Howard D. Silver
Arbitrator
Columbus, Ohio

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In the Matter of Arbitration
Between

The State of Ohio

and

The Ohio Health Care Employees Union
District 1199, WV/KY/OH
National Union of Hospital and
Health Care Employees, AFL-CIO

Case No.
160061689550212

Grievant:
April Ivy

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APPEARANCES

For The State of Ohio

Rodney Sampson, Advocate
Office of Collective Bargaining

Terry Piwnicki, Management Representative
Ohio Department of Human Services

Wyatt McDowell, Legal Counsel
Office of Collective Bargaining

For The Ohio Health Care Employees Union,
District 1199, WV/KY/OH
National Union of Hospital and
Health Care Employees, AFL-CIO

Tom Woodruff, Advocate
President,
Ohio Health Care Employees Union,
District 1199

Robert Harborn, Delegate
Ohio Health Care Employees Union,
District 1199

ISSUE

Is the grievance filed by April Ivy arbitrable?

The hearing in this matter was held on February 28, 1990, within conference room A of the offices of the Ohio Department of Administrative Services's Office of Collective Bargaining, 65 East State Street, Columbus, Ohio. The parties were afforded a full and fair opportunity to present testimonial and documentary evidence, examine and cross-examine witnesses, and make arguments supporting their positions. The record in this matter was closed on February 28, 1990.

BACKGROUND

The Grievant, April Ivy, was employed by the Ohio Department of Human Services effective mid-December, 1988 and was discharged from her employment with the Ohio Department of Human Services in June or July, 1989.[1] Grievant April Ivy was employed between

[1] The evidence presented in this matter as to the hire and discharge dates of Grievant Ivy is not totally consistent. At the hearing herein the arbitrator was informed that the grievant was hired by the Department on December 17, 1988 and commenced work on December 19, 1988; and was removed at the close of business on June 9, 1989. In Joint Exhibit 2, however, within a report of a step three grievance meeting conducted on August 17, 1989, Grievant Ivy is listed as having been hired on December 19, 1988 and discharged effective July 9, 1989. As will become clear within this decision and award, the exact hire and discharge dates are not essential as the issue of arbitrability to be determined in this matter balances on the assumption that at the time of Ms. Ivy's discharge she was still within her initial probationary period. Without such an assumption the underlying reason for this arbitration falls away as the issue giving rise to this matter depends upon Ms. Ivy being

December, 1988 and mid-1989 in a position classified Social Program Analyst 2 within the Department's Bureau of Surveillance and Utilization Review.

Effective May 25, 1989, Ms. Ivy filed a grievance alleging that she had been the victim of harassment and prejudicial treatment by Management during her employment within the Ohio Department of Human Services. This grievance, which appears in the record among the documents constituting the grievance trail in this matter, Joint Exhibit 2, alleges that Articles 5 and 6 of the collective bargaining agreement between the parties had been violated as a result of the harassment and prejudicial treatment suffered by Ms. Ivy. Within her original grievance filed on May 25, 1989, Ms. Ivy requested that the resolution of her grievance include being treated in a fair and equitable manner, that any negative material gathered through or because of prejudicial treatment be expunged from her records, and that she be made whole in every way.

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in a probationary status at the time of her discharge. It should be noted that for purposes of the decision and award herein the arbitrator presumes the probationary status of the grievant at the time of her discharge, but the issue of whether Ms. Ivy was in a probationary status at the time of her separation is an issue not presented to the arbitrator for decision in this matter and the arbitrator was informed that that issue is the subject of another arbitral proceeding. The decision and award in this case, therefore, presume a probationary status on the part of the grievant at the time of her discharge in order to address the issue of arbatribility herein, but this decision and award is not intended by the arbitrator to determine the probationary status of Ms. Ivy at the time of her discharge, leaving the issue of her actual status at discharge to dispute resolution proceedings outside this arbitration.

The grievance filed by Ms. Ivy was considered by Robert D. Braden, Jr. at the first step within the grievance procedure contained within the collective bargaining agreement between the parties. On June 2, 1989, Mr. Braden issued Management's response to Ms. Ivy's grievance and found as follows:

> We do not feel Ms. Ivy has been discriminated against, because she had been counseled on 3 occasions for her tardiness, before we began requesting leave slips. Ms. Ivy stated that she understood the need to arrive at the work site on time, and, also of the consequences if she failed to arrive at the work site on time.
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> Grievance is denied.
>
> See Joint Exhibit 2.

On June 16, 1989, John E. Boyle issued Management's conclusions at the second step of the grievance procedure found within the collective bargaining agreement between the parties. Mr. Boyle issued the following step two response on behalf of Management:

> All employees in this particular unit are requested to fill out leave forms (ADM 4258) for all types of leave, including vacation, sick leave, personal leave, leave without pay, compensatory time, tardy time, etc.
>
> I find no act of discrimination.

RESOLUTION:

> Request for leave slips and payroll forms are part of an employee's permanent record and cannot be expunged due to auditing of these records yearly.
>
> Grievance denied.
>
> See Joint Exhibit 2.

The Grievant, through her Union, then attempted to move her grievance to the third level of the grievance procedure within the collective bargaining agreement between the parties. Effective June 30, 1989, Terry Piwnicki, Labor Relations Officer for the Ohio Department of Human Services, directed correspondence to the Union in the person of Bob Harborn, delegate for the Union. Ms. Piwnicki's June 30, 1989 correspondence to Mr. Harborn reads as follows:

> On June 16, 1989, I received Grievance number 160061689550212, April Ivy. Under the negotiated 1199 Ohio Health Care Employees Union contract, Article 7.08, probationary employees shall not have the right or the ability to file disciplinary grievances under this contract.
>
> Therefore, in accordance with the above, I must deny your request for a Step three grievance meeting.
>
> See Joint Exhibit 2.

On July 28, 1989, Dick Daubenmire, Chief of Contract Compliance, Office of Collective Bargaining, directed correspondence to Grievant April Ivy. This correspondence from Mr. Daubenmire reads as follows:

> The grievance cited above concerns your allegation that you were harassed and singled out for prejudicial treatment by management of the Ohio Department of Human Services.
>
> Prior to filing the above grievance, you had been made aware that you would be discharged from your position as a Social Program Analyst during your probationary period. In fact, you had submitted your resignation but decided to rescind it before it became effective. Section 7.02(B) of the Collective Bargaining Agreement between the State of Ohio and the Ohio Health Care Employees Union, District 1199 states:
>
> > Disciplinary grievance refers to a grievance involving a suspension, discharge, or a reduction in pay or position. Probationary employees shall not have access to the disciplinary procedure.
>
> Since you had been made aware of your discharge at the time this grievance was filed, it was believed that this grievance was a pretext for grieving the merits of your discharge. Hence, no Step Three hearing was held for the grievance. However, the Office of Collective Bargaining has been informed by the Department of Human Services that in the interest of better labor/management relations a Step Three hearing will be scheduled for this grievance. You will be contacted and informed about the date and location of this hearing.

> Please be advised, however, that the sole issue to be examined at the hearing will be that of harassment and discrimination. The merits of your probationary discharge will not be an issue addressed at the hearing and reinstatement is not a remedy which will be considered. If you or the Union attempts to argue the merits of your probationary discharge at the Step Three hearing for this grievance, the hearing will be immediately terminated. The State will not tolerate the use of this type of grievance as a subterfuge for grieving issues which both parties agreed will not be grievable.
>
> See Joint Exhibit 2.

A step three meeting was held on August 17, 1989 regarding Ms. Ivy's May 25, 1989 grievance and a report of this meeting was issued by Terry Piwnicki, Labor Relations Officer, on August 31, 1989. The report of this step three meeting concluded that the grievance be denied based on findings that the Grievant was not subjected to unfair, arbitrary and discriminatory treatment. See Joint Exhibit 2.

On August 9, 1989, in a letter directed to the Director of the Office of Collective Bargaining, the Union informed the State of Ohio that the Union intended to arbitrate Ms. Ivy's grievance.

On October 19, 1989, Mr. Daubenmire, Chief of Contract Compliance for the Office of Collective Bargaining, issued correspondence to Ms. Ivy informing her that the Office of Collective Bargaining concurred with the step three response of Ms. Piwnicki and therefore Ms. Ivy's grievance was denied.

TESTIMONY OF WITNESSES

The first and only witness called by the Union to testify in this matter was Tom Woodruff, the President of District 1199, who identified himself as the chief spokesperson for the Union during negotiations of the collective bargaining agreement between the parties in effect from June 12, 1986 through June 11, 1989. Mr. Woodruff explained that this collective bargaining agreement was negotiated in the spring of 1986. This collective bargaining agreement appears in the record as Joint Exhibit 1 and it was agreed among the parties that this is the collective bargaining agreement which shall be interpreted to resolve the grievance herein.

Mr. Woodruff testified that the collective bargaining agreement at issue in this matter was intended to cover all bargaining unit members, including bargaining unit members serving within probationary periods. Mr. Woodruff pointed out that all provisions within this collectibe bargaining agreement applied to probationary and non-probationary employees alike, with the exception of express language within the contract which excluded probationary employees from specific guarantees within the collective bargaining agreement. Mr. Woodruff testified that there are only two exceptions relating to probationary employees within the contract. According to Mr. Woodruff, one may be found in Article 7 of the collective bargaining agreement, an article addressing the grievance procedure to be utilized by the parties

and an article which specifically excludes probationary employees from the collective bargaining agreement's disciplinary grievance procedure, as specified within Section 7.02(B) of this article. The other exception mentioned by Mr. Woodruff within his testimony is found within Article 9 which provides that dismissal during an initial probationary period shall not be grievable. Mr. Woodruff stressed during his direct testimony that these are the only exceptions within the collective bargaining agreement between the parties which deny probationary employees protections which are otherwise enjoyed by all bargaining unit members covered by the contract. Mr. Woodruff stressed that other than these two exceptions, probationary employees are entitled to all rights under the contract, including the right to work free of discriminatory practices by Management.

Under cross-examination Mr. Woodruff stated that Ms. Ivy's grievance which gave rise to this proceeding alleges prejudicial treatment and said the remedy for this grievance would require placing Ms. Ivy back in the position from which she was removed. Mr. Woodruff could recall no other disciplined probationary employee who availed himself or herself of arbitration between 1986 and 1989, and also expressed the opinion that there was no difference between a probationary removal and a disciplinary removal, with the exception of grievance rights withheld from probationary employees by the articles he had mentioned previously in his testimony.

Also testifying at hearing, as a witness called by Management, was Terry Piwnicki, the Labor Relations Officer for the Ohio Department of Human Services for the past four years. Ms. Piwnicki explained that she served as the step three grievance officer on behalf of Management in this matter and denied Ms. Ivy's grievance at the step three level. Ms. Piwnicki expressed the opinion that probationary employees are not entitled to access the contract's grievance procedure and stressed that Ms. Ivy had been discharged during the course of Ms. Ivy's probationary period.

Under cross-examination Ms. Piwnicki agreed that the contract does apply to probationary employees in terms of wages, sick leave and leaves of absence. Ms. Piwnicki also agreed that the contract prohibits discrimination against probationary employees on the basis of color and sex, among other prohibited categories, and also stated that probationary employees are entitled to be paid under the provisions of the collective bargaining agreement.

The final witness called by Management in this matter was Tim Ferguson, the Chief of the Bureau of Surveillance and Utilization Review. Mr. Ferguson stated that he had been involved in step two and step three procedures in this matter and explained that the step three grievance procedure was carried out because the Ohio Department of Human Services was instructed to carry out such a procedure.

POSITIONS OF THE PARTIES

Union's Position

The Union contends that the grievance in this matter does not address the probationary dismissal of the Grievant, but addresses the prejudicial and harassing treatment suffered by the Grievant while employed by the Ohio Department of Human Services. The Union agrees that probationary employees who are discharged may not utilize the grievance procedure within the collective bargaining agreement between the parties, as such access is denied to probationary employees by language within Articles 7 and 9. However, the Union emphasizes that beyond these exceptions probationary employees are entitled to all other protections accorded bargaining unit members by the collective bargaining agreement, including protections against harassment and discriminatory behavior. The Union points out that probationary employees are entitled to a number of guarantees under the collective bargaining agreement, including wage levels, benefit accrual rates and other circumstances of employment guaranteed to all bargaining unit members, including bargaining unit members within their probationary periods.

The Union claims that to deny Ms. Ivy the opportunity to pursue her grievance through this arbitration proceeding on the basis of her probationary status is to deny probationary employees in general the opportunity to enforce rights and privileges guaranteed to probationary employees under the collective

bargaining agreement between the parties and thereby leave such newer bargaining unit members defenseless in the face of contractual violations perpetrated by Management. The Union cautions that such a situation would leave probationary employees at the mercy of whatever violative conduct the Employer participated in and would leave injured workers defenseless and without remedies. The Union urges that without such defenses there would be nothing to deter the Employer from violating the contact against the newest members of the bargaining unit.

The Union therefore urges that the arbitrator find Ms. Ivy's grievance arbitrable and allow the parties the opportunity to determine the validity of the substance of Ms. Ivy's grievance through the arbitration process.

Employer's Position

The Employer contends that the grievant herein is attempting to secure for herself a right under the contract which is specifically denied her. The Employer refers to Ms. Ivy's grievance as a "backdoor grievance" in that the Grievant is attempting, through artful grievance language, to grieve a probationary discharge when the contract specifically denies her access to the collective bargaining agreement's grievance procedure for such a discharge.

The Employer contends that there is a real difference between a disciplinary removal of a non-probationary employee under the contract and a probationary removal of a probationary employee.

The Employer urges that to allow Ms. Ivy to circumvent the prohibitions against grieving a probationary discharge in this matter is to deny the Employer the right to act unilaterally in dismissing probationary employees, a right granted to the Employer through collective bargaining with the Union and a right expressly set out within the contract between the parties. The Employer stresses that to find Ms. Ivy's grievance arbitrable is to modify the contract between the parties by allowing a probationary discharge to be arbitrated when the contract, as written, specifically prohibits such a procedure.

Management urges that the arbitrator find that Ms. Ivy's grievance in this matter is not arbitrable.

ANALYSIS

Article 2 of the contract between the parties, entitled Union Recognition, provides that this agreement includes all employees in the classifications and positions listed in Appendix A of this agreement. Appendix A of the collective bargaining agreement between the parties lists, under Unit 12, Social Program Analyst 2, classification number 69472. Nothing within Article 2 of the contract between the parties or any other article within the collective bargaining agreement between the parties excludes probationary employees from coverage by the contract. It is therefore found herein that the collective bargaining agreement between the parties extends coverage to probationary employees

within the bargaining unit and extended its coverage to Ms. Ivy during all parts of the probationary period she served while employed by the Ohio Department of Human Services. This coverage is diminished only by specific language within the contract which expressly excludes particular contractual provisions from probationary employees. These exclusions must be apparent from the language used, must be set out in express language and may not simply be inferred.

Article 5 of the collective bargaining agreement between the parties is entitled Management Rights. This article provides that, except to the extent modified by this agreement, the Employer reserves, exclusively, all of the inherent rights and authority to manage and operate its facilities and programs. These rights include the determination and promulgation of the standards of quality and work performance to be maintained, and also includes a promise on the part of Management that it will not discriminate against any employee in the exercise of these rights or for the purpose of invalidating any contract provision. Nothing within Article 5 excludes probationary employees from its protections. It is therefore determined that Article 5 was applicable to Ms. Ivy during Ms. Ivy's probationary period.

Article 6 of the contract between the parties is entitled Non-Discrimination. This article provides that neither the Employer nor the Union shall unlawfully discriminate against any employee of the bargaining units on the basis of race, sex, creed, color, religion, age, national origin, political affiliation, union

affiliation and activity, handicap or sexual preference, or discriminate in the application or interpretation of the provisions of this agreement, except positions which are necessarily exempted by bona fide occupational qualifications due to the uniqueness of the job and in compliance with the existing laws of the United States, the State of Ohio or Executive Orders of the State of Ohio. As there is nothing within Article 6 which excludes its protections from probationary employees, the guarantees afforded by Article 6 of the contract between the parties were contractual protections to which Ms. Ivy was entitled during her probationary period.

Article 7 of the contract between the parties is entitled Grievance Procedure. Within Section 7.01 of this article it was agreed that this grievance procedure shall be available to all bargaining unit employees.

Section 7.02 of Article 7 has within it three paragraphs designated A, B and C. Paragraph A of Section 7.02 defines grievance, as used in this agreement, as referring to an alleged violation, misinterpretation or misapplication of specific articles or sections of the agreement. Paragraph B of Section 7.02 defines disciplinary grievance as a grievance involving a suspension, a discharge or a reduction in pay or position. According to paragraph B of Section 7.02, probationary employees shall not have access to the disciplinary grievance procedure.

Section 7.04 of Article 7 provides that a grievance under this procedure may be brought by any bargaining unit member who believes himself/herself to be aggrieved by any specific violation of this

agreement. Section 7.08 of Article 7 refers to an expedited grievance procedure which is initiated at step three of the grievance procedure, except that probationary employees shall not have the right or ability to file disciplinary grievances under this agreement.

Section 7.07(E)(1) of Article 7 defines the limitations imposed on an arbitrator operating under the grievance procedure. This paragraph provides that the arbitrator shall have no power to add to, subtract from, or modify any of the terms of this agreement nor shall the arbitrator impose on either party a limitation or obligation not specifically required by the express language of this agreement.

Article 9 of the collective bargaining agreement between the parties is entitled Initial Probationary Period. This article provides that all newly hired employees shall serve a probationary period of one hundred eighty days, and further provides that dismissal during an initial probationary period shall not be grievable.

The aforementioned articles indicate that probationary employees are intended to enjoy the coverage of the collective bargaining agreement between the parties during their probationary periods. This coverage, while not as extensive as non-probationary employees, is nonetheless broad in its application and differs from the coverage extended to non-probationary bargaining unit members only under clearly defined exclusions carved out of non-probationary coverage, exclusions which are found in only a very

few well defined and expressly enunciated subject areas. These exclusionary areas are closely related in that each refers to barring probationary employees from grieving disciplinary action through the contract's grievance procedure.

It is significant that the definitions contained within Section 7.02 of Article 7's grievance procedure refer to a "grievance" and to a "disciplinary grievance". Probationary employees are specifically excluded from accessing "disciplinary grievance" procedures by operation of the language in paragraph B of Section 7.02, but no such language is contained within paragraph A of this section which refers to grieving alleged violations, misinterpretations or misapplications of specific articles or sections of the collective bargaining agreement between the parties. This leads the arbitrator to conclude that the collective bargaining agreement specifically excludes a probationary employee from utilizing Article 7 grievance procedures to grieve a suspension, discharge or reduction in pay or position imposed upon a probationary employee, but otherwise permits a probationary employee to grieve alleged violations, misinterpretations or misapplications of the contract between the parties which do not touch on suspensions, discharges or reductions in pay or position.

The exclusion mentioned in Section 7.08 of the grievance procedure underscores, through reiteration, the fact that probationary employees do not have the right nor the ability to file disciplinary grievances under the collective bargaining agreement. Article 9 of the contract between the parties again

specifically lists dismissal during an initial probationary period as a subject which is not grievable.

The language of the collective bargaining agreement at issue in this matter therefore leads the arbitrator to conclude that probationary employees have access to the grievance procedures contained within Article 7 of the contract, except when grieving disciplinary action imposed during a probationary period involving suspension, discharge or a reduction in pay or position. Except for this specific exclusion, the language of the collective bargaining agreement, specifically language within Article 2, extends to probationary employees all of the other rights and privileges bestowed by the collective bargaining agreement on non-probationary employees who are within bargaining units covered by the contract.

The Union's argument about the necessity of permitting a probationary employee access to the Article 7 grievance procedure, in order to ensure protections extended to probationary employees outside of the exclusionary language contained within the aforementioned articles, is well taken. Probationary employees are paid under the terms of the contact, accrue benefits under the terms of the contract, and are entitled to specific protections under a variety of articles within the contract, including Articles 5 and 6 which prohibit discriminatory behavior. Without the ability to grieve on these permissible topics, a probationary employee would be in the paradoxical situation of being entitled to the protections of the contract but unable to enforce these

protections when it was believed the contract had been violated. Extending a protection without the right to secure a remedy for an alleged violation is to deny the protection altogether. Those articles which guarantee non-discriminatory behavior toward probationary employees are enforceable by probationary grievants and can only be enforced through access to the grievance procedure provided within Article 7 of the contract.

Having determined that probationary employees are entitled to access to the grievance procedure contained within Article 7 of the contract, with the exception of disciplinary grievances, it remains to determine what kind of grievance Ms. Ivy has filed in this matter. If Ms. Ivy's grievance herein is a non-disciplinary grievance, the grievance she has filed giving rise to this matter is arbitrable. If, on the other hand, as alleged by the Employer, Ms. Ivy's grievance is a disciplinary grievance cloaked in the adornments of a non-disciplinary grievance, Ms. Ivy's grievance is not arbitrable as disciplinary grievances by probationary employees are not permitted under the terms of the collective bargaining agreement between the parties.

Based on the evidence presented in this matter and the arguments of the parties, the arbitrator is persuaded that the grievance filed by Ms. Ivy giving rise to this matter was and remains a grievance of a disciplinary discharge during the Grievant's initial probationary period. This conclusion is based upon a consideration of the remedy which is sought through Ms. Ivy's grievance, a remedy which is compelled if the grievance filed

by Ms. Ivy on May 25, 1989 is to result in anything other than a moot exercise.

If, as the Union contends in this matter, Ms. Ivy's grievance has nothing to do with her discharge, there is no reason for any remedy resulting from Ms. Ivy's May 25, 1989 grievance to include the reinstatement of Ms. Ivy. If, in fact, the grievance before the arbitrator herein addresses only harassment and prejudicial treatment and does not address the probationary discharge of Ms. Ivy, and if this matter were to be found arbitrable, and if the Grievant should prevail as to the allegations contained within her May 25, 1989 grievance, the remedy which would result to cure the contractual violation would be an order directed to the Employer to cease and desist in the harassment and prejudicial treatment of the Grievant. This would address the particular issues raised by Ms. Ivy in her grievance of May 25, 1989, but would not in any way touch upon the discharge of Ms. Ivy during her probationary period. Such a remedy, of course, would do nothing to reinstate Ms. Ivy and would have the effect of ordering the Employer to take action toward an employee who is no longer employed. Such an order would be moot in its effect due to the absence of an employment relationship between the Employer and Ms. Ivy, the necessary medium through which the ordered remedy would be implemented.

The grievance filed by Ms. Ivy on May 25, 1989 which has given rise to this proceeding exists in the real world only if the remedy sought under the grievance would reinstate Ms. Ivy to her former employment. It is only in the event that Ms. Ivy can prevail in

this grievance in this way and secure reinstatement that any arbitral award based on her May 25, 1989 grievance can afford her relief of any kind. Without such reinstatement this proceeding is an exercise in hindsight only and offers nothing substantial for either party.

If Ms. Ivy's May 25, 1989 grievance must include a remedy involving reinstatement for it to accord relief to the Grievant, it is a grievance which constitutes a disciplinary grievance involving the discharge of Ms. Ivy during her probationary period. As stated previously, a disciplinary grievance involving discharge during an employee's initial probationary period is specifically prohibited by the contract between the parties by express language located within Articles 7 and 9. While Ms. Ivy's grievance was filed shortly before her probationary discharge and while no specific mention of discharge appears within her grievance, the arbitrator is nonetheless persuaded that the intent of her grievance and the effect of her grievance is to raise a disciplinary grievance by a probationary employee who is not entitled to access to the grievance procedure under which this matter proceeds. In other words, the grievance filed by Ms. Ivy on May 25, 1989 raises a subject which is not grievable and therefore not arbitrable under the collective bargaining agreement between the parties. To rule otherwise is to permit a probationary employee, who has been disciplined during her probationary period through suspension, discharge or reduction in pay or position, to secure for herself access to a grievance procedure to which she is,

under these circumstances, unequivocally barred. To allow such a result is to modify the terms of the collective bargaining agreement between the parties and impose upon the parties a limitation or obligation not specifically required by the express language of this agreement. This the arbitrator is explicitly prohibited from doing by language contained within Section 7.07(E)(1) of Article 7 of the contract.

It should be noted that the arbitrator is not employed to determine what is fair or just. The arbitrator is employed specifically and exclusively to give effect to an agreement reached by the parties, through collective bargaining, which is memorialized in the contract under which the parties proceed. The wisdom and judgment as to what is acceptable and what is not acceptable in terms of this agreement is decided by the parties and expressed within the language which makes up the body of the contact. The arbitrator has no authority and has no right to question what the parties have agreed. The arbitrator has only the authority granted to him by the parties to give effect to what has been agreed. In this case the arbitrator finds that the parties agreed that probationary employees shall not have the right to grieve disciplinary actions involving suspension, discharge or reductions in pay or position during their initial probationary periods. As the arbitrator herein finds that Ms. Ivy has attempted to grieve her discharge during her initial probationary period through her grievance filed on May 25, 1989, it is found that this

attempted grievance is not cognizable under the contract between the parties and is therefore a grievance which is not arbitrable.

AWARD

The grievance filed by April Ivy is not arbitrable.

Howard D. Silver
Arbitrator

March 22, 1990
Columbus, Ohio