**OCB AWARD NUMBER: 2709**

SUBJECT: Arb Summary # 2709

TO: All Advocates

FROM: Marisah Ali

OCB GRIEVANCE NUMBER: DRC-2019-03042-12
DEPARTMENT: Ohio Department of Rehabilitation and Corrections

UNION: SEIU District 1199

ARBITRATOR: Robert Stein

GRIEVANTS NAMES: Jane Fisher

MANAGEMENT ADVOCATE: Philip Rader

UNION ADVOCATE: Catherine Harshman

OCB REPRESENTATIVE: Marisah Ali

ARBITRATION DATE: August 3, 2022, September 29, 2022, and October 6, 2022

DECISION DATE: January 9, 2023

DECISION: DENIED

CONTRACT SECTIONS Article 7, Article 8

OCB/BNA RESEARCH CODES: Discipline, Discharge

KEYWORD SEARCH TERMS: Surveillance, Supervisor, Falsification, Secondary Employment

**HOLDING:** The Employer did not violate Sections 7.06, 8.01, 8.02, 8.03, or 8.04, by terminating the Grievant. **Grievance DENIED.**

**Facts:** The result of an investigation found that the Grievant: was involved in the hiring of a PI who was instructed to conduct surveillance on two supervisors of the Adult Parole Authority to determine if they were having an extramarital affair (the Grievant was also found to have provided information to and received information from this PI), accessed a secure law enforcement database in improper manners in her home and secondary place of employment, failed to properly document, staff and address violent and high severity violation behaviors of offenders on her caseload, conducted personal business at her secondary place of employment on ODRC time, falsified timesheets by indicating that she was conducting ODRC work while she was working at her secondary place of employment, and lied to and failed to cooperate with and interfered with investigators’ efforts who were conducting two separate administrative investigations into allegations. For these reasons, the Grievant was terminated for violating the standards of employee conduct.

**The Union argued:** The Union argued that this case was improperly before the Arbitrator because the State is not entitled to any mitigation concerning remedial back pay. The Union also made several procedural arguments related to improper notification, investigative and evidential practices made by the Employer through the course of the investigation, and untimeliness.

**The Employer argued:** The Employer contended that the Grievant was involved in and then lied about her involvement in the unauthorized investigation into the personal lives of Tina Patrick and Jason Perez. The Employer argued that the Grievant was grossly dishonest concerning her involvement in this investigation, the nature and hours of her secondary employment, in incorrectly reporting her time on her timesheets, in her improper accessing of the Employer’s secure database at unauthorized locations, and in her unwillingness to cooperate and provide honest answers to an investigator.

**The Arbitrator found:** Arbitrator acknowledged that arbitrators have consistently held law enforcement officers (like the Grievant) to a higher standard than that of any other public employee due to her particular position within the legal system. The Arbitrator found that the Grievant did participate in the formal, unauthorized surveillance of two fellow employees absent any evidence of a serious motive other than personal revenge and spite. The Arbitrator acknowledged that here, much of the decision of the case depended on weighing the credibility of the parties’ witnesses in determining whose testimony was honest. Here, the Arbitrator found the testimony of disinterested witnesses to be more credible than that of the Grievant. The Arbitrator did not find the Grievant’s testimony to be credible or honest. The Arbitrator found that in addition to improperly participating in the surveillance of her coworkers, the Grievant’s own statements supported the fact that she violated the Standards of Conduct by failing to properly perform her job duties, which would have warranted discipline on its own, even aside from the dishonesty and improper investigation. The Arbitrator found insufficient evidence to sustain the remaining charges that involve the accessing of the Employer’s secure database at home and conducting personal business on DRC time. The grievance was **DENIED.**