

Intervenes in emergency situations such as fights, suicide attempts or fires by applying first aid, enforcing rules, restraining inmates, *responding to calls for assistance*, or by notifying proper authorities such as police, medical facilities, case workers or administration.

(Jt. Ex. 2; Emphasis added)

It is alleged that on January 5, 2013, at approximately 6:55 a.m., CL failed to respond to a Code 1 call for assistance. During his 11:00 p.m. to 7:00 a.m. shift the Grievant was working at the Dorm 1300 post which is a designated Code 1 “responder’s” post. The RCCF’s Safety and Emergency Procedures, 16.37 (“SEP 16.37”) sets forth detailed procedures for reporting and responding to incidents that require immediate CO attention. (Jt. Ex. 8) SEP 16.37 states that Code 1 incidents

... do not involve the immediate threat of physical harm or injury to inmates, staff, or visitors. It is not necessary for the response team to run to the area, but they should respond immediately.

In contrast, Code 2 incidents

... are or could be: life threatening; involve acts or threats that could result in serious physical harm or injury to inmates, staff, or visitors. Officers will respond to incident area as quickly as possible.

(Jt. Ex. 8)

On January 5, 2013, Olay Philaphandeth, Lieutenant, was the RCCF 7:00 a.m. to 3:00 p.m. – day shift – Supervisor. At approximately 6:55 a.m., while preparing for that day’s work, Lt. Philaphandeth overheard Peter Lane, CO2/Control Officer, radio David Johnston, CO2, asking him to “check on the nurse.” Officer Johnston and Officer Al Foote, CO2, proceeded to the medical unit. Colette Thill, the attending RN, told the officers that a female inmate was banging and screaming, causing a disturbance. *Via* radio, Officer Johnston called Control Officer Lane, reporting a Code 1 incident, as Officer Foote was applied critical incident techniques to gain

control of the situation. At 7:03 a.m., Officer Johnston cleared the Code 1.¹ (Testimony by Lt. Philaphandeth, Officer Johnston and Officer Lane; Co. Exs. 1 & 2)

Toward the end of his shift, at 2:22 p.m., Lt. Philaphandeth e-mailed Jeffrey Good, Captain, Operations, commenting on that morning's Code 1 incident. He thought it suspicious that Control Officer Lane would be calling an officer to look into a situation. Thus, Lt. Philaphandeth stated in his e-mail, he had a follow-up conversation with Control Officer Lane who explained the circumstances that prompted him to radio Officer Johnston. Related to that conversation, Lt. Philaphandeth also stated that he spoke with Officer Johnston and Nurse Thill. All three (3) of the referenced individuals provided Lt. Philaphandeth with brief written explanations of the matter, which they e-mailed to him. In turn, Lt. Philaphandeth attached these e-mailed accounts to his e-mail to Captain Good. He also opined that the matter required further investigation because CL and Bethlehem Beyene, probationary CO1, were implicated in the matter and may be at fault for failing to call-in the Code 1 and/or failing to provide Nurse Thill with immediate assistance. (Testimony by Lt. Philaphandeth; Co. Exs. 1 & 2)

Consequently, Captain Good began an investigation. He reviewed a video of the RCCF physical area in question. Further, on January 7, 2013, he interviewed CL and Officer Beyene; on January 8, 2013, he interviewed Nurse Thill and Tamera Lee, CO2, whom he determined "... was not in the area and was not part of the incident;" on January 10, 2013, he interviewed Michael Connell, CO2. Captain Good made notes of these interviews. (Testimony by Captain Good; Co. Exs. 3 & 6) Before being interviewed, CL and Officers Beyene, Lee and Connell each signed a

¹ Apprehensive, and as the shift's supervising officer, Lt. Philaphandeth also proceeded to the medical unit, to assume command of the situation. (Testimony by Lt. Philaphandeth and Officer Johnson) Like Lt. Philaphandeth, Officers Lane, Johnston and Foote, were all day shift employees who reported to work shortly before its 7:00 a.m.

“Tennessen Warning Notice” acknowledging that they had agreed to be interviewed and understood the sought-after information might include private data protected under the MN Government Data Practices Act. (Co. Ex. 4)

On January 15, 2013, following his investigation, Captain Good sent CL a “Notice of Intent to Suspend” for unprofessional conduct and failing to respond to Nurse Thill’s Code 1 call for assistance on January 5, 2013: a violation of RCCF Policy SEP 16.37. The Grievant’s discipline was to be a three (3) day suspension. (Jt. Ex. 3) In that notice Captain Good advised CL of his right to a “Laudermill hearing,” at which he could present his side of the story. (Jt. Ex. 5) The Laudermill hearing was held on January 17, 2013. Captain Good took notes of CL’s comments. (Co. Ex. 5) On January 18, 2013 Captain Good issued a “Notice of Suspension” that, in relevant part, read as follows:

On January 5, 2013 you failed to respond to a code call response (sic) as it was your duty to do so. At approximately 0655 hours, before the end of your shift, you were walking past the Hospital/Security post when the on-duty nurse, Collette Thill, verbally called out for help by stating she had a Code 1 in the Nurses Station. Your response to her was: “You need to use your radio for that.” and proceeded to walk away from the Hospital/Security post area to Control, without rendering any assistance at all.

It is the expectation of the Ramsey County Correctional Facility that all correctional officers have a responsibility to assist any staff member in need of emergency assistance.

(Jt. Ex. 4)

The first day of the Grievant’s three (3) day suspension was January 24, 2013. Additionally, because of his alleged SEP 16.37 violation, CL was removed from the Acting Lieutenant Training Program, which prepares CO2s for promotion to CO3 and, further, his duties as a Field Training Officer (“FTO”) were terminated. Both of these assignments paid extra hourly compensation. (Testimony by Captain Good and Lt. Philaphandeth; Un. Exs. 1, 2 & 3)

Chris Bellfield, Captain, RCCF Administration, testified that a CO2 may be removed from the Acting Lieutenant Training Program if disciplined for cause.

On January 23, 2013, the IBT filed a grievance, claiming that the County's discipline of CL was "unjust" and that he be made

... whole with full immediate reinstatement [,] with full back pay [,] and all rights, privileges and benefits restored and the entire matter expunged from his record.

(Jt. Ex. 5) Subsequently, the grievance was processed through the steps of the grievance procedure as set forth in Article 7, § 7.4 of the CBA. (Jt. Ex. 1) In a memo dated June 7, 2013, following the parties' Step III grievance meeting, the County denied the grievance. (Jt. Exs. 6 & 7; Un. Ex. 6) Thereafter the matter was advanced to arbitration.

On February 11, 2014, the undersigned heard CL's grievance at the RCCF's Maplewood, MN location. Appearing through their designated representatives, the parties were given a full and fair hearing. Witnesses were sworn and cross-examined. Exhibits were introduced and accepted into the record, and the undersigned Arbitrator was given a site visit. The parties stipulated: (1) to a Statement of the Issue; (2) that the matter was properly brought to arbitration for a final and binding determination; and (3) that the Grievant be identified herein by initials. On April 3, 2014, the parties filed timely post-hearing briefs.

II. APPEARANCES

For the County:

Rebecca Wodziak
Tammy Bakeberg
Jeffrey Good
Chris Bellfield
Olay Philaphandeth
Peter Lane
Michael Connolly
David Johnston

Manager, Labor Relations
H. R. Generalists
Captain, RCCF Operations
Captain, RCCF Administration
Lieutenant, RCCF & Shift Supervisor
CO2, RCCF & Control Officer
CO2, RCCF
CO2, RCCF

For the Union:

Kevin M. Beck

Attorney-at-Law

Martin H. R. Norder

Attorney-at-Law

Vance Rolfzen

Business Agent, IBT, Local 320

CL

Grievant

III. RELEVANT CBA PROVISIONS AND RAMSEY COUNTY POLICIES

A. COLLECTIVE BARGAINING AGREEMENT

ARTICLE 10 DISCIPLINE

§ 10.1 The Employer will discipline employees for just cause only. Discipline will be in the form of:

- a. Oral Reprimand;
- b. Written Reprimand;
- c. Suspension;
- d. Reduction;
- e. Discharge.

§ 10.2 Suspensions, reductions and discharges will be in written form. All discipline placed in the employee’s personnel file shall be served on the employee in writing.

(Jt. Ex. 1)

B. SAFETY AND EMERGENCY PROCEDURES: REPORTING AND RESPONSE TO INCIDENTS THAT REQUIRE IMMEDIATE CORRECTIONAL OFFICER RESPONSE (SEP 16.37)

PURPOSE To provide code response procedures for incidents that require immediate correctional officer assistance.

APPLICABILITY All facility staff.

POLICY *A staff person observes or is involved in an incident that requires the immediate assistance of correctional officers will inform control via radio or telephone with the code response level needed. The control room officer will broadcast the code response via the radio, initiating immediate response by officers designated as the responders. All code responses should be done in a controlled and safe manner. Officers should be cognizant of their environment at all times in an effort to avoid unnecessary injury to themselves or others.*

DEFINITION **Incidents:** Situations which include but are not limited to: a fight between inmates; an assault on staff, inmate, or visitor; riot; fire; medical emergency; duress alarm; *inmates refusing to comply with staff directives*; or inmate placement in security.

Code 1 - A response level request for incidents that do not involve the immediate threat of physical harm or injury to inmates, staff, or visitors. It is not necessary for the response team to run to the area, but *they should respond immediately.*

Code 2 - A response level request for all duress alarms and for incidents that are or could be: life threatening; involve acts, or threats that could result in serious physical harm or injury to inmates, staff, or visitors. Officers will respond to incident area as quickly as possible.

Responders: 0700-1500/1500-2300 shifts consist of: shift lieutenant, center hall officer, hospital/security officer, south utility officer, dorm 200 officer, and second floor center officer. 2300-0700 shift consists of: shift lieutenant, dorm 1100/1200 officer, *Dorm 1300 officer*, custody officer, and 2nd center officer.

PROCEDURE

- | | |
|------------------|--|
| All Staff | <ol style="list-style-type: none">1. <i>When observing, or involved in an incident that requires the immediate assistance of correctional officers, inform control via radio or telephone and state the following: code level response, location, and nature of the problem.</i>2. Restrict inmate movement until the code response has cleared. |
| Control | <ol style="list-style-type: none">3. <i>Broadcast the code level, location, and description of the incident over both radio systems.</i>4. If the incident requires medical response, notify medical staff on duty to respond to the incident.5. Notify all officers and other staff to stop all unrelated radio transmission and inmate movement. |
| Responders | <ol style="list-style-type: none">6. When a code response is broadcast, immediately proceed to the location of the incident. <i>Team members will respond during the entire shift, including break times.</i>7. If the incident requires a medical response and medical staff are not available, the shift lieutenant or the center hall officer (0700-1500/1500-2300 shifts) or the custody officer (2300-0700 shift) will take the medical bag from the shift lieutenant's office to the incident location.8. If a code-2 response is announced all officers on break, and those not directly supervising inmates, will immediately respond to the incident. |
| Shift Lieutenant | <ol style="list-style-type: none">9. Upon arrival at the incident, ensure that the incident is under control and proper response actions are accomplished. Inform the control officer |

when the code response is clear and that radio transmission and inmate movement may resume.

10. Clear the code over both radio systems.

(Un. Ex. 8; Emphasis added)

IV. STATEMENT OF ISSUE

Did the Employer have just cause to suspend the Grievant for three (3) days on January 24, 2013? If not, what is an appropriate remedy?

V. FACTS AND BACKGROUND

On the day of the incident, CL worked the Dorm 1300's 11:00 p.m. to 7:00 a.m. shift. The officer assigned to that post's shift is designated a "responder" *per* SEP 16.37. (Un. Ex. 8) SEP 16.37 delineates safety and procedures in responding to "... incidents that require immediate correctional officer response." There are two (2) levels of "immediate ... response," namely: a "Code 1" response

... for incidents that do not involve the immediate threat of physical harm or injury to inmates, staff, or visitors. It is not necessary for the response team to run to the area, but they should respond immediately;

and, a "Code 2" response

... for incidents that are or could be: life threatening; involving acts, or threats that could result in serious physical harm or injury to inmates, staff, or visitors. Officers will respond to incident area as quickly as possible.

(Un. Ex. 8) Captain Good testified that a Code 1 requires a "walking response" to the work area in question; whereas, a Code 2 is more urgent, with "... all available hands to respond fast."

SEP 16.37 also provides that "all facility staff" shall respond to an incident requiring Immediate attention, in the following manner:

A staff person who observes or is involved in an incident that requires the immediate assistance of correctional officers will inform control via radio or telephone with the code response level needed. The control room officer will broadcast the code response

via the radio, initiating immediate response by officers designated as the responders. All code responses should be done in a controlled and safe manner. Officers should be cognizant of their environment at all times in an effort to avoid unnecessary injury to themselves and others.

(Un. Ex. 8)

During the “shift changeover period,” approximately (5) minutes before the end of his shift, the Grievant: (1) was relieved of duty by a “day shift” officer; (2) briefed the relieving day shift officer; (3) gave the day shift officer his radio and keys; and (4) proceeded to leave the facility. (Testimony by CL) At approximately 6:58 a.m., as CL was walking toward the medical unit, he heard Nurse Thill call out “Code 1.” (Testimony by CL; Co. Exs. 3 & 5; Un. Exs. 5 & 6) Nurse Thill was reacting to a disturbance created by an inmate in an isolation cell. (Co. Ex. 3) As CL was walking past the medical unit, he testified that Nurse Thill stepped into the hall, and asked him where the “officer was that was working.” (Co. Ex. 5) The Grievant told her, “You have a radio for that, so use the radio.” (Co. Ex. 3) CL neither used the phone outside the door of the medical unit nor its radio to call Control Officer Lane. A surveillance video shows the Grievant pausing and pointing into the nursing station as he apparently was telling Nurse Thill to use her radio before continuing to walk down the hall toward #4 Gate. (Co. Ex. 6)

After the Grievant told the nurse to call control with her own radio, he continued walking down the hall. Nurse Thill can be seen in the video turning to Officer Beyene – a CO with less than six (6) months on the job – who also had been relieved of duty, did not have a radio, and was walking down the hall a few yards behind the Grievant. (Co. Ex. 6) According to Captain Good’s interview notes, Officer Beyene told him that she heard Nurse Thill say that “she had a ‘Code 1’ in medical.” Further, she told him “[T]here was an inmate pounding on the door so I figured it was for that reason.” (Testimony by Captain Goode; Co. Ex. 3) Hearing the

Code 1, Officer Beyene accelerated her pace, passed the Grievant, whose pace remained constant, arriving at the Control Booth ahead of CL (Co. Ex. 6)

Peter Lane, CO2, was in the Control Booth: an enclosed area with security windows and no microphone. He was the day shift's Control Officer on the day in question. Shortly after having checked-in for duty, he testified that Officer Beyene and the Grievant arrived. Officer Lane e-mailed the following statement to Lt. Philaphandeth:

After assuming the Control Post at 0655 on 1-5-2013, Officer Beyene was exiting the #4 gate and was stating "CODE 1" while pointing towards Officer [CL]. Confused, I asked her to repeat herself. Again Officer Beyene states "CODE 1" while pointing at Officer [CL] and continuing to walk away from the control booth. After Officer Beyene repeated herself, Officer [CL] states "CODE 1" and pointed to Officer Beyene. At this point I believed the officers to be joking or playing around with one another. I asked a third time for the two officers to clarify what was their intention. Both Officers then stated "Nurse station." Due to the Officers inability to communicate properly, I radioed Officer Johnston to check on the nurse. While both officers who originally stated "CODE 1" were waiting at the #5 gate, Officer Johnston immediately took action and went to investigate the Nurses station followed closely by Officer Foote. Moments later Officer Johnston called a CODE 1 to the Nurses station via the radio.

(Testimony by Officer Lane; Co. Ex. 1)

After their exchanges with Officer Lane, Officer Beyene and CL continued on toward #5 Gate to leave the building. (Testimony by Officer Lane; Co. Ex. 6) In the meantime, Officer Johnston testified that from afar he observed the interaction between Officer Beyene and Officer Lane. Officer Johnson e-mailed the following statement to Lt. Philaphandeth:

While standing at the lieutenant's office door I observed officer Beyene saying something to officer Lane in control. It appeared that officer Beyene was trying to tell control that the nurse wanted a code one. Although it wasn't clear, officer Beyene's statement got my attention and I focused on what she was saying. At this time Control officer Lane, requested I to (sic) report to the medical area to discover if there was a problem.

(Co. Ex. 1) After reporting to the medical unit with Officer Foote, Officer Johnston notified Officer Lane of the Code 1, which was immediately aired over the facility's radio system. (Co. Exs. 1 & 2)

Michael Connolly, CO2, who previously had been relieved of midnight-shift duty, was at #5 Gate along with Officer Beyene and CL, about to leave the facility, when the Code 1 was broadcast. Video evidence shows Officer Connolly walking past the medical unit just prior to the inmate's disturbance and Nurse Thill's request for a Code 1. It shows that he arrived at the #5 Gate before the Grievant. Several officers were gathered at that gate. When the Code 1 was announced, CL told Officer Connolly "She needs to use her radio for that," after which Officer Connolly immediately responded to the Code 1, walking back to the medical station. (Testimony by Officer Connolly and CL; Co. Ex. 3)

VI. POSITIONS OF THE PARTIES

A. The County's Arguments: The County argued that it had just cause to suspend the Grievant for three (3) days. Continuing, the County urged that the discipline was reasonable and the facts upon which it was based were credibly established through documented evidence and testimony. Indeed, the County asserted, there is no evidence of disparate treatment or that its disciplinary deliberations and decision were arbitrary, capricious or discriminatory.

The Grievant did not follow the clear and unambiguous instructions found in SEP 16.37, which specify how all staff are to respond to emergency situations that require immediate assistance. RCCF procedures state that employees should "... inform the control officer via radio or telephone and state the following: the code level response, location and nature of the problem." (Jt. Ex. 8) The Grievant neither radioed nor phoned Control Officer Lane to report

Nurse Thill's Code 1 call for assistance even though both means of communication were readily available to him. Moreover, the Grievant neither asked Nurse Thill why she needed assistance nor if she had a radio and was able to use it. CL, a midnight shift designated responder, merely told her to use her radio and then he proceeded toward the exit at a leisurely pace. (Co. Exs. 3 & 6)

The essence of SEP 16.37 is to ensure that RCCF staff orderly and clearly communicate reports of incidents requiring immediate attention for the good and safety of the prison community. Thus, the County argued, CL's misstep was further compounded by his failure to clearly communicate Nurse Thill's Code 1 alert to Control Officer Lane. In fact, Control Officer Lane was "confused" by the Grievant's utterances. Upon reaching the Control Booth, CL used confusing hand gestures. (Testimony by Control Officer Lane; Co. Ex. 1) That the Grievant did not follow RCCF Safety and Emergency Procedure #16.37 is not seriously disputed.

The Grievant did not provide credible reasons for mitigating the discipline he received. In fact, the County asserted, CL contradicted some of his previous statements; his description of the incident changed over time; and he showed less contrition over time. Initially, the Grievant told Captain Good he was not sure whether another officer was in the vicinity. (Co. Ex. 3) However, at the arbitration hearing, he said he was aware of Officer Beyene's presence, and he told her to report the Code 1 alert to control. CL also said that he directed her to make the report because she was a junior officer, she was "a minority," and he wanted her to "look good." (Testimony by CL) Critically, when interviewed by Captain Good, CL did not communicate this altruistic motive for his conduct. He told Captain Good that he "... didn't have a radio on (sic) I didn't feel comfortable going in there." (Co. Ex. 3) Subsequently, on or about

June 5, 2013, CL told Vance Rolfzen, Business Agent, IBT, Local 320, yet a different story. According to Mr. Rolfzen, CL told him that Nurse Thill did not tell him that she needed help and, further, he was "... not a responder as he had already been relieved of duty." Continuing, CL told Mr. Rolfzen, "I continued out the gate as I was already relieved of duty and was going home for the day." (Testimony by Mr. Rolfzen; Un. Exs. 5 & 6) To be non-responsive to Nurse Thill's Code 1 in order to make another officer "look good" or because he had been "relieved of duty" is to ignore the procedures in SEP 16.37, the County averred.

On January 7, 2013, when Captain Good asked CL if there was something he could have done to assist Nurse Thill, CL replied, somewhat contritely: "I guess you're right, I probably should have done something different; I understand what you're saying, I should have done something to help." (Co. Ex. 3) Later, at the February 25, 2013 Step II grievance meeting, the Grievant seemed to be less willing to accept responsibility for his actions. CL's handwritten notes of that meeting indicate that he made the following observations: Nurse Thill "... didn't summon help;" the incident was not a Code 1 since Nurse Thill was "... not in distress" – there was no immediate danger of physical harm –; and he had been properly relieved of duty. (Un. Ex. 6) Still later, CL told Mr. Rolfzen, "I didn't do anything wrong." (Un. Ex. 5)

The County contended that the Grievant behaved as if nurse Thill's failure to radio in the Code 1 somehow negated his responsibility in the matter. This attitude was manifest by his conduct at #5 Gate, as the Code 1 was broadcast, when he told Officer Connolly that Nurse Thill "... should use a radio for that." Officer Connolly, in contrast to the Grievant's derelict behavior, returned to the medical unit to render assistance. (Testimony by Officer Connolly; Co. Ex. 3)

Next, the County observed, the Union asserted that the Grievant was off duty and, thus, his responsibility to respond was negated. This is not an acceptable excuse, the County urged, as the incident took place five (5) minutes before the end of the Grievant's shift and SEP 16.37 does not exempt officers who are *en route* home from responding to emergencies. The Union also alleged disparate treatment in that Officer Beyene was not disciplined for the same misdeeds that resulted in the Grievant's suspension. However, the County maintained, Officer Beyene did in fact respond, rushing to the Control Booth. Further, unlike the Grievant, she was an inexperienced probationary officer with less than six (6) months on the job.

Finally, for all of the above-discussed reasons, the County urged that its discipline was for proven just cause, was reasonable and, therefore, it requested the grievance be denied.

B. The Union's Arguments: The Union initially argued that the County failed to meet its burden of proof of wrongdoing in this case and, *arguendo*, if the Grievant did misstep, CL's 3-day suspension and loss of FTO and Acting Lieutenant status were excessive disciplinary measures. Arbitrators, the Union pointed out, favor progressive discipline, when the disciplinary record of the grievant is unblemished, as in the present case. Corrective measures like coaching, not the punitive measures, is what the present matter called for. Thus, the Union maintained, the Grievant should be made whole, including reinstatement as a FTO and an Acting Lieutenant, and he should be compensated for all lost wages.

Regarding the question of CL's guilt, the IBT argued, the County did not show by clear and convincing evidence that the Grievant violated SEP 16.37, and the County is guilty of disparate treatment and for ignoring mitigating circumstances. Additionally, the Union

continued, the County did not conduct an objective and fair investigation, seeking instead to justify its predetermined conclusion.

SEP 16.37 calls for the responders to communicate the appropriate code level response to control. Further, a Code 1 was characterized by Captain Good as a “walking response.” The Grievant’s behavior was consistent with these SEP 16.37 mandates. Due to his close proximity to Control Booth, the Grievant walked to control, rather than call-out or yell-out: there was no immediate threat of physical harm or injury. (Jt. Ex. 8) When he arrived at the Control Booth, he communicated the Code 1 to Control Officer Lane. He used his voice and hand signals. Lt. Philaphandeth testified that COs are trained to “use their voice” if they do not have a radio. That’s precisely what the Grievant did: he had no radio so he used his voice and non-verbal gestures.

For doing exactly what CL had done, Officer Beyene was “coached” – not suspended. Officer Beyene did not stop to assist Nurse Thill; Officer Beyene continued to walk to the Control Booth to notify Control Officer Lane of Nurse Thill’s Code 1; Officer Beyene used her voice and hand signals to communicate. For the County to argue that Officer Beyene was not suspended because she was a new officer is an inept argument. What is apt is that Officer Beyene and CL exhibited identical behaviors; neither had been disciplined previously for the alleged offense; nothing in the record suggested that either officer would not be responsive to non-disciplinary coaching. Thus, the Union concluded, if coaching was appropriate to correct Officer Beyene’s behavior, it was appropriate to correct CL’s behavior.

The County also maintained that the Grievant deserved harsher discipline because he did not respond while Officer Beyene did. At the hearing Captain Bellfield testified that, in

contrast to CL, Officer Beyene made a “good faith effort.” Captain Good testified that “she did do something: she responded.” However, all of this evidence contradicts Control Officer Lane’s written account of the incident. Therein he describes Office Beyene’s and the Grievant’s responses. Both officers responded by walking through #4 Gate to the Control Booth and both repeatedly used their voices and hand gestures to communicate the Code 1. (Co. Ex. 1) Further, CL told Officer Beyene to report the incident to control. (Testimony by Officer Chad Lee)

The County did not conduct a fair and objective investigation. Rather, it sought to justify Captain Good’s predetermined conclusion. This is borne out by the County’s disregard for the facts of the case. As previously explained, the County maintained that the Grievant did not respond at the time of the incident despite Officer’s Lane’s written statement to the contrary. (Co. Ex. 1) Further, the County disregarded and contradicted mitigating evidence in regard to the Grievant’s contrition. In the County’s response to the Step III grievance meeting, it stated that the Grievant “has failed to acknowledge that he had any responsibility to provide emergency assistance to the nurse.” (Jt. Ex. 7) However, Captain Good’s interview notes state that the Grievant said, “I probably should have done something different ... I should have done something to help.” (Co. Ex. 3) Still further, the Union argued that the following written statement, which is included in Captain Good’s investigatory notes about his interview of CL, suggests that he had predetermined the outcome of his investigation.

At this point I told [CL] that it is my expectation that any officer regardless if it were the end of their shift, with or without a radio, they would stop to help anyone in the facility that has asked for help, especially when they announced a code call.

(Co. Ex. 3) Captain Good’s so-called “expectation,” the Union contended, had never been communicated to the Grievant and the direction to “stop and help” is not consistent with SEP

16.37. (Jt. Ex. 8) Rather than to have suspended the Grievant for not complying with previously unexplained expectations, the County should have coached the Grievant.

Next, the Union argued, the County ignored several of the case's mitigating factors. First, the Grievant was completely honest and forthright throughout the County's investigation of the matter. Second, any inconsistent or varying statements attributed to the Grievant are commonplace, occurring when the same subject is discussed in multiple fora, at different points in time, and when the deposed person is responding to different questions. Third, the incident happened during the shift changeover period which is a unique, short period of time that occurs three (3) times each day: a period that is not expressly covered by RCCF's safety and emergency procedures. On the morning in question, the Grievant did not have his keys and radio; he had been released from duty and was leaving for home. There is no evidence that the County had ever trained the Grievant on appropriate response procedures during the shift changeover period, after release from duty. The officers that did respond to the Code 1, that resolved the incident, were all day-shift officers who had just reported for duty, radios and all. Fourth, the Grievant is a "very good officer," with a good record of discipline, who along with Officer Beyene did in fact alert Control Officer Lane of the Code 1, as required by SEP 16.37.

Finally, the Union argued that for the above-discussed reasons the grievance should be sustained and the requested remedy ordered.

VII. ANALYSIS AND OPINION

In the analysis that follows, the undersigned Arbitrator examines whether the County, by a preponderance of the evidence, established that CL violated the policy/procedures set forth in SEP 16.37, as charged. If it is determined that CL did not violate said policy/procedures,

then, as the Union requested, he will be “made whole,” including restoration of his FTO and Acting Lieutenant roles and responsibilities. However, if it is determined that CL did violate SEP 16.37, then, the Union’s arguments for mitigating the discipline the County meted out in this matter will be evaluated.

That CL was informed about SEP 16.37 and had knowledge of its content is not a disputed issue: he had foreknowledge. *Inter alia*, SEP 16.37 instruct *all staff*, as follows:

When observing, or involved in an incident that requires the *immediate assistance of correctional officers, inform control* via radio or telephone and state the following: code level response, location, and nature of the problem.

(Un. Ex. 8; Emphasis added) With respect to this procedure, consider the following set of uncontested facts in evidence:

- Shortly before 7:00 a.m. on January 5, 2013, Nurse Thill announced a Code 1, while at the doorway or in the hallway adjacent to the medical unit. (Testimony by CL; Co. Ex. 1; Un. Ex. 5)
- As Nurse Thill explained to Lt. Philaphandeth in an e-mail written that morning, an inmate in the medical unit was creating a disturbance. (Co. Ex. 1)
- At that precise time, a few minutes before 7:00 a.m., CL was in the immediate vicinity of the medical unit.
- CL heard Nurse Thill shout-out, “Code 1;” he saw her, but did not inquire about her problem; and he told her “... to use her radio and call the code.” (Testimony by CL; Co. Ex. 3)
- As CL correctly surmised, Nurse Thill’s call for assistance did not involve an immediate threat of physical harm or injury to anyone. (Testimony by CL) Her call for assistance was a classic Code 1 incident. According to SEP 16.37, Code 1 incidents:

... do not involve the immediate threat of physical harm or injury to inmates, staff, or visitors. It is not necessary for the *response team* to run to the area, but they should *respond immediately*. (Un. Ex. 8; Emphasis added)

- CL was not carrying a radio. CL then proceeded to walk down the hallway through #4 Gate, *en route* to the Control Booth.

CL heard Nurse Thill's Code 1 shout-out for the *immediate assistance of a correctional officer*. Although correct, CL's conclusion that she was not in harms-way is irrelevant: a Code 1 call does not involve harmful threats. Further, CO2 or not, just like *all staff* at the RCCF, CL was expected to *inform control* by radio or telephone to report the Code 1's details. There was a telephone on the hallway wall adjacent to the medical unit's doorway. Additionally, as a CO2 – as the response team – CL was expected to *respond immediately*. (Un. Ex. 8) Even the CO2 job description cites “responding to calls for assistance” as one of that position's duties. (Jt. Ex. 2) In summation, the record evidence unmistakably shows that when Nurse Thill was seeking Code 1 assistance CL was literally standing at her side and, yet, he neither *informed control* of the Code 1 nor provided Nurse Thill with *immediate assistance*. Based on this analysis of policy/procedures and evidence, CL, as the County charged, did violate SEP 16.37.

After speaking to Nurse Thill, the Union made note of the fact that CL continued to walk to the Control Booth to report the Code 1: the Control Booth is in close proximity to the medical unit. Thus, his conduct conformed to policy/procedures. For several reasons, this argument does not serve to attenuate the forgoing conclusion. First, CL actually spoke to Nurse Thill, yet he offered no assistance other than to advise her to call in the code. Second, rhetorically speaking, is it unreasonable to conclude that CL should have immediately entered the medical unit, called in the code, and assessed/remedied the situation. Third, as a CO2, like peacekeepers in general, the County justifiably expected CL to have responded promptly to Nurse Thill's call for help. Finally, in a related vein, because CL had been relieved of duty, had turned in his keys and radio, and was on his way home does not mean that he was relieved of

SEP 16.37 duties and responsibilities, as Captain Good told him: an opinion with which the undersigned agrees. (Testimony by Good; Co. Ex. 3) Indeed, CL knew better. As Captain Good reported, CL acknowledged that he "... should have done something to help." (Co. Ex. 3)

Additionally, even after arriving at the Control Booth, the Grievant seemingly could not manage to effectively communicate the "code level response, location, and nature of the problem" of Nurse Thill's request for assistance. Control Officer Lane's written statement, prepared shortly after the incident, states that he thought the Grievant and Officer Beyene were "... joking or playing around with one another." After asking a "... third time for the two Officers to clarify what was their intention," both stated "Nurse station." (Co. Ex. 1) Control Officer Lane was confused. Thus, rather than to broadcast a Code 1 at that point, he sent Officer Johnston to the medical unit to investigate. Control Officer Lane aired the Code 1 only after Officer Johnston had conferred with Nurse Thill and called in the Code 1. If the Grievant and Officer Beyene had communicated the necessary information, there would have been no reason for Control Officer Lane to send Officer Johnston to the medical unit before broadcasting the Code 1 over the radio system.

Arbitral notice is made of the Grievant's serial missteps: first, he brushed off Nurse Thill's appeal for Code 1 assistance, stating "You have a radio for that, so use the radio;" and, second, he failed to properly communicate her Code 1 call to Control Officer Lane. (Co. Ex. 3) He knew the RCCF's policy/procedures; yet, these dual missteps seem to exhibit his indifference toward them. Supporting this proposition is that when the Code 1 was broadcast, CL repeated his "... she should have used a radio for that" refrain in the presence of Officer Connolly who was about to exit the facility. CL's response to the aired Code 1 was to continue to exit the

facility; whereas, Officer Connolly walked back to the medical unit to provide assistance.
(Testimony by Officer Connolly; Co. Ex. 3)

Next, the analysis turns to the matter of disciplinary mitigations. The Union observed that CL was suspended for three (3) days and suffered loss of FTO and Acting Lieutenant benefits; whereas, Officer Beyene was not disciplined – she was coached. Like the Grievant, Officer Beyene: heard and saw Nurse Thill yell that she had a Code 1; confirmed with Nurse Thill that she had a Code 1; and walked to the Control Booth to report the Code 1. (Co. Ex. 3) Nevertheless, Officer Beyene was merely coached: classic disparate treatment, the IBT argued.

The Union rejected the County's contention that said disparate treatment was because the Grievant was a CO2 with six (6) years of experience, while Office Beyene was a probationary employee with less than six (6) months of experience. The undersigned Arbitrator disagrees with the Union. It is unreasonable to believe that a new officer – let alone an U.S. immigrant for whom English was a second language – would have internalized how SEP 16.37 ought to be applied in an operational sense. Additionally, it is reasonable to believe that a new officer would follow the lead of a senior, CO2 officer. She heard CL direct Nurse Thill to “call on the radio,” and, Officer Beyene affirmatively responded when CL told her to “... report the Code 1 to central...” (Testimony by CL; Co. Ex. 3) It is undisputed that she increased the pace at which she was walking, passing CL and reaching the Control Booth before him. (Co. Ex. 6) Ultimately, in the undersigned's opinion, Captains Bellfield and Good got it right, when they testified, respectively, that Officer Beyene made a “good faith effort” and “she did do something: she responded.”

Next, for several reasons, the Union argued, the level of discipline meted out in this case ought to be mitigated. Consider the most salient of these reasons. First, the Grievant was a six (6) year employee for whom there is no record of prior disciplines, and he is perceived as being a “very good employee.” Second, the incident occurred during the shift changeover period about which SEP 16.37 does not comment, and about which there is no evidence of explicit training. Third, in the final analysis, the Grievant actually did attempt to communicate Nurse Thill’s Code 1 call to Control Officer Lane. For these reasons, the Union argued in favor of progressive discipline in this instance, urging there is no reason to believe that CL’s misstep would not be modified or corrected *via* a lesser punitive form of discipline.

The foregoing arguments by the Union are well taken. In varying degrees, each argument has some merit, the Grievant’s discipline-free record being the most persuasive, and the “shift changeover period” explanation the least persuasive. It was also pointed out that the January 5, 2013 Code 1 event ended without adversity. However, appeal to this “no harm, no foul” rule is misplaced. The purpose and design of SEP 16.37 is to prevent adversity from occurring through adherence to the safety and emergency procedures in SEP 16.37. Such a policy is functionally related to the RCCF’s operations and is entirely reasonable. Succinctly put, the County’s interest is in seeing to it that SEP 16.37 procedures are followed, and to encourage said compliance it is in the County’s interest to discipline violators. Accordingly, to violate SEP 16.37 – as the Grievant did – is grounds for just cause discipline under Article 10, § 10.1 of the CBA. However, this section of the CBA also reminds that oral reprimands and written reprimands are lesser forms of discipline that might well precede the meting out of suspensions.

Based on the forgoing analysis and discussion, the undersigned concludes that stern disciplinary action in this case was appropriate. Given the import of SEP 16.37, even to suspend a first-offense violator is reasonable. However, it is not reasonable to suspend for three (3) days as well as to impose the corollary costs of lost FTO and Acting Lieutenant status. On point, the Union persuasively argued for progressive discipline in this instance, urging that there is no reason to believe that CL's misstep could not be modified or corrected *via* a less punitive form of discipline. The County's three (3) day suspension of CL was too harsh: a one (1) day suspension is a more equitable level of discipline, *ceteris paribus*.

Finally, the undersigned has taken into consideration the parties remaining contentions, such as, the Union's claim that the County's investigation of the matter was biased, and the County's claims about the Grievant's evolving and contradictory explanations for his conduct. However, none of these contentions are dispositive of the matters at issue.

VIII. AWARD

The County had just cause to suspend the Grievant. However, given discussed mitigations and CL's lost standing as a FTO and Acting Lieutenant, which this Award shall leave intact, the three (3) day suspension is deemed to be too harsh. As remedy, the three (3) day suspension is reduced to a one (1) day suspension. The Grievant shall be made whole for two (2) days of lost pay and benefits. For the purpose of overseeing enforcement of this Award, the undersigned shall retain case jurisdiction through 5:00 p.m. (local time) on July 3, 2014.

Issued and Ordered on this the 3rd day of June 2014
from Tucson, Arizona by

Mario F. Bognanno,
Labor Arbitrator and Professor Emeritus