**Union Closing Statement**

**Sherria Neel-Black**

**Grievance #DMH 2020-0216-07**

Arbitrator Cole,

The parties to this disciplinary dispute are the Ohio Department of Mental Health and Addiction Services (DMHAS), “Management” and the Ohio Civil Service Employees Association, Local 11, AFSCME (OCSEA), “Union”.

**The Joint stipulate issue presented:**

Was the Grievant Sherria Neel-Black removed for just cause? If not, what shall the remedy be?

When the Grievant was removed she was a Laboratory Technician 2 and had been employed at Heartland Behavioral Healthcare for 29 + years. There has never been any issue like this in the 29 plus years of Sherria Neel-Black’s service. She has worked in a one-man department since 1997 where she has never been sighted by capital JAACO, Medicare, or Medicaid for any violations. She has no history of physical aggression or violence. She's participated in codes, negotiations, discussions, and disagreements with peers and management. She has kept her peers and management breast of current developments and/or changes of Labor and management

The Grievant was charged with a violation a rule 4.1 -Failure to follow policies and procedures and 3.3 - Dishonesty. During the pre-disciplinary meeting Union raised several objections and requested video footage of outside the area where the incident occurred. The alleged victim and Witness Esther Townsend stated they left the room prior to the Grievant. The video contradicts their statements. The Union would point out that Ms. Sampsel and Ms. Townsend had written notes during their investigatory interview which is indicated in the investigator’s summary. Said notes were requested by the Union but they were not provided. The Union also requested the personal communication device (VOCERA) report. The Union was told that the video and the VOCERA report, along with handwritten notes would be provided after the pre-disciplinary meeting. The Union also asked for Olivia Sampsel’s Incident Report (IR) and was informed it would not be made available. It was not until arbitration that the Union was provided a copy of the report for review, despite the fact it was the impetus for the charges which lead to the Grievant’s removal.

The state contends they had “eyewitnesses” to the incident, however aside from Olivia Sampsel - the Grievant's accuser, there was only one witness in the vicinity – Ester Townsend. Her statement about the incident varied based on the time of the day and to whom she was speaking. Other statements presented by the employer are hearsay, second-hand information, by individuals who had no personal or direct knowledge of the incident, but only that which was relayed to them.

The witness Townsend corroborates allegation of the Grievant double-tapping Ms. Sampsel on the face. Miss Townsend also stated she heard the Grievant tell Ms. Sampsel “I'm going to f\*\*\* you up.” However, at arbitration she appeared less than sure of what happened on the date of the incident. While she testified she was present during the entire incident, she made no effort to intervene or seek help.

Miss Boyd, who was on a VOCERA call with Ms. Sampsel did not hear the Grievant say “I'm going to f\*\*\* you up” The VOCERA is worn around the neck chest area where the user can press a button to call for help. Ms. Sampsel was on a call with Ms. Boyd. The hearing officer Donovan Workman stated only the voice of Olivia Sampsel could be heard by Amy Boyd. It became obvious at arbitration this was not true. We could all hear VOCERA’s capabilities. Even though the arbitration was held virtually, calls were made and could be heard via Zoom. The state did not call their Witnesses Amy Boyd or Bob Hobart to testify to their knowledge of VOCERA personal Communications device.

The administrative leave notice is not signed. The Grievant was terminated without just cause. The Grievant was also charged with dishonesty. She maintains she did not touch Ms. Sampsel’s face. The Grievant has been an employee for 29 years and has never had an issue involving putting her hands on a co-worker's face. The Grievant’s own statement throughout this process has never wavered. The Grievant was never asked to write and submit a statement during the investigation. The Union received the video, which contradicts the witness statements that Esther Townsend and Olivia Sampsel walked out of the office together. The Grievant denies double tapping with Sampsel’s cheek. The documentation stated the situation caused Ms. Sampsel to be enraged not the Grievant. The Union said this interaction has been distorted and overblown. Mike Dewitt’s statement (JE 5 pg. 0037) states, "At that point I called Olivia and ask her if she felt safe at work and she indicated that she did feel safe."

Ms. Townsend's statement included that Ms. Sampsel used her left arm to block the Grievant; however, she later said she was unable to see Miss Townsend block the Grievant.   Again, Miss Townsend never called for help. It is hard to believe that someone sat at their desk and didn't call for help if she had witnessed what she claims to have witnessed. The statement from Amy Boyd - Nurse Educator, says that she did not hear the Grievant say "I'm going to f\*\*\* you up" and she did not hear a scuffle. Ms. Sampsel says she immediately logged off from for VOCERA although VOCERA is the tool used to ask for help.

Union submits Miss Townsend and Ms. Sampsel didn't like the Grievant and wanted her gone. By the time the incident was reported - a day later, Ms. Sampsel had discussed her story with several people, including another Union (1199).

The Union asked to submit the Grievant’s statement and have it added to the preview packet. Union was informed they could have submitted the statement during the pre-d meeting as indicated in the pre-d notice. While it's untimely for that submission the Union would like it to be known that at no time was the Grievant asked for a statement.

Joe Dina, the hospital's Labor Relations Officer testified that he ensured a fair and thorough review of the contents of the investigations pre-disciplinary packet. During his testimony he made a statement that he and Bernadette Mosley who was serving as acting head of HR made the decision to remove the Grievant.

Ms. Sampsel testified at arbitration that she knew nothing about the Union. However, during cross-examination she acknowledged that she had served as her chapter’s treasurer. Although she could remember how long she served in that capacity, the Union submits that as treasurer she had to know about the Union since that is an office to which one must be elected. The Union submits that Ms. Sampsel was well aware of OCSEA headquarters and the Grievant testified that she had gone to OCSA headquarters for training with Ms. Sampsel. Ms. Sampsel also testified she did not know who to contact at central office for the Union; however, she also stated during her testimony that she spoke to someone at central office although she contended she couldn’t remember the individual’s name.

Ms. Sampsel’s testimony contradicted what she wrote in her Q and A dated 4/22/2020. She stated she gave the Grievant no response and when she gave no response the Grievant touched her again; however, during her testimony she stated she swung her arm not once but twice. The allegations made by Ms. Sampsel precipitated a chain of events which resulted in the Grievant removal.

Esther Townsend’s testimony varied based on the time of the day and to whom she was speaking. She gave information that was not included when she spoke to the investigator she also stated, falsely, that she and Ms. Sampsel left the area at the same time. Miss Townsend's testimony contradicts parts of her written statement. The video supports the Union's contention that Miss Townsend what's not truthful

The testimony of Becky Harmon is irrelevant. Olivia Sampsel spoke to Miss Harmon the day after the alleged incident, asking for advice on how to handle the situation. Miss Harmon could not speak to any direct or first-hand knowledge of the incidence. In fact, Miss Harmon presented herself at arbitration as somewhat biased or even angry at OCSEA. She made disparaging statements about OCSEA, an organization for which she had no knowledge regarding structure or operation.

Becky Harman also made the statement that no one from OCSEA had spoken to Olivia Sampsel or even approached her about the situation, but during cross it was obvious that she knew nothing of one of our members speaking with Olivia Sampsel. Miss Harmon also stated she did not know the Union’s representative for the facility although the Grievant’s advocate has been present at the same table with Ms. Harmon during Labor Management meetings. It would appear witness Harmon has a selective memory.

Denise Lasor gave testimony regarding her knowledge of the cameras and VOCERA.   The VOCERA log only shows Ms. Sampsel receiving a call from Amy Boyd at 1:56 p.m. The call lasted 3 minutes 39 seconds. As you look at camera 4, it shows the Grievant leaving the area per her statement.

On April 16, 2020, Camera 4 showed:

* 1:57pm – Olivia Sampsel is down the hall in the office (13-7-01/13-51-24)
* 1:59pm – Sherria Neel-Black leaves the office; enter C2 (13-59-34)
* 2:00pm – Sherria Neel-Black out of C2; down hall (14-00-51)
* 2:08pm – Olivia Sampsel with bag out of office; own hall (14-08-51)
* 2:14pm – Ester leaving office alone with coat and bag; talks to matt B. in hallway (14-1-58)
* 3:05pm – Sherria Neel-Black with coat and bags leaving for the day (15-05-09/15-05-16)

A written statement was provided from Angie Davis dated 4/24/2020 in which she stated upon her arrival to work Esther Townsend who is taking temperatures for employees said to her, " I don't know what that was yesterday between Olivia and Sherria but I don't want any part of it." She replied that she understood and when another employee was ready to be screened she left.

Lieutenant Huggins sent an email which stated, " I just wanted to share I was informed today of an alleged workplace violence incident which occurred sometime last week between two nursing staff members. The incident occurred off grounds of the HBH campus during a work-related (both on company time) duty. This was more inaccurate information which was included and considered when determining the outcome of the allegations leveled by Olivia Sampsel.

The Grievant was leaving the office when Ms. Sampsel initiated the conversation on the date of the alleged incident. Miss Black did not know what Ms. Sampsel was talking about and asked her to clarify. Miss Black denies telling Ms. Sampsel that she would f\*\*\* her up. Ms. Sampsel accused Miss Black of being angry and could not stand being wrong; she accused the Grievant of going into a rant.  The Grievant stated during her testimony said she was not angry; she did not go into a rant. She did not understand what drama Ms. Sampsel was starting, but she wanted no part of it. The Grieving also testified that she previously had a similar conversation with Ms. Sampsel who got upset at that time also.

Ms. Sampsel continued to rant, and Ms. Black walked over and patted Ms. Sampsel on the shoulder and stated, “Livy calm down; it's not that big of a deal”. Ms. Sampsel cut-off Miss Black stating, "get your hands off me". Miss Black stepped back and looked at Ms. Sampsel and it was at that time Ms. Sampsel shut off her VOCERA. Miss Black asked Ms. Sampsel why she was so mad and where all the anger coming from. Ms. Sampsel calmed down and recounted her version of what Miss Black said to her earlier regarding PPE and used Dr. Kimbo as an example. Miss Black countered, reiterating what she initially told Ms. Sampsel and offered to show an example. Ms. Sampsel declined the offer. Miss Black left the area to deliver reports. When Miss Black returned Ms. Sampsel and Ms. Townsend were not in the area. Miss Black finished her work and left for the day repair.

There is no basis for Ms. Sampsel fearing revenge from Ms. Black. In fact, Ms. Sampsel stated she felt safe at work when asked about it. Ms. Sampsel did not indicate she feared Miss Black when she spoke with Miss Walton or Miss Harmon

Arbitrator Cole, the Union requests that you grant this grievance. Return Sherria Neel- Black to her previously held position as a Laboratory Technician 2 at Heartland Behavioral Healthcare Hospital. Compensate the Grievant for all back pay, including holiday pay. Fully restore the Grievant’s seniority. Award compensation for any medical expenses incurred during the time of her removal. Award any and all other job-related losses incurred, including retirement contributions and Union dues. Additionally, award all other remedies deemed appropriate to make the Grievant whole.

Respectfully submitted,

Bruce Thompson, OCSEA Staff Representative