VOLUNTARY LABOR ARBITRATION

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In the Matter of the Arbitration

#184

-between-

OHIO CIVIL RIGHTS COMMISSION

ARBITRATOR'S OPINION
Grievant:
Cheryl M. Snider

-and-

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, LOCAL 11, AFSCME, AFL-CIO

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FOR THE STATE:

TIMOTHY D. WAGNER
Arbitration Advocate
Ohio Department of Administrative Services
Office of Collective Bargaining
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Columbus, Ohio 43215

FOR THE UNION:

LOIS HAYNES
Staff Representative
Ohio Civil Service Employees Association
77 N. Miller Road, Suite 204
Fairlawn, Ohio 44313

DATE OF THE HEARING:

February 5, 1988

PLACE OF THE HEARING:

Ohio Department of Administrative Services
Office of Collective Bargaining
65 E. State Street, 16th Floor
Columbus, Ohio 43215

ARBITRATOR:

HYMAN COHEN, Esq.
Impartial Arbitrator
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The hearing was held on February 5, 1988 at the State of Ohio, Office of Collective Bargaining, 65 State Street, Columbus, Ohio, before **HYMAN COHEN**, Esq. the Impartial Arbitrator selected by the parties.

The hearing began at 10:00 a.m. and was concluded at 4:10 p.m. A post-hearing brief was submitted by the Union on March 14, 1988.

* * * * *

CHERYL M. SNIDER has filed two (2) grievances with the **OHIO CIVIL RIGHTS COMMISSION**, the "**Commission**". The first grievance was dated July 21, 1986 and the second grievance is dated July 24, 1986. In her grievance dated July 24 the Grievant summarizes her complaint against the Commission which prompted her to file the initial grievance. In relevant part, she states:

> "* * I believe that my caseload has been selectively reduced so that I am in a posture to be assigned more than an equal share of Conciliations, Request for Reconsiderations.* *"

In her second grievance, the Grievant claims that after rejecting the Regional Director's proposal to resolve "the previous grievances, a case was removed from her caseload and she was assigned a conciliation case". She goes on to state in her July 24, 1986 grievance that:

> "I believe this assignment was done in part in retaliation for filing previous grievances* *."

On July 30, 1986 Inder F. LeVesque, the Fact Finding Supervisor, denied the grievance while stating:

> "It is management's prerogative to assign cases in a manner for the safe and efficient operation of the business."

It should be pointed out that during the hearing the Grievant referred to a grievance protesting the assignment of cases to her, which was dated July 9, 1986.

With the exception of a Step 3 meeting the instant grievances were processed under the grievance procedure set out in the contract between the Commission and **OHIO CIVIL SERVICE EMPLOYEE'S ASSOCIATION, Local 11, AFSCME, AFL-CIO,** the "**Union**". Since the parties failed to achieve a satisfactory resolution of the grievances, the dispute was carried to arbitration.

FACTUAL DISCUSSION

The Grievant has been employed by the Commission since January 1981 at its Regional Office located in Toledo, Ohio. Since August, 1984 she has been a Civil Rights Representative III, which was also referred to as a Field Representative III.

In piecing together the Grievant's testimony concerning the events leading up to the filing of her grievances, she indicated that in November, 1985 the State advised that "* * Requests for Reconsideration, Remands and Conciliations" would be assigned "to those with a low caseload". The Grievant testified that she was assigned four (4) cases consisting of Requests for Reconsideration and Conciliations. She was unable to state the number of cases in each of the categories. Between August, 1984, when the Grievant first became a Representative III and November, 1985, no Representative IIIs worked on Requests for Reconsideration.

Sometime before July, 1986, the Grievant said that LeVesque informed her that she would be receiving Conciliation cases. The Grievant acknowledged that although administering Conciliation cases was within her job description, such cases were previously administered by the Supervisors. The Grievant went on to state that the following day two (2) Requests for Reconsideration were removed from the Supervisor's caseload and assigned to her.

At this point it would be useful to consider the nature of a Request for Reconsideration. A Request for Reconsideration involves a case which has been submitted to the Commissioners and the issues

were not dealt with or certain information is missing. As a result, the party adversely effected by "the deficiency" can request reconsideration of the matter. These cases are returned to the Regional Office where they had initially been processed, for investigation. When an employee is assigned such a case, the reinvestigation must be completed within thirty (30) days. During these thirty (30) days, there is an investigation undertaken of the initial issue and the reasons for the granting of the Request for Reconsideration.

The Grievant also set forth an explanation of a Conciliation which is a case that has been found to warrant probable cause. As a result there is an effort to resolve or negotiate the matter, which must be processed within sixty (60) days. The Grievant said that a Request for Reconsideration is a "more complex case"; a Conciliation however "is a relatively simple case".

In January 1986, pursuant to the Agreement between the parties, the Grievant requested an audit of her position claiming that she was performing work out of classification. In June 1986 the Ohio Department of Administrative Services notified the Executive Director of the Ohio Civil Rights Commission that it had completed a

job audit filed by the Grievant and "based on the duties described", it had determined that the proper classification for the position is "Civil Rights Representative III". Accordingly there was no change in the classification of the Grievant's position. The Commission was advised that "no action will be necessary on [its] part".

In July, 1986 at a Grievance Hearing which was held before Ron Pettaway, Regional Director of the Toledo Office, the Grievant said that she raised the question of working on cases out of her job classification. She continued with her testimony by indicating that Pettaway said that "I was in a posture to receive these cases" within her classification. The Grievant also indicated that at the time Pettaway said that he was "trying to go along with the contract and making an effort to reduce" the bargaining unit work performed by supervisors. Elaborating on the word "posture" which was used by Pettaway, the Grievant said that he meant that since she had a low caseload, she was in a position to work on Requests for Reconsideration. Moreover, the Grievant indicated that Pettaway said that the assignment of Requests for Reconsideration would be done on a "rotational basis". The Grievant questioned Pettaway's use of the phrase "rotational basis", because she had already been assigned two (2) Requests for Reconsideration. Furthermore, the Grievant said that

Pettaway told her that she [the Grievant] had been assigned Requests for Reconsideration due to "business reasons".

The Grievant provided testimony on the history of assignments since she had been employed by the Commission. She said that from "January 1981 on", the procedure had changed several times on "who was to handle Requests for Reconsideration". When she was first hired in January, 1981, she said that she did all types of cases, including Requests for Reconsideration, Remands and Conciliations. The Grievant testified that as a Civil Rights Representative I, she did "walk-ins and call-ins". As a Representative II, which was the next job classification, she performed Requests for Reconsideration, Conciliations and Remands, along with "walk-ins and call-ins".

The Grievant indicated that before the filing of the instant grievances, she had more Conciliations and Requests for Reconsideration than the other Representative IIIs and as a result, it "adversely affected her work", and "threw off" her caseload. She estimated that at the time of her grievances, she had "a high of twenty-three (23) cases" that she was handling, and a "low of nineteen (19) cases". The Grievant stated that although a Conciliation case is relatively simple, the time deadlines make it difficult. She

said that as a result of the number of Conciliations that she was assigned, she is required to do "priority work first and the other work goes on the back burner". The Grievant indicated that she had been assigned two (2) Requests for Reconsideration and one (1) Conciliation before July 21, 1986, when she filed her grievance.

The Grievant also testified as to the reasons for the filing of her second grievance in which she alleged that the Commission retaliated against her for filing her initial grievance on July 21. She indicated that a case which had four (4) months left "before the statute was to" expire was removed from her caseload. On July 24, 1986 she was assigned a new Request for Reconsideration case "which had to be resubmitted in time for the August meeting". This meant that she had two (2) or three (3) weeks to work on it. Since she had other cases to work on including "another Request for Reconsideration," in order to accommodate the new case which was a Request for Reconsideration, she had to put the other Request for Reconsideration "on the back burner". Furthermore, the case that was removed from the Grievant's caseload was assigned to Donald J. Mikolajczak, II, the Steward. In removing the case, Pettaway told the Grievant that there were "no extenuating circumstances to warrant a Request for Reconsideration" by someone who had originally

investigated the case.

The Grievant referred to other instances which she claimed demonstrated retaliatory action by the Commission. In August 1986 she was called into LeVesque's office and told that when she dropped a pen on a clipboard it was "dropped loudly". According to LeVesque, the Grievant showed "a poor attitude" and she "had to try harder". Moreover, at an August 1986 meeting with LeVesque, the Grievant was told that "the quality" of the cases that she had worked on "went downhill and they were inadequately handled". Form letters were returned to the Grievant with the notation that they were improperly done. Another case that the Grievant had performed work on, was returned to her for further information. LeVesque indicated to the Grievant that she had "to get more information on employment statistics". According to the Grievant the report on the case went out "retyped" as it had originally been submitted. Another situation that the Grievant referred to involved two (2) Conciliation Reports that were submitted. One (1) report went out September 23, 1986. It was signed and approved, but the other report was remanded by the Regional Director on September 24, 1986. According to the Grievant the Supervisor told her the report needed "a monetary award". The Supervisor indicated that "he was the boss and she had to do it". The

Grievant said that in the past she had never added monetary awards to Conciliation reports. Finally, the Grievant indicated that she had used form letters for one and one-half (1 1/2) years and subsequent to filing the grievances in July 1986, the Supervisor told her to put another paragraph in the form letter. The Grievant said this had never been done before.

Since August, 1987, the Grievant has been off on disability leave. She indicated that there has been great stress on her. The Grievant said that her caseload has caused her to suffer "major depression" and as a result she has taken disability leave.

Prior to filing her first grievance in 1986, the work evaluations which were conducted by LeVesque have ranged between excellent and above average. However, after filing her grievance the areas of quality and quantity "were reduced" in the evaluations. There were also negative comments on her work on cases and her "dealings" with Supervisors.

Mikolajczak has been a Representative III for three (3) years. He indicated that prior to July 1986 he had not been assigned a Request for Reconsideration; nor could he remember being assigned a

Conciliation. He said that before the filing of the instant grievances, he was assigned a Request for Reconsideration which "had been pulled" from the Grievant's caseload. He elaborated on the Request for Reconsideration by indicating that the Grievant initially had submitted a recommendation with regard to it. Mikolajczak said that as a Steward the Grievant had "brought her problems" to him. Milolajczak stated that he noticed that the Grievant was held at a "lower caseload" and thus she was at a "more ideal posture" to be assigned Requests for Reconsideration. To his knowledge, "around June 1986", the Grievant was the only person in the Regional Office that was kept at a lower level of cases.

On cross examination Mikolajczak indicated that although he had no Requests for Reconsideration and Conciliations prior to July 1986, the other three (3) Civil Rights Representatives IIIs had been assigned Requests for Reconsideration prior to July 1986. In fact, Mikolajczak said that a Civil Rights Representative II did a Request for Reconsideration prior to July, 1986.

Karen L. McClusky was the Chief Supervisor of the Commission's Toledo Ohio office. She elaborated on the duties of a Civil Rights Representative III. Among such duties were the

following: "Handling calls, walk-ins, investigation of complaints by charging parties, public relations, handling of more difficult cases, Conciliations, and analysis of documents, case recommendations and other duties, etc." McClusky testified that as a employee progresses by filling the positions of Civil Rights Representative, I, II and III, the tasks become more difficult. She added that the three (3) positions "interrelate". She stated that she [McClusky] does not perform Remands or Conciliations because those cases are "easily dealt with" under her direction.

McClusky assigns cases at the Regional Office. She stated that prior to the filing of the instant grievances, Requests for Reconsideration were handled by Supervisors to assist the Civil Rights Representative IIIs. She went on to say that since there was an "influx of new charges" and because the Regional Office was "understaffed" ("we had five (5) investigators at the time"), Supervisors handled Requests for Reconsideration. When the staff increased, McClusky said that the staff handled Requests for Reconsideration. She assigned cases, including Requests for Reconsideration "on a rotating basis". Assignments, McClusky stated, were based upon the "availability of an employee". She indicated that "we have the prerogative to assign cases to people who could handle

the caseload". She testified that in July 1986, "there were a number of cases" that were "over one-hundred twenty (120) days" and as a result "some of the staff could not handle a Conciliation". In July 1986, McClusky said that "the office had four (4) Requests for Reconsideration". A Civil Rights Representative II named "Wadley" was assigned two (2) Requests for Reconsideration. The Grievant had been assigned two (2) Requests for Reconsiderations but "one (1) was pulled from her" and given to Mikolajczak due to the policy that an investigator who had performed a pervious investigation of a case, would not be re-assigned a Request for Reconsideration of the same case.

From July 1986 to January 1988 McClusky testified that the office received sixty-one (61) cases which included Requests for Reconsideration, Remands, Conciliations and Compliance Review cases plus one-thousand one hundred (1, 100) new cases. During that period of time, a period of roughly eighteen (18) or nineteen (19) months, ten (10) Conciliations, Requests for Reconsideration and Remands were assigned to the Grievant. McClusky acknowledged that the Grievant received more Requests for Reconsideration than other Civil Rights Representative IIIs. She also stated that the Grievant was very efficient.

McClusky stated that prior to 1985, Civil Rights Representative IIIs performed Requests for Reconsideration. However, the Grievant was on disability for five (5) months between August 1987 and January 1988.

On rebuttal the Grievant disputed McClusky's testimony that of the sixty-one (61) Requests for Reconsideration, Conciliations and Remands, she had handled ten (10) of these cases. The Grievant indicated that she was assigned sixteen (16) of the sixty-one (61) cases during that period of time. Moreover, during the nineteen (19) month period between July and January 1988, she (the Grievant) had been off for eight (8) months on disability leave.

I.

PROCEDURAL ISSUE

DISCUSSION

The Commission raises a threshhold issue which must be resolved before any consideration can be given to the merits of the instant dispute. The State contends that the instant dispute is not arbitrable because, under the guise of claiming a violation of the Agreement, the Grievant seeks a change of her duties, which was

denied to her under the terms of Article 19, Section 19.03 of the Agreement: Section 19.03 provides a special procedure which an employee is required to follow in order to obtain an audit of her position. The procedure was followed and in June, 1986, the Department of Administrative Services determined that the Grievant was properly classified as a Civil Rights Field Representative III.

The query then is whether the instant dispute circumvents Section 19.03, and is the Grievant seeking the proverbial "second bit of the apple". After carefully examining the evidence in the record, I have concluded that the instant dispute is arbitrable. Article 25, Section 25.01 provides as follows:

> "ARTICLE 25- GRIEVANCE PROCEDURE
> §25.01 - Process
>
> A. A grievance is defined as any difference, complaint or dispute between the Employer and the Union or any employee affecting terms and/or conditions of employment regarding the application, meaning or interpretation of this Agreement. The grievance procedure shall be the exclusive method of resolving grievances."

The instant grievance constitutes a dispute "affecting terms and/or conditions of employment regarding the application, meaning or interpretation of the Agreement "as provided in Section 25.01 A of the Agreement. The basis of the grievance is that the Commission's assignment of Requests for Reconsideration to the Grievant constitutes the assignment of supervisory work rather than bargaining unit work. Article I, Section 1.03 which is entitled "Bargaining Unit Work" provides, in relevant part, that:

> "The Employer recognizes the integrity of the bargaining units and will not take action for the purpose of eroding the bargaining units."

An employer impairs the integrity of a bargaining unit by assigning duties traditionally performed by supervisors. Such duties dilute management authority as well as the integrity of the bargaining unit. To assign supervisory duties to a bargaining unit employee confers the indicia of supervisory status upon the employee and is inconsistent with the recognition by the Commission of the integrity of the bargaining unit. See, e.g. *Arkla Chemical Corp.*, 54 LA 62 (Prewitt, 1969). As a result, I have decided that the instant grievances are arbitrable.

There are additional considerations which support the conclusion that the dispute is arbitrable. Stephanie Pina, a Classification Specialist for the Union, who had formerly been employed by the Ohio Department of Administrative Services for over nine (9) years, provided testimony on the nature of job audits by the Department of Administrative Services. She indicated that in order for a Civil Rights Representative III to receive an upgrade to a Representative IV position, the focus of the audit is on the Rank 1 and 2 duties set out in the job description of the Representative IV position. The ranks are established in numerical order based on importance of duties. Pina said, for example, that if the Grievant did not satisfy the percentage allocated for Rank 1 duties of a Representative IV, but performed the Rank 2 duties, she would not receive the upgrade to Representative IV. Thus although the Department of Administrative Services determined that the Grievant is properly classified as a Representative III, it does not necessarily mean that she did not perform some of the duties of a Representative IV. Accordingly, the audit performed by the Department of Administrative Services is not dispositive of the issue presented in this case.

Furthermore, there is no evidence that the Commission has

asserted the non-arbitrability of the instant grievance at any of the steps of the Grievance Procedure. I have therefore concluded that by failing to assert non-arbitrability of the grievance, the Commission has waived its right to assert such a claim at the arbitration hearing.

II.
THE MERITS

Having established that the grievances are arbitrable, I turn to consider the merits of the instant grievances. As I have already set forth, a Request for Reconsideration is an appeal from findings of the Commission, for example, that due to missing data or information, or issues that were not considered, the case should be reconsidered. If the request is granted, the case is returned to the Regional Office which had initially performed the investigation of the facts. When a Representative III is assigned the Request for Reconsideration, the re-investigation must be performed within thirty (30) days.

It is undisputed that between August 1984 and November, 1985 Requests for Reconsideration were handled by Supervisors. I am inclined to believe McClusky's testimony that this was done "to assist the investigators". At the time, there were only five (5)

investigators employed in the Toledo Regional Office. There was an "influx of new charges" and the Regional Office was "understaffed". Thus, the Supervisors performed Requests for Reconsideration. The evidence warrants the conclusion that the circumstances in the Regional Office justified the assistance by Supervisors in performing Requests for Reconsideration. As the Grievant stated, from the time that she joined the Commission "the procedure changed on, who handled Requests for Reconsideration". When she was first hired, she did "all the cases, including Requests for Reconsideration, Remands and Conciliations. The Grievant also acknowledged that as a Representative II, she handled Requests for Reconsideration, Remands and Conciliations. Thus, between August 1984 and November 1985, the Grievant indicated that no Representative IIIs handled Requests for Reconsideration. Furthermore, Mikolajczak indicated that prior to July, 1986 Representative IIIs other than the Grievant and a Representative II, handled Requests for Reconsideration.

Thus, the record demonstrates that except for the period between August, 1984 and November 1985 Representative III's handled Requests for Reconsideration. It was not disputed that there was a "influx of new charges" and the Regional Office was understaffed with five (5) investigators at the time that the Supervisors did Requests

for Reconsideration. In my judgment the evidence warrants the conclusion that the Representative IIIs, with the exception of the period between August 1984 and November, 1985 have handled Requests for Reconsideration. Accordingly, in my judgment, such work is within the job duties of a Representative III.

The Union argues that the Commission is prohibited from assigning Requests for Reconsideration cases to Representative IIIs because this is a function that is specifically set forth under the Rank 2 duties of a Civil Rights Field Supervisor I (formerly designated Civil Rights Field Representative IV). At the outset of this discussion, it should be pointed out that the parties have not negotiated job descriptions for the Civil Rights Representative III, or for that matter, any other job descriptions.

The State's unilaterally developed job description for Civil Rights Field Supervisor I (formerly designated as Civil Rights Field Representative 4), indicates, among the Rank 2 duties "* * * reinvestigates remanded cases and addresses issue of missing data". The percentage of time that a Supervisor I is to devote to the numerous Rank 2 duties is "12-18" per cent. It is true that unlike the job description of a Supervisor I, the State's job description of the

duties of a Civil Rights Representative III does not specifically refer to reinvestigations or Requests for Reconsideration. However, the evidence in the record warrants the conclusion that despite the specific language contained in the job description of Supervisor I, Requests for Reconsideration are within the job duties of a Representative III.

The evidence indicates that the assignment of Requests for Reconsideration to the Grievant, as a Representative III, is compatible with the terms of the Representative III job description. The handling of Requests for Reconsideration comes within the scope of the Rank 1 and Rank 2 duties contained in the job description of a Representative III. Under Rank 1, the Representative III, in relevant part, "Acts as a leadworker for an Investigations Unit, performing duties as an advanced specialist in investigations * * * assists lower level investigators with difficult investigations or the resolution of unusual problems". Under Rank 2 of the Representative III job description, the duties set forth include the "* * investigation of cases, carrying a caseload of moderately difficult to difficult charges * * *."

The Grievant indicated that the handling of Requests for

Reconsideration is a "more complex" matter. However, the job description refers to the investigation of cases and handling of difficult investigations or the resolution of unusual problems as well as "carrying a caseload of moderately difficult to difficult charges * *." Indeed, the Grievant testified that Requests for Reconsideration concern "issues not dealt with and information which is missing". These are matters that concern the primary responsibility of a Representative III, namely, investigation, and thus the handling of Requests for Reconsideration is "reasonably compatible with the job description and falls within the "scope of its allowable parameters. See e.g. *Indiana Reformatory*, 70 LA 620, 625 (Witney, 1978). Furthermore, in *Indiana Reformatory*, the Arbitrator indicated that the contested assignment was "reasonably related to the essence of the duties and the fundamental characteristics of "the detailed job description. At page 625. Similarly, the duties involved in handling Requests for Reconsideration by Representative IIIs are "reasonably related to the essence of the duties and the fundamental characteristics of the detailed job description of a Representative III. Representative IIIs have been handling Requests for Reconsideration since at least 1981, with the exception of the period between August 1984 and November, 1985. Thus, despite the failure of the job description to specify reinvestigations among the job duties of a

Representative III, the evidence warrants the conclusion that the investigatory functions concerning Requests for Reconsideration is reasonably related to the fundamental characteristics of the job description of a Representative III. The fact that the Supervisor I job description specifically provides for reinvestigations among the duties of the postion does not preclude Representative IIIs from handling Requests for Reconsideration which they have done since at least 1981.

The Union contends that since Remands are not assigned "to the same person who had done the initial work-up", the Grievant "was placed in the position where she would be checking the work of a fellow bargaining unit employee determined to be deficient". There was no evidence in the record that such "deficiencies" of the bargaining unit member who performs the initial work-up leads to the imposition of discipline by the Commission. The only evidence in the record on the nature of handling Requests for Reconsideration was provided by the Grievant who stated that such Requests are based upon "issues not dealt with or information which is missing". In effect, there is insufficient evidence in the record to warrant the conclusion that the duties involved are traditional supervisory duties.

Viewing the evidence in the entirety, I cannot conclude that the Commission violated Seciton 43.02 of the Agreement, the "Preservation of Benefits" clause, which provides:

> "To the extent that State statutes, regulations or rules promulgated pursuant to ORC Chapter 119 or appointing Authority directives provide benefits to state employees in areas where this Agreement is silent, such benefits shall continue and be determined by those statutes, regulations, rules or directives."

Assuming that Section 43.02 incorporates by reference Ohio Administrative Code Rule 123:1-17-16, I have already concluded that as a Representative III, the Grievant performed duties "properly belonging to the position" when she handled Requests for Reconsideration.

II.

RETALIATION

The Grievant presented evidence upon which she alleged that the Commission retaliated against her because she filed a grievance

against it. Her basic complaint is that the Commission removed a case from her caseload which had "4 months left" for processing and assigned a Request for Reconsideraiton which had to be processed within two (2) to three (3) weeks. This meant that the recently assigned case received top priority and her other work was placed "on the back burner". In this conneciton, the evidence at the hearing established that the Grievant was assigned more Requests for Reconsideration than other Representative IIIs from July, 1986 to January, 1988.

I cannot conclude that the Union's evidence was adequate to indicate that the Commission retaliated against the Grievant. The removal of a case from the Grievant's caseload and the assignment of a case which required a shorter period of time for processing does not indicate retaliation. Were I to conclude that such action by the Commission constitutes retaliation, it would unduly restrict the Commission's discretion in the scheduling of work. Indeed, to sustain the grievance on this aspect of the dispute between the parties would create a serious impediment to the Commission's assignment of cases. Any assignment or removal of a case would carry the potential of a dispute which could eventually be submitted to arbitration. This is not to say that the Commission is permitted under the Agreement

to assign duties within the job classification of Representative III that exceeds "reasonable bounds". See, e.g. *St. Joseph Lead Co.*, 20 LA 890, 891 (Updegraff, 1953). In the instant case, the Grievant was deliberately assigned a low, rather than a heavy caseload, so that she could handle Requests for Reconsideration. The Grievant acknowledged that she always met deadlines for the work that was assigned to her. Had discipline been imposed by the Commission due to the Grievant's inability to satisfactorily handle her caseload, including Requests for Reconsideration, it would raise different matters than the issues raised in this arbitration.

There were also other incidents related by the Grievant which she stated amounted to retaliation by the Commission. These incidents include LeVesque telling her that she had a "poor attitude" when she (the Grievant) dropped a pen on a clip board; cases that were returned to the Grievant which had been approved in the past and comments by LeVesque that the quality of her work was going "downhill". Based upon the evidence in the record I cannot conclude that these incidents amount to a violation of Section 2.02 of the Agreement which provides as follows:

> "No employee shall be discriminated against, intimidated, restrained,

harrassed or coerced in the exercise
of rights granted by this Agreement."

It should be noted that the evidence in the record shows that the Grievant is efficient and conscientious in the performance of her duties, and is overall, a competent employee. Again it should be underscored, if discipline was imposed by the Grievant due to problems arising concerning the performance of her caseload, a different set of concerns than were presented in this case, would have to be addressed.

GRIEVANCE PROCEDURE

It is undisputed that an appeal of the Commission's denial of the grievance to Step 3 of the Grievance Procedure was requested by the Union, but as Mikolajczak stated "we did not get it." In his undisputed testimony on this aspect of the dispute between the parties, there was "no agreement between the parties that a Step 3 meeting would be waived". He indicated that the meetings at Step 1 and 2 of the Grievance Procedure were "not productive".

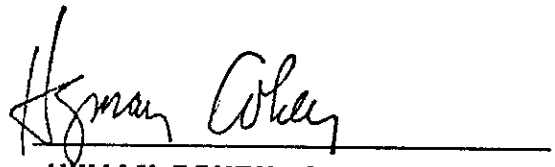
Although the Commission failed to comply with Step 3 of the Grievance Procedure set out in the Agreement (Section 25.02) I cannot

conclude in light of evidence disclosed at the hearing, that there was any prejudice to the Union, or that the Grievant's rights were prejudiced.

AWARD

In light of the aforementioned considerations, the grievances are denied.

Dated: May 20, 1988
Cuyahoga County
Cleveland,Ohio



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