

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 1601-0108-14
JOSHUA HANKERSON,)	
Employee)	
)	Date of Issuance: October 30, 2015
v.)	
)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,)	
Agency)	
)	
)	Arien P. Cannon, Esq.
_____)	Administrative Judge
Joshua Hankerson, Employee, <i>Pro se</i>		
Carl Turpin, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Joshua Hankerson (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on August 8, 2014, challenging the District of Columbia Public Schools’ (“Agency”) decision to remove him from his position as a Custodian, effective August 8, 2014. Employee was terminated for having an “Ineffective” rating under the IMPACT Evaluation during the 2013-2014 school year. On September 12, 2014, Agency filed its Answer to Employee’s Petition for Appeal.

I was assigned this matter on September 22, 2014. A Prehearing Conference was convened on December 16, 2014. A Post Prehearing Conference Order was subsequently issued which required the parties to submit briefs addressing the legal issues in this matter. Both parties submitted their briefs accordingly. Upon consideration of the briefs, it was determined that an Evidentiary Hearing was warranted. A second Prehearing Conference was convened on May 27, 2015, for the purposes of identifying potential witnesses and exhibits for the Evidentiary Hearing. An Evidentiary Hearing was convened on June 24, 2015. Subsequently, the parties were ordered to submit written closing arguments. Both parties submitted their closing arguments accordingly. The record is now closed.

JURISDICTION

OEA has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUES

Whether Agency's action of removing Employee from his position as a Custodian pursuant to an "Ineffective" performance rating under the IMPACT system was done in accordance with all applicable laws, rules, or regulations.

BURDEN OF PROOF

OEA Rule 628.1 states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.¹ "Preponderance of the evidence" shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.²

SUMMARY OF TESTIMONY

The following represents a summary of the relevant testimony given during the Evidentiary Hearing as provided in the transcript (hereinafter denoted as "Tr.") which was generated following the conclusion of the proceeding.

Agency's Case-in-Chief

Candice Glenn ("Glenn") Tr. 7-96

Glenn has been employed by Agency for seventeen (17) years and currently serves as an Assistant Principal. She was also an Assistant Principal at Eastern High School during the 2013-2014 school year. Eastern High has about 1,000 students. During the 2013-14 school year, Glenn was responsible for the oversight of the facilities operations, athletics, and security. She also assisted the Principal with some of her duties, which included issues with personnel reprimands.

Glenn used the IMPACT evaluation system to evaluate the performance of the custodians. Custodians were evaluated in two cycles, once in February and again towards the end of the school year in June. Employee was on the night crew at Eastern High School and his

¹ 59 DCR 2129 (March 16, 2012).

² OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

eight-hour shift generally ended around 11:00 p.m. During the 2013-14 school year, Glenn evaluated Employee twice. The IMPACT evaluation system used for Employee consisted of three components: (1) employee's work; (2) contribution to the school community; and (3) core professionalism.

Glenn identified Agency's Exhibit 3 as the document that was produced after she completed the IMPACT evaluation assessment for Employee for cycle 1. Group 19 of the evaluation form applies to maintenance workers. Glenn stated that she uses the term "maintenance staff" and "custodians" interchangeably. Glenn met with Employee regarding his IMPACT evaluation for the first cycle on February 4, 2014.

The first section of the IMPACT evaluation addresses employee's work performance under "CUST."³ There are six (6) subsections under CUST. CUST 1 addresses building maintenance and looks to see whether a custodian really "inspects all go-to systems, reports problems, completes minor repairs, [and] collaborates."⁴ Employee received a "1" (Ineffective) in this category. CUST 2 relates to maintenance of classrooms and office spaces and Glenn also gave Employee a "1" in the category because she felt he rarely did so in an efficient manner. CUST 3 addresses Employee's performance of the school grounds and common areas. This included the gymnasium and subbasement area. Glenn stated that she felt this was an area that truly needed to be cleaned more often and more thoroughly.

Under CUST 4, restrooms, Glenn stated that Employee "definitely sometimes cleaned" the restrooms and knew that Employee preferred the restrooms over the classrooms and wanted to make sure he received credit for this. She gave Employee a 2, minimally effective, in this area because Employee was not consistent.

In CUST 5, moving and arranging, Glenn gave Employee a 3, an effective rating. The reason for this rating was because this category involved big activities which required moving in groups with maintenance and Glenn felt Employee was "definitely effective."⁵

In CUST 6, safety, Glenn rated Employee a 2, minimally effective. Glenn stated that the mop bucket was not put up at times and it was important to make sure areas were clean and she wanted to ensure students were not throwing liquid or buckets on each other.

Glenn described the second section of the IMPACT evaluation, "Commitment to the School Community," as an area where Employee was allowed to discuss what he was doing throughout the school. This was considered a bonus area and it did not subtract points from Employee's overall score. Employee told Glenn that he worked with the track team and checked on the progress of 30 student-athletes. Despite Glenn being over athletics, the track coach never mentioned that Employee was working with the track team in any capacity. Although Glenn was never told by the track coach that Employee was working with the team, she still gave him credit for it.

³ CUST is short for Custodian Standards.

⁴ Tr. at 17.

⁵ Tr. at 19.

In the area of academic and behavioral expectations, CSC 3, Glenn always saw Employee being professional in a verbal manner to other employees and gave him a 2 in this area.

The third section of the IMPACT evaluation consisted of “Core Professionalism” which has four components: attendance, on-time arrival, policies and procedures, and respect. Glenn noted that Employee was cited on February 3, 2014, for a no call/no show and for not informing the foreman or the principal. Employee also received a deduction for on time arrival on November 28, 2013 (CP-2), to work overtime the day of the Turkey Bowl. Employee was scheduled to get to work at 7:00 a.m.; however, he arrived much later and when he arrived he got into a verbal altercation with an officer.

Employee received a “significantly below standard” rating under Core Professionalism 3 because he would always call in and request to take leave right before his shift was about to start so Agency was never able to prepare a day or two ahead of time. This was typical behavior of Employee. Glenn stated that Employee received “slightly below standard” in the category of respect as a result of the Turkey Bowl verbal altercation incident with the security officer.

Glenn met with Employee on February 4, 2014, regarding his cycle 1 scores. Raymond Woodfork, the foreman, also participated in the first rating cycle and gave his recommendations regarding the employees who worked under him. The meeting with Employee lasted approximately 15-20 minutes. After the meeting with Employee, Glenn submitted Cycle 1 of the IMPACT report. The prepared report was based on Glenn’s first hand observations, her discussion with Mr. Woodfork, the foreman, and also discussions with Assistant Principal Nash, the 3rd floor Assistant Principal.

Glenn identified Agency’s Exhibit 4, which was admitted into evidence, as the IMPACT evaluation for cycle 3, which was Employee’s second assessment. Glenn was also the assessor for this cycle. Glenn met with Employee on June, 11, 2014, to discuss his evaluation for the third cycle. Employee received a 1.5 for the Custodian Standards cluster. Glenn discussed the ratings for each subsection, beginning with “building maintenance” where Employee received a rating of “1”—Ineffective. This rating resulted because the building maintenance responsibility of Employee was rarely in an efficient manner. Employee received a rating of “2”—Minimally Effective—for “Classrooms and Office Spaces” because he sometimes cleaned and maintained the classrooms and office spaces in an efficient manner. Employee slightly improved in this category from the first cycle. Employee received an “Ineffective Rating” for “Common Areas and School Grounds” because this was the area that Glenn was most concerned with. Glenn noted that Employee “rarely cleans and maintains common areas, including school grounds, hallways, all-purpose rooms, cafeterias, gymnasiums, and stairwells, in a timely and efficient manner.”⁶

Employee received an “Ineffective” rating for the “Restrooms” as well. One particular incident which Glenn based this rating on was around March of 2014 where she verbally

⁶ See Agency’s Exhibit 4.

reprimanded several students for being on the second floor although they had a restroom on the third floor. It was then brought to her attention that the restrooms on the third floor had lights out and “that the restrooms were filthy.”⁷ Glenn testified that because she had a restroom pet peeve, the maintenance staff generally ensured that restrooms were clean. Glenn further described the March 2014 incident where she went to check out the third floor restrooms shortly before the 3:00 p.m. bell, she confirmed what she was told by the students. This restroom was Employee’s responsibility. When Glenn finally had the opportunity to speak with Employee regarding this restroom, he explained that he did not clean the restrooms because of how dirty the students were and he was tired of cleaning it up. Employee also told Glenn that there was an issue with students properly discarding hand towels. During the conversation, Employee also used profanity. This conversation was held in the hallway while students were in class. Employee further explained that he usually cleans up the restrooms after the students leave; however, Glenn told him that after the students eat lunch, they usually have to go to the restroom and that he should not wait until 3:15 to clean the restroom. Glenn stated that she issued Employee a verbal reprimand for using profanity with her during their conversation about the restroom.

Glenn further stated that on the same day she spoke with Employee regarding the restrooms, she also spoke with him about wearing a tank top around during school hours, which she considered to be inappropriate attire. Glenn stated that Employee complied with her request and put on an appropriate top.

Glenn gave Employee an “Effective” rating for “moving and arranging.” Employee was a willing participant when it came time to setup for graduation or other events.

Employee received an “Ineffective” rating regarding following safety procedures. Glenn described in particularity the events which led to Employee receiving this rating. One incident involved a cart with nails and trash in the subbasement that was the responsibility of Employee to remove. During Glenn’s conversation in February with Employee regarding his IMPACT evaluation for cycle 1, Employee did not believe some of the deficiencies that were being described to him about his overall work performance. Another incident that impacted Employee’s safety rating was when Employee left his keys in a nightclub over the weekend and did not have his work keys when he returned to work. Employee also had a broken radio that he failed to report for about a week. The radios are the only method of being able to get in contact with employees throughout the building. Employee’s broken radio created issues that prevented him from being contacted when needed.

Glenn further testified about the additional comments she provided in Employee’s evaluation for cycle 3.⁸ Glenn added that she believed Employee needed to work on his professionalism, which included his attendance, respect toward his colleagues, and making himself available via radio when needed. There were instances where Employee had earphones to his ears or his radio was broken, but not reported. Glenn also cited an incident where

⁷ Tr. at 31.

⁸ See Agency’s Exhibit 4.

Employee was assisting with a fashion show that lasted two hours. Employee did not have approval to work with the fashion show and his supervisor was unaware that he participated in the fashion show.

Employee received a 3, "Effective," rating for his "Commitment to the School." This rating was a result of Employee's assertion that he was working with the track team. Employee also attended sporting events and awards ceremonies.

Employee received a minus ten (10) for core professionalism during the third cycle. Glenn noted that Employee would call in the same day and use leave. Glenn further noted that Employee walked around with earphones in his ear and not being able to be reached when needed. This was addressed by Principal Skeritt, and Glenn also addressed this issue with Employee at a graduation held at Jefferson Middle School.

Glenn testified regarding Agency's Exhibit 6 which was regarding her interaction with Employee about cleaning the restrooms on March 7, 2014, and his use of profanity. Glenn's knowledge of Employee was based solely in her capacity as an Assistant Principal at Eastern High School.

Glenn stated that the foreman, Mr. Woodfork, offered to provide Employee assistance in carrying out his duties. This was significant because Mr. Woodfork did not charge the school overtime in offering this assistance to Employee. Mr. Woodfork's hours normally were from around 6:00 a.m. through 3:00 p.m. Mr. Woodfork sometimes offered to stay four (4) hours and help Employee with his duties.

On Cross examination Glenn testified that for the first cycle in Employee's evaluation-- from the beginning of the school year until the conference meeting on February 4, 2014-- she never provided Employee anything in writing about any unacceptable or ineffective behavior.

Glenn stated that when she observed the classrooms in an insufficient manner, she took a picture and asked Woodfork, the foreman, to bring it to Employee's attention. Glenn also testified that the first time she reprimanded Employee was the oral reprimand regarding her issue with the restrooms. This reprimand is documented in a memorandum in Agency's Exhibit 6.

Glenn provided her understanding of the Collective Bargaining Agreement ("CBA") which applied to Employee regarding discipline and discharge. This was highlighted in Employee's Exhibit 1, under Article 16.⁹ Glenn testified about the incident involving Employee and the security at the Turkey Bowl and stated that the version of events provided by Employee and the security officer were similar in nature.

During Glenn's testimony, Employee attempted to establish that Agency failed to take adverse action within 15 days as set forth in the CBA regarding the particular incidents reflected in his evaluation. Glenn also stated that Employee told her that he left his keys in a club over

⁹ See Employee's Exhibit 1, p. 14.

the weekend and that an employee should be reprimanded for such action, which is what Glenn stated that she did in fact do.

Glenn stated that her issue regarding the restrooms was not so much the appearance of the restroom but Employee's willful nonperformance to keep them tidy. It was also the profanity Employee used when Glenn spoke with him about the issue.

Glenn stated that working overtime sometimes was based on events being hosted by Agency and was extra work that was available for its employees who were willing to do so. Glenn also testified that she knew all of the employees who submitted character statements on behalf of Employee.

Alden Wells ("Wells") Tr. 97-123

Wells is the Director of IMPACT Operations for Agency and has held this position since February 2015. Prior to this position, Wells was the manager on the IMPACT Operations Teams and prior to that he was a coordinator on the IMPACT Operations team. During the 2013-2014 school year, Wells was a manager on the IMPACT Operations Team.

Wells described IMPACT as the evaluation system for all DC Public Schools and their school-based staff, which includes school leaders, teachers, custodians, and other support staff in the school buildings. Custodians are classified under group 19. Wells further testified regarding the authority DCPS has in carrying out IMPACT evaluations.

D.C. Code § 1-617.18 authorizes Agency to develop and conduct its own evaluation system for its staff members. 5-E DCMR § 1306 also addresses the IMPACT system.

Wells testified that there is nothing in the Collective Bargaining Agreement in which Employee was under, that addresses the IMPACT evaluation system. While the CBA addresses misconduct, the evaluation system, regardless of what an individual's score may be, is not considered misconduct.¹⁰

Wells explained that after an administrator completes an assessment, they have a conference with the staff member to discuss the assessment. This assessment is available to employees on their IMPACT dashboard, within the online portal for IMPACT. Employees in Group 19 are evaluated twice a year, during the first and third cycle.

Agency's Exhibit 2 is Employee's Final IMPACT Report for the 2013-2014 school year. Employee received an overall "ineffective rating." Wells explained the numeric values provided throughout Employee's evaluation and how they were each weighted. After an employee receives an overall "ineffective rating," they are separated from Agency.

Employee's Case-in-Chief

¹⁰ Tr. at 103.

Joshua Hankerson (“Employee”) Tr. 125-146

One of Employee’s main arguments was that he was not disciplined for any of the particular incidents described in his IMPACT evaluation by Glenn. Employee states that he was not written up nor warned about any of the incidents provided by Glenn in his IMPACT evaluation. Employee also testified that he was never told that he rarely cleaned the classrooms, bathrooms, or kept the school grounds tidy.

Employee stated that when he worked the Turkey Bowl on Thanksgiving, he was working overtime, which was optional. Employee also testified that throughout the course of the school year, no one expressed their dissatisfaction with his overall work performance.

Employee described the incident with the security guard at the Turkey Bowl as a disagreement rather than an argument as described by Glenn. Employee acknowledged that he was late arriving for duty for the Turkey Bowl and explained that he had to tend to his family that was in town for the holidays.

Employee further described the issue that Glenn had with the cleanliness of the restrooms. He stated that when he arrived on duty at 2:00 p.m., he went to check on the restrooms and they only required minimal work, and just some “touchups.” Afterwards, Employee was summoned to a meeting with his supervisor, and while in the meeting, Glenn contacted him on his radio. Although Employee responded, Glenn did not respond back. Because he did not hear back from Glenn, he went to find her and see what she needed. When he got in the restrooms, the lights were off, toilet paper rolls were in the toilets, and graffiti was on the wall. Employee described the scene like it had been “vandalized.” Prior to his meeting, Employee did not see the untidiness of the restrooms. In the conversation he had with Glenn about this problem, Employee told her that it was not his responsibility to watch over the students and make sure they did not vandalize the restrooms. According to Employee, this conversation was the only time he received any sort of oral reprimand from Glenn.

Employee stated that Glenn’s statements about him leaving his keys in a night club was “just pure hearsay” and that he never told her that he left his keys in a night club.¹¹

Employee testified that he felt like whenever he was doing something to help the students, such as assisting with the fashion show, or helping the track team, he was punished for it. Employee felt that he was always told that he should not be doing that and should be elsewhere working. Employee also said that he put in a lot of hours, including overtime hours, and felt that if management had issues with his work performance, they would not have allowed him to work overtime.

¹¹ Tr. at 138.

On cross-examination, Employee acknowledge that he sat down and had a conversation with Glenn when she gave him his IMPACT scores on the dates provided in her assessment (Exhibits 3 and 4).

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

The IMPACT Process

IMPACT is the performance evaluation system utilized by DCPS to evaluate its employees. According to the record, Agency conducts annual performance evaluations for all its employees. During the 2013-2014 school year, Agency utilized IMPACT as its evaluation system for all school-based employees.

For the 2013-2014 school year, Employee's position was classified with Group 19 (Custodians) which was evaluated during two cycles: Cycle 1 and Cycle 3. The first assessment cycle, Cycle 1, ended on February 6, 2014. The second assessment cycle, Cycle 3, ended on June 12, 2014. The IMPACT evaluation system used for Employee and Group 19 consisted of three components, namely:

- (1) Custodian Standards (CUST)—comprised of 90% of the Group 19 employees' scores;
- (2) Contribution to the School Community—comprised of 10% of Group 19 employees' scores
- (3) Core Professionalism-- This component is scored differently from the others. This is a measure of four (4) basic professional requirements for all school-based personnel. These requirements are as follows:
 - (a) Attendance;
 - (b) On-time arrival;
 - (c) Compliance with policies and procedures; and
 - (d) Respect.

Employees did not receive a weighted score for Core Professionalism; rather this was an area where Employees could receive a deduction for lack of professionalism in one of these areas.

School-based personnel assessed through IMPACT, ultimately received a final IMPACT score at the end of the school year of either:

- 1) Ineffective = 100-199 points (immediate separation from school);
- 2) Minimally Effective = 200-249 points (given access to additional professional development - Individuals who receive a rating of 'Minimally Effective' for two (2) consecutive years are subject to separation from the school system);
- 3) Developing = 250-299 points
- 4) Effective = 300-349 points; and
- 5) Highly Effective = 350-400 points.

In the instant matter, Employee received an “Ineffective” rating for the 2013-2014 school year. Employee’s Final IMPACT score for the 2013-2014 school year was 138.¹² An “Ineffective” rating subjects an employee to an immediate separation from their position with Agency.¹³

Governing Authority

DCMR §§1306.4 and 1306.5 gives the Superintendent authority to set procedures for evaluating Agency’s employees.¹⁴ The above-referenced DCMR sections provide that each employee shall be evaluated each semester by an appropriate supervisor and rated annually prior to the end of the year, based on procedures established by the Superintendent. 5 DCMR 1401 provides as follows:

1401.1: Adverse action shall be taken for grounds that will promote the efficiency and discipline of the service and shall not be arbitrary or capricious.

1401.2: For purposes of this section, “just cause for adverse action” may include, but is not necessarily limited to, one (1) or more of the following grounds:

(c) Incompetence, including either inability *or failure to perform satisfactorily the duties of the position of employment.*

The Collective Bargaining Agreement (CBA) between Agency and Teamster Locals 639, the CBA under which Employee was a part of, does not contain language addressing performance evaluations.¹⁵ Furthermore, the 109th Congress of the United States enacted the 2005 District of Columbia Omnibus Authorization Act, PL 109-356, which states in part:

Notwithstanding any other provision of law, rule, or regulation, during fiscal year 2006 and each succeeding fiscal year, the evaluation process and instruments for evaluation District of Columbia Public School employees shall be a non-negotiable item for collective bargaining purposes. D.C. Code § 1-617.18.

¹² Agency’s Exhibit 2.

¹³ Tr. at 120.

¹⁴ DCMR § 1306 provides in pertinent parts as follows:

1306.1 - Official performance evaluation ratings for all employees of the Board of Education shall be inclusive of work performed through June 30th, unless otherwise specified in this section.

1306.5 – The Superintendent shall develop procedures for the evaluation of employees in the B schedule, EG schedule, and ET 2 through 5, except as provided in § 1306.3

¹⁵ See Employee’s Exhibit 1.

Thus, Agency was granted the authority to develop its own evaluation process and tool for evaluating Agency employees and exercised this management prerogative when it created IMPACT.

Accordingly, in reviewing this matter, I will address whether Agency followed the procedures it developed in evaluating its employee; and whether or not Agency's termination of Employee pursuant to his IMPACT rating was supported by just cause. As referenced above, 'just cause' for adverse actions includes incompetence – an employee's inability or failure to perform satisfactorily the duties of their position of employment.

Analysis

The D.C. Superior court in *Shaibu v. District of Columbia Public Schools*¹⁶ explained that, substantial evidence for a positive evaluation does not establish a lack of substantial evidence for a negative evaluation. The Court in *Shaibu* noted that, "it would not be enough for [Employee] to proffer to OEA evidence that did not conflict with the factual basis of the [Principal's] evaluation but that would support a better overall evaluation."¹⁷ Additionally, it highlighted that "principals enjoy near total discretion in ranking their [employees]"¹⁸ when implementing performance evaluations.

Here, Glenn testified credibly regarding the comments and overall performance evaluation she provided for Employee. She gave very descriptive accounts of incidents which led to Employee's overall ineffective performance rating. In particular, Glenn noted that Employee was cited on February 3, 2014, for a no call/no show and did not inform the foreman or the principal. This caused Employee to have points deducted under the Core Professionalism standards of his evaluations. Employee was also late for his arrival on November 28, 2013, to work overtime the day of the Turkey Bowl over the Thanksgiving holiday. Employee was scheduled to get to work at 7:00 a.m.; however, he arrived much later and when he arrived he got into a verbal altercation with an officer. In Employee's testimony, he seems to down play his tardiness to the Turkey Bowl by stating that he was working overtime and working that day was optional. Although Employee may have been working overtime, his argument is flawed. Agency reasonably relied that Employee would arrive to his shift on time once he accepted the overtime assignment. Employee does not deny being late for the Turkey Bowl, rather he attributes his tardiness to having to tend to family who was in town for Thanksgiving.

Employee's practice of calling in to request leave right before his shift began was also negatively reflected in his evaluation. This practice impeded Agency's ability to properly prepare for the absence of Employee from a personnel standpoint. Glenn described this behavior as "typical."¹⁹

¹⁶ Case No. 2012 CA 003606 P (January 29, 2013).

¹⁷ *Id.* at 6.

¹⁸ *Shaibu*, (citing *Washington Teachers' Union, Local # 6 v. Board of Education*, 109 F.3d 774, 780 (D.C. Cir. 1997)).

¹⁹ Tr. at 23.

Another incident which negatively affected Employee's evaluation was a verbal exchange Employee had with a school security guard at the Turkey Bowl. Employee received "slightly below standard" during Cycle 1 in the category of "respect" (Core Professionalism) as a result of this incident. While Employee does not dispute that the verbal exchange occurred with the security officer, he described it as a disagreement rather than an argument as described by Glenn. While the undersigned does not find it necessary to delve into the underlying facts of this incident, I find that Glenn followed the procedures by taking into consideration the incident when evaluating Employee's respect under the Core Professionalism portion of his evaluation.

On February 4, 2014, Glenn met with Employee regarding his cycle 1 evaluation scores. Employee acknowledges that he met with Glenn regarding his Cycle 1 and Cycle 3 evaluations, on February 4, 2014, and June 11, 2014, respectively.²⁰

During cycle 3 of Employee's evaluation, he received an "Ineffective" rating for the upkeep of the restrooms. One particular incident which Glenn based this rating on happened in March of 2014 where she verbally reprimanded several students for being on the second floor although they had a restroom on the third floor. The students explained that they did not want to use the third floor restrooms because they were not clean. In a conversation Glenn had with Employee about this problem, Employee told her that it was not his responsibility to watch over the students and make sure they did not vandalize the restrooms. Glenn stated that Employee used profanity during this conversation and verbally reprimanded him for doing so. Employee did not deny using profanity during this conversation.²¹ According to Employee, this conversation was the only time he received any sort of oral reprimand from Glenn. I found Glenn's recitation of the facts surrounding this conversation to be credible and detrimental to Employee's overall evaluation.

Glenn's assertion that Employee also had a broken radio which he failed to report for about a week negatively impacted his safety ratings in his evaluation. The radios are the only method of being able to get in contact with employees throughout the building. Employee's broken radio created issues that prevented him from being contacted when needed. I also found Glenn credible regarding the issues with Employee's broken radio and failure to properly report the problem.

Throughout Glenn's testimony, I found her specific examples provided in Employee's IMPACT evaluation to be credible. Employee's main contention was that he was not disciplined for any of the particular incidents described in his IMPACT evaluation. Employee's argument misses the mark. The CBA, Employee's Exhibit 1, addresses discipline and discharge and outlines progressive discipline for misconduct. However, the IMPACT evaluation measures Employee's overall performance and not specific acts of misconduct. Because the CBA under which Employee belonged to was silent regarding evaluations for employees, I must defer to the authority granted in Agency to develop its own evaluation process and tools for evaluating its employees and yield to the discretion management holds when evaluating its employees.

²⁰ Tr. at 142-143.

²¹ Tr. at 134.

Based on the aforementioned, I find that Agency followed the procedures it developed in evaluating its employees and that the “Ineffective” rating was supported by just cause. Accordingly, I must uphold Agency’s decision to remove Employee from his position for failure to satisfactorily perform the duties of his position.

ORDER

Accordingly, it is hereby **ORDERED** that Agency’s decision to remove Employee from his position is **UPHELD**.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge