

BEFORE  
JAMES R. COX  
ARBITRATOR

VILLAGE OF SCHAUMBURG  
SCHAUMBURG POLICE DEPARTMENT

and

OFFICER LEO REYNA TERMINATION  
CR #2009-031 & CR 2010-015

METROPOLITAN ALLIANCE OF POLICE  
CHAPTER 195

**DECISION AND AWARD**

Hearings in this matter were conducted by the Arbitrator in Schaumburg, Illinois August 27th, August 30th and September 15, 2010. The Village was represented by Attorney Iain Johnston of the Johnston Greene Law Firm. The Union case was presented by Attorney Joseph Mazzone. Each Representative's Post-Hearing Brief was received in November 2010.<sup>1</sup>

**THE ISSUE**

The issue before the Arbitrator is whether there had been cause within the meaning of the Labor Agreement for the termination of Patrol Officer Leo Reyna and, if not, what should be the remedy. There are no Arbitrability issues. This matter has been properly placed before me for final and binding determination.

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<sup>1</sup> The Union made an Offer of Proof following the close of the Hearing involving Auxiliary Black which they aver occurred on the job September 10, 2010, well after the incident which led to the discipline here. The Village made a prompt and complete response. The Motion is denied. If granted, the facts would have no probative value here.

## **APPLICABLE CONTRACT PROVISIONS**

Article 5, the Management's Rights Clause, recognizes that the Village has the right to "*Discipline or discharge non-probationary Employees for just cause.*"

Article 12, Section 12.3 reads, "*Discharge or discipline involving time off or loss of pay for non-probationary Bargaining Unit Employees shall be for just cause and shall be subject to the Grievance and Arbitration Procedure set forth in this Agreement. The contractual Grievance and Arbitration Procedure shall be the sole recourse for appealing such disciplinary action and shall be in lieu of both the provisions of the Illinois Municipal Code governing discipline and discharge and discipline proceedings before the Village of Schaumburg Board of Fire and Police Commissioners. An Arbitrators Award shall be final and binding as stated in Section 4.3 of this Agreement and any request for judicial review shall be exclusively under and in accordance with the Uniform Arbitration Act and Section 8 of the Illinois Public Labor Relations Act.*"

## **THE CHARGES**

Officer Leo Reyna was charged with having violated various Rules and Department Policies in connection with the November 15, 2010 arrest and processing of [REDACTED]. January 14, 2010, following separate investigations by Police Auxiliary Supervisor Sergeant McCleary and Sergeant Plunkett, he had been suspended two work days<sup>2</sup>. Thereafter, triggered by [REDACTED]. [REDACTED] responses to Deputy Chief Liberio during a January 19, 2010 telephone discussion of the November 15<sup>th</sup> incident, the investigation was reinstated<sup>3</sup>. Officer's Reyna's termination came June 28, 2010, more than seven months after the November disciplinary incident.

Reasons for Schaumburg Police Chief Brian Howerton's Determination that Officer Leo Reyna should be discharged are set forth in a Disciplinary Memorandum. Underlying the decision was the Chief's conviction that Officer Reyna had been untruthful during the investigation and had falsely implicated Auxiliary Black. The outcome was largely based upon the Department crediting Black's version of the incident - that she had not been involved in the search of [REDACTED], a prisoner the Department found had been put into a cell without having been thoroughly searched.

<sup>2</sup> Initially a single day suspension had been recommended

<sup>3</sup> Based upon what Liberio learned, the Village was certainly justified in pursuing this incident further. As shown below, [REDACTED] January assertions to the Deputy Chief were inconsistent with her testimony under oath in August.

Ms. Black had signified on the Arrest Report that she had searched [REDACTED]. However, two and a half weeks after the incident and, in response to questions about contraband found in [REDACTED] possession November 16, 2010, Black claimed that she had not searched [REDACTED] at all that day. As reviewed below, Black had processed this prisoner earlier that day and, by 1055, both she and Officer Reyna had signed his Arrest Report confirming that [REDACTED] had been searched. She acknowledges that Reyna had not asked her to confirm her search on the Report; she wrote the confirmation upon her own initiative. Reyna maintained that he had observed the Auxiliary while she made the search about 1403 hours that afternoon.

If Reyna had searched a female prisoner, it would have been a singular event. There was no evidence that any male Officers search a female prisoner prior to putting her in a cell – conduct strictly forbidden. Black did not dispute that assertion, acknowledging that the search of [REDACTED] had been one of *her* primary responsibilities that afternoon and that she had been present in the Detention Center when [REDACTED] had been put into cell 11. Black presented a series of conflicting statements to support her contentions that (1) she had not been involved with the search in any way and (2) had made a false entry on the Arrest Report about the search. She did not credibly explain why, if she had not made the search, she had not attempted to take any steps to remedy that omission or report her failure to search until confronted with the bad search during an investigation two and one half weeks later.

While the Auxiliary had been subsequently suspended for such misconduct, that discipline is not before me. However, her misconduct does affect the credibility of her denials that she had not been involved in any search of prisoner [REDACTED] relied upon by the Department to discredit Grievant Reyna's December 3<sup>rd</sup> written reports and statements he made during the course of the misconduct investigation.

Schaumburg Police Chief Brian Howerton's Disciplinary Memorandum detailed the reasons for Officer Reyna's discharge. Prior discipline was not identified.<sup>4</sup>

#### 1. False Statements

The Chief concluded that Officer Reyna had made a false written allegation against Auxiliary Officer Black, in two written reports submitted December 3, 2009 and, in addition, "*made detailed false allegations to the OPS Investigator during your interview on April 27, 2010.*" The Chief found that the Officer had "*Submitted initial and subsequent reports, both dated December 3, 2009, and in his interview with OPS on April 27, 2010, where your explanation*

***of your actions in this matter lacked candor and clearly indicated your intention to deceive."***

## **2. Failure to Maintain Surveillance at the Hospital**

***Schaumburg Officers are required to keep prisoners receiving treatment under surveillance. The Rules are clearly expressed. When at a treating facility, "The Police Officer shall remain in the immediate vicinity of the Arrestee. Under no circumstances shall the Arrestee be left unattended or out of controllable range of the Officer...An Officer shall remain with the prisoner throughout the duration of the medical treatment, unless requested to leave the immediate area by a physician. .... All instances of a prisoner not being restrained shall be documented by the Officer on his report."***

***The Chief maintains that Officer Reyna had violated these and other identified policies and procedures when he took prisoner [REDACTED] to the Hospital following her arrest. It is required that "any prisoner charged with a forcible violent felony, domestic battery or violation of an Order of Protection, shall be guarded by Sworn Police Personnel at all times while admitted to a medical facility until (i) Released on bond or (ii) transferred to either another medical facility or lockup facility." Paragraph (e) specifies that "Prisoners who are under guard shall be properly restrained at all times."***

## **3. Failure to Properly Search [REDACTED] before locking her in her cell.**

***It is mandatory that, "Prior to incarceration in the detention area, every prisoner shall be searched again by a member of the same gender, where feasible...". Officers are to "Thoroughly search all Arrestees prior to placing them in cells. They are to "Search Arrestees in accordance with Policy 41-10 - Search of Persons."***

## **4. Failure to carry a firearm while on duty.**

***Rules and Regulations provide that an Officer "carry a firearm whenever on duty." The Chief correctly noted that Grievant had acknowledged that he had left his handgun in a designated weapon locker within the Sally Port and had been unarmed "while at the hospital guarding the prisoner."***

## **THE FACTS**

***At the time of his June 28, 2010 termination, Patrol Officer Leo Reyna had 23 years' service with the Schaumburg Police Department and a good, if not completely discipline free work record. His June discharge had been primarily based upon alleged misconduct during an 18 minute period seven***

months earlier on November 15, 2009 and statements he made thereafter which charged Auxiliary Jennifer Black with having made a search of prisoner [REDACTED]. There was no reliance upon previous misconduct in the Memorandum to support the degree of discipline<sup>5</sup>.

Responding to a domestic dispute call, Officer Leo Reyna arrested [REDACTED] the morning of November 15, 2009. Transported from her Hoffman Estates home to the Schaumburg Police Station by Reyna, she was charged with Domestic Battery. Auxiliary Black processed her testifying she carried out her responsibilities to enter information from the Arrest Report into the 1-CLEAR System in addition to taking fingerprints from and photographing the Arrestee. A Bond Hearing was set for the following morning.

[REDACTED] recalled meeting Auxiliary Officer Black in the processing area and, in Officer Reyna's presence, told Black her finger had been injured. According to [REDACTED] testimony, she had been searched by female Auxiliary Officer Black at that time. Thereafter Officer Reyna and paramedics took her to the Hospital for treatment. Black denied that she had searched [REDACTED] at any time November 15th.

The 18 minute period mentioned above commenced when Officer Reyna reentered the Station, escorting prisoner [REDACTED] back from a Hospital where she had been treated for a finger injury incurred during the course of a reported domestic dispute with her daughter that morning. Arrested at 10:28 at her home by the Officer, she had been brought to the Station where she was processed by Auxiliary Officer Black who had worked part time for the Department about 27 months. Officer Reyna had patted her down at the scene and upon arrival at the Station – he had her empty her pockets and inventoried the contents.

[REDACTED] was charged with *Domestic Battery/Simple*. Both Officer Reyna and Black signed the Arrest Report specifically signifying that she had been searched. Normally [REDACTED] would have been placed into a cell shortly after the processing which had largely concluded by 11:25 when the arrestee signed standard receiving forms. However, in order that her injury be treated,

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<sup>5</sup> There was no basis for reliance on the ten incidents of prior discipline referred to in the Village Post Hearing Brief. There is a contractual limit of five years on consideration of prior discipline. There had been only one prior discipline during this period. Sergeant Plimpton identified a one day suspension in August 2008 for insubordination toward a supervisor and refusal to conduct a Squad inspection. The suspension was not designed to cause him to forfeit pay according to Liberio. "In weighing the Officer Reyna's previous corrective action history and the serious nature of the violations sustained in CR 2009—31, I recommend Officer Reyna receive a One Day Suspension." There had been an oral reprimand for failure to use the security garage for a prisoner August 1, 2008

she was transported to the Hospital at 12:26. A fractured finger was suspected.

While the prisoner had been cuffed during the ambulance ride to the Hospital, the cuffs were removed when she was placed in an examining room where curtains were drawn. Officer Reyna remained just outside. [REDACTED] could not leave without his knowledge. The Village did not establish that she had not been restrained while being examined.

Department Regulations require that prisoners, like [REDACTED] charged with Petty Offenses or Misdemeanors, need not be guarded while admitted to a medical facility, unless deemed necessary by the Watch Commander or another Command Officer. However, there is a requirement that *"any prisoner charged with a forcible violent felony, domestic battery, shall be guarded by sworn police personnel at all times while admitted to a medical facility"* and that *"prisoners under guard shall be properly restrained at all times"*.

[REDACTED] and Reyna were away from the lockup about an hour and one half, returning just before 1400. During the subsequent investigation of this incident, Officer Reyna volunteered without being asked that, during that period he had kept her under observation or control except when she was taken for X-rays. He had remained seated near the examining room. He said he had been later informed that she had been given a pain pill which should have continuing effect until the following day. He was told she would not have to take other medication. He later said that he had mentioned a prescription he brought back to Jennifer Black. It was unclear whether he logged it but the Officer said it was put with her possessions.

A car was sent to pick the two up from the Hospital. Reyna and Officer Hanley transported her back to Detention. The department did not contest his testimony that normal procedures in such circumstances had been followed; that Dispatch had been advised of their return and that they received the time of transport from Communications who would be aware that they coming in to the Detention Center with a female prisoner. Such communications would be on the radio and would alert the Auxiliary at the Station, Ms. Black that morning, so she could prepare for the female prisoner's arrival. There is no evidence that these procedures were not followed. Reyna says that Black, just as when he had brought [REDACTED] in that Morning, was waiting for them. A Chime alerted those in processing of any one approaching. While Officer Reyna testified that she received him and his prisoner, Auxiliary Black maintains that she never noticed the arrival and was not waiting at the Sally Port entrance to processing. Reyna said that after their arrival, they went inside and, together with Ms. Black, proceeded to the Cell Pod area where his female prisoner would be housed.

As Officer Reyna testified, Black met them at the door from the Garage and it would have been necessary for her to use her proxy card to get into the Sally Port Area. There are proxy card stations at each of the doors as well as in the cell pod area. Unfortunately the records maintained of access to those locations, transaction reports, identifying who used the proximity cards to enter and leave, were not examined or made available during the course of the investigation. There is no documentary evidence to substantiate Black's contention that she had not been in or near the Sally Port when Reyna and [REDACTED] returned. There was a failed February 2010 attempt to run a November 15, 2009 access report for the detention area. It was discovered that there was no information available after October 27, 2009 - the data base on the Server had reportedly become corrupt.

Video from surveillance cameras throughout the Center and especially those in the Female Cell Pod area would have been of assistance in resolving the credibility of Black's denial. Officers and Auxiliaries would know that whatever took place in the area of the search would have been captured on Video tape. A look at the tapes during the relevant time period would have saved time spent questioning Auxiliaries and would likely have resolved the credibility of statements subsequently made by Black and Reyna as to who searched [REDACTED]. Those images would have established the veracity of a claim Black would later make - that she had not conducted any search of [REDACTED] November 15th. Yet they were not examined until 2010, when through reuse, the images from November 15<sup>th</sup> were irretrievable.

The evidence is that there were only three law enforcement personnel present in the lockup area about that time who could have been involved in or aware of the required search - Officers Walsh and Reyna and Auxiliary Black. It was uncontested that, of the three, only Auxiliary Black was responsible to search female prisoners and that Officer Reyna, as a male Officer, was forbidden to do so. There is no assertion or evidence that Officer Walsh had played any role in the failure to search or make a complete search, since the processing of his prisoner, [REDACTED]<sup>6</sup>, had been completed by Black before 1359. There was no evidence that he had remained at the Detention Center after the pre booking of that prisoner had been completed not long before 1359.

[REDACTED] came in through the Security Garage. It had been reasonable to expect, based upon normal procedures, that her arrival would have been on the radio and that the Auxiliary would receive her in the processing/booking area. It would be the arresting Officer's responsibility to be sure that the prisoner had been added to the Lockup Inspection log. That log for 15

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<sup>6</sup> Mr. [REDACTED] been arrested by Officer Walsh in connection with a 12:09 traffic accident. He did not have a valid Drivers License. He bonded out. No evidence was presented that he remained in the Station.

November 2009, shows that last person added as of 1400 was [REDACTED]. There was two entries, one made and initialed by Officer Reyna and a footnote added by Black which identifies the time she had been taken to the ER and the 1359 time of return.

Black asserts that, while she had been anticipating searching [REDACTED] when she came back from the Hospital, and had already indicated on the Arrest Report that she had searched her, she did not search her before she was put into cell 11 and made no effort to disclose or otherwise remedy that claimed failure thereafter.

The Village argues in their Post Hearing Brief, that Auxiliary Black should not be faulted for having made a false and inaccurate entry on the Arrest Report because, they believe it had been her intention to make the search whenever [REDACTED] would return to the Station. They adopt Black's rational that she wasn't paying attention, missed the reentry of Reyna and [REDACTED] and that Reyna, for an unexplained reason, did not call out and ask her to do her job. Regardless of her intention, Officers rely on the confirmation in the Arrest Report that a prisoner has been searched and a misstatement could have extremely serious consequences.

Officer Reyna testified that, in accordance with Department Procedures and well established practice, he had observed the assisting Auxiliary search Ms. [REDACTED] shortly after 1400 hours. Black, however, maintains that she had been bonding out [REDACTED] and had not even seen Reyna until he walked past her on his way out of the Station.

It was 6 a.m. Monday November 16<sup>th</sup>, when Auxiliary Police Officer DiMaggio came on the job. Senior to the less experienced Auxiliary Black, when she searched [REDACTED] that morning, she found change and an empty medicine package in a pocket. She reported her discovery to Sergeant Nebl, an Officer responsible for the job performance of all Schaumburg Auxiliary Officers.<sup>7</sup>

The parties do not dispute that contraband had been discovered by DiMaggio. Officer Chrobak said that it had been two cents and a "pill" she mentioned having been given for pain. DiMaggio saw "a small amount of change" and what looked to her like a small open but empty packet.

John Nebl had been a Sergeant three years. He did not immediately respond to what appeared to have been an incomplete search nor did he

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<sup>7</sup> Sergeant Nebl acknowledged having received DiMaggio's report of the incomplete search Monday the 16th. As he himself admitted, Sergeant Nebl did not recall seeing Auxiliary Black's name on the Arrest Report although it is readily apparent and legibly written in a designated area.

attempt to contact Officer Black whom he would have known was the Auxiliary Officer solely and directly responsible for having searched [REDACTED] before she had been put into her cell the day before. Instead, he requested that Officer McClearly question all Auxiliary Officers who had been on duty from the time that [REDACTED] had been brought into the Station Sunday Morning until DiMaggio's search the next day. That Officer was instructed to ask what contact, in any, they had with [REDACTED] and how it was that she happened to have a medicine wrapping, pill and money in her pocket after spending a night locked up. There were not many Auxiliary Officers to contact. If Black were interviewed, there was no evidence of what she told McClearly. The first Officer she testified speaking to about the search was Sergeant Plimpton.

Despite the importance of a careful and complete search, the bad search was not treated as a priority matter. Not only was there no evidence of urgency, but there were some problems with the investigation. Most surprisingly, there had not been any effort to identify or pull surveillance tapes or their hard drive which would have shown the thoroughness of the search. Transaction reports of the use of proxy cards were not accessed.

I recognize that, at that stage of the investigation, there was no expectation that either an Officer or an Auxiliary would deny what would be revealed when the surveillance tapes or proxy card use was reviewed. As far as the testimony shows, two week and a half weeks passed before Nebl received McClearly's report.<sup>8</sup>

We do know that as early as December 3<sup>rd</sup>, Officer Reyna had asked Sergeant Plimpton whether Sergeant Nebl had retrieved the Video of the Detention Facility. Reyna said the Sergeant told him he would look into it. The Sergeant did not deny that Reyna had made that request but stated he did not recall.

Nebl learned from McClearly's Report that Jennifer Black had signed the Arrest Report indicating that she had searched [REDACTED]. While that Report shows Black and Reyna signifying that the prisoner had been searched, for an unexplained reason, Sergeant Nebl concluded no search had been made! When questioned, Nebl admitted that he could have expressed himself more clearly. It was unclear whether he had already spoken to Black and relied upon her contention that she had not conducted the search.

Nebl had asked Officer McClearly what steps he had taken in response to his Email a week or two previously. He reminded him of, *"some errors in Booking and I asked you to look into them. I need a status report. Specifically the incident where a subject was being bonded out and was found with*

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<sup>8</sup> McClearly did not testify and we do not know what either Black or Reyna may have told him about the incident.

**medication in her pocket." He asked whether McCleary had been able to determine the identity of the Auxiliary and the Arresting Officer.**

**When Sergeant Nebl did receive and review McCleary's report, he notified OPS that Sergeant Plimpton had been assigned to investigate further. That Sergeant requested memorandums from Reyna, Black, Walsh and DiMaggio over a four to six week period. While he met with Reyna, he testified without explanation that he had never interviewed Jennifer Black in person.**

**Plimpton sent Sergeant Nebl a Report which reviewed the fact that the Arrestee had been transported by Reyna from the Hospital and that, when she had been taken from her cell for Bond Court the next day, was found with medication in her pocket. Apparently relying upon what Auxiliary Black had told him, he concluded, "It appears that Officer Reyna did not search or request the female Auxiliary on duty to search the Arrestee and it appears he did not note on the medical form or advise the Booking Auxiliary that the arrestee had medication. ...."**

**A Complaint Receipt form signed by Sergeant Nebl reviewed the facts as he then understood them; that Ms. [REDACTED] had been arrested by Officer Reyna and transported to the Detention Center where the Arrest Form, the Property Inventory and the Medical Screening Form were completed. There was no indication on those documents that this Arrestee had any medication in her possession. Nothing was said about Black's attestation on the Arrest Report that she had searched this female prisoner.**

**Sergeant Nebl wrote, "after being processed by Auxiliary Officer Black, the Arrestee was transported to the hospital by SFD and Officer Reyna for a hand injury and discharged at 13:38 with medication. The Arrestee was placed in cell 11 - no indications or notations made on the Property Inventory or the Medical Screening Form that she had medication dispensed by the hospital. There was no notation on the Lock-up Log for the duration of [REDACTED] time in custody that she had needed or had been issued medication. Monday morning [REDACTED] was removed from her cell by Auxiliary Officer DiMaggio and Officer Chrobak for transportation to a Bond Hearing. It was determined at that time that the Arrestee had medication and change in her pockets. It would appear that she was not properly searched upon return from the hospital and the arresting transporting Officer Reyna did not notify the Detention Center Auxiliary Officer that the Arrestee had been issued medication by the hospital. Upon being notified of the medication being in the possession of the Arrestee, I assigned Auxiliary Supervisor McCleary to look into the matter and report back. On 11/30 he provided me with an overview which was reviewed with DC Rizzo who directed me to complete the form and forward it to Sergeant Plimpton." Thereafter, a Complaint Register Number was obtained.**

Sergeant Nebl informed Chief Deputy Rizzo, that [REDACTED] have been housed without female/matron Auxiliary Black having completed a pat down. He apparently relied upon what would be her version of the incident- what she had told Sergeant Plimpton. He discounted Reyna's assertion that he had directly observed Black searching [REDACTED] before putting her in a cell. He suggested a retraining remedy.

The Sergeant placed responsibility for the incomplete search upon Officer Reyna writing, "*Prisoner could have meds in pocket when first arrested (before ambulance ride) or received them at hospital. Even if the female Auxiliary was busy upon return from hospital, the Sworn Officer could have waited and requested the Auxiliary do the pat down. . . . Again, if you think training issue is the proper course, then this is done excepting advising the parties involved and providing the proper roll call reminders. If you think discipline, then obviously we need to get a little more clarification from those involved. Jenny Black has not been a problem. I see no reason it can't be training issue relative to her. I don't know of Ken or Leo's history but it's hard to imagine this is a problem for Kenny as he is the Bond Court/Beat Car 7 (lots of shoplifters) so he knows the drill.*" Nebl saw the incident as a "*Lapse in communications or minor complacency. I see no reason this isn't a training reminder but obviously will defer to your and Vince's judgment.*"<sup>9</sup> Nebl asserted the important of preserving evidence that might have assisted in uncovering the truth.

He also advised that, if Black had believed that Reyna had placed a prisoner in the cell without searching, it would have been prudent for her to ask Reyna to remove her so she could conduct the search. DiMaggio confirmed the obvious wisdom of that observation but described the Auxiliary's role in stronger terms.

Beverly DiMaggio, an Auxiliary for about five years, testified that, if it were true that Black had signed off as having made a search on an Arrest Report, it was her belief that such a search had been conducted. If it were she who had been on duty and knew that a male Officer had placed an unsearched female prisoner in a cell, Auxiliary DiMaggio stated she would not ask the Officer if he had searched the prisoner, she would tell him that you need to conduct the search. She related that, even after a prisoner has been placed in a cell, should a doubt arise whether a search had been made, Auxiliaries would have to go get an Officer to return. "You can get an Officer and say, 'I'm not sure if a person has been searched, come with me and I want to search her'." She added that a Schaumburg Auxiliary does not have to be asked to search a female prisoner brought in by a male, you do it. DiMaggio emphasized that, each time a female prisoner is returned to the cell, she is to be searched

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<sup>9</sup> Sergeant Nebl was in charge of Auxiliaries at that time. In addition, Officer Reyna was a member of his Squad.

and recounted that it only takes a minute and a half to prepare meals for a prisoner and two to four minutes to search a female inmate.

After this incident, DiMaggio checked the logs and found that Auxiliary Black and two other Officers had made cell checks after [REDACTED] had been placed in the cell. Black and the other Officers had performed them incorrectly since laces were still in the shoes the next day. She said that it is an Officer's responsibility to remove the laces<sup>10</sup>. It is apparent that those who put [REDACTED] into the cell and those who made cell checks thereafter that day had violated this important requirement. There was no discipline.

#### Occurrence witnesses relied upon by the Department.

The Department has the burden of proof to prove just cause for the termination. There were three occurrence witnesses upon whom the Department relied to establish the misconduct for which Officer Reyna was discharged - putting a prisoner in a cell without having been searched and dishonesty with respect to his report of the incident. These Occurrence Witnesses were Arrestee [REDACTED], [REDACTED] and Auxiliary Jenifer Black.

#### The Village Position

The Village asserts there is "*substantial evidence*" in addition to Reyna and Black's testimony that indicates that Reyna is untruthful. They cite two points: first that [REDACTED] herself testified she never saw Black upon her return from the hospital and that she had been placed in her cell by a male officer. However, the Record shows Ms. [REDACTED] testified she did not remember who had put her in that cell or whether she had been searched at all. She did not recall seeing Black although Black noted that she had fed her within minutes after she came back from the Hospital. She didn't recollect having seen Black or Officer Reyna and summed up her testimony saying that, "to be fair" she could not recall whether or not she had been searched before being put in the cell.

The Village's second point of reliance is that witness [REDACTED] had testified she had witnessed [REDACTED] being placed in her cell by an officer with a *dark shirt*. However, a review of her testimony shows that, through what clearly is not a large window in the cell door, she said she had witnessed [REDACTED] being placed in her cell by an Officer with a "*shade of uniform*". In any event, [REDACTED] was not asked to relate what she considered dark to any Village uniform. More important is the fact that she identified the wearer of

<sup>10</sup> DiMaggio described a search in detail, including the fact that shoestrings are to be pulled out by the Officers and shoes left outside the cell. She stated that on November 15 she found unlaced shoes outside the cell. [REDACTED] was the prisoner in question

that uniform as having brown hair and a mustache, an appearance which did not fit Officer Reyna in November 2009. Then [REDACTED] said that she did not know whether a man or a woman had put her [REDACTED] into the cell or whether that person had a male or female voice. The Village Reliance on the testimony of these two witnesses is does not have merit. As we examine their complete testimony, we find unusual confusion, contradiction and uncertainty.

[REDACTED] had given statements about the incident to Sergeant Plimpton as well as to OPS Investigator Theis. Sergeant Plimpton had not interviewed her in person, but did discuss the arrest with her by phone. Ms. [REDACTED] testified that, during their telephone conversation, she could have told him or anyone listening in on that call, that she did not recall whether she had been searched prior to entering the cell, explaining that she was in too much pain. She did recall a younger female having searched her before she was printed and taken to the hospital and that Black found 2 cents in her pocket. She maintained that she did not see Officer Black after she had returned from the Hospital. Black denies having searched her at any time that day.

While she certainly knew Officer Reyna had been with her in the Hospital, she was uncertain whether he had returned her to the Detention Center. More significantly, while she did recall being put in a cell, she did not remember who had put her in that cell or whether she had been searched at that time.

There were inconsistencies in the statements made to Sergeant Plimpton, to the Deputy Chief, to Investigator Theis and throughout her testimony. For example, she did not remember which hand had been injured or how many Police Officers had brought back from the Hospital. Black testified that she had brought her food just after her return from the hospital and documented that activity on a log. [REDACTED], however, said she did not recall Black or any female Officer coming to her cell that Sunday night and bringing food. Contrary to an assertion from, [REDACTED], a prisoner from an adjoining cell, she did not recall having any conversations with other inmates about food or hunger. She did not recall if anyone had asked her to take off her shoes before she went inside the cell. [REDACTED] was uncertain whether she had left the cell to make a phone call, stated that an Officer who had brought her something was stocky and balding, an appearance that does not resemble Reyna's look.

She did acknowledge telling the Union Attorney that she did not recognize Officer Reyna who had walked past her several times prior to her testimony. After she had spoken with the Union Attorney, she talked with Village Attorney Johnston and said she told him that it had been the Arresting Officer who had put her in the cell.

██████████ did not recall who had put her in the cell. She didn't recollect having seen Black or Officer Reyna. It is reasonable to expect that she would have recognized Reyna since he had been in her company for more than two hours after the arrest. While she certainly knew he was with her in the Hospital, she did not have any recollection whether he had returned her to the Detention Center. More significantly, she testified not having any recollection who had put her in a cell or whether she had been searched at that time despite what she may have told the Deputy Chief.

During the Hearing, she testified that her search by Officer Black did not occur after she returned from the hospital.. All this, despite the fact that she had not made any such admission to Investigator Theis during his two visits to her home. After considerable vacillation from interview to interview, Ms. ██████████ concluded her testimony that she could not recall whether or not she had been searched before being put in the cell. She conceded, "to be fair, I do not recall." The testimony of the prisoner who was housed in the adjoining cell was equally vague and inconsistent.

WITNESS

██████████ perspective.

██████████ had been arrested early Sunday morning after a domestic dispute with her husband and recounted that she was already in her cell when someone was put into to the adjoining cell. March 15, 2010 when she was interviewed by Investigator Theis<sup>11</sup>. It was unfortunate from a credibility standpoint that her statement had not been taken until four months after the incident. Then, contrary to her testimony under oath during the August 2010 Arbitration Hearing, ██████████ had told Theis that, as he noted, "to the best of her recollection", the Arrestee had been put into the cell block area by a male Officer taller than she is, apparently 5'7". She described that Officer as having brown hair and a mustache, contrary to Grievant's actual appearance in November 2009. There was evidence that he had never worn a mustache. She said the male came alone and, before closing the cell door, had instructed the Arrestee to, "kick off her shoes".

It had been through the relatively small opening toward the bottom of her cell door that she had observed the Arrestee kick off hiking type boot shoes against the wall outside the cell. She recalled the boots being canvas, a brown and cream color, and that there had only been one Officer involved in placing her into the cell. ██████████ testified that the window in her cell was small and limited her view.

WITNESS

<sup>11</sup> ██████████ March statement, taken and edited by the Investigator, was substantially inconsistent with her testimony under oath. After his interview, OPS Investigator Theis had taken his notes to his office, written them up and returned to obtain ██████████ signature. The statement had not been composed by ██████████

It is significant that, as she testified at one point, she could not confirm a critical fact - whether a man or a woman had put her neighbor into the cell or whether it had been a male or female voice she heard telling that lady to kick off her shoes. She did say that, when the Officer brought the person into the next cell, she saw he/she was wearing the same "shade of uniform" and had a full head of hair.

Ms. [REDACTED] also recalled that lunch had been furnished [REDACTED] whom she reported as distraught and constantly complaining, talking to herself, yelling at Officers whether or not any were in the cell block, seemed to have extreme mood swings and became angry when told she could only have one blanket. Ms. [REDACTED] did recall that her cell neighbor had been served a meal about an hour after being brought into the cell, had been taken out twice and, during the night, requested a blanket. She said that she complained about cold juice.

Neither [REDACTED] nor [REDACTED] were able to positively identify either Reyna or Black as the person who searched [REDACTED] before putting her into cell 11. Neither witnesses discredited Officer Reyna's claim that it had been Auxiliary Black - the person who would be expected to search a female prisoner. As mentioned, Black had first certified that she had made the search as Reyna recounted but, when told that a search of [REDACTED] had left contraband in her pocket, maintained her statements on the Arrest Report were false. A careful review of the circumstances is indispensable in determining her credibility<sup>12</sup>.

### Jennifer Black

Jenny Black, a part-time Auxiliary Officer since July 2007, principally performed prisoner processing and feeding. According to the Village Brief she worked just a "few" hours but appears to have worked regularly and was well respected. Responsible for searching female prisoners, during her testimony Ms. Black outlined policy precluding male officers from searching females and affirmed that, when conducting a search, she was not to ask a male Officer to leave the area for something she would need. She was not to leave a female

<sup>12</sup> The Village gave weight to annual performance reports in assessing the relative credibility of Black and Reyna. Those reports were part of the Record and show that in July 2008 Black was scored 4.0, *above expectations and highly satisfactory* in integrity/ethics and respect whereas Reyna had been rated 3.00 indicating *above expectations and highly satisfactory* with respect to those categories in June 2007 with an overall form rating of 2.95/4.00 that year. In 2008 Reyna was rated 4.00 in these factors, the same as Black. In 2009, he retained that rating in integrity/ethics but fell to 2.0 in the trust factor.

alone with the Male Officer. That obligation had been emphasized by Auxiliary DiMaggio.

Black recalled that when prisoner ██████████ had been brought in by Arresting Officer Reyna the 15<sup>th</sup> of November, she complained of pain. Medics were summoned and were waiting to take her for medical treatment as Black processed her – a 20 to 30 minute procedure. She said that, contrary to ██████████ testimony, she had not patted this Arrestee down or otherwise searched her before she left for medical treatment. Black usually searched prisoners just before they were put into a cell and maintained that she had intended to search ██████████ when she came back from the Hospital.<sup>13</sup>

The Auxiliary stated that ██████████ had not been put into a cell before being taken to the hospital and I credit that testimony. Nevertheless, even before ██████████ left the Detention Center, she had completed the Arrest Report and inserted her name and badge number at the appropriate place signifying that she had searched her – in preparation for her return. There was no justification for such an entry at that time. Black had not inventoried the Arrestee's personal property. That function had been accomplished by Officer Reyna.

Jennifer Black admits writing her name on the Arrest Report and that it signified that she had already made a search of Ms. ██████████ when she hadn't. It was inappropriate and happened because, Black explained to Investigator Theis<sup>14</sup> that, as she was entering arrest data into the I-CLEAR system, she realized that an absence of a female searcher might, on the face of report, indicate a breach of Department Policy. There would be not be any breach of Policy unless the female were absent at the time of the search. However, whatever her view, at the time she entered the date, she put in her name and employee number in the "Prisoner Searched by" block on the Arrest Report. A copy of that report was printed and both the original and copy of the Arrest Report given Officer Reyna for inclusion in this file. Investigator Theis found Black's credibility "suspect" because she had misrepresented having made a search. I agree. She was in fact disciplined for misconduct associated with the incident. There was no discipline for dishonesty.

Black had earlier given a slightly different explanation to Sergeant Plimpton March 9, 2009. Then she explained she had put her name on the

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<sup>13</sup> Black's testimony on this point is inconsistent with that of ██████████ who testified that Ms. Black had searched her before she had been taken to the hospital. This would be the first of two denials from Ms. Black that she had searched ██████████ November 15th. As we heard from ██████████, ██████████ was somewhat unstable that afternoon and evening. I recognize that an arrest after a fight with a family member can be a traumatic event. In ██████████ case, she had been in pain.

<sup>14</sup> Based upon a summary of his June 26<sup>th</sup> interview.

Arrest Report so that Officer Reyna would not be criticized or disciplined for breaching a provision of the Department Procedure Manuel mandating that female prisoners are to be searched by a female Officer/Auxiliary. Still she maintained that she intended to do the search at the first opportunity. Officer Reyna says she acted in accordance with that intention as soon as he brought ██████ into the Detention Center.

Officer Reyna testified, when he returned with ██████ that afternoon, he, Black and ██████ went back into the cell area where he used his Proxy card to enter, an entry that could have been confirmed had a prompt review of entry recordings been obtained. Reyna said that Black, following standard search procedures, asked ██████ to stand against the wall. There was then an alleged improper deviation. Black asked Reyna to get her a pair of rubber gloves and a blanket for the prisoner. He said that it was not unusual to assist the Auxiliary processing the prisoner. However, according to DiMaggio, the Officer is not to leave the Auxiliary alone. Beverly DiMaggio's contention was not contested by the Department.

Officer Reyna had been away from the prisoner as he obtained the gloves and the blanket from a storage area. The blanket removal should have been logged. That log was not introduced and Reyna's testimony on that point stands undisputed. Reyna testified that when he returned, he heard Black directing ██████ to remove her shoes and that he went the few steps to the Detention area and stood on the other side of the door leading to the cell hallway. He kept the door open with his foot as he observed Black searching ██████. He saw ██████ had removed her shoes as ██████ observed. The shoes were found outside the cell by DiMaggio the next morning still laced. It does not appear that anyone was disciplined for that lapse.

Reyna said it took Black three to five minutes to search ██████, an interval consistent with DiMaggio's testimony and uncontested by any witness. After the search had been completed, Reyna heard the cell door close and saw Black speaking with ██████ who had been placed inside. He said that Black returned to her desk. He went to the Officer's desk. Each finished up paperwork. Reyna testified he added ██████ name to the Lock Up and Inspection log and initialed his entry. Black had made a 1200 entry on that same log that the prisoner had been "taken to ER" and he wrote she had "returned to cell" at 1359. Black also wrote on the log, "Taken to ER at 12:26 hrs for finger pain; returned at 1359 hrs. Her entry reflects that she had been aware of the precise time of return and confirmed what Reyna had written. A review of the timelines supports Reyna's testimony of Black's activities during the critical 18 minute period following ██████ return to the Detention Center.

Investigator Gerald Theis found it remarkable that Auxiliary Officer Black had signed the Arrest Report in the block titled "Prisoner Searched By"

which also included her star number and the time of the search as 10:55 - well before ██████ would leave for the Hospital at 12:26.<sup>15</sup> Discounting the reported time of the search shown on the Arrest Report, Chief Deputy Rizzo found that the prisoner had actually been processed by Jennifer Black starting at 1145 as shown by her entry on the Prisoners Log, that the front desk called for an ambulance at 1212 and that ██████ had been transported to the ER at 1226. It was 13:09 when Black received an RD number and 13:15 when it was sent to the Front Desk. Black did not recall whether she had gone to the Front Desk with those documents. Had she done so, it is likely that her passage would be registered on Department monitors. According to Jennifer's Activity Report, she had recorded that prisoner ██████ had returned to the Lockup at 1400.<sup>16</sup>

The Prisoner Log shows that Black had processed a Mr. ██████ at 13:25. There is insufficient evidence as to when she would have finished with him. There was evidence that Officer Walsh had been with ██████, his arrestee. officer Walsh did not testify but wrote December 26, 2009, *I do not remember any prisoner ...being brought into the detention facility, while I was present.*" It is likely he was gone by 1400. In any event, there is no evidence of any exigency that would have prevented Black from seeing and assisting Officer Reyna as he came into the detention area and went to the cell pod for females. She certainly would have seen ██████ at the time she fed her which she reported as 1400. She wrote that she checked her cell at 1400. There was an overlap between the time of her reported feeding and the time Reyna's reported her search time.

Black's story that she had not seen Reyna until he was on his way out of the Lockup about 1415 is far from credible. In addition to her log entries establishing that she had actually been in the female cell pod at 1400, she testified that it was her intention to actually search ██████ as soon as she could in order to perform the search that had already been recorded. It was a Sunday afternoon with little activity shown that would have distracted Black from seeing ██████ arrival and completing the short search. It is not a large area.

From my visit to the lockup and based upon (a) testimony about the chimes which sound preceding arrivals from the Sally Port, (b) the relatively small booking and processing area where Black said she had been working and (c) that area's proximity to the Sally Port, I discredit Black's contention that she would not have noticed ██████ and Reyna when they returned from the hospital. Most significant that, as her entries on the log indicate, she had

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<sup>15</sup>Yet there is no reason for such a premature entry whether or not Black had intended to search ██████ before putting her into the cell. It may have been a mistake.

<sup>16</sup> According to NWCD, from 1347 to 1357, the lead Officer was Reyna and the Transport Officer Chrobak.

been right at the cell pod area on or about the time Officer Reyna testified seeing her search [REDACTED]. According to her own entries of the log, she had been feeding and cell checking at approximately 1400 hours.

Auxiliary Black's statement to Sergeant Plimpton was confusing. She wrote that she had documented [REDACTED] return to the Lock up at 13:59, a statement confirmed by her entry in the Inspection Log. She obviously saw her as she had recorded a precise time. She then wrote that she had "almost finished processing another prisoner at the time of [REDACTED] return and that, when she finished, she did cell checks at 1400 and fed [REDACTED] at that time." She said she had been finished with that other prisoner before 1400. Give or take a minute of two, Jennifer Black would have been in the Cell 11 area at the same time as [REDACTED] discrediting her denial that she had not seen [REDACTED] or Reyna during that time period. It would be expected that Black would made accurate entries.

While Patrol Officer Reyna testified having added [REDACTED] to the Inspection log and initialing that entry, Black made a notation that Reyna returned with [REDACTED] at 13:59, shortly before she was scheduled to do her 1400 check. She specified that time. Black also wrote that she had completed cell inspections at 1400 hours and confirmed that time in her letter to Sergeant Jon Plimpton December 5<sup>th</sup>. Sergeant Plimpton assumed that she had started the cell inspections before 1400 hours based upon her memorandum to him which he construed as meaning that by 1400 hours [REDACTED] had already been locked in cell 11.

The Adult Locker and Inspection Log (*Inspection Log*) requires Officers to "Enter Exact Times of Inspection". Auxiliary Black recorded that she did make a cell check of [REDACTED] in her cell at 14:00. It was about that time that, according to his statement, Officer Reyna had noted on the Inspection Log that she had been "returned to cell 11". He also wrote that [REDACTED] had returned "at 13:59" on the cover sheet, a time would be consistent with his reentry into the Processing Area through the Sally Port. Auxiliary Black made an entry on the following page of the Inspection Log that she had fed [REDACTED] and [REDACTED] at 1400 hours. As stated it would be likely that the search was conducted at this time or just shortly thereafter as Officer Reyna indicated.

To reiterate, there was a notation that [REDACTED] was fed by JB at 1400 hours, the reported time of her cell check. Using her initials, she recorded making a subsequent check of that cell 11 at 1430. Despite such evidence, the Auxiliary maintains, from the time evidence shows that Reyna arrived and left - a 18 minute period - she had been in the Processing Area where she remained until 1500 when her shift ended.

It is reasonable to believe that when Officer Reyna returned to the Station with [REDACTED], he would her take her directly to cell 11.

Lacking surveillance films or applicable PROX readings, there is no evidence which would disclosed who went into that area and when; there is no evidence to refute that Officer Reyna took ██████████ anywhere but to her cell as soon as he returned with her from the Hospital.

In making the credibility resolution here, the Arbitrator must consider not only the circumstances but established practices including the fact that Officers do not searching a female prisoner and the acknowledged responsibility of the Auxiliary to search. There is no evidence of any emergency or circumstance which would have caused either Black or Reyna to deviate from that routine November 15<sup>th</sup>. There is no evidence of any circumstance that afternoon that would have caused Officer Reyna to search a female prisoner and put in her cell himself without calling his Assistant. She was there making a cell check and feeding ██████████ according to her entries on the log. She did not identify any activity that she could not interrupt for a few minutes to perform the essential search.

There is no evidence that Reyna or any other male Schaumburg Officer had previously violated the restriction on searching a female prisoner. Moreover, Officer Reyna would know that such an activity would (1) be within the range of the surveillance cameras and (2) make him vulnerable to both termination and a civil lawsuit should there be a disclosure. He would be making such a move next to a cell occupied by another woman. Most significantly, there was no reason why Reyna would not have called Black as he contends and have her perform her duty. There was time. The search would have taken less than 5 minutes. He remained in the Station about 20 minutes.<sup>17</sup>

The activities Black described after 1400 do not reflect the response of an Auxiliary who realized that she had not carried out her duty to conduct a search.

1. She said she saw Reyna as he was leaving and asked whether ██████████ had been fed although she had already written on the inspection report that she had fed her at 1400!
2. Black testified she, "*does not think she asked Reyna if he searched ██████████.*" According to the testimony of DiMaggio and others, this would have been Black's principal concern if she had not been at the cell doing the search. It was what she had been waiting to do since she made her entry about three hours earlier that she had searched ██████████. It had been her expressed intention. She certainly would have made an inquiry.

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<sup>17</sup> Reyna had arrived back at the Station shortly before 1400. He estimated that the search had taken place between approximately 1403 and 1408 and that, about ten minutes after the time Black finished her search, he left the Sally Port at 1418.

3. Black claimed she heard the cell door close, concluded that Reyna and ██████ had come back in, looked up and saw that they were near cell 11. When asked, she did not respond to a specific question regarding whether she had actually seen Reyna escorting the prisoner back into the Processing Area.
4. When she saw him, Black did not ask Reyna to go back to the cell with her so she could search ██████ although she claimed knowing that an unsearched prisoner had been placed in a cell. Black did not offer any explanation why she had not searched ██████ herself or asked Reyna to assist her. We have DiMaggio's testimony on what Auxiliaries should do in such a situation.

Despite her testimony that she had not made any attempt to search ██████ before or after she had been taken to the Hospital, Jennifer Black did not point to any effort she had made to comply with her obligation to search ██████ that Sunday. She did not report that there was an unsearched prisoner in a cell. Such conduct would be completely inconsistent with the work record of this conscientious aide. It is evident that the story she told after having been confronted with the incomplete search was untrue. In assessing the auxiliary's credibility and her story that she was doing something with another prisoner and had not even been near cell 13, I have to judge whether she would engage in such misconduct and, if so, why. Was it a pretext to excuse what the Union calls a "bad search" of ██████? Let's look back once more at her excuses.

There was her claim that she had been working with another prisoner when ██████ returned, and that, before she knew it, ██████ was already inside her cell. She did not have time.

This argument does not wash. As the documentation shows, Black was either in or near the cell at 1400. Thereafter she had almost an hour thereafter if she had missed that search and, as she conceded, all she had to do was to press a button in the monitor room and available Officers would have assisted her if she had not made any search.

Black told Investigator Theis that she thought the female Officer who would replace her when her shift ended, would conduct the search. This is patently false. There was no evidence that she left any message for that Officer who would see from the Arrest Report that ██████ had already been searched. Then she made a vague claim that she had assumed somebody else had or would search her. As the Union put it, Black was attempting to cover up a bad search by maintaining that ██████ had been put into the cell without her having searched her.

Although there is neither authorization to do so nor evidence of any practice, Black testified that prior to Sunday November 15<sup>th</sup>, there had been

times when, without the authorization of any Officer, she had certified on Arrest Reports that she had conducted a search without having done so. Neither Black nor the Department presented any evidence that any Auxiliary had ever engaged in the procedure Ms. Black considered a practice. If she had, it was neither sanctioned nor approved by the Department. In fact she was disciplined for such misconduct. There was no such practice.

Jennifer Black had been disciplined for her misconduct in connection with the matter.<sup>18</sup> Her suspension followed an interview by Black with OPS Investigator Theis June 26, 2010. Mr. Theis stated that this interview had been the second time she was questioned and was conducted with the objective "To determine her state of mind and the details of her false entry in the Prisoner Searched Block of the [REDACTED] Schaumburg Police Department Arrest Report dated November 15th." Investigator Theis concluded that her conduct constituted an apparent violation of the Police Department Policies and Procedures Manual.

A memo explaining reasons for the discipline noted that violations were found, "*In that you affixed your signature to the [REDACTED] Arrest Report when in fact you did not participate in or conduct any searching activity in connection with the arrest of [REDACTED]. . . . Neglect of duty in that you failed to notify a Supervisor that a female had been placed in the Detention Center without being searched. . . .*" That "*Prior to incarceration in the Detention Center, every prisoner shall be searched again by a member of the same gender where feasible.*" The Memorandum concluded: "*As a result of your conduct, a decision has been made that you receive an eight-day suspension from your duties as a part-time Employee.*"

#### AWARD

There is insufficient evidence to establish that the Village had just cause within the meaning of Articles 5 and 12 for the termination of Patrol Officer Leo Reyna. There is a lack of credible evidence that Auxiliary Jennifer Black had not conducted the November 15, 2009 search of [REDACTED]. I credit Officer Leo Reyna's testimony that he had observed Auxiliary Black as she searched [REDACTED] November 15, 2009 before putting her into cell 11. The Village did not meet its burden of proof to establish that Officer Reyna had engaged in the misconduct for which he was terminated.

There is insufficient evidence that Reyna made the alleged false written allegations against Auxiliary Officer Black or made false statements to the OPS Investigator during his April 27, 2010 interview or that he had had

engaged in any conduct with the alleged intent to deceive during the investigation. I find that, based upon the evidence presented, in his role during the search of [REDACTED], Officer Reyna did not have any responsibility for any failure to conduct a thorough search prior to placing [REDACTED] in cell 11.

I find further that the Village did have cause to discipline Officer Reyna for (1) failure to maintain required surveillance during the visit to the Hospital when he allowed [REDACTED] to go to the X-Ray Department, unattended and out of his controllable range, and (2) his failure to carry his firearm during the visit to the Hospital. There is no contention that these lapses, by themselves, justify discharge. They do warrant at least the two day suspension that was originally suggested. There is no evidence in this Record that any Officer has received a greater penalty for similar infractions.

The Grievance is granted. Officer Reyna is to be offered reinstatement and made whole for any loss of pay or benefits less (1) outside earnings and unemployment compensation received and two days straight time pay. I will retain jurisdiction for 60 days should there be any back pay dispute.

**James Cox**  
**Arbitrator**

Issued this 20<sup>th</sup> day of December 2010