

Howard D. Silver
Arbitrator
Columbus, Ohio

#7/2 ✓

In the Matter of Arbitration
Between

The State of Ohio

and

Grievant: Marcia R. Wehrman

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

Grievance No.:
24-11-910225-0309-02-11

APPEARANCES

For: The State of Ohio

Robert E. Thornton, Advocate
Office of Collective Bargaining

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

Ervin L. Crenshaw, Advocate
District 1199, The Health Care and
Social Service Union, SEIU, AFL-CIO

This matter was originally scheduled for hearing on September 5, 1991. At the request of the Employer and over the objection of the Union, this matter was continued to October 16, 1991. The hearing was conducted on October 16, 1991 on the premises of the Southwest Ohio Developmental Center, a facility operated by the Ohio Department of Mental Retardation and Developmental

Disabilities located in Batavia, Ohio. Both parties were afforded a full and fair opportunity to present testimonial and documentary evidence. Following the submittal of written closing and reply briefs, the record in this matter was closed on December 7, 1991.

ISSUE

Is the removal of Grievant Marcia Wehrman for just cause? If not, what shall be the remedy?

STIPULATED STATEMENT OF FACTS

The parties stipulated that the Grievant, Marcia Wehrman, was employed at the Southwest Ohio Developmental Center as a temporary employee immediately prior to her full-time appointment. The parties also stipulated that the Grievant was employed as a full-time Psychiatric Nurse Supervisor 1, classification number 65525, at the Southwest Ohio Developmental Center, a facility of the Ohio Department of Mental Retardation and Developmental Disabilities, from January 26, 1986 until the date of her removal, February 17, 1991.

STATEMENT OF THE CASE

On December 20, 1985, Marcia R. Wehrman submitted an Ohio civil service employment application for the purpose of securing an emergency appointment with the Southwest Ohio Developmental Center. Upon this application Ms. Wehrman listed her residence as 4004 DeCoursey Avenue, Covington, Kentucky. Ms. Wehrman received a temporary appointment to the Southwestern Ohio Developmental Center as a result of this application.

Effective January 26, 1986, Ms. Wehrman received a permanent, full-time appointment as a Psychiatric Nurse Supervisor 1 with the Southwest Ohio Developmental Center and her employment continued under this appointment until the date of Ms. Wehrman's discharge, February 17, 1991. Written notification of her permanent appointment on January 26, 1986 was directed to Ms. Wehrman over the signature of the then Superintendent of the Southwest Ohio Developmental Center, Robert C. Boley.

A personnel action form, personnel action number 341882, was prepared to record the January 26, 1986 permanent appointment of Ms. Wehrman to the position of Psychiatric Nurse Supervisor 1 at the Southwest Ohio Developmental Center. Upon this personnel action form Ms. Wehrman's place of residence was listed as 4004 DeCoursey Avenue, Covington, Kentucky. This personnel action form had written upon it the signature of Robert E. Brown, identified as Director, but did not have written upon it the signature of the Director of the Ohio Department of Administrative Services. A

handwritten notation appears on this personnel action form which reads: "LTR of residency intent?"

A second personnel action form, personnel action number 330829, was prepared to record the January 26, 1986 permanent appointment of Ms. Wehrman to the position of Psychiatric Nurse Supervisor 1 at the Southwest Ohio Developmental Center. This personnel action form bears the signature of SODC Superintendent Ronald C. Boley and also has upon it the signature of William G. Sykes, the Director of the Ohio Department of Administrative Services. This personnel action form, which is marked "approved" near the signature of the Director of the Ohio Department of Administrative Services, has listed upon it 721 Princeton Drive, Terrace Park, Ohio as Ms. Wehrman's residential address.

In February or March, 1986, Ms. Wehrman filed with the Southwest Ohio Developmental Center a statement which reads as follows:

To Whom It May Concern:

This is to inform you that I am now a resident of the State of Ohio. My address and phone number are as follows:

Marcia R. Wehrman, R.N.-PNSI
721 Princeton Drive
Terrace Park, Ohio 45204
513-831-3670

If I may be of further assistance, please do not hesitate to call.

Sincerely,

Marcia R. Wehrman

Subsequent to March, 1986, Ms. Wehrman filed with the Southwest Ohio Developmental Center an employee change of address notice. This notice corrected Ms. Wehrman's address from 721 Princeton Drive, Terrace Park, Ohio to 921 Princeton Drive, Terrace Park, Ohio. Also filed by Ms. Wehrman was an Employee's Personnel Record Emergency Information form listing Ms. Wehrman's address as 921 Princeton Drive, Terrace Park, Ohio, and upon this form two telephone numbers were listed, 831-3670 or 491-7234.

In February, 1986, John H. Santose was appointed Superintendent and Chief Executive Officer of the Southwest Ohio Developmental Center. In late September or early October, 1990, a page from the Cincinnati Bell White Pages Telephone Book was directed to Superintendent Santose by an employee of the payroll office of the Southwest Ohio Developmental Center. On this page Marcia R. Wehrman was listed at the address 38 East 41st Street, Covington, Kentucky, with a telephone number listed as 491-7234. Superintendent Santose contacted the central offices of the Ohio Department of Mental Retardation and Developmental Disabilities and was advised to contact Ms. Wehrman for the purpose of affording Ms. Wehrman an opportunity to verify her place of residence.

Superintendent Santose prepared a letter to Ms. Wehrman addressed to 921 Princeton Drive, Terrace Park, Ohio 45174, and placed the letter within an envelope which was marked, "Do not forward, address correction requested." This letter was postmarked October 2, 1990. The letter was returned to the Southwest Ohio Development Center with a label noting that the letter, had it not

been returned, would have been forwarded to Post Office Box 412, Terrace Park, Ohio 45174.

In a letter dated October 8, 1990 directed to Ms. Wehrman at Post Office Box 412, Terrace Park, Ohio 45174, Superintendent Santose informed Ms. Wehrman that recent correspondence had been sent to her address of record on file with the Southwest Ohio Developmental Center which had been returned by the post office with a notation that her address was then Post Office Box 412, Terrace Park, Ohio 45174. Ms. Wehrman was informed in this letter that the Cincinnati Bell Telephone Book listed Ms. Wehrman's address as 38 East 41st Street, Covington, Kentucky. Within this correspondence Ms. Wehrman was reminded that Ohio Revised Code Section 124.27 provides that any person appointed to a position in the classified service pursuant to Ohio Revised Code Sections 124.01 to 124.64, except temporary and exceptional appointments, shall be or become forthwith a resident of the State of Ohio. This correspondence ordered Ms. Wehrman to provide the Southwest Ohio Developmental Center with proof of Ohio residence. Ms. Wehrman was directed to provide this proof no later than November 8, 1990 and was informed that failure to provide such proof of residency within the State of Ohio would result in further action.

On October 17, 1990, Ms. Wehrman directed two letters to Superintendent Santose. One of the letters provided information about Ms. Wehrman's physical condition from her physician, Doctor Michael A. Grefer, and related to a disability claim made by Ms. Wehrman.

The second letter dated October 17, 1990 from Ms. Wehrman to Superintendent Santose was in response to Superintendent Santose's October 8, 1990 correspondence relating to Ms. Wehrman's post office box located in Terrace Park, Ohio and her residential listing within the Greater Cincinnati Telephone Directory as 38 East 41st Street, Covington, Kentucky. Within this correspondence Ms. Wehrman informed Superintendent Santose that she was the owner of the post office box in Terrace Park, Ohio and also possessed a post office box at 15161 Latonia Station in Covington, Kentucky. Ms. Wehrman stated that she received mail at both post office boxes and received mail at both the 921 Princeton Drive, Terrace Park, Ohio address and the address at 38 East 41st Street, Covington, Kentucky. Within this correspondence Ms. Wehrman identified her legal residence as 921 Princeton Drive, Terrace Park, Ohio. This residence was described by Ms. Wehrman as her lawful domicile as a result of her common law marriage to Fred "Dutch" Deuschle. Ms. Wehrman stated within this letter that she entered into this common law marriage with Mr. Deuschle on August 3, 1985. Ms. Wehrman identified 38 East 41st Street, Covington, Kentucky as their second residence, a home purchased by Mr. Deuschle for their son, Duran, on the occasion of their son's six month birthday.

Ms. Wehrman also noted within her letter to Superintendent Santose dated October 17, 1990 that in December, 1985, when Joe Rupe and Joe Brown were acting heads of security and personnel at SODC, Mr. Brown had told employees at SODC that if they needed an Ohio address they were to subscribe to an Ohio post office box.

Within this correspondence Ms. Wehrman noted that she pays Ohio taxes and has paid such taxes since 1985, and also noted her youngest child, Erika Deuschle, has listed on her birth certificate her legal residence of 921 Princeton Drive. Ms. Wehrman also pointed out within this correspondence that she registered to vote in Hamilton County in 1989 and noted that her car is registered in Hamilton County, Ohio.

On or about October 24, 1990, Ms. Wehrman filed an Employee's Personnel Record Emergency Information form with the Southwest Ohio Developmental Center listing her address as 921 Princeton Drive, Terrace Park, Ohio and her telephone number as 491-7234.

In correspondence directed to Ms. Wehrman dated November 21, 1990, Superintendent Santose reiterated that he had directed correspondence to Ms. Wehrman dated October 8, 1990 requesting proof that Ms. Wehrman was an Ohio resident as a condition of employment at the Southwest Ohio Developmental Center. Superintendent Santose referenced the October 17, 1990 correspondence from Ms. Wehrman wherein she claimed residence in the State of Ohio at 921 Princeton Drive, Terrace Park, Ohio, but noted that mail sent to that address was undeliverable and had to be forwarded. Superintendent Santose also noted in this correspondence that the October 24, 1990 Emergency Information sheet filed by Ms. Wehrman with the Center listing the Terrace Park address provided an out of state telephone number as the residence's telephone number. Superintendent Santose also stated within this correspondence that to date he had received no proof

from Ms. Wehrman that she actually resided in the State of Ohio.

Within his November 21, 1990 correspondence, Superintendent Santose ordered Ms. Wehrman to provide his office with proof of residence in the State of Ohio. This verification was demanded by the close of business on December 3, 1990 and Ms. Wehrman was further informed that in the event residence in the State of Ohio could not be secured prior to December 3, 1990, a verification of intent to live in Ohio, such as a signed lease, could be submitted. Superintendent Santose closed his November 21, 1990 correspondence by informing Ms. Wehrman that failure to provide the proof of residency requested would result in administrative action, up to and including removal.

In a letter dated November 30, 1990 from Ms. Wehrman to Superintendent Santose, Ms. Wehrman enclosed a copy of a petition for divorce which she had had filed on her behalf as a common law wife in Ohio. Superintendent Santose was informed that this matter was still in litigation and was further informed by Ms. Wehrman within this letter that the 921 Princeton Drive, Terrace Park, Ohio address would remain Ms. Wehrman's legal residence until issues involving her marital status were resolved.

The complaint for divorce enclosed with Ms. Wehrman's November 30, 1990 correspondence to Superintendent Santose lists Ms. Wehrman as Marcia Wehrman-Deuschle and provides as her address P.O. Box 412, Terrace Park, Cincinnati, Ohio. Paragraph one of this complaint states that the plaintiff, Ms. Wehrman, and the defendant, Fred Deuschle, are and have been residents of Hamilton County, Ohio

for at least six months preceding the filing of this complaint. The complaint alleges that Ms. Wehrman and Mr. Deuschle entered into marriage on or about August of 1983 and have had two children born of this marriage, and alleges that the plaintiff and defendant have been separated and the parties own real estate in both Hamilton County, Ohio and Covington, Kentucky in the name of Mr. Deuschle. The complaint is signed by Gene A. Stagnaro, III, Attorney for Plaintiff Marcia Wehrman.

Upon receipt of the November 30, 1990 letter from Ms. Wehrman with the enclosed divorce complaint, Superintendent Santose ordered the Center's Chief of Security to conduct an investigation into the legal residency of Ms. Wehrman. The investigation ordered by Superintendent Santose produced a paternity complaint filed in Kenton District Court within the Commonwealth of Kentucky on behalf of Ms. Wehrman against Frederick C. Deuschle. This paternity complaint was filed May 13, 1987, notes the birth of a male child, Duran Curby Deuschle, born to Ms. Wehrman on December 9, 1986, alleges that Mr. Deuschle is the natural father of this child, and notes within paragraph three of this complaint that Ms. Wehrman resided at 4004 DeCoursey Avenue, Covington, Kentucky. This paternity complaint also notes that Defendant Deuschle resided at 921 Princeton Drive, Terrace Park, Ohio and alleges that the conception of the child occurred in Kentucky. The second page of this complaint bears the signature of Ms. Wehrman verifying the accuracy, to the best of her knowledge, information and belief, of the information contained within this paternity complaint.

The investigation ordered by Superintendent Santose also produced a consent entry signed by Ms. Wehrman on June 11, 1987 wherein Ms. Wehrman consented to an entry on the journal of the Probate Division of the Court of Common Pleas of Hamilton County, Ohio, finding that Frederick C. Deuschle is the natural father of Duran Curby Deuschle. This consent entry lists Ms. Wehrman's address as 4004 Decoursey Avenue, Covington, Kentucky.

The investigation ordered by Superintendent Santose also uncovered an affidavit of Fred Deuschle as a defendant within the suit for divorce filed against him by Ms. Wehrman in the Hamilton County Court of Common Pleas, Domestic Relations Division, Case No. A-9002585, File No. E-168676-0-9. Within this affidavit Mr. Deuschle swears that he is a resident of 921 Princeton Drive, Terrace Park, Ohio; that he has maintained a relationship with Ms. Wehrman whose address is 38 East 41st Street, Covington, Kentucky; that he is the father of one and possibly another child born to Ms. Wehrman; that he is not and has never been married to Ms. Wehrman; that since the beginning of his relationship with Ms. Wehrman he has never resided with Ms. Wehrman; and that Ms. Wehrman and her children have at all times maintained their residency in Kenton County, Kentucky within a house owned by Mr. Deuschle at 38 East 41st Street, Covington, Kentucky, and to Mr. Deuschle's knowledge have resided there since 1987. This affidavit was signed by Mr. Deuschle on April 12, 1990.

On January 2, 1991, a hearing was conducted within the Court of Common Pleas of Hamilton County, Domestic Relations Division,

within the divorce action filed by Ms. Wehrman against Mr. Deuschle. At page 19 of the transcript of this hearing, Ms. Wehrman's former attorney, Mr. Stagnaro, testified that Ms. Wehrman lived in a house in Kentucky owned by Mr. Deuschle in July, 1990.

On February 14, 1991, a predisciplinary hearing was conducted as to charges lodged against Ms. Wehrman to the effect that she had failed to comply with Ohio Revised Code Section 124.27 in that she had allegedly failed to become a resident of the State of Ohio and had knowingly made false statements on public documents relating to her residency in the State of Ohio. The predisciplinary hearing was conducted before John Quigley, the Director of Human Resources at the Millcreek Developmental Center. On February 15, 1991, Hearing Officer John Quigley issued his report. This report reflects that on two occasions during the predisciplinary conference Ms. Wehrman stated that she was then living in the State of Kentucky, "in exile." Hearing Officer Quigley found, based on the statements of Ms. Wehrman and on written evidence presented by the Employer, that Ms. Wehrman was residing in the State of Kentucky in violation of Ohio Revised Code Section 124.27 and Ohio Administrative Code Section 123:1-11-02, and had made dishonest statements, in writing, claiming to have been a resident of the State of Ohio.

In a letter dated February 15, 1991, over the signature of Superintendent Santose, directed to Ms. Wehrman at 38 East 41st Street, Covington, Kentucky, Ms. Wehrman was informed that she was removed from her position as a Psychiatric Nurse Coordinator,

effective February 17, 1991. The grounds for this removal were listed within an order of removal signed by Superintendent Santose which listed the removal effective date as February 17, 1991. The grounds for the removal expressed within this order included knowingly making false statements on public documents relating to residency in the State of Ohio when, according to this order, Ms. Wehrman had been a resident of the State of Kentucky from October, 1990 through January, 1991. The order of removal issued to Ms. Wehrman alleged that she had failed to comply with Ohio Revised Code Section 124.27 and Ohio Administrative Code Section 123: 1-11-02 by failing to be or to become a resident of the State of Ohio.

On February 20, 1991, Ms. Wehrman filed a grievance with the State of Ohio as to her removal from employment with the Southwest Ohio Developmental Center. This grievance was processed under the collective bargaining agreement between the parties and on April 16, 1991, the State of Ohio, Office of Collective Bargaining, was informed of the Union's intention to submit this matter to arbitration.

TESTIMONY OF WITNESSES

John Santose

Superintendent John Santose identified the correspondence between himself and Ms. Wehrman which began in October, 1990 and extended through February, 1991. Mr. Santose testified that the

investigation of Ms. Wehrman's residency was prompted by the listing of Ms. Wehrman's residence as being located in Covington, Kentucky within the Greater Cincinnati Ohio Bell Telephone Book. Superintendent Santose testified that the investigation had nothing to do with Ms. Wehrman's membership within the Union and also testified of another individual employed at the Southwest Ohio Developmental Center whose residency had come into question. Superintendent Santose testified at hearing that the investigation of this other individual had occurred in the same manner as that which had occurred involving Ms. Wehrman, and when the Ohio residency of the other individual had been verified, the matter had been dropped. Superintendent Santose testified that the investigation of this other individual had been prompted by military orders which had been received listing a phone number located within the State of Kentucky. Superintendent Santose stated that he had demanded proof of residency from this other individual and residency in Ohio had subsequently been verified.

Fred "Dutch" Deuschle

Mr. Deuschle gave as his residence's address 921 Princeton Drive, Terrace Park, Ohio. Mr. Deuschle explained that he had met Ms. Wehrman at a social event approximately eight years ago and he and Ms. Wehrman had subsequently dated.

Mr. Deuschle testified that he and Ms. Wehrman have two children and these children live with Ms. Wehrman at 38 East 41st Street, Latonia, Kentucky, a suburb of Covington, Kentucky. Mr.

Deuschle testified that he owns the residence at 38 East 41st Street, Latonia, Kentucky; telephones his children at this address and sees his children at this address. Mr. Deuschle explained that he supplied this residence to Ms. Wehrman and their children in an effort to assist his children and provide them with a place to live.

Mr. Deuschle testified that he owns an automobile which has been provided to Ms. Wehrman which is registered in Ohio and is registered in Mr. Deuschle's name. Mr. Deuschle was not aware that Ms. Wehrman owned any other automobile.

When asked whether Ms. Wehrman had ever lived with him at 921 Princeton Drive, Terrace Park, Ohio, Mr. Deuschle stated that Ms. Wehrman had never lived at this address for any length of time and had not lived there for as long as a week. Mr. Deuschle recalled that Ms. Wehrman had expressed a desire to live at 921 Princeton Drive, Terrace Park, Ohio, but this wish had always been refused by Mr. Deuschle. Mr. Deuschle stated that Ms. Wehrman has no ownership interest in 921 Princeton Drive, Terrace Park, Ohio.

Mr. Deuschle testified that in January, 1986 Ms. Wehrman had made casual mention to him of her need to live in the State of Ohio. Mr. Deuschle testified that he informed Ms. Wehrman that if she wished to have correspondence sent to the 921 Princeton Drive, Terrace Park, Ohio address, that would be acceptable. Mail was subsequently sent to Ms. Wehrman at the 921 Princeton Drive address but Mr. Deuschle testified that this arrangement did not work out and subsequently Ms. Wehrman secured a post office box to which her

mail could be forwarded. Mr. Deuschle stated that even after Ms. Wehrman had secured a post office box in Terrace Park, Ohio he continued to receive mail for Ms. Wehrman at the 921 Princeton Drive address.

Mr. Deuschle testified that when he purchased the residence at 38 East 41st Street, Latonia, Kentucky, it had been as a result of a decision made solely by Mr. Deuschle. He believed the house to be a good investment and the house is in close proximity to Ms. Wehrman's parents and to a babysitter who provides care to Ms. Wehrman's children. Mr. Deuschle stated that he provided this residence to Ms. Wehrman so she would have a place to raise their children. Mr. Deuschle stated that his discussion with Ms. Wehrman about relocating to the State of Ohio concerning her work involved Ms. Wehrman's desire to relocate closer to her place of employment. While Mr. Deuschle had been aware that Ms. Wehrman had been removed from her employment at the Southwest Ohio Developmental Center, he and Ms. Wehrman had not discussed the removal. Mr. Deuschle testified that the affidavit he had sworn on April 12, 1990, wherein Ms. Wehrman was listed as living at 38 East 41st Street, Covington, Kentucky, and where it had also been sworn that he and Ms. Wehrman had never resided together, was true.

Under questioning by the Union representative, Mr. Deuschle explained that he had stayed overnight on occasion at his property in Kentucky. When asked why he had provided a house to Ms. Wehrman in the State of Kentucky, Mr. Deuschle testified that he had not wanted to live with Ms. Wehrman but had wanted the children of Ms.

Wehrman and himself to live with Ms. Wehrman. Mr. Deuschle testified that on one occasion he and Ms. Wehrman looked at condominiums in Ohio but there had been no discussion of Mr. Deuschle buying a residence for Mr. Wehrman within the State of Ohio.

Alec Plymale

Alec Plymale is an organizer for District 1199. Mr. Plymale lives in Dayton, Ohio but maintains another address in Huntington, West Virginia.

Mr. Plymale investigated Ms. Wehrman's case in terms of residency and testified that he discovered that the rules applicable to Ohio civil service employees' residency are not applied uniformly. Mr. Plymale testified that, in his opinion, Ms. Wehrman had been treated in a disparate manner in comparison to other employees of the State of Ohio but provided no particulars in support of this opinion.

Under cross-examination by the Employer's representative, Mr. Plymale testified that he had found that certain AFSCME bargaining unit employees employed by the State of Ohio were residing outside the State of Ohio. Mr. Plymale refused to provide the names of these employees.

Mr. Plymale did testify that Quinten Allen, a Business Administrator employed at the Pauline Warfield Lewis Center in Cincinnati, Ohio, was employed by the State of Ohio but lived outside of the State of Ohio. Mr. Plymale was unaware as to

whether Mr. Allen was employed within the classified or unclassified service, but explained he had secured information about Mr. Allen's residence through the Bureau of Motor Vehicles.

Marcia R. Wehrman

Ms. Wehrman testified that in December, 1985 she resided at 4004 DeCoursey, Covington, Kentucky. Ms. Wehrman stated that at the time of her appointment to a permanent position at the Southwest Ohio Developmental Center in January, 1986, she had been asked about her residence but had been told that it was not important and her residence would make no difference.

Ms. Wehrman recalled that in the Spring of 1986, Mr. Santose became the Superintendent of the Southwest Ohio Developmental Center and had told Ms. Wehrman that she must be a resident of the State of Ohio to continue in her employment at the Center. Ms. Wehrman testified that in her mind this meant that she must make an attempt to become an Ohio resident. Ms. Wehrman told Mr. Deuschle at that time, "Santose says I have to live in Ohio." According to Ms. Wehrman, Mr. Deuschle had responded, "You live with me." Ms. Wehrman testified that in her mind, at that time, this established Ms. Wehrman as an Ohio resident.

Ms. Wehrman pointed out that during all times relevant to her employment at the Southwest Ohio Developmental Center she had paid Ohio income taxes, had been married to Fred Deuschle, and her legal residence, based on her marital status, had been 921 Princeton Drive, Terrace Park, Ohio. Ms. Wehrman explained that she lived

in the State of Kentucky because she was incompatible with Mr. Deuschle, pointing out that when she had become pregnant Mr. Deuschle had become abusive toward her.

Ms. Wehrman stated that the house at 38 East 41st Street, Covington, Kentucky was purchased by Mr. Deuschle on the same date the legitimization of their son, Duran Curby Deuschle, had been finalized. Ms. Wehrman stated that this house had been intended to be a temporary arrangement during a time when the residence at 921 Princeton Drive, Terrace Park, Ohio was being readied for Ms. Wehrman and her children. Ms. Wehrman explained that Mr. Deuschle had lived at 921 Princeton Drive alone and it had been considered unsafe for children. Ms. Wehrman explained that in October, 1985, she had lived at 921 Princeton Drive for approximately five weeks while Mr. Deuschle had not been in residence. Once the 921 Princeton Drive residence had been readied for her and her children, however, Mr. Deuschle had refused to allow Ms. Wehrman and her children to move in.

Ms. Wehrman pointed out that the second child born to herself and Mr. Deuschle, Erika Kierstin Deuschle, had been born at St. Luke Hospital in Fort Thomas, Kentucky, and had had listed on her birth certificate 921 Princeton Drive, Terrace Park, Ohio as her home address. Erika Kierstin Deuschle was born on December 6, 1988.

Ms. Wehrman testified she had been active within the Union at the Southwest Ohio Developmental Center and pointed out that when she began her employment at the Center there had been greater

numbers of registered nurses and licensed practical nurses on staff. Ms. Wehrman testified that between February and April, 1990, staffing had been reduced to levels which Ms. Wehrman believed to be dangerous. When Ms. Wehrman returned to the Center from a disability leave she found that staff had remained at a level which she believed to be too low and had filed a grievance as to staffing levels. In April, 1990, Ms. Wehrman directed letters to a variety of individuals and agencies complaining of what she believed to be dangerous conditions at the Center. Investigations ensued at the Center and Ms. Wehrman testified that administrators of the Center had been well aware that Ms. Wehrman had been the cause of these investigations.

Ms. Wehrman pointed out that in 1986 the Director of Nursing had raised the residency question with Ms. Wehrman and had informed her that she needed to be a resident of Ohio to remain employed at the Center. Ms. Wehrman testified that she had been informed by the Director of Nursing that her residency was determined by where she voted. Ms. Wehrman stated that the residency issue had never been mentioned again until the fall of 1990.

Ms. Wehrman explained that while in the Cincinnati area in September, 1989, she observed a sign in a shop window inviting citizens to enter and register to vote. Ms. Wehrman entered the shop, filled out a voter registration card and wrote upon this voter registration card the address 921 Princeton Drive, Terrace Park, Ohio. This card is dated September 20, 1989 and bears the signature of a volunteer registrar, Timothy R. Duncan. Ms. Wehrman

testified that the address appearing on this registration card was correct at that time as that was her marital domicile and her legal residence.

Ms. Wehrman reiterated that the house that she lives in with her children in Kentucky resulted from a mutual agreement between herself and Mr. Deuschle but was only to serve as a temporary place of residence until 921 Princeton Drive could be readied for her children. Ms. Wehrman also testified that she submitted to Superintendent Santose what she considered proof of her residency in the State of Ohio.

Under cross-examination by the Employer's representative, Ms. Wehrman testified that the Personnel Director at the Mt. Vernon Developmental Center in January, 1986, Mr. Brown, arrived at the Southwest Ohio Developmental Center as the Center's acting Personnel Director. Ms. Wehrman testified that she was informed by Mr. Brown in January, 1986 that if she encountered any problems in regard to her residency she could simply get a post office box in the State of Ohio and this would satisfy any residency requirements.

When asked why certain legal documents involving the paternity of her children list her residence as being located in Kentucky, Ms. Wehrman stated that these documents had been prepared at a time when she was under extreme duress, pointed out that she did not have access to legal counsel during the paternity hearing, and had simply followed the advice of her counsel to use the DeCoursey address. When asked why she had not used the Princeton Drive

address, Ms. Wehrman testified that it had never come to her frame of reference as her marital domicile at that time. Ms. Wehrman reiterated that her legal residence since August 3, 1985 has been 921 Princeton Drive, Terrace Park, Ohio.

Ms. Wehrman agreed that during her tenure as an employee of the Southwest Ohio Developmental Center she had been employed within the classified service. Ms. Wehrman testified that in or prior to 1986 she and Mr. Deuschle had looked at condominiums in the State of Ohio. At some point in time Ms. Wehrman became aware that 921 Princeton Drive couldn't ever be readied for her children and therefore other accommodations had been considered. Ms. Wehrman stated that the house in Kentucky was not for her but for her son Duran, that Mr. Deuschle paid for the utilities on the house, and said that the car which she drives had been a birthday gift to her from Mr. Deuschle on the occasion of her 39th birthday. Ms. Wehrman stated that the title for this vehicle was in Mr. Deuschle's name but it had been a gift to Ms. Wehrman.

Ms. Wehrman explained that she had been off work since April, 1990 as a result of a back injury, a disability leave which had been made retroactive to November 5, 1989. Ms. Wehrman stated that she had moved to 38 East 41st Street, Covington, Kentucky in June, 1987.

When asked by her representative whether, based on Ms. Wehrman's understanding of the law, she had complied with Ohio's residency requirements for the employment of classified employees, Ms. Wehrman stated that she had, as she understood those

requirements. Ms. Wehrman also testified that what she had directed to Superintendent Santose as proof of her Ohio residency had been perfectly logical and should have been accepted as such.

POSITIONS OF THE PARTIES

Position of the Employer

The Employer claims that Ms. Wehrman was properly removed from her position with the Southwest Ohio Developmental Center on the basis of failing to become a resident of the State of Ohio as required by Ohio Revised Code Section 124.27, and for fraudulently completing various employment forms listing her residence as 921 Princeton Drive, Terrace Park, Ohio. The Employer claims that during all time periods when Ms. Wehrman had been employed at the Southwest Ohio Developmental Center, she had resided at 4004 DeCoursey Avenue, Covington, Kentucky or 38 East 41st Street, Covington, Kentucky.

The Employer points out that beginning in October, 1990, Ms. Wehrman had been informed by her Employer of the necessity of maintaining residency in the State of Ohio if she wished to continue as an employee of the Southwest Ohio Developmental Center. The Employer points out that Ms. Wehrman was given ample opportunity to satisfy this statutory obligation between early October, 1990 and mid-February, 1991. The Employer claims that Ms. Wehrman not only refused to establish residency in the State of

Ohio but continued to provide false and misleading statements to her Employer in this regard.

The Employer argues that Ohio Revised Code Section 124.27 should be read in context and construed according to accepted rules of grammar and common usage. Because the term "resident" is not defined by this statute, the Employer urges that Black's Law Dictionary, which does provide a definition for "resident", be used, and that this definition be "any person who occupies a dwelling within the State, has a present intent to remain within the State for a period of time, and manifests that intent by establishing an ongoing physical presence within the State together with indicia that his presence within the State is something other than merely transitory in nature." The Employer argues that the term "resident" should be held to mean a dweller, a habitant, or occupant, one who resides or dwells in a place for a period of more, or less, duration; signifying one having a residence or one who resides or abides. The Employer points out that merely having a post office box within the State of Ohio or simply hoping or desiring to live in a place within the State of Ohio is not sufficient to establish the residency required by Ohio Revised Code Section 124.27.

The Employer emphasizes that Ohio Revised Code Section 124.27 requires that a person who is not a resident of Ohio and who is to be employed as a classified employee shall become a resident of Ohio "forthwith" upon appointment. The Employer points out that four and one-half years after Ms. Wehrman was employed as a

classified employee of the Southwest Ohio Developmental Center she had still failed to establish Ohio residency. The Employer urges that because Ms. Wehrman has failed to establish residency in the State of Ohio, because there is no evidence of any kind reflecting that Ms. Wehrman has any intention of establishing such residency, and because of false and misleading statements which the Employer claims Ms. Wehrman has made in regard to her residency in Ohio, the removal of Ms. Wehrman should be upheld and the grievance as to her removal dismissed.

Position of the Union

The Union claims that Marcia Wehrman was not discharged for just cause. The Union urges that the Grievant fully complied with her interpretation of Ohio residency requirements found within the Ohio Revised Code and the Ohio Administrative Code. The Union points out that neither the Ohio Revised Code nor the Ohio Administrative Code defines what constitutes a "resident" of the State of Ohio and points out that both codes only address an applicant for a position. The Union emphasizes that neither code places any limitation on a person who works for the State of Ohio after she is hired.

The Union points out that in December, 1985, when Ms. Wehrman made application for appointment to a civil service position with the State of Ohio, she listed as her address 4004 DeCoursey Avenue, Covington, Kentucky. The Union stresses that the initial personnel action form issued for this appointment listed Ms. Wehrman's

address as 4004 DeCoursey Avenue, Covington, Kentucky, and Ms. Wehrman had been informed in early 1986 by the then acting Personnel Director, Mr. Brown, that in the event an Ohio address were to be needed, all that would need be done would be to subscribe to an Ohio post office box. The Union also points out that it had always been Ms. Wehrman's intention to reside with her common law husband, Mr. Deuschle, at 921 Princeton Drive, Terrace Park, Ohio. The Union emphasizes that Ms. Wehrman had the full and honest intention to continue her relationship with Mr. Deuschle and it had been her understanding that because of this relationship she and her children would reside at the Princeton Drive address when it became suitable for her and her children to live there. The Union claims that this bona fide intention satisfies the statutory requirement for residency found within Ohio Revised Code Section 124.27.

The Union emphasizes that because the Terrace Park residence owned by Mr. Deuschle was not suitable for Ms. Wehrman and her children, she was relocated, on a temporary basis, to the house at East 41st Street in Covington, Kentucky. Once again, the Union emphasizes that this was to be a temporary arrangement, was only to continue until the house in Terrace Park was suitable for Ms. Wehrman and her children, and the Union contends that these actions indicate a continuing intention on the part of Ms. Wehrman to live within the State of Ohio.

The Union also points out that the management of the Southwest Ohio Developmental Center had been well aware of Ms. Wehrman's

residency in Kentucky and the reasons as to why she was living there. The Union points to testimony from Ms. Wehrman to the effect that a birthday party for her son, Duran, at his home on the occasion of his six month birthday on June 6, 1986 had been prominently posted throughout the Southwest Ohio Developmental Center and managers at the Center had been invited to the party. The Union points out that no attempt was made at that time to question Ms. Wehrman's residency. The Union argues that no effort was made prior to October, 1990 to question Ms. Wehrman's residency as a condition of employment and that as time went on the Employer accepted the Grievant as a legitimate employee of the State of Ohio, and her continuing employment while she resided in Covington, Kentucky established a continuing practice.

The Union also argues that Ms. Wehrman should be viewed as having dual residency, both in Ohio and in Kentucky. The Union reminds the arbitrator that the President of the United States is a dual resident, having property in Texas and Maine. The Union contends that Ms. Wehrman should be treated no differently than any other state employee who works for the State of Ohio but who maintains property in other states. The Union contends that to deny Ms. Wehrman these rights would be to discriminate against her.

The Union also claims that the collective bargaining agreement now in effect between the parties, the contract under which this disciplinary action proceeds, provides within its first article that the purpose of this agreement is to provide for the wages, hours, and terms and conditions of employment of the employees

covered by this agreement. The Union stresses that Article 1 of the contract between the parties is intended to automatically modify or supersede conflicting rules, regulations, and interpretative letters of the Department of Administrative Services pertaining to wages, hours and conditions of employment; and conflicting rules, practices, policies and agreements of or within departments/agencies pertaining to terms and conditions of employment; and conflicting sections of the Ohio Revised Code except those incorporated in Chapter 4117. or referred to therein. The Union points out that nothing within the contract between the parties requires residency within the State of Ohio to maintain employment with the State of Ohio. The Union argues that provisions within the Ohio Administrative Code and the Ohio Revised Code addressing residency within the State of Ohio as a precondition to employment with the State of Ohio have been superseded by the provisions of the contract between the parties. The Union claims, therefore, that a residency requirement may not be employed as a basis for the discharge of Ms. Wehrman under the collective bargaining agreement between the parties and therefore the removal of Ms. Wehrman, effective February 17, 1991, cannot be based upon just cause.

The Union points out that had the State of Ohio wished to include within the collective bargaining agreement between the parties a residency requirement, such a requirement could have been negotiated and installed within the contract, but was not. The Union argues that attempting to impose a residency requirement upon

members of the bargaining unit covered by the collective bargaining agreement between the parties is an attempt by Management, through the arbitration process, to secure for itself something it did not secure at the bargaining table.

The Union also claims that the real reason behind the removal of Ms. Wehrman is retaliation by the Employer against Ms. Wehrman for the several grievances she had filed at the Southwest Ohio Development Center involving staffing issues, and patient care and conditions. The Union claims that because of the investigations which ensued as a result of these grievances, Management now seeks retribution against Ms. Wehrman for the investigations which occurred at the Center.

The Union argues that Ms. Wehrman never engaged in any dishonesty in the completion of public records involving her employment by the State of Ohio, that Management had been aware of her living circumstances at all times, and that Ms. Wehrman had met all criteria imposed by Management concerning residency. The Union contends that the information provided by Ms. Wehrman to the Superintendent of the Southwest Ohio Developmental Center meets all requirements necessary to establishing her satisfaction of Ohio Revised Code Section 124.27 and applicable Ohio Administrative Code provisions. The Union contends that this action is merely an attempt by the Employer to rid itself of what Management considers a troublemaker. The Union therefore requests that Ms. Wehrman be reinstated with full back pay and her grievance be sustained in its entirety.

DISCUSSION

The Grievant was removed from employment with the Southwest Ohio Developmental Center effective February 17, 1991. The discharge of the Grievant was executed as a disciplinary proceeding under the contract between the parties.

Article 8 of the collective bargaining agreement between the parties applicable to this grievance provides in Section 8.01 that disciplinary action may be imposed upon an employee only for just cause. Thus, if the removal of the Grievant in this case is to be upheld, the arbitrator must find that the reasons underlying the separation of Ms. Wehrman from her employment with the Southwest Ohio Development Center have been sufficiently proven, in terms of validity and egregiousness, to support the discipline imposed. In opposition to the removal of the Grievant, the Union puts forth three arguments.

First, the Union contends that the residency requirement contained within Ohio Revised Code Section 124.27 is not applicable to the employment of Ms. Wehrman as such a requirement is not contained within the collective bargaining agreement negotiated and agreed by the parties. The Union argues that Management had the opportunity to negotiate such a residency requirement at the time the contract was negotiated but did not do so, and therefore the residency requirement upon which the Grievant's removal is based is a requirement falling outside the contract and is therefore a

duty which may not be imposed as a condition of employment applicable to Ms. Wehrman.

The Employer disputes the Union's claim as to the inapplicability of the Ohio residency requirement contained within Ohio Revised Code Section 124.27 to Ms. Wehrman, pointing to Article 1 of the contract between the parties and provisions within Ohio Revised Code Section 4117.10(A). For the reasons listed below, the arbitrator finds that the Employer's argument on this claim is well-taken.

Article 1 of the collective bargaining agreement between the parties in effect from June 12, 1989 through June 11, 1992 defines the purpose of this agreement as providing for the wages, hours, and terms and conditions of employment of the employees covered by this agreement, and to provide an orderly, prompt, peaceful and equitable procedure for the resolution of differences between employees and the employer. Article 1 of the contract between the parties provides that upon ratification, the provisions of this agreement shall automatically modify or supersede conflicting rules, regulations and interpretative letters of the Department of Administrative Services pertaining to wages, hours and conditions of employment; conflicting rules, regulations, practices, policies and agreements of or within departments/agencies pertaining to terms and conditions of employment; and conflicting sections of the Ohio Revised Code except those incorporated in Ohio Revised Code Chapter 4117. or referred to within Ohio Revised Code Chapter 4117. Thus, the language of Article 1 within the contract between the

parties expressly provides that the provisions within this contract do not supersede or modify statutory provisions contained within Ohio Revised Code Section 4117.

Ohio Revised Code Section 4117.10(A) provides that an agreement between a public employer and an exclusive representative entered into pursuant to Chapter 4117. of the Ohio Revised Code, covers the wages, hours, and terms and conditions of public employment covered by the agreement. This statute also provides that where no agreement exists or where an agreement makes no specification about a matter, the public employer and public employees are subject to all applicable state or local laws or ordinances pertaining to the wages, hours, and terms and conditions of employment for public employees. This statute goes on to state that laws pertaining to residency requirements prevail over conflicting provisions of agreements between employee organizations and public employers.

The State of Ohio's Southwest Ohio Development Center, a facility operated by the Ohio Department of Mental Retardation and Development Disabilities, is a public employer, and the Ohio Health Care Employees Union, District 1199 is an exclusive representative, as intended by Ohio Revised Code Chapter 4117. It is also the case that the collective bargaining agreement between these parties was entered into pursuant to Chapter 4117. of the Ohio Revised Code and governs the wages, hours, and terms and conditions of public employment of those within a bargaining unit covered by this agreement.

By operation of Ohio Revised Code Section 4117.10 (A), therefore, as the contract between the parties makes no specification about requiring Ohio residency, public employees covered by this contract are subject to state laws pertaining to such a requirement. Ohio residency requirements as they relate to classified public employees are addressed within Ohio Revised Code Section 124.27.

It is also the case that Ohio Revised Code Section 4117.10(A) expressly provides that Ohio laws pertaining to residency requirements are to prevail over conflicting provisions within collective bargaining agreements addressing such requirements. Thus, even had the contract between the parties herein had within it language which conflicted with the residency requirements contained within Ohio Revised Code Section 124.27, according to Article 1 of the contract between the parties and express language within Ohio Revised Code 4117.10 (A), the residency requirement contained within Ohio Revised Code Section 124.27 would be entitled to enforcement.

The arbitrator is therefore persuaded, based on the language of the contract between the parties and the statutory language contained within Ohio Revised Code Section 4117.10(A) and Ohio Revised Code Section 124.27, that the requirement of Ohio residency found within Ohio Revised Code Section 124.27 is applicable to bargaining unit members covered by the contract between the parties and is a requirement therefore applicable to the Grievant in this matter.

The second argument put forward by the Union in opposition to the discharge of the Grievant claims that there is insufficient cause to uphold the removal of Ms. Wehrman such that just cause is absent in support of the termination of the Grievant's employment. The Union argues that Ms. Wehrman fully complied with her interpretation of residency requirements found within the Ohio Revised Code and the Ohio Administrative Code. The Union points out that neither code provides a definition for "resident" of the State of Ohio. The Union contends that both codes address only an applicant for a position and neither code places any residency limitation on a person after that individual has been hired by the State of Ohio. The Union claims that Ms. Wehrman always possessed the intention to live within the State of Ohio but because of circumstances beyond her control has had to temporarily take advantage of a second residence in the State of Kentucky. The Union argues that Management has been aware of this situation for years and should be estopped at this late date from taking action on a circumstance which has long been known to the Employer.

The Employer urges the arbitrator to take a common sense point of view in addressing the just cause requirement applicable to Ms. Wehrman's removal. The Employer points out that Ms. Wehrman has had ample notice that the residency requirement contained within Ohio Revised Code Section 124.27 would be enforced and was given ample opportunity to comply with this legal requirement. The Employer claims that Ms. Wehrman has failed to satisfy the legitimate requirements of Ohio law as to residency within this

state as a precondition to continuing public employment by the State of Ohio, and has instead issued statements to her Employer while employed at the Southwest Ohio Developmental Center which were misleading and false in terms of her residency.

As stated above in the arbitrator's discussion of whether Ohio Revised Code Section 124.27 is applicable to bargaining unit members covered by the contract between the parties, it is found by the arbitrator that the residency requirement found within Ohio Revised Code Section 124.27 is applicable to these bargaining unit members and therefore was applicable to the Grievant prior to and on the date of her discharge. There remains, however, a determination of exactly what this residency requirement demands.

The language addressing residency required of Ohio public employees appears within the last sentence of Ohio Revised Code Section 124.27. This sentence reads as follows:

... Any person appointed to a position in the classified service under sections 124.01 to 124.64 of the Revised Code, except temporary and exceptional appointments, shall be or become forthwith a resident of the state.

The evidence presented reveals that Ms. Wehrman was originally appointed to a position at the Southwest Ohio Developmental Center in December, 1985 under a temporary or exceptional appointment. Under the express language of Ohio Revised Code Section 124.27, the appointment of Ms. Wehrman as a temporary or exceptional appointee did not require that Ms. Wehrman be a resident of the State of Ohio. Ms. Wehrman listed her address at that time on her Ohio

civil service employment application, signed by Ms. Wehrman on December 20, 1985, as 4004 DeCoursey Avenue, Covington, Kentucky. Ms. Wehrman received her temporary or exceptional appointment and her Kentucky residency as listed on her application raised no legal issue in terms of her residency.

Ms. Wehrman's permanent appointment, however, effective January 26, 1986, with the Southwest Ohio Developmental Center, removed her from the ranks of those appointed under a temporary or exceptional appointment and brought into play the residency requirement expressed within Ohio Revised Code Section 124.27. As a full-time permanent appointee, effective January 26, 1986, Ms. Wehrman became a person appointed to a position in the classified service under Sections 124.01 to 124.64 of the Ohio Revised Code. Her status as such triggered the operation of the final clause contained within Ohio Revised Code Section 124.27, which reads, "...shall be or become forthwith a resident of the state."

Both parties to this proceeding have pointed out to the arbitrator that the term "resident" is undefined within Ohio Revised Code Chapter 124. The Employer urges a nontechnical, common sense definition be applied by the arbitrator for purposes of construing this term within the context of the language of Ohio Revised Code Section 124.27. The Union contends that this language refers only to applicants for positions for public employment with the State of Ohio and does not apply to those who have been hired by the State of Ohio.

The Union's argument, to the effect that the residency requirement contained within Ohio Revised Code Section 124.27 is applicable only to applicants and not to those hired by the State of Ohio, is not well-taken. The language of Ohio Revised Code Section 124.27 does not refer to applicants but to any person appointed to a position in the classified service. The arbitrator does not find that the residency requirement intended by Ohio Revised Code Section 124.27 applies only to those who have applied for employment with the State of Ohio and not to those who have secured employment with the State of Ohio. The arbitrator reads the language of Ohio Revised Code Section 124.27 to mean that the Legislature of the State of Ohio intends that Ohio public employees within the classified service shall be residents of the State of Ohio at the time of their appointment or shall become residents of the State of Ohio very shortly after their appointment.

The arbitrator finds that the term "resident", as used within Ohio Revised Code Section 124.27, describes a person who resides in a place, and that to reside means to dwell permanently or for a considerable time, or to be present at a place habitually. The definitions of "resident" and "reside" are intended by the arbitrator to be common, ordinary, everyday definitions of these terms and the arbitrator's definitions are supported by definitions for these terms contained within the Unabridged Second Edition of the Random House Dictionary of the English Language, published by Random House in 1987.

The evidence presented reveals that Ms. Wehrman, from the date of her permanent appointment to a position with the Southwest Ohio Developmental Center in January, 1986, has lived either at 4004 DeCoursey Avenue in Covington, Kentucky or at 38 East 41st Street, Latonia, Kentucky, a suburb of Covington, Kentucky. This finding is supported by the testimony of Ms. Wehrman, the testimony of Mr. Deuschle, and a variety of documents either prepared by Ms. Wehrman or prepared on her behalf. A number of documents submitted to the Southwest Ohio Developmental Center, though purporting to describe Ms. Wehrman's address as 921 Princeton Drive, Terrace Park, Ohio, provide a telephone number for the 38 East 41st Street address in Latonia, Kentucky. The fact that Ms. Wehrman made arrangements to receive mail at a post office box in Terrace Park, Ohio rather than at the 921 Princeton Drive address also supports the view that Ms. Wehrman was not physically living at the 921 Princeton Drive, Terrace Park, Ohio address during the period of time in question.

The heart of the dispute between the parties as to the residency requirement applicable to Ms. Wehrman under Ohio Revised Code Section 124.27 appears to be a dispute between where Ms. Wehrman physically resides and where Ms. Wehrman claims to legally reside. As stated above, all of the evidence presented in this case reveals that Ms. Wehrman was physically living at an address in the State of Kentucky from December, 1985 through the date of her removal, February 17, 1991. Ms. Wehrman has argued, however, that because of her marital status involving Mr. Deuschle, and because of her mental state as it relates to her intention to live

at 921 Princeton Drive, Terrace Park, Ohio, her legal residence should be viewed by her employer and this arbitrator as 921 Princeton Drive, Terrace Park, Ohio.

The arbitrator has examined closely the indicia argued by Ms. Wehrman and the Union on Ms. Wehrman's behalf which the Grievant and the Union contend reveal that Ms. Wehrman has been a legal resident of the State of Ohio during the time period in question. These indicia include the payment of Ohio income taxes, the operation of a vehicle that is registered in the State of Ohio, and addresses appearing on birth certificates of children born to Ms. Wehrman. The arbitrator has also examined the voter registration card provided by Ms. Wehrman upon which she listed herself as an Ohio resident. The arbitrator has also taken into consideration the instances wherein Ms. Wehrman had made mention at her place of employment, the Southwest Ohio Developmental Center, of her residency within the State of Kentucky, specifically for a birthday party on behalf of her son. The arbitrator is nonetheless persuaded that the reality of where Ms. Wehrman physically lived between October, 1990 and February 17, 1991 must determine whether the Grievant has satisfied the residency requirements of Ohio Revised Code Section 124.27 or not. The arbitrator is not persuaded that legal fictions involving post office boxes or mental intentions or claims as to marital domicile or arguments concerning necessity overcome proof of actual circumstances within the real world as to where a person lives in terms of determining whether an individual resides within the State of Ohio or not.

Ms. Wehrman first received notice of her employer's concern about the circumstances of her residency in early October, 1990, and received subsequent correspondence from the Superintendent of the Southwest Ohio Developmental Center informing Ms. Wehrman that if concerns about her residency were not satisfied she would face administrative action which could include separation from employment. Ms. Wehrman's response was to direct correspondence to the Superintendent of the Center expressing her legal position and her contention that the circumstances underlying her living arrangements satisfied Ohio Revised Code Section 124.27. Ms. Wehrman continued to describe herself as a resident of the State of Ohio in this correspondence and continued to maintain that she was a resident of 921 Princeton Drive, Terrace Park, Ohio. Ms. Wehrman did not, between October, 1990 and mid-February, 1991, substantiate that she actually dwelled at a residence within the State of Ohio and based on this lack of proof was removed from her employment with the Southwest Ohio Developmental Center.

The residency requirement of Ohio Revised Code Section 124.27 requires that an individual who is appointed to a position in the classified service "shall be or become forthwith a resident of the state." The evidence presented reveals that Ms. Wehrman was not a resident of the State of Ohio on the date of her full-time permanent appointment to the classified service of the State of Ohio, and the evidence presented also reveals that she did not become a resident of the State of Ohio forthwith, that is, without delay, and five years later had still not become a resident of the

State of Ohio even after repeated notification that such Ohio residency was required by law. The arbitrator finds that Ms. Wehrman has been in violation of Ohio Revised Code Section 124.27 in that she had failed to be or become forthwith a resident of the State of Ohio following her appointment to a position in the classified service that was neither exceptional nor temporary, failed to satisfy this residency requirement after being directed to do so in October, 1990, and in documents filed with the Superintendent of the Southwest Ohio Developmental Center claimed residency in the State of Ohio when she was not residing within the State of Ohio. While Ms. Wehrman was entitled to interpret for herself what was required by Ohio Revised Code Section 124.27, her claims to the Superintendent of the Southwest Ohio Developmental Center to the effect that she was a resident of the State of Ohio were nonetheless misleading, and were intended to persuade the Superintendent of the Center of a fact that was not true. To this extent the correspondence of Ms. Wehrman to the Superintendent of the Southwest Ohio Developmental Center in regard to her State of Ohio residency was misleading and false.

The third issue put forward by the Union in opposition to the removal of Ms. Wehrman claims that Ms. Wehrman was removed not because of a lack of residency in the State of Ohio but because of the investigations which Ms. Wehrman caused to be conducted at the Southwest Ohio Developmental Center. The Union contends that this discharge is a matter of retaliation and constitutes an attempt by

the Southwest Ohio Developmental Center to relieve itself of a troublemaker.

The arbitrator is not persuaded upon the evidence presented that the Southwest Ohio Developmental Center has used the residency requirement contained within Ohio Revised Code Section 124.27 as a subterfuge for ridding itself of an unwanted employee. The evidence presented persuades the arbitrator that the question as to the residency of Ms. Wehrman arose when her name and address were discovered within a telephone book of the greater Cincinnati area and this information was passed to Superintendent Santose. The fact that Ms. Wehrman's requests for investigations occurred between February 12, 1990 and April 7, 1990; the fact that she had not been at the Southwest Ohio Developmental Center since April 7, 1990 as an active employee of the Center; and the fact that the residency requirement was only raised in October, 1990, persuade the arbitrator that the Superintendent of the Southwest Ohio Developmental Center removed Ms. Wehrman based on the residency requirements of Ohio Revised Code Section 124.27 and did not use this as a basis to remove an employee for other reasons. The arbitrator is also persuaded to this view by the fact that Ms. Wehrman was given ample opportunity, from October, 1990 through mid-February, 1991, to cure the residency defect underlying her employment by establishing residency in the State of Ohio as a matter of fact rather than as a matter of legal fiction. Had Ms. Wehrman taken the opportunity afforded her to establish residency in the State of Ohio, the basis for this discharge would have been


cured. On the basis of affording Ms. Wehrman four and one-half months to erase what the Employer believed to have been a residency defect in her employment, the arbitrator is not persuaded that the residency requirement of Ohio Revised Code Section 124.27 was used as a ruse to remove Ms. Wehrman.

The collective bargaining agreement between the parties expressly provides that Ohio Revised Code Chapter 4117. is applicable to bargaining unit members covered by this agreement. Ohio Revised Code Section 4117.10(A) expressly imposes upon these bargaining unit members residency requirements imposed by Ohio law. Ohio Revised Code Section 124.27 expressly requires that classified civil servants employed by the State of Ohio reside within the State of Ohio. Failure to satisfy this requirement after reasonable notice and reasonable opportunity to comply with this requirement constitutes just cause for dismissal.

The arbitrator finds that Ms. Wehrman was provided with reasonable notice and reasonable opportunity to comply with Ohio Revised Code Section 124.27 as it relates to Ohio residency, and Ms. Wehrman did not do those things necessary to satisfying the residency requirements contained within this statute. The arbitrator further finds that the failure of Ms. Wehrman to become a resident of the State of Ohio after such notice and opportunity establishes just cause for her removal from employment with the Southwest Ohio Developmental Center.

AWARD

1. The matter herein is arbitrable and properly before the arbitrator.
2. The removal of Grievant Marcia Wehrman was for just cause.
3. The grievance is denied.


Howard D. Silver
Arbitrator

January 2, 1992
Columbus, Ohio