

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. MA-19-12

(MANAGEMENT SERVICE DISCIPLINE)

LARRY SALCHENBERGER,)	
)	
Appellant,)	
)	
v.)	RULINGS,
)	FINDINGS OF FACT,
STATE OF OREGON,)	CONCLUSIONS OF LAW,
DEPARTMENT OF CORRECTIONS,)	AND ORDER
)	
Respondent.)	
_____)	

On May 8, 2013, the Board heard oral argument on Appellant’s objections to a Recommended Order issued by Administrative Law Judge (ALJ) B. Carlton Grew on March 19, 2013, after a hearing held on September 6 and 7, 2012, at the Department of Justice’s offices in Salem, Oregon. The record closed on October 5, 2012, following receipt of the parties’ post-hearing briefs.

Pam Russell, layperson and spouse of Appellant, Ontario, Oregon, represented Appellant.

Tom C. Lenox, Assistant Attorney General, Labor and Employment Section, Department of Justice, Salem, Oregon, represented Respondent.

On August 8, 2012, Appellant Larry Salchenberger filed this timely appeal of the decision of the State of Oregon, Department of Corrections (Department), suspending him for a week without pay. Salchenberger alleges that the suspension was unjustified.

The issue is:

Did the Department’s suspension of Salchenberger for one week effective July 15, 2012, violate ORS 240.570(3)?

For the following reasons, we conclude that the suspension did not violate ORS 240.570(3).

RULINGS

Salchenberger objected to the following rulings of the ALJ and reiterated them in his post-hearing brief:

1. Supplemental testimony of Gilberto Rodriguez

At the close of the first day of hearing, the Department announced that it rested its case. At the beginning of the next day of hearing, the Department asked to reopen its case to recall Corrections Captain Gilberto Rodriguez. The stated reason for the request was that Rodriguez wished to correct the record because he had erred regarding the dates of certain events.

The ALJ acted within his discretion in allowing the testimony. Appellant had not begun his portion of the hearing and was not unfairly prejudiced by allowing the Department to reopen its case. Nor was Appellant unfairly prejudiced by the corrected testimony; he had ample opportunity to cross-examine the witness and to present argument that the changed testimony affected the credibility of the witness.

2. Cross Examination of Appellant's witness Captain Thomas A. Jost

Appellant called only one witness, Captain Jost. During cross-examination, Appellant objected to a series of Respondent's questions as beyond the scope of the direct examination. The ALJ sustained some of these objections and overruled others. The ALJ acted within his discretion in concluding that two of the questions he permitted regarding the Oregon Accountability Model and the opinions of AFSCME bargaining unit members did in fact exceed the scope of direct examination, and he properly declined to consider the evidence produced through those questions.

3. Offered Exhibit not on Exhibit List

At hearing, Respondent offered Exhibit R-27, Salchenberger's own proposed performance improvement plan that was drafted and submitted before the events at issue in this case. Appellant objected on the basis that the document was not listed on the Respondent's prehearing exhibit list. The ALJ's prehearing order stated in part,

"Pursuant to OAR 115-010-0068(2), you are directed to do the following: * * * **By seven days prior to the hearing date**, mail or deliver to the other parties all exhibits and an exhibit list regarding your case-in-chief (exhibits offered at hearing that were not mailed or delivered seven days before the hearing will be received only upon a showing of good cause under OAR 115-010-0068(4))." (Emphasis in original.)

Respondent offered other exhibits relevant to Salchenberger's performance improvement process. Respondent's rationale for failing to list the document—that it did not know that Salchenberger would contest the purpose of a meeting at the start of the performance improvement process—did not establish good cause. The ALJ acted within his discretion in sustaining the objection and declining to receive Exhibit R-27.

4. Production of documents in disciplinary case

Appellant objected that a small number of requested documents were not produced during his disciplinary proceedings, but were produced before this hearing. Appellant has not identified any impact of this alleged withholding of documents on his discipline or this proceeding, and the objection is overruled.

5. The remaining rulings of the ALJ were reviewed and are correct.

FINDINGS OF FACT

1. The Department is a state agency responsible for operating correctional facilities in Oregon, including the Snake River Correctional Institution (SRCI or the prison) in Ontario. SRCI holds approximately 3,000 male inmates. The employees who staff the prison are divided among the departments of Operational Services, Security Services, and General Services.

2. Salchenberger was first hired by the Department in May 1985 as a correctional officer. He was promoted through the ranks to correctional sergeant, correctional lieutenant, and transport lieutenant. On June 28, 2005, Salchenberger was promoted to a correctional captain position in the Security Department of SRCI, a position he held at the time of hearing. The prison Security Services Department employs, in ascending order of authority, approximately 540 correctional officers, 5 corporals, 23 sergeants, 17 lieutenants, and 11 captains.

3. The correctional captains' superiors, in order of authority, are Security Manager Al Hannon, Assistant Superintendent of Security Judy Gilmore, and Superintendent Mark Nooth. The correctional captains directly supervise four correctional lieutenants, who in turn supervise 100-150 employees. One correctional captain acts as the top manager in the facility when the superintendent is absent, and in that role is designated the Officer in Charge (OIC). Another manager is designated Officer of the Day (OD), who reports to and assists the OIC and communicates with staff about issues that arise in the day-to-day running of the prison.

4. The Security Services Department is charged with ensuring that the institution runs smoothly and that the inmates and staff are safe and secure.

5. In order to fulfill its duties, the Department has issued Corrections Rules and Procedures, and SRCI has issued Procedures and Post Orders. These rules and procedures include provisions regarding emergencies, fights involving inmates, sanitation issues, and inmate deaths. On average, two inmates die at the prison each month.

6. The Department Code of Conduct, DOC Policy: 20.1.3, provides in part:

“Every employee of the Department of Corrections shall constantly strive to attain the highest standards of conduct and professional public service. This requires that employees be faithful to the principles of providing professional services, adhering to the code of ethics and meeting the vision, values, rules, policies and procedures of the department. Employee’s conduct must be above reproach and must not impugn the credibility and honesty of the department, its employees, or the corrections profession.”

7. The Department uses the Oregon Accountability Model (OAM) as the underlying philosophy and model for the running of its prisons. The central goal of that model is to conduct the operations of correctional institutions in a way that will help inmates return to society motivated and able to lead successful lives. The conduct of prison staff is a critical part of the implementation of the model. The OAM requires that staff seek to act as positive examples and that interactions between staff and inmates are aimed at encouraging positive change in the inmates. Compliance with OAM is an element of employee performance evaluations.

8. As of the date of his suspension, Salchenberger had received approximately 1,900 hours of training on a variety of subjects, including personal success, maintaining a respectful workplace, communication skills, and basic security practices.

Prior discipline and counseling

9. On December 10, 2009, SRCI Superintendent Mark Nooth and Assistant Superintendent of General Services Jamie Miller met with Salchenberger to discuss performance expectations. Nooth and Miller told Salchenberger that he would be held to expectations regarding maintaining a respectful workplace and following the Department’s Code of Conduct.

10. On December 15, 2009, Salchenberger reported to work in the morning and told subordinate staff that he was hung over because he had been up drinking until 3:00 a.m. the night before. Salchenberger received a letter of reprimand for this conduct on March 23, 2010.

11. On February 9, 2010, the Department issued Salchenberger a verbal reprimand for making an inappropriate statement to a subordinate employee, failing to act promptly on an employee complaint, and failing to take corrective action.

Events leading to suspension

12. In 2011, the SRCI management team identified a need for Salchenberger to improve his professionalism when interacting with staff and his judgment in implementing Department and SRCI policies and procedures. The management team's observations and staff surveys indicated that Salchenberger had failed to improve his behavior following repeated counseling and the March 23, 2010 written reprimand.

13. In late 2011, Salchenberger met with some high level Department managers in Salem in order to create his own performance improvement plan.

14. In November 2011, Salchenberger met with Assistant Superintendent of Security Gilmore to discuss plans to improve his performance. Gilmore decided to merge the Salchenberger-drafted plan with a plan Gilmore was preparing. Gilmore issued the performance improvement plan on December 19, 2011.

15. On January 14, 2011, the Department issued Salchenberger an evaluation for the period October 1, 2009 to September 30, 2010. Salchenberger's direct supervisor, Security Manager Hannon, reviewed the evaluation with Salchenberger. The evaluation was not graded, but was generally positive. Under "Communication," Hannon wrote that Salchenberger needed to use "increased emotional intelligence * * * when he addresses issues with staff." Hannon also stated that he "would like to see [Salchenberger] improve on his ability to maintain staff morale while also continuing to take a proactive approach to addressing staff issues." Under "Leadership/Professionalism and Ethics," Hannon stated, "[a]s discussed in [Salchenberger's] self-evaluation he is often viewed as harsh in his manner; he needs to ensure that he makes improvement in this area."

16. On January 30, 2012, Gilmore and Salchenberger met to review Salchenberger's progress with the performance improvement plan and to review ways that he could improve his performance. As part of that process, Gilmore directed Salchenberger to meet with four prison managers to discuss his communications style and get their feedback on his performance. Gilmore specifically directed Salchenberger to make the initial contact with the managers. She did so because she believed that the process would be more effective if Salchenberger demonstrated his commitment to it by taking the first steps, and because she understood that he had failed to complete a similar assignment to meet with Sharon Blacketter, the Department of Correction's Eastside Institutions Administrator.

17. Gilmore notified the four managers about Salchenberger's assignment and stated that Salchenberger's initiation of the meetings was part of his assignment. The four managers were Hannon, Security Manager; Jason Bell, Assistant Superintendent, Correctional Rehabilitation Services; Jamie Miller, Assistant Superintendent General Services; and Gilberto Rodriguez, Correctional Captain.

18. The next performance plan review meeting was eventually set for March 5.

19. In late February 2012, Gilmore contacted the four managers Salchenberger was to meet with. They reported that Salchenberger had not arranged the meetings.

20. Salchenberger did not begin arranging the assigned meetings until the middle of March, after he learned that he was being investigated for not scheduling the meetings, and did not contact Gilmore to advise her of an inability to initiate or complete the assigned task. Some of the meetings Salchenberger scheduled were cancelled by the other parties.¹ Salchenberger completed the assigned meetings in May. Had Salchenberger demonstrated some efforts to arrange the meetings as directed, Gilmore believes she would not have addressed the matter in a disciplinary fashion.

21. Although he was apparently on vacation during part of February, and his work may have been busier than normal, Salchenberger had 15.5 workdays and 30 working hours to begin the scheduling process. Unlike all other correctional captains, Salchenberger works a four-day workweek, giving him a two-hour block of time at the end of each shift to perform administrative tasks. The most generous interpretation of the evidence is that Salchenberger did not assign a significant priority to setting up the meetings as directed.

Monthly captains' meetings

22. SRCI holds monthly captains' meetings on the first Thursday of every month at 7:00 a.m., and have held those meetings on that schedule for many years. The meetings are mandatory, and had been for at least six years preceding the date of hearing.²

23. On February 6, 2012, Salchenberger did not attend the captains' meeting and did not call to report his absence. Later that day, Salchenberger's immediate superior, Security Manager Hannon, spoke with Salchenberger about missing the meeting. Salchenberger stated that "he blew it" and had simply forgotten about the meeting. Hannon told Salchenberger that he was required to attend the meetings or to call Hannon before the meeting to notify the participants of his absence.

24. On March 1, 2012, Salchenberger did not attend the captains' meeting, and did not call his superior officer before the meeting to report his absence. Salchenberger did leave a message for Captain Rodriguez at 9:14 a.m. that day, more than two hours after the meeting was scheduled to start, and told him that he would not be attending. Rodriguez is not Salchenberger's supervisor; he was OIC that day.

¹Salchenberger chose not to testify at this hearing. This Board, therefore, derives Salchenberger's factual contentions from his reported statements in his disciplinary proceedings, which are exhibits in this case, and as recounted at hearing by witnesses, as well as other exhibits.

²Salchenberger contends that the meetings were not mandatory because some of them took place on his days off. The Department established that in such a case, the affected captain was required to use overtime to attend, or obtain prior approval to miss, the meeting. The Department also established that such meetings could not take place in this 24-hour prison if they were not mandatory because of the captains' differing shifts.

25. Salchenberger later told Hannon that he did not attend the meeting because he had to assist his dog after a recent surgery and assist his children regarding the death of a friend.

Events following the death of inmate John Doe

26. When an inmate dies and staff does not witness the death, the Oregon State Police (OSP) investigates the death, and the prison does not release the body to third parties without OSP's consent. Generally, OSP responds and investigates inmate deaths immediately.

27. The prison does not have body bags or other equipment designated for storing or holding cadavers, and does not have a location dedicated to that use. Corrections and SRCI policies and procedures do not address holding cadavers for long periods of time because the practice and expectation is that when an inmate dies, any required investigation should be conducted promptly and the body removed from the institution as soon as possible.³

28. There was no evidence that SRCI had ever stored a cadaver.

29. On March 3, 2012, Salchenberger was the OIC. At 6:45 p.m., staff notified Salchenberger as OIC that inmate John Doe⁴ was having medical difficulties. Doe was moved to the prison's Central Medical Facility where he died shortly thereafter. It appeared that Doe had suffered a heart attack.

30. Pursuant to Department and prison regulations, Salchenberger notified medical personnel, Nooth, and Gilmore of the death. Salchenberger told Gilmore that the death was witnessed by staff and that the facility was on normal operations, which would have meant that OSP would quickly release the body. Based on that information, Gilmore understood that the body would be transferred from SRCI to a mortuary before the end of the day.

31. Salchenberger contacted the OSP and spoke to the on-call officer, Detective Damian Acosta. After discussing the circumstances of the death, Salchenberger and Acosta agreed that an investigation was necessary before OSP could release the body from SRCI.⁵ Salchenberger did not inform Gilmore or Nooth of the change in the status of the death.

32. When Salchenberger reached Acosta, the detective was at a social function at which he had consumed alcohol. Acosta believed it was therefore inappropriate for him to come to SRCI to

³Prompt removal of a dead body from the prison is a priority even if the facility is in lockdown status.

⁴A pseudonym.

⁵Although Doe's death was apparently observed by prison staff, the onset of the medical episode that led to his death was not, and the parties do not dispute that the death was properly considered subject to investigation. The Department does not contend that Salchenberger acted inappropriately in changing the treatment of the death from one witnessed by staff to one not witnessed by staff.

conduct that investigation until the following morning. Accordingly, Acosta asked Salchenberger whether SRCI had a place to hold the body until that time.⁶ This was an unprecedented request. Salchenberger told Acosta that he had a refrigerated location in which he could hold the body. In jest, Acosta told Salchenberger that the refrigerated location would be acceptable to store the body overnight, so long as lunches/food items were moved out of the way, and both men laughed. Acosta did not know that the “refrigerated location” mentioned by Salchenberger was an infirmary food cooler. Acosta told Salchenberger that he would conduct the investigation the following morning. Based on his past experience, Acosta expected that he would find Doe’s body in a room in the prison in a secure area screened off by a curtain and a notice to staff who passed by.⁷ Had Salchenberger told Acosta that the prison could not hold the body, Acosta would have called his sergeant and figured out an alternative plan.

33. Salchenberger decided to put Doe’s body in the infirmary food cooler.

34. The infirmary food cooler was used to store food for infirmary patients. It was also used to store special food for patients with diabetes or with Hepatitis C. It is a walk-in cooler approximately six feet wide and eight feet deep, with food stored on shelving on its walls. The lockable, windowed door to the cooler opens off of the infirmary kitchen, next to an area designed for food preparation, which itself is part of SRCI’s Central Medical Facility. The medical facility is staffed by RNs and inmate orderlies.

35. Salchenberger argued in his disciplinary proceedings that the structure that is currently the infirmary food cooler⁸ was used to store cadavers before the previous facility was significantly expanded to become SRCI. Even if true, there is no evidence that this cooler had been used for cadavers or medical waste or anything besides food since SRCI was created in the early 1990s, or in Salchenberger’s entire term of employment there.

36. Salchenberger directed Officer Lane Gekeler to remove food from the cooler, place the body inside, padlock the cooler door, and place an evidence log sheet on the locked kitchen door.⁹ Salchenberger did not consult his SRCI superiors regarding the situation before giving the order to place the body in the food cooler. The record does not reveal Salchenberger’s motive for failing to do so.

⁶Salchenberger does not contend, and there is no evidence in the record, that Acosta had the authority to decide what Salchenberger or SRCI should do with Doe’s body except not to release it to a third party before an OSP investigation.

⁷Hannon’s experience was that the body would be placed in a room with a staff member stationed outside the door.

⁸Because Salchenberger did not testify, the record contains scant basis to evaluate his credibility regarding this alleged belief or its source.

⁹The record is unclear regarding where the evidence log was located, or whether it was moved. These uncertainties are not material to the result in this case.

37. Doe's body was on a rolling gurney covered with a white bedding sheet. Although vomit was visible on Doe's beard before he was covered, no bodily fluids were visibly emitting from the body at the time it was covered or afterwards. The structure of the gurney was such that no bodily fluids could escape from beneath the body.

38. Gekeler removed only the food that was not in sealed containers, placing it in the kitchen prep area outside the cooler. He left food that was in sealed containers in the cooler, as well as some oranges. Gekeler then rolled Doe's body into the cooler, locked it and placed an evidence log on the door of the also-locked kitchen door. Doe's covered body was visible through the cooler door's window, as were oranges and other food items.¹⁰

39. Salchenberger was present in the Central Medical area at the time that he ordered Doe's body to be placed in the food cooler. Salchenberger did not personally inspect the cooler or the surrounding area until the next morning when Acosta arrived. Salchenberger did not assign another supervisor to oversee the body that night.

40. The only person with a key to the outer kitchen door, which led to the cooler, was the Infirmary Officer stationed around a corner in the hallway approximately 40 feet from the outer kitchen door. After the body had been placed in the cooler, Salchenberger called Steve Brown, who was acting as OD, to notify him that the body had been placed in the food cooler. Salchenberger did not call any other prison administrative staff regarding his decision. Brown knew Salchenberger had been in contact with Gilmore and Nooth regarding the death and assumed Salchenberger had their permission to place the body in the food cooler.

41. Shortly after the body was placed in the food cooler, an SRCI RN called Chris Kimball, Acting Nurse Manager. The RN told Kimball that Doe's body in the food cooler was causing a great deal of concern with the infirmary nursing staff and inmate orderlies and wanted to know what Kimball was going to do about it. The staff were troubled by the unusual situation and the fact that food was stored in the cooler. Later that night, Kimball received another call from an RN concerned about the situation based on the fact that he knew the cooler was designed and used to store food. Kimball told the RNs that Security staff had placed the body in the cooler, and that he deferred to Security staff judgment on the matter.

42. Brown arrived at the prison at 10:15 p.m. to conduct his rounds as OD. Salchenberger did not tell Brown about the circumstances of Doe's death or his reasoning for placing the body in the cooler before leaving at the end of his shift. During Brown's shift, several Correctional Lieutenants expressed concern about the decision to store the body in the food cooler, and Brown decided to confer with Gilmore. Some inmates also talked about the decision and expressed concern.

¹⁰Gekeler was not disciplined for failing to remove the remaining food.

43. When Brown told Gilmore about the situation, Gilmore was shocked. She told Brown that the body could not be stored at the prison and directed him to call a Medical Services manager. Brown did so, and Dr. Steve Shelton, Corrections' Medical Director, told him that the body could not be stored at the prison for a number of reasons, including sanitation.

44. Brown viewed the cadaver through the cooler door window. He saw oranges and sandwiches in the cooler with the body. He then updated Gilmore. Gilmore decided that because it was close to 12:00 a.m., because the damage resulting from Doe's body storage had been done, and because OSP had already arranged to conduct the investigation the next morning, it was best to leave the body in the cooler until the next morning. Gilmore did not contact Nooth about the situation, and received a verbal statement of expectations (which was noted in her personnel file) for that omission.

45. Overnight, prison staff signed the evidence log and entered the kitchen area to retrieve sack lunches for inmate orderlies, and to obtain utensils and napkins for the infirmary inmate breakfast.

46. The next morning, Acosta entered the cooler. He was shocked that Salchenberger had actually placed the body in a food cooler and shocked to see food on the shelves. He observed that a foul odor had filled the cooler. Acosta completed the investigation and released the body on behalf of OSP. The body was then removed from the cooler and the prison.

47. After the body was removed, prison staff disposed of the food present in the cooler and thoroughly sanitized the cooler following bodily-fluid-cleanup procedures. Gilmore directed that the cooler not be used for food until it was approved for food storage by the Oregon Health Department, which occurred on Monday, March 5.

Investigation

48. At the end of February or beginning of March 2012, Gilmore requested that Hannon conduct an investigation of Salchenberger's failure to contact and meet with the four managers as he had been directed. Hannon interviewed Salchenberger about the matter on March 5. In the meantime, Gilmore learned that Salchenberger had missed the March 1 mandatory captains' meeting and directed an investigation into that matter as well. Gilmore cancelled her scheduled March 5 performance plan meeting with Salchenberger pending the outcome of the investigations.

49. On March 13, the Department issued a letter of reprimand to Salchenberger concerning the missed captains' meeting and manager contact assignment. That discipline was withdrawn so that the three disciplinary issues could be addressed together.

50. Salchenberger was resolute throughout the disciplinary process that his conduct was appropriate or excused and warranted no discipline.

51. In determining the amount of discipline to impose on Salchenberger, Gilmore and Nooth considered his employment history and generally positive performance as mitigating factors. They also considered whether his lengthy experience and recent actions supported a conclusion that he was unwilling to provide a level of performance commensurate with that experience and the expectations of a manager at the prison. They considered removing Salchenberger from management services. They concluded that an economic sanction was appropriate discipline to motivate Salchenberger to focus on the changes sought.

52. On July 13, 2012, the Department issued a one-week suspension to Salchenberger regarding all three incidents.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and subject matter of this dispute.
2. The Department's one-week suspension (without pay) of Salchenberger did not violate ORS 240.570(3).

Standards for Decision

Management service employees are subject to a range of discipline, including suspension, "if the employee is unable or unwilling to fully and faithfully perform the duties of the position satisfactorily." ORS 240.570(3). The employer has the burden of proving that its discipline was consistent with ORS 240.570(3). OAR 115-045-0030(6). The employer meets its burden of proof if this Board determines, under all of the circumstances, that its actions were "objectively reasonable." *Brown v. Oregon College of Education*, 52 Or App 251, 260, 628 P2d 410 (1981); *Lucht v. State of Oregon, Public Employees Retirement System*, Case No. MA-16-10 at 24 (December 2011); *Morisette v. Children's Services Division*, Case No. 1410 at 23 (March 1983).

In applying the "objectively reasonable" standard to management service discipline cases, an employer may hold a management service employee to strict standards of behavior, so long as these standards are not arbitrary or unreasonable. *Lucht* at 23; *Helper v. Children's Services Division*, Case No. MA-1-91 at 22 (February 1992). A significant factor for this Board's consideration is

"the extent to which the employer's trust and confidence in the employe have been harmed and, therefore, the extent to which the employe's capacity to act as a member of the 'management team' has been compromised. In addition, [our precedent] give[s] weight to the effect of the management service employe's actions on the mission and the image of the agency and the extent to which those actions do or do not reflect the proper use of judgment and discretion." *Lucht* at 24, citing *Reynolds v. Department of Transportation*, Case No. 1430 at 10 (October 1984).

Management service disciplinary action is reviewed under a two-step process. *Lucht* at 25. First, because a reasonable employer is one who “disciplines employees in good faith and for cause,” the employer must first prove the charges that are the basis of the discipline. *Id.*, citing *Smith v. State of Oregon, Department of Transportation*, Case No. MA-4-01 at 8 (June 2001). The employer need not prove all of the charges on which it relies. *Lucht* at 25; see also *Ahlstrom v. State of Oregon, Department of Corrections*, Case No. MA-17-99 at 15 (October 2001). Second, the employer must demonstrate that the level of discipline imposed was objectively reasonable. *Lucht* at 25. A reasonable employer “imposes sanctions that are proportionate to the offense; considers the employee’s length of service and service record; and applies the principles of progressive discipline.” *Id.*, citing *Smith* at 8-9. However, a reasonable employer may not be required to use progressive discipline “where an employee’s offense is gross or the employee’s behavior probably will not be improved through progressive measures.” *Lucht* at 25, citing *Peterson v. Department of General Services*, Case No. MA-9-93 at 10 (March 1994).

Here, the Department suspended Salchenberger for one week for: (1) failing to meet with the four managers for feedback; (2) failing to attend a mandatory captains’ meeting without calling in first; and (3) failing to properly handle Doe’s corpse.

Salchenberger, while on a performance improvement plan, was specifically directed to arrange meetings with four managers during March 2012. The Department established that Salchenberger made, at best, a minimal attempt to arrange those meetings in March, if he made any attempt at all. Although his vacation schedule and the press of work could explain delays in the date those meetings actually took place, those factors do not explain Salchenberger’s failure to take any concrete steps to arrange those meetings as directed or his failure to report problems with the process to Gilmore. It is apparent that Salchenberger assigned an unjustifiably low priority to completing his assigned task. The Department established that Salchenberger failed to meet with the four managers, as directed.

After missing a mandatory captains’ meeting in February, and being specifically instructed to attend the meetings or call in as absent in advance, Salchenberger missed the March meeting, and called in to someone besides his supervisor, more than two hours after the meeting started. Salchenberger defends his conduct by arguing that the meetings were not mandatory because they were on his day off, a contention that the Department rebutted. Salchenberger also defended his conduct by stating he needed to care for a pet in the post-surgery process. Whether or not Salchenberger’s supervisor would have accepted that rationale is, however, irrelevant because Salchenberger failed to call in to provide that rationale before the meeting. The Department established that Salchenberger failed to attend a mandatory captains’ meeting, without calling his absence in beforehand.

Salchenberger made a series of errors in the handling of Doe’s corpse. The most significant of these were: (1) simply accepting that the prison would hold the corpse overnight without further inquiry or action; (2) directing that the corpse be put in the infirmary food cooler; and (3) failing to inform his superiors of his planned actions.

Salchenberger argues that he complied with the necessary steps required after an inmate death, such as advising his superiors and the OD, and that his actions did not violate any rule. Whether or not his actions violated Department and prison rules regarding standards of conduct and modeling appropriate social behavior, his role as the individual in charge of a prison of 3,000 inmates required more than just not violating those rules. Salchenberger's position required him to appropriately address unforeseen situations that were not explicitly provided for in prison work rules. Salchenberger was confronted with an unprecedented problem—having OSP decline to respond to investigate an inmate's death until the next day—and chose not to inform or consult with his superiors. Salchenberger then created an unprecedented solution—having Doe's body moved to the infirmary food cooler—and again chose not to inform or consult with his superiors. The choices to hold the body overnight, and to do so in the food cooler, were significant examples of poor judgment that caused unnecessary drama and staff discomfort in a prison with 3,000 inmates.

Although Salchenberger vigorously asserted that his actions reflected no disrespect to Doe and his remains, Salchenberger appeared to lack the understanding that others could reasonably disagree. Moreover, his decision not to inform or consult with his supervisors, in light of his previous conduct, reflected a disregard of his place in the chain of command. The Department established that Salchenberger improperly handled Doe's corpse.

In sum, we conclude that the Department established each of the three allegations that formed the basis of Salchenberger's one-week suspension. In reaching that conclusion, we acknowledge, but disagree with Appellant's contention that the Department's investigation was not sufficiently accurate or complete to justify the three allegations. Although the record establishes that some investigative reports contained minor inaccuracies, those inaccuracies do not undermine the fundamental facts that motivated the Department's suspension. Moreover, the Department's investigation included multiple interviews with Salchenberger, as well as a written response by him, which did not meaningfully dispute the three aforementioned allegations.¹¹ Finally, the Department's notice of pre-disciplinary action set forth the three charges that formed the basis of the suspension, such that Appellant was provided adequate notice of the basis for the discipline. In sum, we find that the Department's investigation was sufficient, and that, in any event, Salchenberger was not prejudiced by any deficiencies in that investigation.

Reasonable employer

Having concluded that the Department proved each of the allegations that formed the basis for its discipline, we turn to the issue of whether the Department's imposition of a one-week unpaid suspension was the action of a reasonable employer.

¹¹For example, Salchenberger acknowledged that: (1) he, and not Acosta or the OSP, made the decision to put the inmate's corpse in the infirmary cooler; (2) he missed the captains' meeting; and (3) as of March 5, 2012, he had not yet arranged to meet with the four managers regarding his performance.

Performance expectations

Salchenberger was aware that he was to meet with four managers by the first week of March 2012 as part of his performance improvement plan. He was also aware that he was to attend the mandatory March captains' meeting or call his superior officer in advance of the meeting if he could not attend. Salchenberger was also aware that his emotional intelligence and judgment were in question, that the situation created by Doe's death and the OSP's delay was unprecedented, and that he could consult with his superior officers in handling the situation. He also knew the OAM and his status as a role model in the institution for subordinate staff and inmates. Salchenberger's actions fell below the level of performance that he knew or should have known that the Department expected of him.

Length of service

The Department considered Salchenberger's length of service and performance record. That length of service cuts both ways in this case. Salchenberger was a long-term well-trained employee who had provided generally good performance in the past. On the other hand, Salchenberger's length of service and experience should have heightened his (1) awareness of the need for calling in before missing the captains' meeting; (2) awareness that the prison did not store bodies and did not store them in the infirmary food cooler; and (3) awareness that he could and should involve his superiors in decisions regarding the unique events surrounding Doe's death.

Effect on the Department

It is apparent that Salchenberger's decision making was not helpful to the mission and the image of the Department and did not reflect a proper use of judgment and discretion. Whatever Salchenberger's own opinion of whether it was appropriate to treat Doe's body in this fashion, he knew or should have known that his actions would cause staff and inmate confusion and concern, would reflect negatively on the professionalism and competence of prison staff, and would undermine the efforts behind the OAM.

Proportionality of the discipline

The Department summarizes its view of the level of discipline as follows:

"After considering the facts and Appellant's rationalizations for his behavior, SRCI management legitimately felt Appellant needed the one-week suspension to get his attention regarding the seriousness of his performance deficiencies over the short period of time in question. Even in the midst of a performance improvement plan, Appellant exhibited an unacceptable casualness about attending mandatory meetings and was unable to follow through on a simple assignment designed to help him improve his performance. Appellant also lacked the judgment necessary to appropriately handle the inmate death on March 3. These are issues in Respondent's perspective that cannot be tolerated from any employee, let alone an experienced

Captain charged at times with maintaining the safety and security of the entire institution and setting an example for lower level staff.” (Respondent’s post-hearing brief at 19.)

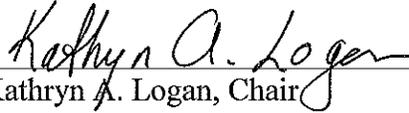
Salchenberger’s failure, throughout the disciplinary process, to acknowledge any errors in prioritizing his activities, communicating with his superior officers, and appropriately handling the situation regarding Doe’s body, support the Department’s theory that a significant level of discipline was required to get Salchenberger’s attention.

This Board concludes that, under all the circumstances of the case, the Department’s imposition of a one-week suspension on Appellant is “objectively reasonable,” and we will dismiss the appeal.

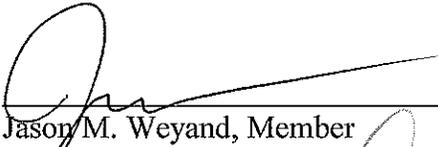
ORDER

The Appeal is dismissed.

DATED this 3 day of July 2013.



Kathryn A. Logan, Chair



Jason M. Weyand, Member



Adam L. Rhynard, Member

This Order may be appealed pursuant to ORS 183.482.