

1. Findings of Fact

1.1 Applicable DOC Work Rules

Fuller was disciplined for violating the following provision of DOC General Rules of Employee Conduct, AD-PR-11:

H. Professional Demeanor

6. Obey a supervisor's lawful orders. Instructions that the employee believes unnecessarily jeopardize health and safety regulations must be immediately reported to an authority higher than the person giving the directive.

Fuller's discipline letter also cited several provisions of Management Philosophy and Goals policy, AD-GA-01. The record contains a copy of this policy with an effective date of May 2021. The policy's stated purpose is "to describe the management philosophy of the Iowa Department of Corrections (IDOC) and Community-Based Corrections (CBC) as the Iowa's Corrections System." Of the AD-GA-01 provisions referenced in Fuller's discipline letter, only one provision is actually contained in the May 2021 version of the policy. That provision states:

E. Guiding Principles

8. Staff Recruitment and Development

Establish and maintain a highly skilled workforce that value strong ethics, integrity, diversity, and a high degree of professionalism.

Fuller's discipline letter also referenced and contained the language of the following provisions, said to be contained in AD-GA-01.

7. Respect for Others:

F. Staff should model behavior that we expect of others.

a. Ground rules for working together, we shall:

iv. Deal with each other responsibly and take ownership of our behavior.

vii. Use the chain of command for communications and problem-solving.

Upon review of the AD-GA-01 policy that was in effect as of May 2021, these provisions are not part of it.

1.2 Background Information

Fuller is employed by the DOC as a correctional officer (CO) at ISP. He began his employment with the DOC in July 2010. His regular shift hours are 9 p.m. to 7 a.m. Fuller's work performance has been satisfactory and rated as meeting and exceeding expectations on his annual employee performance evaluations. He has not been previously disciplined during his twelve-year tenure with the DOC.

Fuller's one-day suspension at issue here involves a refusal to work mandatory overtime. The DOC has minimum staffing levels for every shift. Adequate staffing levels are critical to ensuring the overall security inside the prison and safety of staff and incarcerated individuals. The shift supervisor is responsible for adequately staffing his shift. When additional staff is needed, the shift supervisor may mandate an officer from the prior shift to work overtime until that officer can be properly relieved. The institution goes through a list of employees in order when mandating overtime. When an employee fulfills an overtime mandate, they go to the bottom of the mandate list.

While adequate staffing is necessary to the operation of a correctional facility, the institution is also cognizant that overtime mandates interfere with the employees' schedules and obligations outside of the institution. As such, the common practice at ISP is for the shift supervisor to work with the mandated

employee if they have a conflict with working past their scheduled shift. Depending on the nature of the conflict and staffing needs, the shift supervisor will work with the officer to accommodate around the conflict. Some possible accommodations around the mandate may include the officer being allowed to leave the mandated shift early, or working before and after other scheduled appointments or obligations. State witness testimony indicates that mandate refusals are not a common occurrence at the institution.

The shift captain may also skip an employee for mandated overtime if the employee provides a “legitimate reason” for not being able to fulfill the mandate on that particular day. The shift supervision has the discretion to determine what constitutes a “legitimate reason,” and can excuse an employee from the mandate directive. In such cases, although the employee is technically refusing to work the mandated hours, the refusal is authorized by the shift supervisor. The skipped employee generally would be the first in line the next time an employee is needed to work a mandate. The skipped employee is not subject to discipline.

Documentation in evidence provides some insight into how the institution has handled authorized leave for the purpose of attending medical appointments. The record contains a copy of sixteen daily schedule rosters for first-shift from February 1 to April 6, 2022. This roster is of employees who were regularly scheduled to work that shift. The roster shows that employees are allowed to attend medical appointments during their regularly scheduled shift. Some employees arrived late due to an early appointment, others worked before and

after their appointments, and some were excused to leave at a specific time for an appointment and did not return.

The record also contains a document titled “employee mandate skip list.” This is a list of employees who were skipped for mandates between June 7, 2021, to April 6, 2022. This is not an official DOC document, but was compiled by the union based on the information available to it. The State did not dispute the accuracy of the information contained on the “skip list.” The list has a total of forty-four employees who were skipped for mandatory overtime during the specified time period. In twenty-eight of those instances, the employee was skipped for an overtime mandate due to a doctor appointment either for themselves or their children. Other reasons for skipping an employee included childcare obligations, employee illness, attorney appointments, court, or realtor meetings. On this “skip list,” Fuller does not appear as an employee who was skipped for mandatory overtime during that specific time period.

1.3 Incident Underlying Discipline

Fuller was scheduled to work on June 6, 2021, for his regular shift from 9 p.m. to 7 a.m. He was assigned to work master control. When he arrived to work, the shift supervisor was Captain Jeremy Engeman. Fuller informed Engeman at the start of his shift that his daughter had doctor appointments on June 7, and he would not be able to work overtime. Engeman told Fuller to inform the first shift supervisor, Captain Charles Hixson, of the appointments. When Hixson arrived at the institution around 1 or 2 a.m., Fuller called Hixson and told him the same information regarding his daughter’s appointments. Hixson indicated it would not

be a problem since he let him know early. Around 6 or 6:30 a.m., however, Hixson called Fuller and stated he is mandating him to work overtime. As discussed below, some discrepancy exists regarding the precise conversation and tone used during their exchange. The record is undisputed, however, that Fuller did not stay to work mandatory overtime on June 7. He left the facility at the end of his scheduled shift at 7 a.m. after he was properly relieved in master control by another officer.

At 6:40 a.m., Hixson wrote an email to his superiors reporting that two employees refused to be mandated. Pertaining to Fuller, Hixson stated:

CO Lucas Fuller refused to be mandated for 6-2 shift citing he had to take his daughter to a medical appointment. When asked what time the appointment was scheduled for, he stated he needed to call this morning and set up a time so his daughter could have labs done. When asked what time he needed to call to set the appointment up, Fuller stated 8AM or 9AM and the appointment would be later in the afternoon. When I told him he could work until her appointment time, Fuller instantly became argumentative and went into a tirade about how it was not his fault administration can't keep this place fully staffed and how I can't mandate him when a family has a doctor's appointment ... And on and on and on. I told him I wasn't going to argue, I only needed to know if he was going to work or not. If not I would pass his refusal on to [deputy warden], along with advising him that by refusing he was subjecting himself to possible discipline.

Hixson also reported in the same email that another CO, officer JC, refused to be mandated. Hixson described that officer JC was initially agreeable to work the mandate, but once Hixson informed him which housing unit was left to fill, the CO refused to stay. Officer JC used profanity when he expressed his refusal to work the mandate. The officer stated that his back hurt and he would be unable to do the showers required in his assigned unit. Hixson stated he would get an activities officer to do the showers, but the CO continued to refuse the mandate. Officer JC indicated he would take leave for a pre-approved FMLA condition. This officer was

disciplined with a one-day suspension. Undisputed testimony reveals this officer's one-day suspension was subsequently reduced to a written reprimand.

1.4 Investigation

ISP determined the June 7 report warranted further investigation. ISP conducted an investigatory interview with Fuller on July 7, 2021. The complaint investigated was Fuller's refusal to follow Hixson's mandate directive.

When asked whether he followed Hixson's mandate, Fuller responded "not exactly" and added "I did not stay, no." He acknowledged the directive given to him was to stay for the mandate. When asked why he did not follow the directive, Fuller explained that he had already talked to Hixson earlier in the shift that he cannot stay past his shift because his daughter had labs and a doctor's appointment. Fuller stated that Hixson did not indicate any issue with him leaving at the end of his scheduled shift. Around 6 a.m., however, Fuller stated that Hixson called him and told him he had to stay. Fuller reminded Hixson that he already said it was alright when he informed him earlier that he had to leave for his daughter's appointments. He stated Hixson was aware of the reason he could not stay for the mandate.

When asked whether he gave Hixson the specific time of the appointment, Fuller stated he informed Hixson that he first had to take his daughter to get labs done and that the laboratory opens at 8.am. After labs, he informed Hixson that he had to take her to a doctor's appointment afterward. Fuller denied that he told Hixson he had to call the doctor to make the appointment. Fuller stated he already

spoke to the doctor about setting up labs, and the appointment after labs was to discuss the result and a future plan of action for his daughter's medical treatment.

When asked what he understood following a supervisor's directive to mean, Fuller stated it was to do what his captain told him to do. Fuller stated he did not contact any other supervisor after his disagreement with Hixson about the directive. Fuller stated he turned in a medical slip corroborating that he took his daughter for a medical appointment on June 7. The initial slip Fuller provided, dated June 7, indicated he was seen and that he may return to work on the same day (no restrictions). Fuller obtained another note from the doctor, dated July 12, which stated Fuller was seen at the doctor's office on June 7 for his daughter's medical condition.

During his interview, Fuller expressed frustration at the situation, highlighting that Hixson told him four hours prior to his mandate directive that he had the appointments. Fuller alleged disparate treatment by Hixson, stating that he skipped employees that were ahead of him for mandates and their reasons were not an issue. Fuller stated he did not recall Hixson giving him an option to come back after the appointment. He also did not recall stating that it was not his fault that administration is unable to keep the institution fully staffed. Fuller described Hixson as upset during their conversation.

Fuller's investigatory interview was the extent of the investigation. ISP did not interview Engeman, Hixson, or any other employee as part of the investigation.

Hixson testified at hearing. He maintains that Fuller never gave him enough information to be able to accommodate his appointment. Hixson states that Fuller

only told him he needed to set up a lab appointment for his daughter. When he offered to relieve him to make a phone call to set up the appointment and work until the appointment, Hixson testified Fuller balked at that idea and went into a tirade about the institution's inability to keep it staffed. Hixson testified that Fuller made it clear he would not stay past his scheduled time and he went to the next person on the mandate list. Hixson acknowledged that when he first arrived to work, Fuller or Engeman, or both, mentioned that Fuller had a doctor's appointment, or needed to schedule an appointment, for his daughter that day. Hixson did not recall it in detail, citing that the incident occurred over a year prior.

Fuller testified that he lives approximately 45 minutes from the institution. He maintains that he needed to take his daughter to get labs done and then to a doctor's appointment after that, and that he advised Hixson of the same. He further testified that he told Hixson the laboratory did not open until 8 a.m. Fuller argues he could not have gotten labs done if he stayed. He claims he provided Hixson with sufficient information on the appointments. Fuller testified three other people were ahead of him on the mandate list, and they all refused to work the mandate before Hixson called him. Fuller testified that he made it clear to Hixson that he was unable to stay because of those appointments, and that he left master control only after being properly relieved. He further highlighted that he made sure that both shift captains were aware of the appointments well in advance.

1.5 Discipline Decision

ISP determined that Fuller's mandate refusal on June 7 warranted discipline as the institution considers this a failure to follow a reasonable work

directive. Fuller was given a one-day paper suspension on July 14, 2021, for violations of the DOC policies recited above. The factual basis for the discipline, as outlined in the discipline letter stated:

An investigatory interview was held with you on July 7, 2021 to discuss the directive by the Shift Captain that you would be mandated for the 6a-2p shift on June 7, 2021. The investigation revealed that you refused the directive on June 7, 2021 and did not stay for the day shift.

As a result of you not following the directive by the Shift Captain, you are being issued a letter of suspension.

Evidence in the record reveals that a total of four officers refused to work mandated overtime on June 7. Three of those officers received one-day suspensions, including Fuller and officer JC, discussed above in Hixson's initial email about the incident. Undisputed testimony reveals that officer JC's one-day suspension was subsequently reduced to a written reprimand. The record does not reveal any information about the third officer that was disciplined.

The record reveals that one officer, CO JN, also refused the overtime mandate on June 7 but was "authorized" not to fulfill her mandate that day. Hixson testified that when he contacted officer JN, she advised him she had an appointment with her attorney that day for an upcoming court proceeding. He understood the proceeding was coming up soon, and she did not have time to reschedule the attorney appointment. Hixson determined this was a legitimate reason to excuse her from having to work mandatory overtime. As a result, officer JN was not disciplined for refusing to work the mandate on June 7. Hixson testified the distinction between officer JN and Fuller on that day, is that officer JN provided him with a valid reason for being unable to work, a clear time, exhibited

“professional” behavior during their conversation, and offered to work the next mandate. Nothing in the record indicates that JN provided, or that Hixson inquired, about the time of her attorney appointment or whether she was asked to work before and after it. When asked whether Fuller was offered the opportunity to instead work a mandate the following day, Hixson testified that Fuller was offered to work the mandate the day that he was mandated for, June 7.

2. Issue Presented and Summary of Arguments

The issue in this case is whether the DOC has just cause to discipline Fuller with a one-day suspension for his actions on June 7, 2021. The specific aspects of just cause in contention in this appeal are whether Fuller had notice of the applicable work rules, whether the DOC conducted a fair and thorough investigation, and whether the imposed discipline was warranted or in line with the principles of equal treatment.

Fuller acknowledges that employees must follow supervisor’s orders and that he did not stay for his mandated shift. However, he argues that he was disparately treated on June 7, 2021, because other employees are regularly skipped for mandates without discipline if they can demonstrate their absence is due to a medical appointment. Fuller further contends that he made both shift supervisors aware in advance of the upcoming conflict that would prevent him from working a mandate that day. He maintains that he provided sufficient information about his medical appointments. Furthermore, Fuller asserts that other employees that day were skipped without discipline. Fuller maintains that the situation on June 7 did not warrant discipline, and is not in line with how other

employees have been treated when they need to skip a mandate due to a medical appointment.

The State maintains it had just cause to discipline Fuller. ISP contends Fuller refused to work his mandate. The State claims Fuller was given an opportunity to work around his conflict and accommodate the appointment that he had, but chose not to provide adequate details about the appointment to allow the shift supervisor to accommodate his schedule. He instead derided the facility's ability to adequately staff shifts, and unilaterally chose to leave prior to the mandated shift even after being warned that his refusal may result in discipline. If dissatisfied, ISP contends Fuller should have taken his issue up the chain of command but he instead chose to refuse the mandate. The DOC has a crucial need to adequately staff its shifts, and an employee taking it upon themselves to leave without clear authorization undermines the institution's ability to manage its staffing needs. As such, discipline is warranted and a one-day suspension is in line with the how it has disciplined other employees for failing to follow work directives.

3. Conclusion of Law and Analysis

Fuller filed the instant state employee disciplinary action appeal pursuant to Iowa Code section 8A.415(2), which states:

2. Discipline Resolution

a. A merit system employee . . . who is discharged, suspended, demoted, or otherwise receives a reduction in pay, except during the employee's probationary period, may bypass steps one and two of the grievance procedure and appeal the disciplinary action to the director within seven calendar days following the effective date of the action. The director shall respond within thirty calendar days following receipt of the appeal.

b. If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board. . . . If the public employment relations board finds that the action taken by the appointing authority was for political, religious, racial, national origin, sex, age, or other reasons not constituting just cause, the employee may be reinstated without loss of pay or benefits for the elapsed period, or the public employment relations board may provide other appropriate remedies.

The following DAS rules set forth specific discipline measures and procedures for disciplining employees.

11—60.2(8A) Disciplinary actions. Except as otherwise provided, in addition to less severe progressive discipline measures, any employee is subject to any of the following disciplinary actions when the action is based on a standard of just cause: suspension, reduction of pay within the same pay grade, disciplinary demotion, or discharge. . . . Disciplinary action shall be based on any of the following reasons: inefficiency, insubordination, less than competent job performance, refusal of a reassignment, failure to perform assigned duties, inadequacy in the performance of assigned duties, dishonesty, improper use of leave, unrehabilitated substance abuse, negligence, conduct which adversely affects the employee's job performance or the agency of employment, conviction of a crime involving moral turpitude, conduct unbecoming a public employee, misconduct, or any other just cause.

The State bears the burden of establishing that just cause supports the discipline imposed. *E.g., Stein and State of Iowa (Iowa Workforce Dev.)*, 2020 PERB 102304 at 16. In the absence of a definition of "just cause," PERB has long considered the totality of circumstances and rejected a mechanical, inflexible application of fixed elements in its determination of whether just cause exists. *Id.* at 15. In analyzing the totality of circumstances, the Board has instructed that the following factors may be relevant to a just cause determination:

While there is no fixed test to be applied, examples of some of the types of factors which may be relevant to a just cause determination, depending on the circumstances, include, but are not limited to:

whether the employee has been given forewarning or has knowledge of the employer's rules and expected conduct; whether a sufficient and fair investigation was conducted by the employer; whether reasons for the discipline were adequately communicated to the employee; whether sufficient evidence or proof of the employee's guilt of the offense is established; whether progressive discipline was followed, or not applicable under the circumstances; whether the punishment imposed is proportionate to the offense; whether the employee's employment record, including years of service, performance, and disciplinary record, have been given due consideration; and whether there are other mitigating circumstances which would justify a lesser penalty.

Id. PERB also considers how other similarly situated employees have been treated.

E.g. Kuhn and State of Iowa (Comm'n of Veterans Affairs), 04-MA-04 at 42.

The presence or absence of just cause rests on the reasons stated in the disciplinary letter provided to the employee. *Eaves and State of Iowa (Dep't of Corr.), 03-MA-04 at 14.* To establish just cause, the State must demonstrate the employee is guilty of violating the work rule, policy, or agreement cited in the disciplinary letter. *Gleiser and State of Iowa (Dep't of Transp.), 09-MA-01 at 17-18, 21.*

3.1 Notice of Applicable Work Rules

Fuller had notice that employees are expected to follow a supervisor's work directives, and acknowledges he is subject to this work rule. As such, the State has established that Fuller had notice that his failure to follow a directive may result in discipline.

The discipline letter also had several references to policy AD-GA-01, Management Philosophy and Goals. As an initial matter, the State has not shown that Fuller is subject to this policy. By the policy's title and stated purpose, it appears to be a policy intended as a guide for management.

Furthermore, only one out of the four provisions cited in the discipline letter is actually contained in the AD-GA-01 policy as it existed in May 2021. As such, even if the State can establish the policy applied to Fuller, those three provisions were not part of the policy at the time he was disciplined. The sole provision that appears in the policy is a guiding principle for staff recruitment and development, which generally talks about management establishing and maintaining a workforce with a strong work ethic, integrity, and high degree of professionalism.

Finally, Fuller's discipline letter provides no basis as to how he violated the professionalism provision of AD-GA-01 on June 7. The DOC appears to argue that Fuller's tone and statements to his shift supervisor were unprofessional. However, this basis for discipline is not contained in the discipline letter. PERB has consistently held that the presence or absence of just cause rests on the reasons stated in the disciplinary letter provided to the employee. *Eaves*, 03-MA-04 at 14. In this case, Fuller's discipline letter does not indicate he was disciplined for his tone or perceived unprofessionalism during the conversation with his shift captain.

Under this record, the State has established that Fuller was subject to and had notice of the work rule requiring him to obey a supervisor's lawful orders. However, it has not established notice of policy expectations for the provisions of AD-GA-01 cited in the discipline letter, or notice that he was being disciplined for unprofessional tone or statements on June 7.

3.2 Fairness and Adequacy of Investigation

The State has not established that it conducted a fair and adequate investigation prior to the imposition of discipline.

The State's investigation in this case consisted of an interview with Fuller. Although Fuller made it known that he spoke to both Engeman and Hixson regarding his daughter's appointments, neither captain was interviewed. The information he provided to the captains is material to the issue being investigated. The inquiry here was not limited to whether Fuller worked the overtime mandate, as it was undisputed that he left after his regular shift ended. Instead, the critical inquiry of the investigation was whether Fuller provided adequate information about the appointments to the institution. When the inquiry is the extent or specificity of the information he provided to his supervisors, it is necessary for the investigation to include an interview with those supervisors he spoke to about the appointments.

At a minimum, the DOC should have interviewed Hixson prior to the imposition of discipline. It is apparent that shift supervisors have discretion to skip employees on the overtime mandate list for "legitimate" reasons and the employee will not be subject to discipline. In this case, Hixson made the determination that Fuller's situation did not present a legitimate reason to skip him, but instead required him to work at least a portion of the mandate. Hixson reported that he was willing to accommodate around Fuller's appointments, but that Fuller refused to provide specific information regarding appointment times that would enable him to work around that conflict. In his interview, Fuller disputed this assertion and maintained that he provided the shift captain with sufficient information about the appointments. In light of this material factual dispute, the DOC had, at a

minimum, an obligation to interview the shift captain that determined Fuller to be a mandate refusal.

In his interview, Fuller also alleged disparate treatment regarding the enforcement of the overtime mandate list. He specifically stated that several other employees were ahead of him on the mandate list on June 7, but that they received no consequences for refusing. Nothing in the record indicates that the DOC took any steps as part of its investigation to determine whether employees were disparately treated in terms of enforcing the mandate list. Fair and consistent enforceability of work rules is part of the just cause analysis, and the DOC had an obligation to investigate an allegation of disparate treatment prior to the imposition of discipline.

For the reasons discussed, the State has not shown it conducted a fair and adequate investigation in this case because it did not attempt to resolve material factual disputes underlying the reason for the discipline, and failed to make any inquiries about the consistency of the overtime mandate enforcement.

3.3 Penalty

The evidence is undisputed that Fuller did not stay for a mandated overtime shift after his shift supervisor informed him he was required to work the mandate. However, this is not the end of the inquiry when determining whether the employer had just cause to discipline the employee for the proven offense. One just cause factor particularly relevant in this case is how the institution has treated other employees in similar situations as Fuller had found himself on June 7.

As an initial matter, it is necessary to limit the analysis to the actual reason for Fuller's discipline. He was disciplined for not working an overtime mandate as directed by his shift supervisor. Fuller timely informed his supervisor he was unable to stay due to an appointment, and made it clear he would leave at the end of his scheduled shift. Fuller did not abandon or leave his assigned post until he was properly relieved by another officer. While the shift captain chose not to skip Fuller on the mandate list, the shift captain was fully aware Fuller could not stay and he was able to find alternate coverage before Fuller's shift ended.

The importance of following work directives is well established on this record. It is also well established that overtime mandates are necessary for the institution to maintain adequate staffing on each shift. While not disagreeing with the importance or reasonableness of these expectations, just cause requires that the employer enforce its rule in a consistent manner. Under the facts presented, the DOC has not demonstrated that its discipline of Fuller is in line with how other similarly situated employees are treated.

The DOC asserts that it generally disciplines employees with a one-day suspension for failing to follow a supervisor's directive. While this may be true, it only applies to those instances when the DOC determines to discipline the employee at all, as opposed to excusing them from the overtime mandate. Undisputed evidence in the record shows that shift supervisors regularly skip employees on the mandate list without consequences. For the ten-month period from June 2021 to April 2022, evidence in the record shows that shift supervisors skipped forty-four employees from their mandate obligation for a specific shift. The

employees were not disciplined for refusing a supervisor's directive because the shift supervisor authorized them not to fulfill their mandate on that specific date.

Furthermore, the record also credibly establishes that medical or doctor-related conflicts are a common reason for shift supervisors to authorize employees not to fulfill their overtime mandates. Twenty-eight out the forty-four authorized mandate skips during the ten-month period described were for doctor appointments for the employee or family members. Fuller's inability to work the overtime mandate on June 7 was for the same reason provided by the twenty-eight employees who were not disciplined.

Finally, evidence in record suggests disparate treatment in terms of how officers were treated specifically on June 7. Officer JC, who initially agreed to work, did not express that he had any conflicts with the mandated overtime hours. It was not until the officer learned his assigned post that he refused to work. This refusal to follow a work directive is meaningfully different from Fuller's situation, who had informed both shift captains in advance of his doctor-related conflicts, yet both officers received the same penalty.

The record is also undisputed that officer JN received no discipline as the shift captain determined her appointment with an attorney was a legitimate reason to skip her entirely. She presumably had a specific time set for her appointment. Under this record, however, there is no evidence that the shift supervisor inquired about time of the appointment, the duration of it, or whether officer JN can work before and after the appointment. Instead, she was authorized to not fulfill the mandate at all that shift. She was allowed to work the next mandated shift instead.

Fuller was not offered that option. Officer JN and Fuller were not treated the same on June 7, and this disparate treatment ultimately led to Fuller being disciplined, but not officer JN.

The analysis here does not in any way intend to undermine or question the importance of overtime mandates, obeying supervisor directives, or the necessity of the shift supervisor having discretion to make on-the-spot staffing decisions through mandates. However, just cause requires that the application and enforcement of work rules is consistently applied. For the reasons discussed, the DOC has not demonstrated that Fuller's discipline is in line with how similarly situated employees are treated in terms of enforcing overtime mandates.

3.4 Conclusion

Under the record presented, and following consideration of the parties' arguments, the State has not established that it had just cause to discipline Fuller with a one-day suspension. The investigation did not attempt to obtain additional information regarding material factual disputes Fuller raised in his interview. The investigation similarly failed to make any inquiry into Fuller's contention that he was disparately treated regarding the overtime mandate on June 7. Fuller raised both of these issues in his investigatory interview, and the DOC had an obligation to investigate further prior to the imposition of discipline. The record before the undersigned shows that Fuller's discipline is not in line with how similarly situated employees have been treated when they are unable to fulfill an overtime mandate due to medical appointments.

Consequently, I propose the following:

ORDER

The State of Iowa, Department of Corrections, shall rescind and remove the original and all copies of the notification of Lucas Fuller's suspension, as well as any other documentation of the suspension from all personnel files maintained concerning Fuller. The State shall take all other actions necessary to place Fuller in the position he would have been in had the State not issued a suspension on July 14, 2021. PERB retains jurisdiction of this matter in order to address any remedy-related matters which might arise and to specify the precise terms of the remedy.

The cost of reporting and of the agency-requested transcript in the amount of \$680.95 are assessed against the Appellee, State of Iowa, pursuant to Iowa Code subsection 20.6(6) and PERB rule 621—11.9. A bill of costs will be issued to the Appellee in accordance with PERB subrule 621—11.9(3).

This proposed decision and order will become PERB's final agency action on the merits of Fuller's appeal pursuant to PERB rule 621—11.7 unless, within 20 days of the date below, a party files a petition for review with the Public Employment Relations Board or the Board determines to review the proposed decision on its own motion.

DATED at Des Moines, Iowa this 18th day of November, 2022.



Jasmina Sarajlija
Administrative Law Judge

Electronically filed.
Served via eFlex.