

Issue: Group II Written Notice with suspension (violating workplace violence policy);  
Hearing Date: 11/28/12; Decision Issued: 12/04/12; Agency: VDOT; AHO:  
Frank G. Aschmann, Esq.; Case No. 9947; Outcome: Full Relief;  
**Administrative Review: EDR Ruling Request received 12/19/12; EDR Ruling  
No. 2013-3504 issued 02/01/13; Outcome: Remanded to AHO; Remand  
Decision issued 03/05/13; Outcome: Declined to Reconsider; Administrative  
Review: EDR Ruling Request on Remand Decision received 03/20/13; EDR  
Ruling No. 2013-3562 issued 04/17/13; Outcome: Remanded to AHO again;  
Second Remand Decision issued 05/28/13; Outcome: Original decision  
affirmed.**

COMMONWEALTH OF VIRGINIA  
OFFICE OF EMPLOYMENT DISPUTE RESOLUTION  
DEPARTMENT OF HUMAN RESOURCE MANAGEMENT  
DIVISION OF HEARINGS

DECISION OF HEARING OFFICER

In the matter of: Case No. 9947

Hearing Date: November 28, 2012  
Decision Issued: December 4, 2012

PROCEDURAL ISSUE

No procedural issues raised.

APPEARANCES

Grievant  
Grievant's Representative  
Agency Presenter  
Agency Representative  
Four Agency Witnesses  
Five Grievant Witnesses

ISSUE

Did the Grievant violate the Agency's policy against workplace violence by making threatening remarks thereby placing another employee in fear of harm such as to warrant the issuance of a Group II Written Notice with employment suspension for ten days?

FINDINGS OF FACT

The Grievant is employed by the Agency as a Transportation Operations Manager III. The Grievant has been employed with the Agency in this supervisory position since he was promoted to the position approximately five years ago and has been with the Agency for many more years. The Grievant is highly knowledgeable and skilled in his profession. His supervisor considers him reliable and effective in getting his work assignments done. The Grievant has authority to set schedules and assign individual job duties to his crew. The Grievant often works along side his crew and performs the same tasks he asks them to perform.

On February 19, 2012, the Grievant and his crew were assembled in the "warming room" pending a shift change for snow operations. The Grievant engaged in conversation with Grievant's second witness (hereafter G2). The conversation was joined by Grievant's third witness (hereafter G3) and Grievant's fourth witness (hereafter G4). Also present in the room were the Agency's first witness (hereafter A1) and the Agency's second witness (hereafter A2).

A1 and A2 were able to over hear the conversation even though they were not parties to the conversation.

During the conversation the Grievant, G2, G3, and G4 discussed killing rats. A few days before the conversation on February 19, 2012, G4 had discovered torn and chewed toilet paper and rodent feces in his work truck. He had requested the Grievant give him some "Dcon" to kill the rodents. The Grievant responded that he would have to look into using "Dcon" to kill the rodents because it was a poison and he did not know if it was permitted to use poison to kill the rodents. On February 19, 2012, the Grievant was in the "warming room" reading material on wild rat control he had obtained from a Humane Society website. G2 asked the Grievant what he was reading and the conversation about rats ensued. G2 and G3 both suggested using the "Dcon" and G3 said he had some in his shop. The Grievant, G2, G3 and G4 all stated that the conversation was about the elimination of rodents and had no hidden meaning.

A2 recalls hearing the conversation beginning with a co-worker stating he had mice or rats in his truck eating paper and the Grievant responding that they did have rats and they needed to do something to get rid of them, "smoke them out" or something to that effect. A2 also recalls the Grievant stating that he would go on-line to investigate what to do to properly handle the situation in case the rats were protected. A2 did not think the conversation was simply about mice in the truck but stated he did not feel any threat and was not fearful in any way.

A1 heard the conversation and testified he interpreted the words as a threat against him. A1 stated that he feared for his life and did not move from the scene for fear of attracting attention to himself. A1 reported the incident the next day to a supervisor of equal rank but less seniority than the Grievant, the Agency's third witness (hereafter A3). A3 contacted the human resources department for advice on the situation and was advised to make a full report.

An investigation resulted which was conducted by a representative from human resources and the Maintenance Manager (hereafter A4) who is the supervisor of the Grievant's immediate supervisor (hereafter G1). A4 conducted numerous interviews and issued a report which is the Agency's exhibit number six. A4 concluded there were management problems at the facility and issued a Group II Written Notice to the Grievant for a violation of the workplace violence policy, noting an offense date of 2/19/12 and citing Written Notice Offense Codes #32: Violation of Policy 1.80, Workplace Violence. The Group II Written Notice issued to the Grievant states the allegations of A1 were confirmed and goes on noting various management problems including statements by the Grievant which "could be viewed as retaliatory."

Pending at the time, was a complaint against the Grievant for misuse of state property on February 14, 2012. The Grievant was working with his crew trimming trees which were growing out over the roadway. The Grievant was performing the actual trimming using a pole saw from an elevated position. The saw malfunctioned numerous times and the Grievant became frustrated. He tossed the saw from his elevated position down an embankment to one of the crew to fix. An anonymous complaint was filed against the Grievant. The complaint was investigated

concurrently with the matter at issue in this proceeding. The Grievant acknowledged the incident, admitting his frustration with the saw and explaining that he would have had to come down from his elevated position, go around the truck and down the embankment to hand the saw to the crew member. The Grievant chose to take a short-cut by tossing the saw down. On March 15, 2012, a Group II Written Notice was issued to the Grievant for misuse of state property. The Grievant has accepted the disciplinary action and has not grieved it. The Grievant has this active Group II Written Notice on his personnel record.

During the investigation of this matter it was discovered that several members of the Grievant's crew were disgruntled over the management style of the Grievant and frustrated because they felt G1 would take no action to change the Grievant's methods. The crew's complaints against the Grievant are detailed in Agency exhibit number six. A1 expressed that he felt the Grievant humiliated his subordinates, showed favoritism, had an anger management problem and used bad management techniques. The Grievant frequently gave orders and directions to his crew that were short and not particularly detailed. He would withhold information about assignments to prevent crew members from avoiding some of the unpleasant tasks they were to perform. The Grievant criticized work that was improperly done and held the crew to a high performance standard. He would use photo images to point out jobs that were unsatisfactory and jobs that were done properly. The Grievant gave oral reprimands and informal "write ups" for unsatisfactory work performance. At times the Grievant used curse words on the job. Upon his return from a Winter vacation the Grievant increased discipline on the crew for violations of Agency policies. This was referred to as the "new deal."

The investigation also revealed that the night crew was upset about an incident which occurred during snow removal duty. The crew was told to go home two hours early because they would not be needed as the probability of snow had abated. Subsequently, the night crew was required to turn in two hours of leave. It was also discovered that someone had placed a sign on the Grievant's door which read, "Warden." A1 reported that he felt this was degrading. The sign had been on the Grievant's door for a long time, estimated to be three years by the Grievant. The Grievant considered it a joke which someone had played on him and he found it amusing. The Grievant had laughed with other crew employees about it and never received any prior complaint about the sign.

The Agency issued two separate Group II Written Notices to the Grievant on March 15, 2012, both endorsed by A1. Consideration was given to the Grievant's tenure and performance history with the Agency and he was sanctioned with a ten day suspension rather than employment termination. A4 did not believe this was a situation which rose to a level where employment termination was appropriate.

## APPLICABLE LAW AND OPINION

The General assembly enacted the Virginia Personnel Act, Code of Virginia §2.2-2900 et seq., establishing the procedures and policies applicable to employment with the Commonwealth. This comprehensive legislation includes procedures for hiring, promoting, compensating, discharging and training state employees. It also provides for a grievance procedure. The Act balances the need for orderly administration of state employment and personnel practices with the preservation of the employee's ability to protect his rights and to pursue legitimate grievances. These dual goals reflect a valid governmental interest in and responsibility to its employees and workplace. Murray v. Stokes, 237 Va. 653 (1989).

Code of Virginia §2.2-3000 et seq. sets forth the Commonwealth's grievance procedure. State employees are covered by this procedure unless otherwise exempt. Code of Virginia §2.2-3001A. In disciplinary actions, the Agency must show by a preponderance of the evidence that the disciplinary action was warranted and appropriate under the circumstances. Department of Employment Dispute Resolution Grievance Procedure Manual, §5.8 (2).

To establish procedures on Standards of Conduct and Performance for employees of the Commonwealth of Virginia and pursuant to Code of Virginia §2.2-1201, the Department of Human Resource Management promulgated Standards of Conduct Policy number 1.60. The Standards of Conduct provide a set of rules governing the professional and personal conduct and acceptable standards for work performance of employees. The Standards of Conduct serve to establish a fair and objective process for correcting or treating unacceptable conduct or work performance, to distinguish between less serious and more serious actions of misconduct and to provide appropriate corrective action. The Agency uses these policies for its Standards of Conduct.

The Standards of Conduct define a Group II violation as acts of misconduct of a more serious or repeat nature that significantly impact agency operations. An employee failing to comply with written policy is an example of Group II offense. The Standards of Conduct establish a system of progressive discipline which provides employees an opportunity to correct errors and improve performance in all but the most serious cases. Sanctions increase with continued violations of the Standards of Conduct. The Standards of Conduct maintain that an accumulation of two active Group II Written Notices should result in employment termination, however, when mitigating circumstances exist, an employee may be suspended, demoted or transferred. Group II Written Notices remain active for three years from date of issue.

The Agency has adopted the Department of Human Resource (hereafter DHRM) Policy Number 1.80, Workplace Violence. The policy defines workplace violence in broad terms. The policy gives specific examples of prohibited acts which include threats to injure or creating a reasonable fear of injury to a person and retaliating against an employee who, in good faith, reports a violation of the policy. Additionally, the Agency has its own policy on workplace violence which was established in accord with the DHRM policy. The Agency's Violence in the

Workplace Policy, SP #1-005, Version October 2010 Rev. 2, also defines workplace violence in broad terms and includes prohibitions against threats, intimidation and verbal abuse.

The primary issue of this matter is whether on February 19, 2012, the Grievant made oral threats to A1 causing him fear of injury. It is clear from the evidence that no direct threat was made by the Grievant to A1. On its face the conversation between the Grievant and G2, G3 and G4 was about eliminating rodents that had infested G4's truck. Thus to be a threat of any kind towards A1 the words must be interpreted as referring to A1, specifically that when the term "rat" was used it meant as a reference to A1. The evidence presented by the Agency is insufficient for this Hearing Officer to draw that conclusion. Accordingly, I find that the Agency has failed to meet its burden of proof, by a preponderance of the evidence, that the Grievant violated the workplace violence policies of the Agency on February 19, 2012.

The Agency presented two witnesses who were present on February 19, 2012. The testimony and written statement made by A1 are not credible. A1 has a distinct bias against the Grievant. He stated that the Grievant had embarrassed him, had improperly disciplined him, was a "bully," had anger problems and he disapproved of the Grievant's management style. A1 interpreted the "warden" sign on the Grievant's door as degrading to him, however, it was simply a prank which someone had played on the Grievant. In his initial report to A3, A1 stated he feared for his life. This statement is inconsistent with his actions. A1 did not move from the scene during the conversation and remained quietly at his place. A1 came to work the next day. A1 did not report the incident to a superior until the next day. A1 did not report the matter to the police.

While it is conceivable that the Grievant was upset at being reported for throwing the saw five days earlier it is inconsistent with the evidence that the Grievant directed a threat at A1. The complaint was made anonymously. The evidence does not reveal who made the complaint. Even if the word "rat" did refer to a person the phrase "smoke them out" which was referred to by A1 would indicate that the Grievant did not know who the snitch was. Thus it makes no sense that he would direct a threat to A1 when he did not know who the snitch was. Additionally, it further impeaches the statement of A1 that he feared for his life. There is no reason why A1 would fear for his life when the statement being made indicated the Grievant did not know who the snitch was. This indicates, at the least, an embellishment by A1. Likewise, A1's statement that he heard the Grievant say he wanted to stomp on the rat's head and shove decon down its throat appear to be embellishments of the conversation. No other witness reports these things being said. Even the Agency's corroborating witness, A2, does not recall these phrases.

A1's credibility is further diminished by his testimony that he was not at all upset by the incident when the night crew was directed to take two hours of leave after being allowed to go home early. In his prior statement, A1 indicated that the night crew was upset by the incident, which would include A1. Even the crew members who are supportive of the Grievant expressed that they were upset by losing the leave time. A1's demeanor at this point in his testimony was almost jovial and inconsistent with someone who had been forced to take leave when he was not

at all at fault.

The Agency's corroborating witness, A2, had only a vague memory of what was actually said on February 19, 2012. The parts of the conversation he recalls indicate nothing beyond a discussion of how to eliminate the rodent infestation, which he acknowledges was a problem. Further, A2 states that he did not find the discussion one which created any fear. Thus his testimony is inconsistent with A1. The Grievant has also demonstrated bias in A2. A2 was dissatisfied with the management style of the Grievant and was reported to generally dislike the Grievant.

Both A1 and A2 complained that the Grievant picked on a particular crew member. This statement further diminishes the credibility of these witnesses because the crew member gave a statement in which he states that he has nothing bad to say about the Grievant and is treated pretty well. He goes on to state that A1 and A2 are part of a group in the crew who are "bad apples" and are always complaining about something. The testimony of A1 and A2 was inconsistent in their reports on the Grievant's demeanor during the conversation on February 19, 2012. A1 stated that the Grievant was red-faced and speaking in an aggressive tone. A2 stated that the Grievant spoke in a normal tone of voice. All of the Grievant's witnesses to the conversation indicated a normal tone of voice.

The Agency called A3 as a witness but he was not present during the conversation on February 19, 2012, and had no direct knowledge of what was said. A3 received the complaint from A1 the next day and testified that A1 was shaking and scared at that time. This testimony is not credible. A1 demonstrated no shaking or signs of fear at the time of the incident nor did he report it immediately. It does not follow that he would be uncontrollably shaking with fear the next day. Additionally, the witness lacked credibility because he testified that he was unaware of the rodent problem in the truck but in his statement during the investigation he acknowledged the rodent problem. The Grievant demonstrated bias in the witness. A3 statements show that he feels subordinated to the Grievant even though they hold the same position at the Agency. A3 disapproves of the Grievant's management style and complained of many problems at the facility. A3 has only been at this location since February 2012, approximately the same time when the lost leave time incident occurred and complaints about the Grievant began.

The Agency called A4 as a witness but he was not present during the conversation on February 19, 2012, and had no direct knowledge of what was said. A4 was not inherently incredible nor did he display the bias of the other Agency witnesses but he testified that A2 appeared before him during the investigation and was visibly upset and shaking. It may be that A4 was confused about the people who he interviewed but this testimony is irreconcilable with the other evidence. A2 expressed that he did not feel any fear from the incident so it makes no sense that he would be upset and shaking four or five days later when interviewed by A4. Regardless whether A4's testimony is false or simply reflects confusion the inconsistency diminishes the weight of the evidence and A4's credibility. Further, A4's statements and report demonstrate that he was greatly concerned about the management at the facility and past acts

attributed to the Grievant and G1. While this is a legitimate area of concern for the Agency, it is not what the Group II Written Notice specifies as the Grievant's offense. The Group II Written Notice specifies an offense date of February 19, 2012. The Agency could have cited a larger time frame or multiple dates; it chose not to do so. The Group II Written Notice specifies offense code # 32, a violation of policy 1.80. The Agency could have selected numerous other offense codes that would apply to the mismanagement issues but it chose not to do so. The Agency is bound by the notice it issues as the Grievant is entitled to due process and must be notified of his offense [Grievance Procedure Manual § 4.1(a) & §5; Standards of Conduct, Policy 1.60 §§E, F, Glossary]. The evidence by A4 is tainted because it reflects discipline being issued for reasons beyond the scope of the offense charged in the Group II Written Notice.

The Grievant introduced evidence through witness G1 which showed the complaints against the Grievant started around February 2012, approximately the time when leave was taken from the crew. G1 had not received any prior complaints of violence by the Grievant. The Grievant introduced evidence by G2, G3 and G4, that the conversation on February 19, 2012, was about eliminating the rodent infestation in the truck. None of the witnesses were impeached in regard to their testimony about this issue. All the witnesses had some complaint about management but all denied hearing any threat being made.

The testimony of G3 was particularly persuasive. At first reluctant, when directed to speak forthright and truthfully, G3 opened up and gave unequivocal testimony that the conversation on February 19, 2012, was about the rodent infestation and how to get rid of them. He stated that he had suggested using Decon and had offered to provide the poison as he had some in his shop. G3 went on to testify that some of the crew was disgruntled with the Grievant and were looking for something to pin on him and get him in trouble because he had increased discipline after returning from his Winter vacation.

The crew was disgruntled for a number of reasons including the loss of leave, the increased discipline and a general dissatisfaction with the management style of the Grievant. The crew was also frustrated because there was a perception that G1 would not do anything to address their concerns. Thus it can be inferred that A1 was seeking to create trouble for the Grievant as a method for having his grievances addressed by upper management. It is clear that there were management problems at this division of the Agency, however, this does not prove that the Grievant threatened A1 on February 19, 2012. The Agency's evidence does not establish by a preponderance of the evidence that there was a covert meaning to the words used by the Grievant on February 19, 2012, and therefore is insufficient to prove a violation of Agency Policy 1.80, Workplace Violence.

The Agency's evidence on prior acts of mismanagement does not prove the Grievant threatened A1 on February 19, 2012. While these acts raise legitimate issues of concern at the Agency they are not properly charged in the Group II Written Notice at issue. Likewise, the allegation of retaliation has only been alluded to with prior bad acts and therefore could not constitute retaliation for reporting the activity on February 19, 2012.



## DECISION AND ORDER

It is found that the Agency has not presented sufficient evidence to find the Grievant violated Agency Policy 1.80, Workplace Violence on February 19, 2012. Accordingly, it is hereby ordered that the Agency remove the Group II Written Notice issued on March 15, 2012, for a violation of Agency Policy 1.80, Workplace Violence from the Grievant's personnel file. Back pay and all associated benefits which would have accrued to the Grievant for the period of his suspension are hereby awarded to the Grievant.

## APPEAL RIGHTS

You may file an administrative review request within 15 calendar days from the date the decision was issued, if any of the following apply:

1. If you believe the hearing decision is inconsistent with state policy or agency policy, you may request the Director of the Department of Human Resource Management to review the decision. You must state the specific policy and explain why you believe the decision is inconsistent with that policy. Please address your request to:

Director,  
Department of Human Resource Management  
101 North 14<sup>th</sup> St., 12<sup>th</sup> Floor  
Richmond, VA 23219

or, send by fax to (804) 371-7401, or email.

2. If you believe that the hearing decision does not comply with the grievance procedure or if you have new evidence that could not have been discovered before the hearing, you may request that EDR review the decision. You must state the specific portion of the grievance procedure with which you believe the decision does not comply. Please address your request to:

Office of Employment Dispute Resolution  
Department of Human Resource Management  
101 North 14<sup>th</sup> St., 12<sup>th</sup> Floor  
Richmond, VA 23219

or, send by email to [EDR@dhrm.virginia.gov](mailto:EDR@dhrm.virginia.gov), or by fax to (804) 786-1606.

You may request more than one type of review. Your request must be in writing and must be received by the reviewer within 15 calendar days of the date the decision was issued. You must provide a copy of all of your appeals to the other party, EDR, and the hearing officer. The hearing officer's decision becomes final when the 15 calendar day period has expired, or when requests for administrative review have been decided.

You may request a judicial review if you believe the decision is contradictory to law. You must file a notice of appeal with the clerk of the Circuit Court in the jurisdiction in which the grievance arose within 30 days of the date when the decision becomes final. Agencies must request and receive prior approval from EDR before filing a notice of appeal.

See Sections 7.1 through 7.3 of the Grievance Procedure Manual for a more detailed explanation, or call EDR's toll-free Advice Line at 888-232-3842 to learn more about appeal rights from an EDR Consultant.

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Frank G. Aschmann  
Hearing Officer

**COMMONWEALTH OF VIRGINIA**  
**OFFICE OF EMPLOYMENT DISPUTE RESOLUTION**  
**DEPARTMENT OF HUMAN RESOURCE MANAGEMENT**  
**DIVISION OF HEARINGS**

**DECISION OF HEARING OFFICER ON REMAND**

In the matter of: Case No. 9947

Hearing Date: November 28, 2012  
Decision Issued: December 4, 2012  
Decision on Remand: Issued March 5, 2013

**ORIGINAL ISSUE**

Did the Grievant violate the Agency's policy against workplace violence by making threatening remarks thereby placing another employee in fear of harm such as to warrant the issuance of a Group II Written Notice with employment suspension for ten days?

**FINDINGS OF FACT**

All findings of fact made in the original decision issued on December 4, 2013, are hereby incorporated by reference. On February 1, 2013, the Office of Dispute Resolution (hereafter EDR) sent the hearing officer an Administrative Review document. The document remands case number 9947 to the hearing officer for further review. This is the only document which has been received by the hearing officer pertaining to any appeal or request for review of the hearing officer's decision in case number 9947.

**APPLICABLE LAW AND OPINION**

All findings of law and opinion made in the original decision issued on December 4, 2013, are hereby incorporated by reference. Pursuant to the Rules for Conducting Grievance Hearings section VII, A., "A copy of all requests for administrative review must be provided to the other party, EDR, and the Hearing Officer." The party requesting an administrative review of case number 9947 has failed to comply with this rule. Thus the hearing officer finds the request improperly filed and untimely.

**DECISION AND ORDER**

The disciplinary action of the Agency is affirmed. Case number 9947 is hereby dismissed with prejudice.

## APPEAL RIGHTS

The parties may pursue a judicial appeal as noted in the EDR Administrative Review referencing the Grievance Procedure Manual.

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Frank G. Aschmann  
Hearing Officer

**COMMONWEALTH OF VIRGINIA**  
**OFFICE OF EMPLOYMENT DISPUTE RESOLUTION**  
**DEPARTMENT OF HUMAN RESOURCE MANAGEMENT**  
**DIVISION OF HEARINGS**

**DECISION OF HEARING OFFICER ON REMAND**

In the matter of: Case No. 9947

Hearing Date: November 28, 2012  
Decision Issued: December 4, 2012  
Decision on First Remand: Issued March 5, 2013  
Decision on Second Remand: Issued May 28, 2013

**ORIGINAL ISSUE**

Did the Grievant violate the Agency's policy against workplace violence by making threatening remarks thereby placing another employee in fear of harm such as to warrant the issuance of a Group II Written Notice with employment suspension for ten days?

**FINDINGS OF FACT**

All findings of fact made in the original decision issued on December 4, 2013, are hereby incorporated by reference. On April 17, 2013, the Office of Dispute Resolution (hereafter EDR) sent the hearing officer an Administrative Review document. The document remands case number 9947 to the hearing officer for further review. EDR directs the hearing officer to consider all of the alleged violations addressed in the agency's Group II Written Notice.

**APPLICABLE LAW AND OPINION**

All findings of law and opinion made in the original decision issued on December 4, 2013, are hereby incorporated by reference. Accordingly it is held that the agency has failed to establish that the Grievant violated Agency Policy 1.80, Workplace Violence on February 19, 2012.

The agency cites only Agency Policy 1.80, section 32, in the Group II Written Notice as being violated by the grievant but makes a general allegation that he used authoritative/dictatorial management techniques, intimidation, belittling language and instilled fear in his subordinates which could be viewed as covert retaliation. The agency cites a document that was read to the employees and identified as the "new deal" as another example of action by the Grievant could be viewed as retaliatory.

The agency presented evidence which indicated it did not approve of the management

style of the Grievant. These are the methods which the agency contends could be viewed as covert retaliation. The agency only took this position after the investigation by the Grievant's second line supervisor and the issuing of the Group II Written Notice. The agency at no time prior to the issuance of the Group II Written Notice directed the Grievant not to use these management methods, prohibited him from using these methods or provided any type of counseling which indicated the agency did not approve of his techniques. The agency has violated the stated purpose of DHRM Policy 1.60, The Standards of Conduct, which states it is the intent of the policy that agencies follow a course of progressive discipline. While there are exceptions to this intent of the policy the agency has given no justifiable reason why the Grievant should be punished at the Group II Written Notice level prior to any warning to change his behavior.

Further, the evidence reveals an extraordinary mitigating circumstance, the Grievant's first line supervisor approved of the Grievant's methods and authorized him to act in the manner he did. The agency's action to punish the Grievant for his management style without any prior warning that it was improper and, in fact, just the opposite, the approval of his supervisor, is unjustified.

Similarly, the agency's example of the "new deal" is a prior act which the Grievant was never told was improper. This management action was known to the Grievant's supervisor and the Grievant was never counseled not to use such a method. The "new deal" document may have been interpreted by upper management as some form of retaliation but on its face it is simply a set of directives to the Grievant's subordinates directing them to follow proper procedures.

The agency has not cited any policy in which it is improper for a manager to direct subordinates to follow proper procedures. In fact, the agency cites no policy which this action is alleged to violate. The agency may feel this was an improper management technique but imposed discipline after the fact without ever provided any warning or guidance that the action was improper. The agency failed to comply with the intent of the Standards of Conduct to use progressive discipline with its disciplinary action in this matter. In addition, there is the extraordinary mitigating circumstance that the actions of the Grievant were approved by his immediate supervisor.

## DECISION AND ORDER

It is found that the Agency has not presented sufficient evidence to find the Grievant violated Agency Policy 1.80, Workplace Violence on February 19, 2012, or any other unstated policy in the general allegations contained in the Group II Written Notice at issue. Further, there are extraordinary mitigating circumstances which make the imposed discipline improper.

Accordingly, it is hereby ordered that the Agency remove the Group II Written Notice issued on March 15, 2012, for a violation of Agency Policy 1.80, Workplace Violence from the Grievant's personnel file. Back pay and all associated benefits which would have accrued to the Grievant for the period of his suspension are hereby awarded to the Grievant.

#### APPEAL RIGHTS

The parties may pursue a judicial appeal as noted in the EDR Administrative Review referencing the Grievance Procedure Manual.

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Frank G. Aschmann  
Hearing Officer