborn child's.

The Union concedes that Grievant's statement about using a gun could not be overlooked. Perhaps the Employee did earn some corrective discipline. It contends, however, that the statement was provoked by fear of a larger, stronger aggressor -- a bully -- and that the Employer grossly overreacted. The Union maintains that in doing so, Management violated the most fundamental precepts of just cause.

OPINION

The Arbitrator agrees that when contemplating discipline for fighting, an employer ordinarily has to distinguish between aggressor and victim. If it disregards the difference and fires both employees in knee-jerk fashion, it places its decision at significant risk of reversal by an arbitrator. Even if fighting is viewed as joint misconduct, just cause requires management to carefully estimate degrees of fault. When an employer fails to do that, the duty falls to the arbitrator.

Here, however, estimating fault would not have saved Grievant. The Union's idea that the only aggression was what occurred in the restroom is too narrow to fit the facts. The fight began on the workroom floor where Grievant mercilessly and with marked effect inflamed Monica's anger. She insulted and debased Monica skillfully. The vernacular says it best: Grievant knew what buttons would provoke Monica, and she pushed them all.

Grievant's threat to blow her adversary away also was aggression. It had its desired and intended consequence when Monica lost her last vestige of self control. The Arbitrator finds it incomprehensible for the Union to argue that Grievant was an innocent victim. It does not ring true, nor does Grievant's defense that she said the words out of apprehension for her unborn baby's safety. In the Arbitrator's judgment, that was a bogus, transparent attempt to draw on his natural sympathies for pregnant women and unborn children. It does not work here. The most charitable conclusion the Arbitrator can come to regarding Grievant's position is that both combatants were aggressors; each was equally culpable for what happened.

* * *

Just Cause: Of the many arbitral decisions that have tried to define this amorphous and perplexing two-word standard, none seems to hold the definitive last word. Arbitrators have fashioned complex rules to guide others in their assessments of just-cause principles, but they are too mechanical. They just don't always apply.

The problem is that there is a human element that has to be weighed to establish whether just cause exists. Because each human being is unique, inflexible rules cannot apply equally to everyone. In this Arbitrator's opinion, salvageability is the touchstone. Just cause requires employers to try to salvage employees who are salvageable and allows them to discharge those who are not.

To determine salvageability, an employer must temper its view of the offense with judicious and discerning regard for every potentially mitigating factor. Of course, the employer may consider aggravating factors as well, but it cannot overlook mitigating ones. It bears repeating that the employee's salvageability is the key.

The evidence convinces the Arbitrator that the State based the removal entirely on Grievant's misconduct and on negative aspects of her work record. The Employee had seven years, seniority and worked for the Agency as an intern two years before establishing her seniority date. She had longevity, but her work history was anything but admirable. May 1990 through August 1993, she accumulated a startling number of disciplinary impositions for attendance violations. Her file contains two written reprimands, a one-day suspension, a three-day suspension, and two ten-day suspensions, all for absenteeism and tardiness. In April 1990, her written comment on a reprimand was: "I will try to adapt to my new situation (baby) . I will try to get up early enough to get us both dressed and get there on time." She did not keep her promise. In December 1992, the Agency placed her on restricted sick leave, requiring physician verifications for absences due to illness. Under the State Sick-Leave Policy, such requirement applies to employees whose sick-leave usages display pattern abuse.

Grievant's attendance did not improve. In January 1993, she received a ten-day suspension and a six-month EAP referral. It appears that the referral might have been in lieu of discharge. That conclu-sion stems from the wording of the EAP agreement. It looks like a last-chance letter, signed by both the Employee and her Union Representative. It says in part:

> 7. Management agrees to hold the removal in abeyance until the successful completion of this program. At that time management will reconvene the pre-disciplinary hearing and modify the requested discipline.
>
> 8. The Union agrees that they will not grieve the discipline imposed or any aspect of this employee assistance agreement.
>
> 9. [Grievant] and the Union agree that any instance of unexcused absence or failure to follow written policies of management will result in an automatic quit by [Grievant].

While the Union urged that Grievant's attendance record was immaterial to this dispute, the Union Advocate introduced Employee Evaluation Reports to show that Grievant was a dedicated worker who deserved a second chance. The inconsistency between the Union's plea for rejection of the bad record and acceptance of the good is obvious. Management (and by derivation, the Arbitrator) was obligated to consider the positive aspects of the Employee's record and not barred from considering the negative ones. Both were relevant.

* * *

It is sometimes observed that arbitrators are strangers to the workplace, and should not second-guess management's judgment. This tenet is influential, but only when management thoroughly carriesout its job of evaluating an employee's salvageability. When it fails to do so, the obligation becomes the arbitrators. He or she must then reassess just cause and, if necessary, invade and overturn management's considered judgment.

As stated, the Arbitrator finds that the Employer did not do enough. It looked only to Grievant's misconduct and her poor attendance record, and then made its decision. The Arbitrator must go further; he must examine the whole picture both the negative and the positive elements. In carrying out that duty, the Arbitrator finds the following factors relevant:

1. Grievant's Attendance: It was deplorable up to December 1993. According to the evidence, however, it improved since then. The Employee's record showed no discipline for attendance or any other misconduct

for more than a year following the EAP referral.

2. Evaluations: At first, Grievant's evaluations were uniformly good. Her mid-probation performance assessment in May 1988 was acceptable. Her supervisor noted that she was doing a better-than-adequate job, was open to learning new procedures, was consistently outgoing, friendly and cooperative. The final probationary evaluation in July of that year was even better. The written supervisory comment was: "[Grievant] gets along well with everyone. She is able to handle her work flow effectively and efficiently." In subsequent years, most of Grievant's ratings were at or above standards.

Good evaluations continued until the Employee received a promotion in 1994. For the first time, her ratings all were below expectations. The supervisor comment then was: "If significant improvement is not made, probationary demotion will be requested."

3. Remorse: The Agency pointed out that Grievant showed no remorse in her predisciplinary meeting or even in arbitration, after she had about a year to think over what she had done. Arbitrators sometime say that remorse is important in decisions to uphold or overturn a discharge. "Remorse" is a poor word for what they mean. It signifies abject sorrow for an act, a gnawing distress arising from a sense of guilt for past wrongs.".[5] If this is the definition, an arbitrator who insists on it goes too far. He or she assumes the ability and right to judge an individuals innermost conscience. Moreover, remorse is as often faked as it is true.

All that is really required is that an employee show realization that his/her misconduct was wrong. The objective is to guarantee that his/her reinstatement will not place the employer in jeopardy of like misconduct.

Contrary to the Agency's assertion, Grievant did show an appreciation for the fact that the gun threat was wrong. She testified that it was impulsive and desperate, "because she [Monica] wouldn't leave me alone." Grievant also said that she sincerely regretted the threat.She did not seem to regret or acknowledge the fact that her own aggressiveness provoked the incident, but the Arbitrator believes that a severe penalty less than discharge would have impressed that on her.

4. The Threat: Telling Monica that she would blow her away was horrible, and the Employer rightfully was frightened by it. This was not free speech, and it would be a mistake for the Arbitrator to underestimate it. However, Grievant testified believably that she did not mean it -- that the threat derived from fear that Monica was going to hit her. That testimony stood up well against searching cross examination.

What cannot be overlooked here is that Grievant was not a physical battler. She fought with her mouth, and she was good at it. Despite the threat, however, there is absolutely no evidence that she is inclined toward violence. The probability is that she is not.

* * *

Evidence establishes that Grievant was not a good or valuable employee. She had many problems, which were resistant to corrective discipline. But she was not fired for those problems. Her discharge was based mainly on the fight in the bathroom (which she was instrumental in provoking) and her threat to blow her adversary away. The evidence proves to a high degree of certainty that the statement was made in the heat of the moment, that Grievant is not a violent person,and that there is no likelihood she would ever point a gun at Monica or anyone else.

While it is understandable that the Agency would not want to retain an employee whose attendance had been consistently poor, whose productivity had become unacceptable, the Arbitrator finds, ***under the circumstances***, that discharge was too severe to comply with just cause. This finding does not imply that every employee who threatens to shoot another deserves a second chance; that kind of ruling plainly would be wrong. It is only under the circumstances that existed here that the Arbitrator finds Grievant is entitled to reinstatement.

Clearly, Grievant deserves no better treatment than her adversary. Monica returned to work after a forty-

five-day suspension, with a two-year last-chance agreement hanging over her head. The Arbitrator does not believe it is in his power to force the parties to offer or accept a last -chance agreement. However, if Grievant is reinstated without back pay and if that decision stands on her record, it will be as effective a deterrent to future misconduct. Also, the Arbitrator believes that if the Agency regards the gun threat as a symptom of emotional imbalance, it should have the right to require a psychiatric fitness-for-duty examination before reinstating the Employee.

AWARD

The grievance is sustained in part.

The State is directed to reinstate Grievant at the beginning of the pay period following receipt of this Award. Such reinstatement shall be without back pay or restoration of benefits, but shall include full, unbroken seniority.

If, due to the gun threat, the Employer genuinely believes Grievant is unstable and her return to the workforce might be dangerous, it may condition the reinstatement on a psychiatric fitness-for-duty examination. Such examination shall be at the Employer's expense and will not delay Grievant's restoration to pay status. In other words, if the Employer elects to have Grievant examined, and Grievant passes the examination, her reinstatement will be retroactive to the beginning of the first pay period following receipt of this Award.

Decision issued at Lorain County, Ohio July 12, 1996.

Jonathan Dworkin, Arbitrator

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[1] The quote is essentially what Grievant wrote. However, the Arbitrator has added sentence structure, punctuation, and spelling corrections to make it comprehensible.

[2] In the hearing, the Union urged that Monica followed Grievant to the restroom looking for a fight. The Employer countered that the presence of the two employees in the restroom was just a coincidence. It introduced schematics of the workplace to prove its point. According to testimony, Monica’s route was different from Grievant' s. The Arbitrator finds that the Union’s version is more probable, though he does not believe that Monica’s initial motive was aggression. She did go there to confront Grievant, probably hoping to relieve the resentment she felt.

[3] Case No. 24-09-890303-0181-01-04, decided May 24, 1990.

[4] 74 LA at 838

[5] Webster's Third New International Dictionary, Unabridged.