ACOA Grievance 13-015
Randy McLellan (MSPT), Current Employee ID: 277435,
P.O. Box 876072, Wasilla, Alaska 99687-6072

Contract Provisions violated: Management's actions are in violation of the Bargaining Agreement, including, but not necessarily limited to, Article 3.1 (Noninterference), Article 6.1 (Nondiscrimination), Article 12.1 (Definition), Article 12.2 (Administrative Investigation), and Article 27.3 (No Secret Files).

3.1 Noninterference

The Employer agrees that it will not in any manner, directly or indirectly, attempt to interfere with the lawful relationship between any bargaining unit member and the Association. It will not in any manner attempt to restrain any bargaining unit member from belonging to the Association or from taking an active part in Association affairs, and it will not discriminate against any bargaining unit member because of Association membership or activity, upholding Association principles, or working under the instruction of the Association or serving on a committee, provided that such activity is not contrary to this Agreement.

6.1 Nondiscrimination

Neither party will unlawfully discriminate against any member for purposes of selection, hire, promotion, or other conditions of employment on the basis of race, color, religion, national origin, age, sex, physical handicap, marital status, change in marital status, pregnancy, parenthood, Association activity, political affiliation, or political belief.

12.1 Definition

A. Discipline and discharge of permanent employees shall be for just cause. Failure to complete a probationary period does not require just cause and shall not be considered a disciplinary action. Discipline is defined as personnel action against a permanent employee resulting from a just cause finding from the Employer.

12.2 Administrative Investigation

A. The member shall be entitled to a fair investigation.

27.3 No Secret Files

No secret files shall be kept on any employee and the location of all files containing personnel records shall be made known to an employee upon request.

Nature of Grievance: The Grievant, Sergeant Randy McLellan, who is the President of the Alaska Correctional Officers Association, has been systematically and unjustly harassed and persecuted by the Department of Corrections (DOC) for having spoken out on health and safety issues of major concern to the Correctional Officers he represents.

The recent "investigation" and resulting demotion from Sergeant to Correctional Officer II are together yet another attack on his character and livelihood. Sergeant McLellan's demotion is discipline without just cause.

THE FACTS DO NOT WARRANT THE GRIEVANT'S DEMOTION

On March 2, 2013, the Grievant and three Officers from his shift had to deal with a particularly violent inmate who was brought into the prison after nearly beating his father to death with his bare hands. The remanding Alaska State Trooper needed to take pictures of the inmate's hands as evidence. The inmate was verbally threatening and aggressive. The prisoner's strength and uncooperative behavior caused the Trooper to seek the help of the Officers on duty to restrain and hold down the non-compliant prisoner in order to take the pictures.

As the Trooper and the three Officers held the inmate down, the Grievant took pictures of his hands. Prior to exiting the cell, the Grievant gave a direct order to the inmate to remain on the floor or he would be sprayed with Oleoresin Capsicum (O.C.), commonly referred to as pepper spray. After assisting the Trooper, and as the Officers tried to exit the cell and secure its door, the inmate quickly rose up and began violently kicking the cell door, preventing the Officers from securing it. The third kick was sufficiently violent to completely open the door at which time Sergeant McLellan immediately applied O.C. so as to be able to secure the door to prevent risk of injury to the Officers and the inmate.

Officers are trained to direct the spray towards a subject's facial area, as the eyes and nose are areas where O.C. is most effective. As Sergeant McLellan began to spray, the inmate turned away and ducked, causing the spray to hit the inmate in the back of the head where it would not be effective. Sergeant McLellan continued to attempt to apply O.C. to the inmate's facial area and the total spray time according to the State was five seconds. As Sergeant McLellan stated in his interviews, this was not a choreographed event. This was a violent man who had been brought in for attempted murder, had been uncooperative and very physical with the Troopers, and had to be tasered multiple times. Sergeant McLellan quickly reacted to this individual's actions of kicking open the cell door into one of his Officers. His intent was to restore order and to prevent potential injury to the inmate, the Trooper, his Officers, or himself.

The length of time of the Grievant's O.C. spray is not problematic, as the State contends. The Grievant did not deploy O.C. spray in the inmate's face for five full seconds because the inmate turned his head away. Rather, the Grievant deployed the O.C. spray in the target area for a much shorter period of time. The Grievant's actions were not in any way inappropriate and additionally they certainly were not maliciously or sadistically motivated, and he would be found blameless were the standards of Hudson v. McMillan to be applied.[1]

[1] Hudson v. McMillian, 503 U.S. 1 (1992)

When O.C. is used, Officers are also often affected. This is especially true at Mat-Su Pre-Trial because of its very poor ventilation. In this case all Officers were affected and one even reacted by vomiting. Policy and Procedure 1208.09 states that, "*Persons exposed to O.C. shall be given the opportunity and the means to clean themselves as soon as practicable*". The cell that the inmate was in when sprayed had a toilet and a sink, both of which are cleaned regularly by inmate janitors. The opportunity and "*means to clean*" himself were available and the inmate took advantage of it. It was probably the inmate's drunken state that led him to forego the sink for the toilet. Officers routinely see intoxicated individuals use the cell toilets in many strange ways. However, when Officers had recovered sufficiently themselves, had caught up on tasks that they had to complete, and felt the inmate could be safely taken out of the cell to shower and put on new clothes, he was allowed to do so.

By policy and past practice, the Sergeant on duty is to use his/her judgment on when to use O.C., how to apply it, and when to take the inmate out of his cell. Sergeant McLellan did exercise good judgment and made decisions consistent with his training and past practice, as well as practices around the State. More importantly, he made the right decisions which were necessary to prevent injuries. The inmate in this matter did not complain about the Grievant's conduct and later apologized for his behavior.

MANAGEMENT SHOULD BE HELD RESPONSIBLE FOR ITS CARELESS OR INTENTIONAL SPOLIATION OF CRITICAL EVIDENCE

This incident occurred on March 2, 2013, but notice of an investigative hearing was not given until April 24, 2013. This was the Grievant's first indication that Management was considering disciplining him for something that had happened in March. The investigative hearing was held on April 26, 2013.

In responding to ACOA's May 24, 2013 request for a copy of the full video of the event in question, which ACOA still does not have, the State advised the Association that such videos are erased and re-used after 30 days. That being the case, one must assume that the video from the March 2 event would have been recorded over on April 1, 2013. The incident's recording in its entirety was not saved, only the portions the State wanted copied to a disc. Portions that might have been useful in the Grievant's defense were not copied and are no longer available.

Obviously, Management was considering discipline when it copied portions of the incident prior to recycling the video. Whether Management's failure to copy the entire incident that would have shown the inmate not being compliant when he was taken from the cell was intentional, or simply human error, does not matter. The fact is that Management based its conclusions on an incomplete investigation and denied the Grievant a valuable portion of the video that would have supported his innocence and permitted neutral observers to evaluate the Grievant's actions and the inmate's behavior in their true context.

The Grievant was not allowed to review the saved video until immediately before his April 26th hearing. His discipline letter did not contain enough specific information to allow him to recall the incident. Not until he was allowed to review the video just minutes before his interview was he able to remember the incident. Neither he nor the Association representatives who reviewed it with him saw anything they felt warranted discipline. It was a common example of an event that happens regularly within the Department at booking facilities. This fact is readily provable and will be shown to occur many times at an arbitration hearing, if a hearing is necessary.

The DOC failed to conduct a timely, thorough and complete investigation into this incident. What is particularly unsettling is that the video that was preserved by the DOC ends abruptly when the Officers start to enter the cell to further decontaminate the prisoner. The DOC preserved over 30 minutes of video contending it shows a compliant inmate, yet at the one instant when the issue of non-compliance could best be evaluated – when the Officers reentered the room – the tape is cut off. The Association, based upon the testimony of the other Officers present at the time of the incident, maintains that the inmate was not compliant even at this point. Interestingly enough, the DOC recorded two minutes of an empty cell prior to the inmate entering the cell but then cut the tape off as Officers stepped into the cell to remove him.

There is testimony that the inmate remained non-compliant even after he was removed from the cell and taken to the shower. If the Grievant and the Association had been made aware of pending discipline, they would have requested and been entitled to the tapes from the three cameras which would have shown the inmate's actions and demeanor as he was being escorted from the cell to the showers. The DOC delayed the investigation long enough that none of this evidence was available to the Association.

In an investigatory interview on May 14, 2013, one of the Officers involved in this incident (Officer Dyer) was asked, "*At what point in that video would you say that the inmate became compliant*?" to which he responded, "*I don't think he was compliant when they took him out*." He went on to state that the inmate was drunk. He recalled that the Officers had no idea if the inmate was under the influence of other substances as well, and perceived that the inmate was both a "*dangerous, violent*" man and a "*powerful human being*". Wisdom dictates that decisions made in instances such as this, must be made in favor of Officer and inmate safety. The decisions made on March 2nd were done in the interest of prudence and safety, as they should always be.

There is reason to believe that the individuals from Public Protection who were conducting the Grievant's investigation and involved in deciding his fate never saw the original, entire video. There is also reason to believe that the two individuals from the DOC who were both present and involved in deciding his fate never saw the original, entire video. The entire video would have included the portion showing the inmate being removed from his cell for further decontamination. Certainly the Association and Grievant have been denied this valuable piece of evidence and the investigation is incomplete without it. Compliance, as the investigators seem to believe, does not instantaneously occur. Not preserving and considering the complete video, a crucial piece

of physical evidence, was, at the least, a judgment error on the part of DOC; at the most, it was an intentional act of spoliation of evidence. The entire video recordings from all of the cameras would have shown that the inmate was still non-compliant when taken from his cell, as the Officers on duty testified. In either case, it reflects an incomplete and unfair investigation and denied the Grievant his right to all of the evidence.

Another issue of concern is that as the Grievant and the Association representatives were watching the video prior to the first meeting on April 26th, Management walked into the room. Management was impatient and wanted to get started with the interview. Neither the Association representatives nor the Grievant knew at that time that the tape was edited at the end. It was not discovered until later, right before the hearing with Officer Dyer, May, 14, 2013, at which time it was immediately brought to the attention of Management. The Grievant testified in his first hearing, unaware that the end of the tape was cut off, that the inmate was non-compliant when being removed from the cell.

As of July 11, 2013 when this Step II Grievance was submitted, 48 days after the Association's written request and many subsequent requests, the State had still not provided a copy of the video or still photos used in the Grievant's disciplinary hearing. Neither the Association nor the Grievant had the tape or stills to prepare this Grievance.

THE INMATE WAS NOT COMPLIANT AND FORCE, CONSISTENT WITH POLICY AND PROCEDURE, WAS ADMINISTERED BY THE GRIEVANT IN A REASONABLE AND NECESSARY MANNER.

The inmate was not compliant even at the point DOC investigators contended that he was. The physical presence of several Officers and the Grievant's open display of the O.C. canister was in fact Level I force as articulated in DOC's own policy. This was reinforced by verbal warnings that O.C. would be applied should the inmate not comply with the Officers' orders. These "passive" measures, within the Use of Force Policy, were ignored by the inmate. Only after that, did the Grievant proceed to the next level of force in order to dissuade the inmate from kicking the cell door. Complying with established procedure, he employed "*Oleoresin Capsicum (OC) – Delivered by an aerosol powered device designed to subdue an Individual*."

The Grievant followed P&P 1208.09 as it is laid out. "*Officers shall perform their duties in a manner that minimizes the need for force and maximizes the opportunity for voluntary compliance.*" The Grievant and the other Officers gave the inmate every opportunity to comply with their requests and he refused. *"When practical, prisoners should be warned of imminent use of force and given a reasonable opportunity to comply with the order prior to the application of force."*

The DOC Use of Force Policy allows for Officer discretion when dealing with rapidly escalating situations and states: *"Officers do not have to escalate their level of control, in a step by step progression. Because prisoner resistance can begin at any level, officer response can begin at a level that represents a reasonable response to resistance by the*

prisoner." The Grievant, a seasoned booking Sergeant, exercised that discretion immediately after the inmate kicked the cell door open the third time. The Grievant protected the Officer holding the cell door from taking another hit and prevented a physical hands-on confrontation with possible Officer and/or inmate injuries. His application of O.C. likely protected Officers from harm, such as possible career-ending shoulder, knee, or back injuries, and protected the inmate himself from injuries that could have permanently impaired the inmate's health and also could have led to lawsuits against the Department and the Officers. The application of force ceased completely when the inmate fully backed away from the door and allowed it to be secured, thus ending the immediate threat of injury for all involved. Later, when the inmate was still angry and retained the ability to be violent, the Grievant exercised discretion and showed good judgment when he refrained from rushing too quickly to remove the inmate from his cell, thus avoiding further confrontation.

During the investigatory interview with Officer Dyer, the Human Resources investigators stated, "*In the video the inmate is in obvious distress and he begins knocking on the door for someone to help him at 0352 hours and he is knocking on it for about one to two minutes*." The interviewers have never worked in a Correctional setting and do not have any prison experience. Whether the investigators were naive to the realities of dealing with combative prisoners or actively looking for a way to discipline the Grievant, they failed to observe things that were contrary to their pre-conceived notions. One example would be the inmate's behavior seven minutes later at 0359 hours when the inmate had resumed violently kicking the door in the same manner he had displayed when he was attacking the Officers earlier before he was sprayed. The inmate's verbal threats continued throughout the entire event. Two DOC Management personal also sat in on the interviews and made no attempt to correct or explain to the interviewers the realities of a corrections setting, realities that they absolutely were aware of.

The effectiveness of O.C. varies between individuals and it is often less effective when applied to individuals who are under the influence of drugs, alcohol, or extreme anger. A Study published by the National Institute of Justice noted that:

> *"According to officer reports, the OC had no effect on seven suspects. These seven individuals exhibited drugged behavior or seemed to have emotional problems. These data indicate that individuals who are heavily intoxicated, drugged, or mentally unstable may be resistant or immune to O.C.'s effects or that OC may actually exacerbate the difficulty associated with controlling such persons".*[2]

The inmate in this case was drunk, may have been under the influence of other substances, and had just attempted to beat his father to death with his bare hands, indicating that he also may have had an emotional problem. No experienced competent Correctional Officer would have risked taking the inmate from his cell to allow him to shower when those interviewing the Grievant proclaimed it should have been done. The Grievant's judgment came from nearly sixteen years of experience dealing "face-to-face"

[2] National Institute of Justice Research Brief, February 1997, *Evaluation of Pepper Spray*, Page 5 and 6

with inmates. The Officers on his shift have a combined total of 35 years of "hands-on, face-to-face" experience. The Human Resource Personnel who conducted the Grievant's interviews have zero "face-to-face' experience to base their judgment upon. The fact is that Officers are trained to do everything possible, and to take every precaution, to insure that they are able to return safely to their families at the end of each shift while at the same time acting to protect inmates from serious injury.

Every Officer involved in this incident, as well as the Trooper, believed that the Grievant's actions were completely justified. In a written memo, the Trooper wrote, *"Utilizing the OC spray was the safest option for not only myself and the DOC officers, but for [inmate's name redacted] as well knowing that he is a violent offender. [Inmate's name redacted] assaultive and combative behavior stopped immediately after being sprayed with OC and was the best option to deal with an intoxicated and assaultive inmate."* The Trooper also said that prior to being taken to Mat-Su Pre-Trial, the prisoner tried to attack the Troopers, was tasered multiple times, and fought them all the way to the facility. The outcome at the end of the day was that everyone was safe, even the inmate. If the Officers had been compelled to physically secure the inmate it is completely reasonable to believe that either an Officer or the inmate could have been seriously injured.

The Association believes all of the Grievant's actions the night of March 2, 2013 were appropriate and do not warrant any discipline. However, if the Grievant's performance was not what Management desired, then the fault is Management's for failing to provide any substantive continuation training in the application and use of O.C. With regard to the need for continuation training after the Academy, the lengths of time between each involved Officer's initial O.C. training and this incident were 15 years, 13 years, 12 years, and 10 years.

The Grievant's behavior should be measured from the vantage point of the situation as he encountered it, and not from the perspective of 'Monday morning quarterbacks' who, with no experience or training, try to assess the situation from the safety of their office.

Furthermore, P&P 1208.09 does not prescribe the amount or duration of O.C. to be used. What P&P 1208.09 does say is that, "*persons exposed to OC shall be given the opportunity and means to clean themselves as soon as practicable*", which is exactly what happened in this situation. The Merriam-Webster Dictionary defines practicable as "*reasonably capable of being accomplished*". Obviously, what is "practicable" is a function of the inmate's attitude, whether the Officers have recovered sufficiently to deal with him, and the other work which Officers on shift had to complete after already having been previously distracted by the inmate's bad behavior. In this respect, it is relevant to note that both buildings at Mat-Su Pre-Trial are run with minimal staff, 5-6 Officers at any one time. People often get hurt when this process is unnecessarily rushed, and delaying a trip to the shower to ensure inmate and Officer safety is often the wisest course of action. Furthermore, nowhere in P&P 1208.09 does it state that, "*The 18.5-ounce can of OC used is for larger group situations or areas where the trajectory of the spray hits a larger area or multiple individuals to be effective.*" This assertion is found

only in the Grievant's Discipline Letter. Additionally, the O.C. canister itself does not mention "*large group situations*" and the instructions say "*subject*" implying that it is to be used on one individual.

IT IS A MATTER OF RECORD THAT THE DOC HAS SPECIFICALLY TARGETED THE GRIEVANT, A LONG-TERM LEADER OF THE ALASKA CORRECTIONAL OFFICERS ASSOCIATION

This is not the first time that the DOC has specifically targeted the Grievant. The DOC has attempted to interfere with, coerce, and restrain the exercise of his rights to engage in protected union activities by retaliating against the Grievant in response to his having exercised his guaranteed rights and obligations as a Board Member and Representative of the Alaska Correctional Officers Association. Aimed specifically at the Grievant, these retaliatory actions were additionally intended to send a message to all Association Board Members and Representatives in an attempt to intimidate and coerce them from exercising their rights and duties to defend the Association and its members against Management's actions and inactions, thereby threatening their physical safety, health and welfare. Furthermore, Management's actions against the Grievant attempted to restrain him and his fellow Association members from exercising their rights to Freedom of Speech and from exercising their right to report on matters of public concern.

In 2008 the Grievant was asked by Correctional Officers to speak out about staffing problems in the early years of DOC Commissioner Schmidt's Administration. At one point, Management came to his institution and told him to talk to a reporter about MRSA, which the Grievant did. Commissioner Schmidt then went to the press not only calling the Grievant a liar by name but accusing him of *"… spreading hate and spreading fear"* on a local radio show. The Commissioner's comments were slanderous.

> *"Well sure, this morning this Randy McLellan said that he has officers (sic Inmates) that have gone days without fresh clothes. I talked to the superintendent this morning and it has never been reported that we didn't have enough clothes. His job is to make sure they have clothing exchange, so I have to make sure that the union members aren't out there spreading hate and spreading fear and making sure that they are in fact, you know we don't want them to not do a linen exchange and then go to the media and not their supervisors and say hey we're not doing linen exchange."*[3]

There was an investigation and it was determined no discipline was warranted as the Grievant's public statements were found to be completely accurate. The Grievant was given a Letter of Instruction, which could not be challenged by the Association.

A year later, in 2009, the Grievant was again under investigation for declining to accept an intoxicated Title 47 with a low body temperature due to sub-freezing temperatures until the Police Officer obtained a medical clearance from the hospital. He correctly felt

[3] DOC Commissioner Schmidt on the Eddie Burke Show KBYR 700AM Talk Radio, April 24, 2008

it was in the best interest of the Department and the incapacitated intoxicant to have him medically cleared before accepting him. The Grievant was given a Letter of Instruction, which again could not be challenged by the Association. Both letters of Instruction are now being used by Management to justify the Grievant's demotion.

The Grievant was prevented from attending contract negotiations even though he was a member of the Association's negotiating team. Over the years, the Association has written to State Officials, including the Governor and Commissioner of Administration, about his treatment, both in regard to being kept from negotiations and to his undergoing almost constant investigations. Previous investigations have been conducted as this one was, biased and with termination in mind.

In this current matter the Association will show that the DOC went to extraordinary lengths to justify the discipline that it wanted to take (termination), and then did take (demotion), against the Grievant. This includes, but is not limited to, deliberately manipulating evidence (other than the videos which were previously discussed) and purposely presenting evidence in an intentionally distorted manner. It includes unprofessional and deceptive interviewing techniques, along with biased questioning meant solely to justify the investigators' desired result.

The Grievant is one of the very best Officers within the Department of Corrections. In the nearly 16 years he has been an Officer he has never received lower than a Mid Acceptable in any evaluation and since he became a Sergeant has predominantly received High Acceptable ratings. In his last six evaluations, he achieved two High Acceptable and four Outstanding (highest possible rating) ratings for his overall performance. The Grievant has also received two Letters of Commendation. The Grievant is not just a great Officer and a great asset to the Department; he is also a natural born leader, who is respected by Correctional Officers statewide. These continuing personal attacks on him are wrong. They not only inflict suffering upon the Grievant and his family, they also put all Officers at risk. The DOC, in its zeal to sanction the Grievant, appears indifferent to the consequences. Officers will, and already are hesitating in deciding whether or not to use O.C. out of fear of losing their jobs, with the result that Officers – and inmates – will be at a greater risk of bodily harm.

There have been many investigations of the Grievant that were not "official". Officers have been asked to "watch" the Grievant and Management constantly reviews his every action more closely than those of other Sergeants and holds him to a higher standard. This is not just the Grievant's opinion but is common knowledge at Mat-Su Pre-Trial and throughout the Department.

Management continuously watches the Grievant, including reviewing video of him. At one point Officers became aware that Management was spending days, not hours, but days, going back over a month of video to see if they could find the Grievant doing something, anything wrong. That Management was spending days reviewing video was relayed to the Grievant by other Officers who figured Management was checking up on him again. After what was believed to be up to four days of reviewing video

surveillance, it was alleged that the Grievant had missed picking up inmates' distribution in one module. The Grievant was given seven days off for the alleged infraction and another day off for stating that the amount of time that Management had spent "*trying to get him*" was pathetic. With this incident there is again edited video and his discipline is currently being grieved. Again, the Association believes that there is sufficient evidence to show that the Grievant's treatment is rooted in Management's prejudice and desire to silence his voice as ACOA's President.

In regard to this latest charge, the Grievant's use of force was not excessive and the length of time the inmate stayed in his cell was not excessive. The Grievant's performance in all respects was consistent with DOC policy. He has never been accused of excessive use of force in the past. The only explanation for the Grievant's demotion is his active role as ACOA President and the State's desire to punish him for his Association activities.

* A section has been omitted because it deals with particular incidents within the institutions and divulges personal information concerning the Officers and inmates involved in those incidents.

THE INVESTIGATION WAS PERFORMED WITH THE OBJECTIVE AND PURPOSE, FORMED AT THE OUTSET, OF PUNISHING THE GRIEVANT

This Grievant's investigation was conducted with the end goal of justifying planned discipline, not as a fact-finding mission. The methods and means of the investigation included deceptive practices, manipulated and biased questions and comments, and evidence taken out of context. It should be noted that the Grievant was escorted out of his institution like a common criminal, something that has only been done with Officers who were a threat to the institution and, as far as we know, all were later fired. The treatment of the Grievant was deliberately demeaning.

As the Grievant's investigation continued, Management worked to justify its intended termination of the Grievant. Management contacted Superintendents, Assistant Superintendents, and others, including Corrections Academy personnel. Management rejected all comments or evidence that showed the Grievant's actions were consistent with current DOC practices and training at the Academy.

It should be noted that at least some of the individuals mentioned in the preceding paragraph, when contacted, were told that the Grievant's actions were wrong and inappropriate "before" being asked for their opinion. This included false comments about the Grievant being out of control and using O.C. on every inmate. If Management really believed that, why did they wait until now to discipline him? Why did they not previously counsel or warn him?

UNNECESSARY TREATMENT OF GRIEVANT

The DOC humiliated the Grievant by having the Lieutenant escort him out of the institution in front of fellow Officers and inmates. He was then placed on administrative leave for over a month. For over a month the Grievant waited as the State of Alaska worked to justify his termination. This would be stressful enough for anyone but the Grievant had just sold his house, had purchased land, and was working with the bank so as to enable the construction of a new home. To our knowledge, no Officer in the last 15 years has been on disciplinary administrative leave as long as the Grievant was.

SECRET FILE WAS USED FOR DISCIPLINE

Sergeant McLellan's Letter of Demotion dated June 12, 2013 states, *"You have repeatedly demonstrated disregard for policies, procedures, and management directives which has been documented through prior disciplinary action"*. There was no evidence provided to support these allegations and there was no explanation why this was even in the Grievant's demotion letter.

Later, in preparing for this grievance filing, the Association requested and obtained the Grievant's personnel file. Surprisingly, the two Letters of Commendation he had received were missing. Even more surprisingly, the State included a secret file which the Mat-Su Pre-Trial Superintendent was keeping on the Grievant. The file contained a log of absolutely false notes. The Grievant was never given an opportunity to see, let alone rebut, items in the file, even though these items were used to justify the demotion. Secret files are a violation of the Correctional Officers Bargaining Agreement.

NO EVIDENCE OF FAILURE TO PROPERLY SUPERVISE OFFICERS

Demotions should be for the failure to properly run a shift or for failing to properly supervise one's subordinate Officers. The Grievant is considered one of the best Sergeants in the State of Alaska. Neither Officers nor Management have ever questioned his leadership skills and Management has not pointed to one single issue with his leadership or the Supervision of his crew.

THE GRIEVANT HAS SUSTAINED AND WILL CONTINUE TO SUSTAIN ECONOMIC DAMAGES, UNLESS HE OBTAINS RELIEF

The Grievant acted in the best interest of the Department and his fellow Officers, making this wrongful punishment even more hurtful. This demotion is a significantly disproportionate amount of punishment. The Grievant was at pay step 15K making $34.24 an hour. His demotion moves him to step 13K where he will make $29.71 an hour. The Grievant is approximately four and a half years away from possible retirement, which has an approximate value of $40,335.12 in lost wages over that time period.

This demotion will also affect his retirement. As a Tier III employee for the State of Alaska his retirement is figured by an average of his three highest paid years of State service. His average would have been approximately $35.54 prior to the demotion, but now is estimated to be approximately $33.07. Should the Grievant choose to retire at 20 years of State service and the average life expectancy of a male in the US being 76 years, he is expected to be on retirement for 33.5 years. This calculates to a total loss of $74,964.96 over the period of his retirement.

The DOC has enacted an $115,000 discipline upon the Grievant, which is completely absurd and disproportionate. The loss stated does not include overtime hours. If the Grievant works overtime, which he surely will, it will increase the amount of his loss. The amount of discipline would also increase should the Grievant continue to work beyond his retirement date.

The real cost cannot be measured in dollars. The Grievant is an excellent Sergeant and he takes his job and his profession very seriously. The demotion is as devastating to him personally as Management had hoped it would be.

When did this occur: Director Bryan Brandenburg's Letter of Demotion was received on June 12, 2013.

Relief Sought: The Grievant should be made whole in every way, including restoring the Grievant to his Sergeant position and making him whole for all lost wages and benefits due to this demotion. The DOC shall cease and desist from interfering with and discriminating against members' exercise of Association activities, from the continuing investigations and harassment of the Grievant, and shall treat the Grievant as any other Officer within the Department of Corrections.