

**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

Kenneth Rupert,

Appellant,

v.

Case No. 2014-REM-09-0256

Department of Rehabilitation and Correction
Toledo Correctional Institution,

Appellee,

ORDER

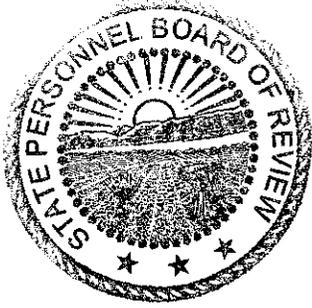
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge (ALJ) in the above-captioned appeal. Further, the Board has carefully reviewed and considered respective counsel's analysis provided to the Board in Oral Argument on December 2, 2015.

At this comprehensive Oral Argument by this Board, both sides were ably and actively represented by excellent legal counsel. Summary points were made by both sides and a wide range of questions asked by the Board members and attorneys. Discussions probed in-depth on the questions of insubordination, disparate treatment, penalties, and appropriate conditions, including security levels at the Toledo Correctional Institution. Both sides agreed that a highly-detailed and substantive record had been developed by the ALJ and with the Report and Recommendation summary.

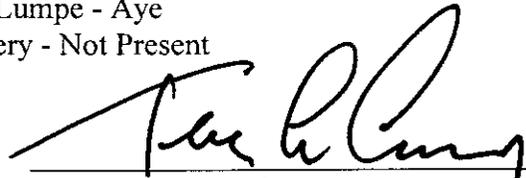
After a thorough examination of the entirety of the record, including a review of the Report and Recommendation of the ALJ, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the findings of the ALJ and hereby modifies the effective date of discipline recommended by the ALJ, as follows.

On December 18, 2015, this Board issued a final Order in this matter. On December 21, 2015, this Board issued a Stay Order in this matter. On December 28, 2015, Appellant filed Appellant's motion for clarification of this Board's final Order and on December 29, 2015, Appellee filed Appellee's response to Appellant's motion. Based on those pleadings, the parties and counsel should note that *the intent of this Board is that back pay for Appellant is to run from December 2, 2015 until the effective date of Appellant's reinstatement with Appellee.*

Wherefore, it is hereby **ORDERED** that Appellant's removal be modified to a reduction and that Appellant be reinstated to a classification assigned to the highest non-supervisory position under a Unit Manager, all to be effective December 2, 2015, pursuant to R.C. 124.03 and R.C. 124.34.



Casey - Aye
Lumpe - Aye
Tillery - Not Present

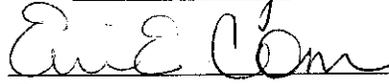


Terry L. Casey, *Chairman*

CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitutes ~~(the original)~~ a true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, January 06, 2015.2016



Clerk

NOTE: Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights.

NOTICE

Where applicable, this Order may be appealed under the provisions of Chapters 124 and 119 of Ohio Revised Code. An original written Notice of Appeal or a copy of your Notice of Appeal setting forth the Order appealed from and the grounds of appeal must be filed with this Board fifteen (15) days after the mailing of this Notice. Additionally, an original written Notice of Appeal or a copy of your Notice of Appeal must be filed with the appropriate court within fifteen (15) days after the mailing of this Notice. At the time of filing the Notice of Appeal or copy of your Notice of Appeal with this Board, the party appealing must provide a security deposit to the Board. In accordance with administrative rule 124-15-08 of the Ohio Administrative Code, the amount of deposit is based on the length of the digital recording of your hearing and the costs incurred by the Board in certifying your case to court. The length of the digital recording, the costs incurred, the corresponding amount of deposit required, and the final date that the Notice of Appeal or copy of your Notice of Appeal and the Deposit will be accepted by this Board are listed at the bottom of this Notice. If a full or partial transcript of the digital recording has been prepared prior to the filing of an appeal, the costs of a copy of that certified transcript will be accepted by this Board; transcript costs will be listed at the bottom of this Notice.

IF YOU ELECT TO APPEAL THIS BOARD'S FINAL ORDER, THEN YOU MUST PROVIDE THE DEPOSIT LISTED BELOW AT THE TIME YOU FILE YOUR NOTICE OF APPEAL OR COPY OF YOUR NOTICE OF APPEAL WITH THIS BOARD. Please note that the law provides that you have fifteen (15) calendar days from the mailing of the final Board Order to file your Notice of Appeal or copy of your Notice of Appeal both with this Board and with the Court of Common Pleas. The fifteenth day is the date that appears at the bottom of this Notice.

METHOD OF PAYMENT: for all entities other than State agencies, payment of the deposit must be by money order, certified check, or cashier's check. State agencies are required to use the Intra-State Transfer Voucher (ISTV) system (OBM Form 7205), which must be processed prior to the filing of an appeal. To initiate an ISTV, State agencies may call the State Personnel Board of Review Fiscal Office at 614/466-7046.

IF YOU MAINTAIN YOU CANNOT AFFORD TO PAY THE DEPOSIT LISTED BELOW, THEN YOU MUST COMPLETE THE BOARD'S "AFFIDAVIT OF INDIGENCE" FORM. YOU CAN OBTAIN THAT FORM BY CALLING 614/466-7046. THE COMPLETED AFFIDAVIT MUST BE RECEIVED BY THIS BOARD ON OR BEFORE January 13, 2016. You will be notified in writing of the Board's determination. If the Board determines you are indigent, you will be relieved of the responsibility to pay the deposit to the Board. However, if the Board determines you are NOT indigent, then YOU MUST FILE YOUR NOTICE OF APPEAL OR A COPY OF YOUR NOTICE OF APPEAL AND PAY THE DEPOSIT BY THE DATE LISTED BELOW.

If you have any questions regarding this notice, please contact the Board at 614/466-7046.

Case Number: 2014-REM-09-0256

Transcript Costs: \$1056.00 Administrative Costs: \$25.00

Total Deposit Required: * \$1081.00

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: January 21, 2016

**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

Kenneth Rupert

Case No. 2014-REM-09-0256

Appellant

v.

October 21, 2015

Toledo Correctional Institution
Department of Rehabilitation & Correction

Marcie M. Scholl
Administrative Law Judge

Appellee

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on April 27 and 28, 2015. Present at the hearing were Appellant Kenneth Rupert, represented by James J. Leo, Attorney at Law and Appellee Toledo Correctional Institution designee Tara Kimball, Labor Relations Officer, represented by E. Joseph D'Andrea and Tracy Nave, Assistant Attorneys General.

The subject matter jurisdiction of the Board was established pursuant to sections 124.03 and 124.34 of the Ohio Revised Code.

Appellant Rupert was removed from his position of Correction Specialist, effective September 9, 2014. The pertinent part of the removal order states as follows:

The reason for this action is that you have been guilty of R6-Insubordination: Disobedience or inappropriate delay in carrying out a direct order of a supervisor. R27-Failure of a supervisor to properly supervise or enforce work rules or failure to properly process employee payroll forms. R-50-Any violation of ORC 124.34...and for incompetency, inefficiency, neglect of duty, insubordination, violation of such sections or the rules of the Director of Administrative Services or the commission, or any failure of good behavior, or any other acts of misfeasance, malfeasance, or nonfeasance in office. (See attached for violation details).

(Attachment)

On 4/9/14, all unit managers, were given a direct order to complete a monthly tracking form and turn it into their supervisor, UMC Rinna. You completed this form once since it has been assigned and you

stated you feel the task is redundant and will not complete the form as directed by your supervisor.

On 5/21/14, all unit managers, were given a direct order that all bed moves for the unit must be approved by STG before the move is completed. You refused to follow this directive as well as instruct your staff to follow the directive and you stated you do not agree with this process.

As the ORAS coordinator, per ToCI policy-U-07, you are responsible for conducting quality reviews of assessments and case plans. You have failed to follow directives, properly supervise your staff, complete assignments, and follow procedures assigned to you by your supervisor.

STATEMENT OF THE CASE

Appellee's first witness was Appellant Rupert, as if on cross examination. Appellant Rupert testified he began his employ at Appellee in December, 2000, as a Case Manager and became a Unit Manager in April, 2006. On February 3, 2014, he began working on Unit A and previous to that, he worked on Unit B. As a Unit Manager, Appellant Rupert supervised two Case Managers, two Sergeants and one Administrative Assistant. His supervisor, beginning in September, 2012, was Meredith Rinna, Unit Management Chief.

The duties of a Unit Manager included implementing and designing re-entry programs for inmates; tracking and updating inmate data, adhering to and enforcing policy, making rounds, holding team meetings, supervising and doing Ohio Risk Assessment System (ORAS) reviews. Appellant Rupert also stated he was the ADA Coordinator and the ORAS trainer for Appellee, in addition to volunteering to conduct the inventory of the barbershops and was assigned to the northwest region faith based committee.

Appellant Rupert identified Appellee's Exhibit 4 as the Standards of Employee Conduct and testified he received and understood them. Appellee's Exhibit 46 was identified by Appellant Rupert as a pre-disciplinary conference notice, which he received and Appellee's Exhibit 47 was identified as the sign-in sheet for the conference, which he stated he attended. He also testified he was given an opportunity to speak on his own behalf and to present evidence. Appellee's Exhibit 48 was identified as the report of the pre-disciplinary hearing officer, which report Appellant Rupert testified he has seen before. Appellee's Exhibit 49 was identified by Appellant Rupert as the order of removal which he stated he received.

Appellant Rupert confirmed his past disciplines of a two-day working suspension in January, 2014; a five-day working suspension in April, 2014; and a written reprimand in November, 2012.

In looking at the directive identified as Appellee's Exhibit 24, Appellant Rupert testified he was to turn in a tracking form by the fifth of each month. He turned in one for April, 2014. He stated he completed one for May and August, but did not turn them in.

Appellant Rupert explained the Security Threat Group Committee, or STG, was a committee which ensured proper racial and gang balance in the units. At an operations meeting on May 21, 2014, Unit Management Chief Rinna stated that the STG was to clear all bed moves prior to any bed move taking place. Appellant Rupert explained that he supervised the sergeants who were responsible for doing bed moves, which consisted of moving an inmate from one cell to another. Appellee's Exhibit 36 was identified as the minutes of the operations meeting of May 21, 2014, and those minutes show Appellant Rupert was in attendance and was manager of Unit A at that time. Appellee's Exhibit 37 was identified by Appellant Rupert as a follow-up email from Ms. Rinna regarding bed moves, which stated that sergeants were to discuss any bed moves with STG first. Appellant Rupert testified his sergeants did discuss bed moves with STG. Appellee's Exhibit 38 was identified as another email, dated June 12, 2014, regarding the bed moves.

Appellee's Exhibit 15 was identified by Appellant Rupert as his certificate of completion for the Ohio Risk Assessment System (ORAS) Trainer and he confirmed he was the ORAS Trainer for Appellee. He identified Appellee's Exhibit 14 as a history of the training sessions he attended and confirmed he received at least seven training sessions regarding ORAS. In looking at Appellee's Exhibit 20, Appellant Rupert testified he did perform those tasks as ORAS Trainer, explaining he was responsible for assessing persons using ORAS and ensuring they were proficient in the use of the system. Appellee's Exhibit 21 was identified as an email dated May 27, 2014, which Appellant Rupert received from Ms. Rinna, which states that since 2011, Appellee had not been in compliance with the ORAS standards. Appellant Rupert testified he trained staff on the prison in-take tool and the community supervision tool. He evaluated staff on those tools by watching staff interview the inmates. He testified he was not aware of what the ORAS Coordinator duties were, as he was the Trainer.

In reviewing Appellee's Exhibit 42, Appellant Rupert testified he held weekly minutes and created minutes of those meetings. He stated he was not surprised that his unit only had minutes from sixteen meetings loaded onto the intranet.

Appellee's Exhibit 22 was identified by Appellant Rupert as Ms. Rinna's order, dated May 23, 2014, to update the RAP6, which is a notation to staff regarding an inmate's rehabilitation needs. Appellee's Exhibit 23 was identified by Appellant Rupert as a screen shot of RAP6, showing the last note dated January 9, 2012.

Appellant Rupert explained that the contraband vault is where excess property of inmates is stored. He stated it is the responsibility of the sergeants to dispose of the contraband per the policy. Appellant Rupert testified he does not recall it ever being brought to his attention that his unit's contraband vault was overflowing and disorganized. In looking at Appellee's Exhibit 34, Appellant Rupert testified he received this email dated June 24, 2014. Attached to the email was a picture of the contraband vault showing Unit A and B's shelves as full, with items on the floor.

Appellant Rupert explained that a Local Control hearing was a meeting between a Unit Manager and an inmate in segregation to determine if the inmate can be returned to a previous status. The hearings were to take place every thirty days. Appellant Rupert testified he made every effort to conduct these meetings every thirty days.

Appellant Rupert testified he is familiar with the American Correction Association (ACA) standards and knew he had to be in compliance with them. He identified Appellee's Exhibit 30 as an email dated May 16, 2014, which listed concerns about Unit A's cell blocks and noted where the unit was out of compliance. The email stated it was important to fix the errors prior to an audit taking place and Appellant Rupert responded to the email stating that the unit will be in compliance prior to the audit.

Appellee's Exhibits 31 and 32 were identified as emails from Ms. Rinna to Appellant Rupert, dated June 2 and 3, 2014, stating that Unit A still needed to be cleaned up. Appellee Exhibit 11 was identified as an email dated February 4, 2014, from Ms. Holloway asking Appellant Rupert for an "on-hand" inventory of the barbershop supplies, which Appellant Rupert agreed to do. By March 4, 2014, Appellant Rupert still had not done an inventory and Appellee's Exhibit 12 was identified as another email from Ms. Rinna, dated June 3, 2014, in which she tells Appellant Rupert she wants all of his inventories for the barbershop by June 4, 2014. Appellant Rupert testified he did not submit them by that date although he had them in his book. Appellee's Exhibit 13 was identified as another email, dated July 14, 2014, from Ms. Rinna to Appellant Rupert, stating she never received the barbershop inventories. Appellant Rupert testified he submitted them to Ms. Holloway.

Appellee's next witness was Meredith Rinna, Unit Management Chief at Appellee since September, 2012. She explained Toledo Correctional Institution is an all-male, double-celled facility, housing level three and four offenders. There are four housing units, A through D. She supervises three Unit Managers, as Unit B and D are under the same Unit Manager. Ms. Rinna stated she provides guidance to the Unit Managers and ensures that policy and procedure are followed in the units. Ms. Rinna explained that the Ohio Plan is a published document for all facilities and for all unit managers to follow in carrying out their duties. She explained that a Unit Manager is a "mini-warden" for a housing unit.

Ms. Rinna stated she completed performance evaluations for the Unit Managers and the Ohio Plan competencies were essentially the performance goals. She identified Appellee's Exhibit 6 as the performance evaluation she completed for Appellant Rupert, covering the time period of November, 2011 to November, 2012. At that time, Appellant Rupert was the Unit Manager in Unit B. It was noted in his performance evaluation that he was to have submitted a unit plan or mission statement by October 31, 2012 and he did not do so. He was given a new deadline of November 10, 2012, and Appellant Rupert sent in portions of the plan but not all of it. She stated his monthly report for October, 2012, was not turned in by the deadline either.

Appellee's Exhibit 27 was identified by Ms. Rinna as the internal management audit report, which is done on an annual basis. She explained that the audit ensures policies are being adhered to and stated there is a dual system of compliance between the ACA standards and the Ohio Plan. The audit revealed that there was no documentation of employees completing their rounds during the night, as after 4:00 p.m., there was no proper documentation of any inmate contact, so in response to the audit finding, a tracking form was created. The form was identified by Ms. Rinna as Appellee's Exhibit 24. Appellee's Exhibit 29 was identified as the Institution's response to the lack of compliance with various ACA Standards. Ms. Rinna stated that if too many things were not compliant, then the institution could lose its accreditation.

Ms. Rinna identified Appellee's Exhibit 24 as her email dated April 9, 2014, to the Unit Managers explaining the tracking form. The time frame for completion of the form was monthly from April to September, 2014. She testified there were three Unit Managers who were permanent employees in that job, as at that time, one of the Unit Managers was out on a leave and that person's position was being filled by another employee in a temporary work level. Ms. Rinna testified she did not make that person responsible for the tracking forms, as it was thought the person was not going to be in the position for a lengthy period of time. Appellee's Exhibit 26 was identified as an email dated July 3, 2014, from Ms. Rinna to Appellant Rupert and to

Ms. Barker, another Unit Manager. The email states Appellant Rupert did not submit a tracking form for May, 2014.

With regard to the bed moves, Ms. Rinna testified the most problematic unit was Appellant Rupert's. She explained that if an inmate wanted to move cells, the inmate would submit a kite to the STG committee. STG would then say yes or no based on the balance of gangs on the unit. If the move is approved by STG, then the inmate takes the approval to the sergeant and the Unit Manager, who had the final authority. Ms. Rinna testified she explained the bed move policy to the Unit Managers at the weekly operations meeting and she identified Appellee's Exhibit 36 as the minutes from the May 21, 2014 meeting in which she explained the policy. Ms. Rinna testified Appellant Rupert was in attendance at the meeting.

Appellee's Exhibit 37 was identified as Ms. Rinna's May 22, 2014, email to the Unit Managers in which she spells out step by step procedures for the bed moves. She testified Unit A had great resistance to the policy from Appellant Rupert and Sergeant Nolan. Appellant Rupert went to both her and the Major and stated that he and his sergeant were not going to follow the policy, as it was his opinion they knew more than STG about Unit A. Appellee's Exhibit 38 was identified by Ms. Rinna as a June 12, 2014, email to Unit A telling them she was very disappointed they were not following her directive, as STG had told her Unit A had not come to them about any bed moves. Ms. Rinna testified she tried to impress upon Unit A the potential violence that could happen and that a liability could also be created by not following the policy and going through STG. She testified she had to tell Appellant Rupert there would be no more bed moves for his unit and she took away the option of Appellant Rupert having the final say in the bed move.

Ms. Rinna explained that ORAS is used throughout the state and in county probation departments and the like. All inmates need to be assessed and then case plans or treatment plans are devised from the assessments. She stated Appellant Rupert was the coordinator and the managing officer responsible for seeing that the ORAS policy was enforced. Ms. Rinna stated an ORAS trainer provides training on how to complete an assessment and the ORAS coordinator takes it a step further to ensure that the policies and standards are being enforced. She stated Appellant Rupert had more expertise with ORAS than she did. Ms. Rinna testified that the June, 2013, internal management audit found Appellee did very poorly in ORAS. The auditor told Appellant Rupert he was the expert in ORAS and then discussed the coordinator duties with him and told him to follow the policy. Ms. Rinna then put in writing in her February, 2014, email, identified as Appellee's Exhibit 20, that Appellant Rupert was the ORAS coordinator. She stated as coordinator, Appellant Rupert was to send out emails to remind people that the intake tool had to be done within ninety days of an inmate coming into the facility. Ms. Rinna testified

Appellant Rupert never disputed with her that he was the coordinator and he never told her he was only the trainer.

Appellee's Exhibit 27 was identified as the audit report done after the directive was given to Appellant Rupert. It is dated March, 2014. The report showed that ORAS was not in compliance. Appellee's Exhibits 18 and 19 were identified as emails reflecting a meeting, held on June 4, 2014, in which the policies governing ORAS were discussed as well as the policy itself. Appellant Rinna stated Appellant Rupert still did not follow the policy. Appellee's Exhibit 21 was identified as a May 27, 2014, email Ms. Rinna sent to her staff outlining the ORAS tracking system. She gave case managers a deadline and told Appellant Rupert that two new case managers needed help and to give them assistance, but Appellant Rupert did not assist them.

Ms. Rinna testified Appellant Rupert did the barbershop inventory prior to her being hired as chief. She explained it is important to know what supplies are in the barbershop. The business office was found to be non-compliant in the audit, so therefore, an inventory of supplies was needed prior to a purchase order being done. A chemical inventory also needed to be completed, as that inventory was tied to an ACA standard. The chemical inventory needed to be done weekly, or as the chemicals were used, and the equipment inventory needed to be completed once a month. Appellee's Exhibit 11 was identified by Ms. Rinna as an email chain stating that an inventory of the barbershop needed to be done prior to making any purchases. More than a month after this email was sent, there was still no inventory. Appellee's Exhibit 12 was identified by Ms. Rinna as another email telling Appellant Rupert to do the barbershop inventory and to give it to her. She testified she never received the barbershop inventory from Appellant Rupert.

Appellant Rupert conducted weekly unit meetings to review policies and to introduce any new or changed policies. Ms. Rinna testified he was then to upload the minutes of those meetings to the internal website each week. In looking at Appellee's Exhibits 41 and 42, Ms. Rinna stated she directed the unit staff to the internal website, but when she took a screen shot of Unit A's minutes, there were a lot of gaps, showing that Appellant Rupert did not consistently upload his minutes.

Ms. Rinna testified Appellant Rupert supervised the sergeants who were tasked with keeping the contraband vault cleaned and organized. She stated he was hit or miss with that duty. Prior to the June, 2014, audit, all units were told to clean out the contraband vault, but one of the sergeants under Appellant Rupert did not do so, as everything was in disarray. The warden pulled Ms. Rinna into his office and told her to tell Appellant Rupert to have the vault cleaned out by the next day, but he did not do so. She stated, however, that luckily, it was not noted in the audit.

Appellee's Exhibit 34 was identified by Ms. Rinna as the email chain after the audit was completed.

Local control hearings deal with inmate discipline and Ms. Rinna explained that the rules infraction board makes a recommendation as to the discipline. Every thirty days a hearing has to be held to review inmate behavior and in October, 2013, Appellant Rupert was to do the hearings. Ms. Rinna testified sometimes he held the hearings, sometimes he was late in holding them and sometimes he did not hold any hearings at all. Appellant Rupert never asked for any help in his unit even though other employees offered their assistance.

On cross examination, Ms. Rinna stated the tracking forms were to be completed for the time period of April through October, 2014, but ended early in September, 2014. She explained they originally wanted six months of data for compliance purposes. Appellant's Exhibits 18, 19, 20, 21 and 26 were all identified as emails and logs having to do with the tracking forms. Ms. Rinna testified Ms. Barker did not submit a tracking form for June, but did for April and May. She told Ms. Rinna that she and Appellant Rupert thought they did not have to do the forms for June. In mid-July, Captain Walters filled in on a temporary basis for Ms. Barker when she was out on leave. Ms. Rinna testified he was not required to complete the tracking forms since he was a temporary employee in the position and was there only to ensure that basic requirements were met and to maintain control. Sometime in July, Appellant Rupert did send an email to Ms. Rinna asking if the tracking forms were still in place.

Appellant's Exhibit 8 was identified by Ms. Rinna as an email she wrote, dated May 22, 2014, regarding the bed move procedure with STG. She stated STG was the only entity which really knew the information regarding security threats and even though the memorandum stated the unit managers had to go to the committee, they also could have gone to Lieutenant Bennett, a member of the committee who was always available. STG wrote a policy regarding bed moves, which was effective September 25, 2014. Ms. Rinna testified Appellant Rupert and Sergeant Nolan were the only two to complain about having to go through STG and felt they should not have to consult with the committee. Appellant's Exhibit 9 was identified as Ms. Rinna's response to Sergeant Nolan's concerns. In reviewing Appellant's Exhibit 10, Ms. Rinna stated these were the staff meeting minutes from June 4, 2014, which indicate that the final decision for bed moves was up to the unit manager and sergeant. She testified no sergeants were disciplined for failing to follow the bed move policy.

In looking at Appellant's Exhibit 33, Ms. Rinna testified the audit done by ACA went well and they remarked that the institution was clean. She confirmed

there was nothing in writing to indicate that the material on the floor in the contraband vault was from Unit A. She confirmed that the visitor record log for the contraband vault notes Appellant Rupert was in there on June 24.

Ms. Rinna explained that the coordinator for ORAS was to ensure policies were enforced and that case managers were doing their assessments as well as doing quality reviews of the assessments and case plans. She stated there was no time frame for doing the quality reviews, just that they had to be completed before the annual audit. Ms. Rinna stated it was her personal opinion that the reviews should be done monthly, but that was not policy and it was not in writing anywhere. Ms. Rinna identified Appellant's Exhibit 55 as the ORAS procedures policy, effective September 10, 2013. She stated the policy is a departmental policy and local policy clarifies departmental policy. Appellee's Exhibit 19 was identified by Ms. Rinna as the local policy regarding ORAS, effective June 1, 2014. Ms. Rinna confirmed that neither policy states who the coordinator or designee is nor are there any time frames listed as to when quality reviews must be done. She explained that the prison intake tool, or PIT, is the tool which has to be completed and reviewed in a quality review. In the 2014 audit, there were thirteen (13) PITs which needed to be completed. The PITs are to be done by the case managers and Ms. Rinna stated there has been a backlog of PITs, which existed prior to her appointment in September, 2012. She stated there is still a backlog of approximately forty (40) PITs waiting to be completed. She pointed out that the policy lists the duties of the ORAS coordinator and that the duties were also listed in her email and in the departmental policy.

Appellant's Exhibit 56 was identified as the Prison Re-entry Assessment and Planning policy, which is the updated version of the ORAS procedures policy and was effective August 11, 2014. This policy lists the duties of the ORAS coordinator.

In looking at Appellee's Exhibit 21, Ms. Rinna testified she does not know whether or not these case plans were completed and in looking at Appellee's Exhibit 42, she does not know if the dates are weekly meeting dates or town hall dates. She stated Ms. Barker left A unit in February, 2014, and posted her minutes prior to that date. Ms. Rinna testified Ms. Barker was not disciplined for not posting her minutes although she only posted ten (10) out of approximately thirty (30) meeting minutes.

In looking at Appellee's Exhibit 27, Ms. Rinna confirmed that the facility was found to be clean and orderly during the audit. She stated Appellant Rupert was the only employee to be disciplined for not completing the monthly tracking log and she could not point to any exhibits which established that Appellant Rupert failed to conduct timely local control hearings.

On redirect examination Ms. Rinna explained that the tracking form was the only document available to show the auditors that the Institution was trying to comply with the standard. She gave the audit team all of Robertson's, three of Ms. Barker's and one of Appellant Rupert's. Ms. Rinna testified Ms. Barker only submitted three of the tracking forms because Ms. Barker was out on medical leave for a period of time, but she cannot explain why Appellant Rupert did not comply with the mandate. She stated that even though Mr. Walters did not have to complete the forms while he was filling in for Ms. Barker, that does not mean the forms were not important. Had she known that Ms. Barker was going to be out for as long as she was, Ms. Rinna stated she would have had Mr. Walters complete the forms. Ms. Rinna testified she spoke to the warden about the requirement to complete the forms and he stated he wanted them to continue and to be completed.

In looking at Appellee's Exhibit 50, the Ohio Plan, Ms. Rinna stated her position is listed as Chief of Unit Management and Appellant Rupert's position of Unit Manager is listed and referred to as a "mini-warden" position. While reviewing Appellee's Exhibit 37, Ms. Rinna testified STG has access to information regarding inmates that Unit Managers and Sergeants do not have. She stated STG's information is integral to maintaining security and lessening the threat of violence. She testified Unit C worked with STG in making bed moves and there was no indication from that unit that they did not like doing so. She stated that if a Unit Manager initiates a bed move and STG says no, then STG controls.

Ms. Rinna testified Appellant Rupert did not do any quality reviews on the PITs as he was required to do. She identified Appellant's Exhibit 21 as an email she sent him regarding the outstanding reviews and Appellant Rupert never sent her what she asked for. As for Appellant Rupert's non-compliance in doing the local control hearings, she received a listing from the secretary as to the ones which were not done.

On re-cross examination, Ms. Rinna testified she could not produce the listing she received from the secretary regarding the local control hearings. In looking at Appellee's Exhibit 37, Ms. Rinna could not show where in the policy it states that STG can negate a bed move made by a Unit Manager. She stated it also appears that Ms. Barker did not post her Town Hall meeting minutes on the intranet and received no discipline for failing to do so.

Appellee's next witness was Edward R. Sheldon, currently the warden at Allen Correctional Institution. Prior to that, he was the warden at Toledo Correctional Institution, beginning in November, 2011. He began his employ with the Department in 1989. He explained that due to his experience with high level

double bunked situations, where two inmates are in a cell made for one, he was hired at Toledo. Warden Sheldon stated that situation means there are twice as many inmates but the same amount of staff as if there was only one inmate per cell. Since Toledo Correctional is a Level 3 institution, he stated there is a lot of gang activity, assaults on staff, thefts, extortion and the like.

Warden Sheldon explained that if an inmate has a STG designation, it is important. He stated there are three groups of gangs; passive, active and disruptive. Toledo Correctional is second only to Lucasville in the percentage of active and disruptive gang activity. He testified the STG team is a team of institutional staff who are subject matter experts in prison gangs. They track where the inmates are, where the gangs are and essentially, put out fires before they happen. He also stated that the information to which STG is privy is not always known to Unit Managers.

The goals for Toledo Correctional when Warden Sheldon took over were to acclimate staff to double bunking and the inmate swell. He explained that the new "normal" was an increase in violence and in maximum security inmates. Warden Sheldon testified that when he arrived, the violence had just started to show itself and there was a sixty-six percent increase in the inmate population. There have been serious staff assaults, homicides, extortion, broken jaws of staff members and more. As part of a plan to get the prisons under control and to return to the unit management style of the mid-1980's, the Department created the Ohio Plan. Warden Sheldon identified Appellee's Exhibit 50 as that plan.

He explained that the Chief of Unit Management supervises unit managers and case managers as needed. The Chief reports to the Deputy Warden of Operations, who in turn reports to the Warden. A unit manager is assigned to a unit to manage and supervise staff. Toledo has three units with approximately 500 inmates assigned to each. Warden Sheldon testified he met with Appellant Rupert several times, as Appellant Rupert was confused and believed that as a "mini-warden", he reported directly to the Warden and not to the Unit Management Chief.

In looking at Appellee's Exhibit 37, Warden Sheldon testified he considered this to be a direct order on how to handle bed moves and the importance of STG involvement. He concurred with the email as written. He also stated that "A" block contained the most violent inmates.

Warden Sheldon explained that an employee in a Temporary Work Level position, or "TWL", does not always have the qualifications of the full-time staff. In the absence of the full-time staff member, a leader and decision maker is needed to fill the position on a temporary basis and a lot of times, that person is not equipped to handle all of the functions of a position. Ms. Barker was a unit manager and

approximately two times a year, she would take a leave of absence. Lieutenant Walters assumed Ms. Barker's position a few times on a TWL.

Warden Sheldon testified the tracking sheet captured quality rounds being made by the sergeants, case managers and unit managers and they were instituted to ensure that the staff was going into the units. Both Ms. Barker and Appellant Rupert met with Warden Sheldon to share with him that they felt the tracking forms was micro-management by Ms. Rinna. Warden Sheldon testified he told them the tracking forms needed to stay in place for security purposes and for everyone to be accountable. He stated he had an expectation that the forms would be completed. Ms. Barker, however, failed to submit some and so did Appellant Rupert, although Ms. Barker was not disciplined for failing to do so. Warden Sheldon testified he would have to review the circumstance surrounding her failure, to ascertain whether it was absence, blatant insubordination, a misunderstanding, etc.

Warden Sheldon testified he was told one unit had contraband that needed taken care of and it was Appellant Rupert's unit. He met with Appellant Rupert and told him it needed to be fixed, but he does not believe the issue was corrected. Warden Sheldon stated he believes he met with Appellant Rupert after the internal audit and during the ACA audit. In looking at Appellee's Exhibit 34, Warden Sheldon testified it was a picture of an extremely cluttered vault and looks like there is more than one week's worth of contraband in it. He stated it was the unit manager's responsibility to have the sergeants clean up the vault. He also testified he did not remember any issue being brought to him by Ms. Rinna regarding barbershop purchases, nor was he aware of any tracking form problem with regard to Ms. Robertson.

Appellee's Exhibit 9 was identified by Warden Sheldon as a two-day working suspension issued to Appellant Rupert and Appellee's Exhibit 49 was identified as the removal order issued to Appellant Rupert.

On cross examination Warden Sheldon testified that a direct order and a directive carry the same weight and that an email can convey a direct order. In looking at Appellee's Exhibit 33, Warden Sheldon testified the reference on pages twelve and thirteen are to the maintenance area and not contraband. He stated that with regard to the picture of the contraband vault, he did not know which unit's contraband was spilling out onto the floor.

On redirect examination, Warden Sheldon testified he expects the Institution to be audit-ready everyday and that he believes Appellant Rupert's removal was appropriate.

Appellee's next witness was Tara Kimball, a Labor Relations Officer at Toledo Correctional since November, 2012. As such, she is the liaison between Warden Sheldon and all employees and is responsible for employee discipline. Ms. Kimball testified she knows Ms. Barker and stated she was a unit manager who has been disciplined in the past; however, Ms. Kimball confirmed Ms. Barker did not receive discipline for failing to submit monthly tracking forms or STG and bed moves. She testified she does not know why Ms. Barker was not disciplined for those things. Ms. Kimball also testified that Ms. Robertson was another unit manager and she also did not receive discipline for any of the aforementioned infractions.

Appellee's Exhibits 43 through 49 were identified by Ms. Kimball as everything that was contained in Appellant Rupert's pre-disciplinary packet. She stated he was found to have violated Rules 6, 27 and 50. She identified Appellee's Exhibit 3 as including the disciplinary grid found on page 14.

On cross examination Ms. Kimball testified Appellee's Exhibit 46 does not specifically state anything about the contraband vault or the ORAS quality review, as the particulars are in the investigatory documents. She stated the order of removal states a general "failure to follow supervisor".

Appellant Rupert testified Lieutenant Bennett was the STG coordinator and they spoke daily about inmates and had a good rapport with each other. He testified that with regard to his ORAS duties, he felt beginning in May, 2014, he was to train all staff in the utilization of the ORAS tool and to ensure the staff was competent in using the tool. Appellant Rupert explained that case managers complete a PITS when an inmate comes into the Institution and not all inmates need them. He stated there was a back log of approximately three to four hundred.

Appellant Rupert explained that the "local control process" consists of looking at a list to see which inmate is in local control. One has thirty days to review that inmate to determine where the inmate should be placed after thirty days. This process applies to all inmates assigned to "A" block. He testified he did between twenty-five and thirty a month and it was necessary to stay on top of it and track it. In looking at Appellant's Exhibit 54, Appellant Rupert testified the local control placement hearings are done by various people on various dates. He stated he could only recall one time when he was late doing local controls.

Appellant Rupert, in looking at Appellant's Exhibit 50, testified this was a record of visits to the contraband vault and it shows his signature on the record, indicating he was in the vault, on June 24, 26, July 11 and 15 and August 1.

In looking at Appellee's Exhibit 20, Appellant Rupert testified Ms. Rinna never followed up with him after issuing the statement that he would be the ORAS coordinator to tell him what that encompassed. Appellant Rupert testified "A" block had a very inexperienced team, as they had a TWL, a probationary case manager and another employee with one year experience. Warden Sheldon wanted him out on the blocks and Appellant Rupert stated that is where he was, as he did not sit at a desk and do paperwork. In contrast, "B" block had very experienced people assigned to it. He also stated that the responsibilities in "A" block were very different than those in "B". Some of the officers were new hires and he had to be on the block dealing with inmates. He placed the sergeants and case managers out in the unit and he knew all gang members. Appellant Rupert testified he ruled "A" block with an iron fist and did his job with the best resources he had. He stated "A" block had the worst of the worst as far as inmates were concerned. He also stated that in February, 2014, he had a lot of health issues and that is why he did not appeal the discipline listed in Appellee's Exhibit 10.

On redirect examination Appellant Rupert confirmed he has a duty to maintain a racial balance in the unit.

FINDINGS OF FACT

After thoroughly reviewing the testimony of the witnesses and the documents admitted into evidence, I find the following facts:

1. At the time of his removal, Appellant Rupert had been classified as a Unit Manager and had approximately fourteen (14) years of service with Appellee.
2. His disciplinary history consists of a written reprimand in November, 2012; a two (2) day working suspension in January, 2014; and a five (5) day working suspension in April, 2014.
3. As a Unit Manager, Appellant Rupert supervised two Case Managers, two Sergeants and one Administrative Assistant. His direct supervisor was Meredith Rinna, Unit Management Chief. As a Unit Manager, Appellant Rupert was also known as a "mini-warden".
4. At the time of his removal, Appellant Rupert was assigned to Unit A, which housed some of Appellee's highest level of offenders. As Unit Manager, Appellant Rupert was to implement and design re-entry programs for inmates, track and update inmate data, make rounds, enforce and adhere to policy, conduct team meetings, supervise staff and complete ORAS reviews.

5. Appellant Rupert received and understood the Standards of Employee Conduct.
6. Appellant Rupert was to complete tracking forms, which were to be completed by the fifth of every month. This duty was put into place by Ms. Rinna beginning in May, 2014. Appellant Rupert did not complete tracking forms for May and June although he stated he completed forms for May and August, but did not turn them in.
7. Pursuant to an email authored by Ms. Rinna on May 22, 2014, bed moves were to first be approved by STG, but left the final decision to the Unit Manager. In an email dated June 12, 2014, Ms. Rinna stripped Appellant Rupert's right to approve bed moves. A written policy regarding bed moves became effective September 25, 2014.
8. Appellant Rupert completed training and received a certificate designating him as the ORAS Trainer. In an email dated February 26, 2014, Ms. Rinna states Appellant Rupert is the ORAS Coordinator. Appellant Rupert's Unit was behind in completing ORAS PITs as of May 27, 2014.
9. Appellant Rupert volunteered to complete the barbershop inventories. He was first asked for the inventory in February, 2014 and by July 14, 2014, he had not turned in the inventories.
10. Appellant Rupert held weekly staff meetings and town hall meetings. He was to post the minutes from those meetings on the Institution's intranet. He did not post all of the minutes as they were posted inconsistently.

CONCLUSIONS OF LAW

In order for Appellee's removal of Appellant Rupert to be affirmed, Appellee had the burden of proving by a preponderance of the evidence, the allegations contained in the removal order. Appellee proved some, but not all of the allegations.

The first allegation in the removal order states that Appellant Rupert was given a direct order to complete monthly tracking forms and turn them into his supervisor, Ms. Rinna, beginning in May, 2014, and he did not do so. The evidence established that as of July 3, 2014, neither Appellant Rupert nor Ms. Barker had turned in their tracking sheets for May and Appellant Rupert testified he completed one for May and August, 2014, but did not turn them in. Appellee has met its burden with respect to the fact that Appellant Rupert did not comply with his

supervisor's order to complete the monthly tracking forms. The testimony from Ms. Rinna indicated Ms. Barker did not submit a monthly tracking form for the month of June, but did so for April and May, which is contradictory to her email of July 3, 2014, wherein she states both Ms. Barker and Appellant Rupert did not submit the forms for the month of May. While it is true that Appellant Rupert did not submit the forms as required, it is also true that Ms. Barker did not submit the form for at least June and possibly May. Those are for time periods when Ms. Barker was at work as Unit Manager and not when she was out on leave and the person filling in for her was not required to complete the forms. The fact that Ms. Barker did not receive any discipline for failing to complete the forms must be considered as disparate treatment as she was also a Unit Manager.

The next allegation in the removal order stated Appellant Rupert failed to follow a direct order that all bed moves must be approved by STG before the move can be completed. It also states Appellant Rupert failed to instruct his staff to follow the directive. This allegation has not been fully proven.

It is clear from Ms. Rinna's testimony that when she emailed the Unit Managers on May 22, 2014, regarding the bed move policy and STG approval, the Unit Manager had final approval of the Unit Sergeants' bed moves. While it was thoroughly explained by Ms. Rinna and Warden Sheldon that the involvement of STG was imperative to curb the possibility of violence in the cell blocks, and that at times, STG had information that the Unit Managers did not have regarding gangs and possible opportunities for violence, the policy still left the final decision with the Unit Managers. This was reiterated in the Unit Staff Meeting Minutes, Appellant's Exhibit 10, which states that "The final decision rests with the Sgt/UM". In essence, then, the policy basically mandated that the Unit Manager confer with STG prior to making a bed move, but after such conference, the Unit Manager could decide to follow STG's recommendation or not. The testimony and documents indicate that on June 12, 2014, Sean Bowerman sent out an email stating "no further bed moves will be done on A block without his permission or that of Lieutenant Bennett", which is contradictory to Ms. Rinna's email of May 22, 2014 and that of the minutes of the June 4, 2014 meeting. Appellant Rupert testified, uncontroverted, that he had a good rapport with Lieutenant Bennett and did talk with him frequently about any bed moves. Since Appellant Rupert had final authority for bed moves, until Ms. Rinna stripped him of such authority in her email of June 12, 2014, it appears he was following the policy set out in Ms. Rinna's email of May 22, 2014. After being told that STG would be the sole approver of bed moves, it appears Appellant Rupert followed the policy, as evidenced in Appellant's Exhibits 11 through 17.

The next allegation in the removal order is that Appellant Rupert did not perform the duties of the ORAS Coordinator. This allegation has been proven. Appellant Rupert wanted to basically argue nomenclature – that he was the ORAS

Trainer and not the Coordinator. He stated he did not know what the Coordinator's duties were, but they are spelled out in the policy and in Ms. Rinna's email of February 26, 2014. Additionally, if he did not know the duties, he could have asked and if he did not think he was the Coordinator, he could have talked with Ms. Rinna. The testimony indicated Appellant Rupert did not talk with Ms. Rinna or question his designation of Coordinator, but instead just chose to ignore the designation and not complete the duties. That is unacceptable.

Appellee also presented evidence of Appellant Rupert's violation of Ohio Revised Code section 124.34 by alleging he was responsible for the condition of the contraband vault; however, that allegation was not proven. While the picture entered into evidence definitely shows a messy and untidy vault, there was no actual evidence presented which proved that the contraband on the floor was from A block, as in looking at the picture, it could have been from any of the three shelving units. Appellant's Exhibits show that Appellant Rupert was in the vault prior to the audit and the audit did not list the vault as being a problem. This allegation was not proven.

Another allegation brought up by Appellee under the general heading of a "violation of ORC 124.34" was that of the barbershop inventories. Appellant Rupert testified he volunteered to complete the barbershop inventories but the evidence established that he did not do so. He was asked repeatedly for the inventories and Ms. Rinna testified she did not receive them from Appellant Rupert. This allegation was proven by Appellee.

The last allegation that Appellant Rupert violated section 124.34 of the Ohio Revised Code was that he did not post the minutes from his weekly and town hall meetings. While that is a true statement, the evidence established that Ms. Barker also did not post all of her minutes, but she did not receive any discipline for not doing so. Once again, Ms. Barker was also a Unit Manager and since she did not receive any discipline, this must be considered as disparate treatment.

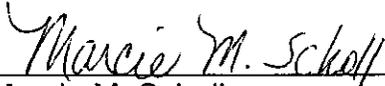
In conclusion, Appellee proved by a preponderance of the evidence that Appellant Rupert did not turn in all of the tracking forms he was charged with completing, but neither did another unit manager and that unit manager did not receive any discipline for her lack of tracking forms. Appellee also proved by a preponderance of the evidence that Appellant Rupert did not complete the duties of the ORAS Coordinator and that he did not turn in the barbershop inventories, although asked repeatedly to do so. Appellee also proved Appellant Rupert did not post all of his meeting minutes, but neither did Ms. Barker, and she received no discipline for her lack of minutes. Appellee failed to prove that Appellant Rupert did not abide by the bed move policy. There was no evidence presented to dispute

Appellant Rupert's testimony that he did talk with Lieutenant Bennett regarding bed moves, but during that time period, Appellant Rupert was the final decider. When Ms. Rinna took that authority away from him, the evidence established that he did work with STG in making the bed moves. Appellee also did not prove that Appellant Rupert's unit was solely responsible for the condition of the contraband vault.

Appellant Rupert was a fourteen year employee and his past discipline consists of a written reprimand and a two-day and a five-day suspension. While he did exhibit instances of insubordination, the proven violations of the Rules do not warrant removal. Appellant Rupert proved there was disparate treatment between the discipline he received and the lack of discipline given to Ms. Barker, another Unit Manager, for committing the same violations as Appellant Rupert.

Appellant Rupert stated during the investigatory process and at the record hearing that his unit housed the most violent of offenders at Toledo Correctional Institution and that he had several inexperienced personnel under him. While those things may be true, an experienced and seasoned supervisor should have been able to figure out a way to complete the tasks and duties assigned or have been able to talk with the supervisor, Ms. Rinna, to obtain additional help, if only for a temporary time period. While Appellant Rupert's insubordination was time consuming and frustrating for the administration, it did not seem to negatively affect the accreditation audit, as Ms. Rinna testified the audit went well. In fact, she sent out a congratulatory email to her staff commending them on their efforts.

Appellant Rupert did seem to be overwhelmed and could not complete the duties assigned to him as supervisor. While his violations do not warrant removal, they do point out that he is not an effective supervisor, thereby presenting a case for his reduction to a non-supervisory position. Therefore, it is my **RECOMMENDATION** that the removal of Appellant Rupert be **MODIFIED** to that of a reduction in position, pursuant to sections 124.03 and 124.34 of the Ohio Revised Code, and that Appellant Rupert be reinstated to a classification that is the highest non-supervisory position under a Unit Manager.



Marcie M. Scholl
Administrative Law Judge