

**Arbitration Decision and Award  
in the Matter of Arbitration Involving**

**State of Ohio Department of Human Services  
and  
Service Employees International Union District 1199  
(Sherry Bush, Grievant)**

**Grievance No: 16-00-9040216-0010-02-12**

**Marcus Hart Sandver, Ph.D.  
Arbitrator**

**Representing the Grievant:**

**Mr. Daniel H. Klos  
Attorney at Law  
Zingarelli Law Offices**

**Representing the State of Ohio:**

**Ms. Edith Barger  
Attorney at Law  
State of Ohio Office of Collective Bargaining  
and  
Mr. Eric Warren  
State of Ohio, Department of Human Services**

**Hearing Dates:**

**August 31, 1994  
November 21, 1994**

**Closing Statements Received:**

**November 29, 1994 (State of Ohio)**

**Final Briefs Received:**

**December 19, 1994 (State of Ohio)**

**Decision Issued:**

**December 31, 1994**

## **I. BACKGROUND**

This case involves a matter of discipline arising from an incident between the grievant (Sherry Bush) and her supervisor. The grievant was suspended for 21 working days for incompetence on February 10, 1994 and served the suspension from February 17, 1994 through March 17, 1994. A grievance was filed on February 16, 1994. The third step meeting was held on March 23, 1994 and the employer's answer denying the grievance was dated April 5, 1994. The request for arbitration, filed by the grievant, was dated April 6, 1994. By mutual agreement, the parties chose from a panel maintained by the State of Ohio and SEIU District 1199, Marcus Hart Sandver to arbitrate the matter. The hearing was scheduled for August 31, 1994.

## **II. THE HEARING**

The hearing convened at 9:00 A.M. on August 31, 1994. Due to issues arising from the grievant's representatives challenge to the arbitrability of the grievance the hearing was postponed by mutual agreement until September 28, 1994. On September 27, 1994 the parties mutually requested postponement of the hearing until November 21, 1994.

The hearing was reconvened at 9:00 A.M. on November 21, 1994. In attendance at the hearing for the grievant were the following:

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| 1. Daniel H. Klos   | Attorney at Law, Chief Spokesperson for the Grievant |
| 2. Sherry Bush      | Grievant   |
| 3. Michael Robinson | SEIU District # 1199 Delegate                        |

In attendance at the hearing for the State of Ohio were the following:

1. Ms. Rachel Livengood      Chief of Arbitration Services  
   Office of Collective Bargaining
2. Mr. Eric Warren              Labor Relations Officer  
   Ohio Department of Human Services
3. Ms. Edith Barger            Advocate, Office of Collective Bargaining

The parties were asked to introduce joint exhibits into the record. The following joint exhibits were introduced:

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| Joint Exhibit # 1 | Issue Statement   |
| Joint Exhibit # 2 | Collective Bargaining Agreement between Service<br>Employees International Union District 1199 and the<br>State of Ohio 1992-1994 |

During the course of the hearing, several exhibits were marked and received into the record.

The following is a listing of union exhibits:

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|--------------------|---|
| Union exhibit # 1  | Department of Human Services<br>Human Resources Policy Manual   |
| Union exhibit # 2  | Department of Human Services Office of Internal<br>Administration Human Resources Policy Directive<br>Dated May 21, 1994. |
| Union exhibit # 3  | Complaint/Disposition Report<br>Dated June 30, 1993.  |
| Union exhibit # 4a | Inter-Office Communication<br>To: File From: Sherry Bush<br>Dated July 14, 1993.  |
| Union exhibit # 4b | Interoffice Communication<br>To: File From: Sherry Bush<br>Dated July 15, 1993.   |

Union exhibit # 5	Inter-Office Communication To: Pauline Hosenfeld From: Carol Ankrom Dated November 4, 1993.
Union exhibit # 6	District # 1199 SEIU/State of Ohio Grievance Form. (Sherry Bush) Dated September 15, 1993
Union exhibit # 6a	District # 1199 SEIU/State of Ohio Grievance form. (Sherry Bush) Dated August 19, 1993
Union exhibit # 7	Grievance Response 2nd step Dated October 29, 1993
Union exhibit # 8	Memo from Peggy Blevins to Pauline Hosenfeld Subject: Corrective Action Plan for Sherry Bush Dated November 17, 1993
Union exhibit # 9	Memo from Peggy Blevins to Pauline Hosenfeld Subject: Sherry Bush Dated November 12, 1993
Union exhibit # 10	Memo from Pauline Hosenfeld to Jack Alsop Subject: Proposed Disciplinary Action - Sherry Bush Dated November 23, 1993
Union exhibit # 11	Memo to Sherry Bush from Carol Ankrom Subject: Transition work plan for unit entry Dated March 18, 1994
Union exhibit # 12	Memo to Carol Ankrom from Mary Louise Dyess Subject: Creative Child Care Center Dated August 11, 1993

The following exhibits were introduced into the record by the employer:

OCB exhibit # 1	Grievance Form. Sherry Bush Dated February 16, 1994
OCB exhibit # 2	Memo to Sherry Bush from Arnold Tompkins Dated February 10, 1994

OCB exhibit # 3	Payroll Ledger for Sherry Bush
OCB exhibit # 4	Opening statement ODHS Dated August 31, 1994
OCB exhibit # 5	State of Ohio Licensing Rules Dated April 1991
OCB exhibit # 6	Complaint Report (Kinder Care) Dated August 17, 1993
OCB exhibit # 7	Complaint Report (Kinder Care) Dated September 9, 1993
OCB exhibit # 8	Letter to Claudia Rapesch (Kinder Care) from a concerned parent. Dated August 12, 1993
OCB exhibit # 9	Letter to Pauline Hosenfeld from a concerned parent Dated August 13, 1993
OCB exhibit # 10	Memo to files Dated August 11, 1993
OCB exhibit # 11	Letter to Krista Azeltine (Kinder Care) from Sherry Bush Dated October 26, 1993
OCB exhibit # 12	Memo to Eric Warren from Peggy Blevins Dated August 19, 1994
OCB exhibit # 13	Memo to Sherry Bush from Peggy Blevins Subject: Creative Child Care Dated September 13, 1993
OCB exhibit # 14	Arbitration Decision (Sherry Bush, grievant) Dated October 22, 1993

### **III. THE ISSUE**

#### **A. STATEMENT OF MAIN ISSUE**

As stated in Joint exhibit # 1: Was the discipline imposed upon the grievant for just cause? If not, what shall the remedy be?

#### **B. ISSUE OF ARBITRABILITY**

The hearing began with a statement from Ms. Livengood regarding the issue of arbitrability of the grievance. The collective bargaining agreement (Joint exhibit # 1) provides for two procedures for handling grievances. In section 7.09 there is an expedited grievance procedure which is to be used in cases involving suspensions, discharges, and reductions in pay or position. Under section 7.09 these types of cases are excluded from the regular grievance procedure found in section 7.06. In her opening statement, Ms. Livengood stated that in practice the parties rarely, if ever, use the expedited procedure for grievances involving suspensions. Further, Ms. Livengood pointed out that the grievant herself had approved (signed) a letter from Michael Robinson (union representative) to Stephen Gulyassy specifically requesting that her case be processed under the grievance procedure found in section 7.06 of the collective bargaining agreement. This letter was dated April 6, 1994 and a copy was sent to Ms. Bush's attorney, Mr. Klos.

The representative of the grievant responded that on the original grievance form itself, Ms. Bush had requested processing the grievance under section 7.09, the expedited procedure. When the grievance was processed to arbitration after the third step answer was received on March 23, 1994, the union contends that Ms. Bush was essentially restating her request to

have the grievance processed under the 7.09 expedited procedure.

### *C. BENCH DECISION - ARBITRABILITY*

The arbitrator called a recess to consider the procedural matter of arbitrability. The arbitrator issued a bench decision and ruled that the grievance was arbitrable. The arbitrator considered carefully the letter from Michael Robinson to Stephen Gulyassy signed by Sherry Bush requesting that the suspension be arbitrated under section 7.06 of the agreement. The best and most recent evidence clearly indicated that Ms. Bush approved the request to arbitrate the matter under section 7.06 on April 6, 1994. Given the signed request from Ms. Bush and the well established past practice of processing suspension grievances under 7.06 ( a point not refuted by the union) the arbitrator asked that the parties proceed to discuss the merits of the case at hand.

### *D. OPENING STATEMENTS - MAIN ISSUE*

The State began its presentation with a prepared opening statement. In his opening statement, Mr. Warren pointed out to the arbitrator that the grievant was a Facilities Standards Representative, AKA a Day Care Licensing Specialist, and that she had been employed by the State of Ohio for 9 years. Mr. Warren emphasized that Facilities Standards Representatives were responsible for conducting inspections of the physical facilities of child care providers. The incident which precipitated the current grievance, occurred during the summer of 1993. It is the position of the State that Ms. Bush was negligent in not conducting a physical inspection of a child care center that had been the subject of several complaints received by

the Department of Human Services. Further, the State maintains that Ms. Bush's actions were part of an established pattern of insubordination dating back to January of 1993. In 1993, Ms. Bush received a 20 day suspension for discrimination, refusal to follow written policies, performing at a substandard level and failure to follow directions.

In the union's opening statement, Mr. Klos briefly reviewed the facts of the matter which transpired during the months of July and August of 1993. Mr. Klos pointed out that on her first day back at work after her 20 day suspension, Ms. Bush was given the assignment to investigate allegations of child abuse which had been raised against Creative Child Care Center. Ms. Bush was directed to conduct an inquiry into the matter by her supervisor, Ms. Blevins. Subject to standard operating procedure, a decision was made to delay an investigation by Ms. Bush of the Creative Child Care Center until Franklin County Children Services had made their investigation. On July 9, 1993, Ms. Blevins went on vacation. On or about July 13, 1993, Ms. Bush asked Ms. Ankrom (Ms. Bush's acting supervisor) to accompany her on an inspection of Creative Child Care Center. Due to an excessive work load, Ms. Ankrom was unable to accompany Ms. Bush on an inspection of the Center. Ms. Ankrom asked Ms. Bush to review Creative Child Care Center's record of non compliance with agency regulations. Ms. Bush then wrote a memo to the files on July 14, 1993 summarizing the record of past infractions against Creative Child Care Center. Ms. Blevins returned from vacation on July 26. Ms. Blevins did not inquire about the progress of the Creative Child Care Center investigation at that time.

In September of 1993, Ms. Blevins reprimanded Ms. Bush for violations of office rules unrelated to the grievance at hand. Ms. Bush filed a grievance about this matter in



September. On October 29, 1993 Ms. Bush met with Mr. Jenkins, Ms. Blevins and Mr. Robinson to discuss the reprimand and the grievances. Mr. Jenkins proposed a corrective action plan he established to help correct the matter which had caused Ms. Bush's reprimand. On November 17, 1993 a corrective action plan was developed in a memo from Ms. Blevins to Ms. Hosenfeld.

On November 12, 1993 Ms. Blevins wrote a memo to Ms. Hosenfeld recommending that Ms. Bush be disciplined for failing to investigate the Creative Child Care Center and for not addressing certain complaints that had been received involving the Kinder Care Learning Center. On November 23, 1993 Ms. Hosenfeld wrote a letter to Ms. Bush in reference to the Creative Child Care Center matter. The corrective action plan of November 17 was not mentioned in the November 23 memo.

Mr. Klos stated his view that Ms. Blevins and Ms. Hosenfeld engaged in punitive conduct towards Ms. Bush. Mr. Klos stated his opinion that Ms. Bush should have been notified by Ms. Blevins of pending discipline when the corrective action plan was discussed on October 29 and when the plan was written on November 17. Mr. Klos concluded his opening statements by stating his view that the actions of Ms. Blevins towards Ms. Bush were not aimed at corrective action but rather at punishment.

#### *E. UNION WITNESS - MICHAEL ROBINSON*

The first witness called by the union was Mr. Michael Robinson. The witness was sworn in by the Arbitrator. Mr. Robinson was Ms. Bush's union representative and testified first in the hearing to eliminate the need to separate the witnesses.

Mr. Robinson testified mainly about the October 29, 1993 meeting with Mr. Jenkins, Ms. Blevins and Ms. Bush. Mr. Robinson testified that no mention was made by Ms. Blevins at the October 29 meeting of additional discipline pending against Ms. Bush. Mr. Robinson testified that in his opinion the October 29 meeting was to "clear the air" of all matters pertaining to Ms. Bush and Ms. Blevins. The result of the October 29 meeting was the memo of November 17 which outlined Ms. Bush's corrective action plan.

On cross examination, Mr. Robinson testified that the grievances filed by Ms. Bush on August 16 and September 14 related to failure to follow reporting in procedures and harassment by the supervisor. Mr. Robinson testified that the corrective action plan of November 17 was directly related to these issues.

On redirect examination, Mr. Robinson testified again that he was under the impression at the October 29 meeting with Mr. Jenkins that the corrective action plan would deal with all of Ms. Bush's discipline problems. On recross examination, Mr. Robinson testified that he had no knowledge of any pending discipline against Ms. Bush at the time of the October 29 meeting.

#### ***F. MANAGEMENT WITNESS - MR. HENRY JENKINS***

The first management witness was Mr. Henry Jenkins, Assistant Deputy Director Office of Child Care and Children Services, Ohio Department of Human Services. The witness testified that he had been employed for three years in his present position. Previously, Mr. Jenkins was employed as the Chief of the Bureau of Child Care at ODHS.

The State advocate asked Mr. Jenkins if he had any knowledge of the matter involving

Ms. Bush's investigation of Creative Child Care Center prior to the meeting which took place on October 29. Mr. Jenkins testified that he had some knowledge of the matter but that he did not formally consult with Ms. Blevins or Ms. Hosenfeld prior to the October 29 meeting regarding the Creative Child Care matter. Mr. Jenkins was asked when he became fully aware of the disciplinary matter involving the investigations of Creative Child Care and Kinder Care and he testified that he did not know when he became fully aware of this matter.

Mr. Jenkins was asked several questions about the corrective action plan (union exhibit # 7 & 8) which he participated in formulating. Mr. Jenkins was asked if union exhibits # 7 and # 8 relate to the Creative Child Care matter and Mr. Jenkins testified that the action plan he formulated, related to the harassment grievance and the checking in grievance filed in August and September of 1993.

On cross examination, Mr. Jenkins was asked if he had prior knowledge of the details of the Creative Child Care matter prior to the October 29 meeting and he testified that he had no such knowledge. Mr. Klos asked Mr. Jenkins if Ms. Blevins told him about the Creative Child Care matter at the meeting of October 29 and Mr. Jenkins testified that she did not. Mr. Klos asked Mr. Jenkins if he was informed about any pending discipline against the grievant at the October 29 meeting and he testified that he was not informed of any pending discipline against Ms. Bush at that time.

Next, Mr. Klos asked Mr. Jenkins a series of questions relating to union exhibits # 9 and # 10. Mr. Jenkins testified that he was familiar with both of these documents and that he signed one of them (#10) on December 9, 1993.

At this point, Mr. Klos asked Mr. Jenkins again why the Creative Child Care matter was not discussed at the October 29 meeting involving Bush, Blevins, Robinson and himself. Mr. Jenkins testified that the Creative Child Care matter was a separate issue and not the subject of the meeting on October 29.

*G. MANAGEMENT WITNESS - PAULINE HOSENFELD*

The next witness called by the State was Ms. Pauline Hosenfeld, Chief of Child Care Licensing. The witness was sworn-in by the Arbitrator. The State representative asked Ms. Hosenfeld to briefly describe her duties as Chief of Child Care licensing and she explained that she was responsible for administering the Day Care Licensing Law. Ms. Hosenfeld briefly described the licensing requirements for child care centers found in OCB exhibit # 5.

Ms. Hosenfeld was asked to comment on Ms. Bush's knowledge of the rules and duties of a Day Care Licensing Specialist. Ms. Hosenfeld testified that Ms. Bush was very skilled and knowledgeable about her job. Ms. Hosenfeld was asked to identify union exhibit # 9 and she identified it as a letter from Ms. Blevins to her dated November 12, 1993 detailing the facts of the Creative Child Care and Kinder Care investigations. Ms. Hosenfeld was asked if this was the first time that she had become aware of problems Ms. Bush had encountered in conducting investigations. Ms. Hosenfeld testified that this was not the first incident where Ms. Bush had encountered difficulties in conducting investigations.

Next, Ms. Hosenfeld was asked to identify union exhibit # 10. Ms. Hosenfeld identified union exhibit # 10 as a letter from her to Mr. Alsop dated November 23, 1993. Ms. Hosenfeld was asked if she considered this matter a serious one and she testified that the

investigation incidents were serious because there were allegations of child abuse which had not been investigated. Ms. Hosenfeld was asked why the investigation of Creative Child Care took so long and she testified that the delay was due to Ms. Bush's failure to initiate an investigation of the matter in July. Finally, the State advocate asked Ms. Hosenfeld if she felt the 21 day suspension was justified. Ms. Hosenfeld testified that due to the seriousness of the allegations against the child care centers, and due to the fact that Ms. Bush had been recently disciplined for a similar offense, that the discipline was justified.

On cross examination, Mr. Klos asked Ms. Hosenfeld if her memo of November 23, 1993 contained any mention of a corrective action plan for Ms. Bush. Ms. Hosenfeld testified that her November 23 memo did not discuss a corrective action plan for Ms. Bush. Next, Mr. Klos asked Ms. Hosenfeld if there is a corrective action plan in effect for Ms. Bush currently. Ms. Hosenfeld testified that Ms. Bush now has a new supervisor (Ms. Ankrom) and there was a transition plan developed on March 18, 1994 (union exhibit # 11) to assist in Ms. Bush's transition to a new supervisor.

Mr. Klos asked Ms. Hosenfeld to review the corrective action plan developed for Ms. Bush on November 17, 1993 (union exhibit # 8). Mr. Klos asked Ms. Hosenfeld if she discussed the pending discipline for Ms. Bush stemming from the Creative Child Care matter with Ms. Blevins before the action plan was developed. Ms. Hosenfeld testified that the corrective action plan was related to the grievances filed in August and September and was not related to the Creative Child Care matter.

Mr. Klos asked Ms. Hosenfeld to think back to June 30, 1993 and to describe what happened in handling the complaint against Creative Child Care Center. Ms. Hosenfeld

briefly discussed the complaint processing procedure. Mr. Klos asked Ms. Hosenfeld if child abuse had been found at Creative Child Care and she testified that while there may not have been physical child abuse, there was still a violation of state law and licensing requirements at Creative Child Care.

Mr. Klos asked Ms. Hosenfeld to look over union exhibit # 8 once again (corrective action plan of November 17). Mr. Klos asked Ms. Hosenfeld if the corrective action plan was designed to correct deficiencies in Ms. Bush's performance and she testified that it was. Mr. Klos asked Ms. Hosenfeld if the actions proposed in sections B and C of the action plan were fulfilled and she testified that they were. Mr. Klos asked Ms. Hosenfeld if the performance evaluation in section D was completed and Ms. Hosenfeld testified that it was completed but that the results were not given to Ms. Bush.

Next, Mr. Klos asked Ms. Hosenfeld to review union exhibit # 11 (memo of March 8, 1994). Mr. Klos asked Ms. Hosenfeld if the meetings mentioned in sections A or B were held and she testified that they were. Mr. Klos asked Ms. Hosenfeld to describe the differences between union exhibit # 8 and union exhibit # 11 and she testified that they had different purposes, one was a transition plan to a new supervisor (union exhibit # 11) and one was a corrective action plan under an existing supervisor (union exhibit # 8). Mr. Klos asked Ms. Hosenfeld if the penalty for failing to fulfill the requirements of a transition plan and a corrective action plan were the same and Ms. Hosenfeld testified that the discipline would be the same if an employee failed to fulfill either of the plans.

Mr. Klos asked Ms. Hosenfeld why the corrective action plan of November 17 was developed and she testified the November 17 corrective action plan was developed to deal

with the grievances of August and September not the Creative Child Care matter. Mr. Klos asked Ms. Hosenfeld if there was a corrective action plan developed for Ms. Bush after she returned from her suspension in June of 1993 and Ms. Hosenfeld testified that there was no corrective action plan developed for Ms. Bush at that time.

Mr. Klos asked Ms. Hosenfeld to describe the investigation of Creative Child Care. Ms. Hosenfeld testified that Ms. Blevins investigated Creative Child Care sometime in late October of 1993 but that she did not find much. Mr. Klos asked Ms. Hosenfeld if Ms. Blevins had told her that Ms. Bush had asked her (Blevins) to accompany her (Bush) to Creative Child Care and Ms. Hosenfeld testified that she did not know if Ms. Blevins had told her this or not. Mr. Klos next asked Ms. Hosenfeld if Ms. Ankrom had told her that Ms. Bush had asked her (Ms. Ankrom) to accompany Ms. Bush to Creative Child Care and Ms. Hosenfeld testified that she knew about this request from Ms. Ankrom's November 4 memo (Union exhibit # 5).

Mr. Klos asked Ms. Hosenfeld when Ms. Bush was removed from the Creative Child Care investigation and she testified that she did not know the date. Finally, Mr. Klos asked Ms. Hosenfeld if a DI-13 had ever been filled out for Ms. Bush and Ms. Hosenfeld testified that a DI-13 was not filled out for Ms. Bush because one was not required in this instance.

On redirect examination, the State advocate asked Ms. Hosenfeld if there was an element of subjectivity in determining child abuse from an on site inspection and Ms. Hosenfeld testified that there was no clear cut standard in many cases. Ms. Hosenfeld testified that just because Franklin County Children's Services had not found child abuse at Creative Child Care this does not necessarily mean that there was not any child abuse at

Creative Child Care that could not have been detected by another trained observer. Ms. Hosenfeld testified that Ms. Bush's 9 years of experience made her a skilled observer of child care situations.

On recross examination, Mr. Klos asked Ms. Hosenfeld if Ms. Bush was given the Creative Child Care case on her first day back to work after her 20 day suspension and Ms. Hosenfeld testified that this may have been the case. Mr. Klos asked Ms. Hosenfeld who gave Ms. Bush the Creative Child Care assignment and Ms. Hosenfeld testified that Ms. Blevins made this decision.

Mr. Klos asked Ms. Hosenfeld if it was common practice for the State DHS to defer to a County CSB when a potential violation overlaps both jurisdictions and Ms. Hosenfeld testified that this was common practice. Mr. Klos asked Ms. Hosenfeld if Ms. Bush did anything wrong in waiting for the CSB to complete its investigation and Ms. Hosenfeld testified that this was proper procedure. Mr. Klos asked Ms. Hosenfeld if Ms. Bush had done anything improper in asking Ms. Ankrom to accompany her to Creative Child Care in mid-July while Ms. Blevins was on vacation. Ms. Hosenfeld testified that Ms. Bush had done nothing improper in making this request to Ms. Ankrom. Mr. Klos asked Ms. Hosenfeld when, if ever, Ms. Bush had acted inappropriately in connection with the Creative Child Care investigation. Ms. Hosenfeld testified that, in her view, Ms. Bush had acted inappropriately when she did not notify Ms. Blevins on July 26 (the day she returned from vacation) that she (Bush) had not investigated the matter at Creative Child Care. Instead of informing Ms. Blevins directly about this matter, Ms. Bush placed a letter in the file. Mr. Klos asked Ms. Hosenfeld when Ms. Blevins had informed her that Ms. Bush had not investigated Creative



Child Care and Ms. Hosenfeld testified that she was informed of this matter sometime in the Fall of 1993. At this point the witness was excused.

**H. MANAGEMENT WITNESS - PEGGY BLEVINS**

The next witness called by the State was Ms. Peggy Blevins, supervisor of Day Care Licensing. The witness was sworn in by the Arbitrator. Ms. Blevins testified that she had been a day care licensing supervisor for 5 years and Ms. Bush's supervisor for 4 years. Ms. Blevins testified that Ms. Bush had maintained a good work record for 3 years but in the last year of their association things seemed to go wrong with Ms. Bush's performance. Ms. Blevins testified that she made Ms. Bush aware of her concern for her performance but that Ms. Bush reacted to the feedback defensively. Ms. Blevins was asked if she was responsible for recommending the disciplinary suspension for Ms. Bush in May of 1993 and Ms. Blevins testified that she was the supervisor who recommended the discipline for Ms. Bush.

Ms. Blevins was asked to recount her remembrance of the events of early July 1993. Ms. Blevins testified that she received a complaint about Creative Child Care on either June 30 or July 1, 1993 and she assigned the case to Ms. Bush. Ms. Blevins testified that she and Ms. Bush agreed to postpone the investigation of Creative Child Care until Franklin County Children's Service Board had finished their review of the matter. Ms. Blevins testified that once an investigation is turned over to a Day Care Licensing Specialist, they take responsibility for the investigation.

Ms. Blevins testified that she first learned of the results of the Franklin County Children's Service review of Creative Child Care on September 10 in a memo from Carol

Ankrom. Ms. Blevins testified that she then wrote a memo to Ms. Bush on September 13 inquiring about the status of the Creative Child Care investigation. Ms. Blevins testified that she received official notification from Franklin County Children's Services on September 23 regarding Creative Child Care. Ms. Blevins testified that she talked to Ms. Bush on October 13 about the matter and learned that Ms. Bush had not conducted any investigation on her own nor had she made any contact with the Creative Child Care Center. Ms. Blevins testified that at this point she decided to relieve Ms. Bush of any responsibility for the Creative Child Center investigation and she (Blevins) decided to conduct the investigation herself. Ms. Blevins testified that when she conducted her investigation of Creative Child Care in October only six of the eighteen employees at Creative Child Care had been there in June when the complaint was filed. As a result of the time delay and resultant employee turnover, it was difficult to conduct an investigation of Creative Child Care. Ms. Blevins was asked how Ms. Bush responded when asked why she (Bush) did not investigate Creative Child Care and Ms. Blevins testified that Ms. Bush told her that she forgot about the investigation.

Ms. Blevins was asked if there were other problems with Ms. Bush's performance. Ms. Blevins testified that in August and September of 1993 there were complaints received about Kinder Care Learning Center in Pickerington. The Kinder Care investigation was assigned to Ms. Bush. On October 26, 1993 Ms. Bush wrote a report to the Administrator of Kinder Care outlining the complaints against the Learning Center. In her report, however, there were some complaints that were not mentioned by Ms. Bush specifically those involving smoking breaks and those involving an anonymous complaint on August 17 which dealt with child/teacher ratios and threats to children.

Ms. Blevins testified that when she questioned Ms. Bush about the items missing from her letter of October 26 to the Administrator of Kinder Care, Ms. Bush answered that her computer had malfunctioned and skipped over parts of the stored memory and thus had not printed some parts of the report that Ms. Bush had written. Ms. Blevins was asked if Ms. Bush was adequately trained in how to conduct investigations. Ms. Blevins testified that she went out with Ms. Bush on two investigations in March or April of 1993 to help her with her investigatory skills and in her opinion Ms. Bush was skilled at conducting investigations.

On cross examination, Mr. Klos asked Ms. Blevins if she had ever filled out a DI-13 form for Ms. Bush and she testified that she had not. Mr. Klos asked Ms. Blevins if she had ever completed a written performance evaluation for Ms. Bush and she testified that she had not. Mr. Klos asked Ms. Blevins if she was responsible for disciplining Ms. Bush in May of 1993 and Ms. Blevins testified that she was responsible for this discipline.

Mr. Klos asked Ms. Blevins if Ms. Bush asked her (Blevins) to accompany her (Bush) to Creative Child Care in July of 1993 and Ms. Blevins testified that Bush did not make such a request. Mr. Klos asked Ms. Blevins if Ms. Bush conducted an investigation at Kinder Care and Ms. Blevins testified that Ms. Bush did conduct this investigation. Mr. Klos asked Ms. Blevins to detail her concerns about the Kinder Care investigation and Ms. Blevins testified that she was concerned about the Kinder Care investigation because it was incomplete in that certain complaints were not addressed in the report.

Mr. Klos next asked Ms. Blevins about the October 29, 1993 meeting she had with Mr. Jenkins, Ms. Bush, and Mr. Robinson. Specifically, Mr. Klos asked Ms. Blevins what was discussed at the October 29 meeting. Ms. Blevins testified that the October 29 meeting

involved the grievances Ms. Bush had filed against Ms. Blevins involving alleged harassment and failure to follow office policy in August and September. Mr. Klos asked Ms. Blevins what resulted from the meeting of October 29 and Ms. Blevins testified that the result of the meeting was the corrective action plan for Ms. Bush which was dated November 17, 1993. Mr. Klos asked Ms. Blevins when she decided to discipline Ms. Bush for the matters involving Creative Child Care and Kinder Care and Ms. Blevins testified that she did not know. Mr. Klos asked if the decision was made before or after the October 29 meeting and Ms. Blevins testified that she did not know. Mr. Klos asked Ms. Blevins if the corrective action plan was designed to deal with the problems arising from the Creative Child Care and Kinder Care investigations and she (Blevins) testified that this plan was not designed to deal with these investigatory problems.

Mr. Klos asked Ms. Blevins when she began her investigation of Creative Child Care and she testified that she began her investigation on October 21, 1993. Mr. Klos asked Ms. Blevins when she removed Ms. Bush from the Creative Child Care investigation and she (Blevins) testified that Ms. Bush was removed from the investigation on either October 14 or 15. Mr. Klos asked Ms. Blevins when she notified Ms. Bush that discipline may be forthcoming resulting from the Kinder Care and Creative Child Care investigations and Ms. Blevins testified that she notified Ms. Bush about the pending discipline shortly after she (Blevins) sent her November 12 memo to Hosenfeld. At this point, the witness was excused. The State rested its case at this point.

**I. UNION WITNESS - CAROL ANKROM**

The first witness called by the Union was Ms. Carol Ankrom, supervisor of Child Care Licensing Specialists. The witness was sworn in by the Arbitrator. Mr. Klos began his examination by asking Ms. Ankrom to describe the Creative Child Care matter which began on June 30, 1993. Ms. Ankrom testified that Ms. Bush came to her sometime in mid to late July (between July 14-23) and asked her (Ankrom) to accompany Bush on an investigation of Creative Child Care Center. Ms. Ankrom testified that she advised Ms. Bush not to go to Creative Child Care until Ms. Blevins returned from vacation in late July. Ms. Ankrom testified that she contacted Ms. Blevins on September 10 about the Creative Child Care investigation but she could not recall communicating with her about the matter before September 10.

Mr. Klos asked Ms. Ankrom if she was Ms. Bush's current supervisor and she testified that she was. Mr. Klos asked Ms. Ankrom if she developed the Transition Work Plan for Unit Entry (union exhibit # 11) for Ms. Bush and she testified that she did develop this plan. Mr. Klos asked Ms. Ankrom if she has had any problems with Ms. Bush as an employee since March 18, 1994 and Ms. Ankrom testified that there have been no problems. There was no cross examination. The witness was excused.

**J. UNION WITNESS - SHERRY BUSH**

The next witness called by the union was the grievant, Ms. Sherry Bush. The witness was sworn in by the Arbitrator. Mr. Klos asked the witness to describe to the Arbitrator what happened regarding the Creative Child Care investigation. Ms. Bush testified that she

received the Creative Child Care assignment from her supervisor on July 1, 1993. The witness testified that it was mutually agreed between Bush and Blevins that no action would be taken at Creative Child Care until Franklin County Children's Services and conducted a preliminary investigation. When Ms. Ankrom informed Ms. Bush on July 14 that Franklin CCS had completed their investigation, Ms. Bush asked Ms. Ankrom to accompany her on an investigatory interview. Ms. Ankrom advised Ms. Bush against an on site interview and recommended an office interview instead.

When Ms. Blevins came back from vacation on July 26, Ms. Bush attempted to schedule a meeting with her but was unable to schedule a meeting. Ms. Blevins did not ask Ms. Bush about the Creative Child Care matter and Ms. Bush did not communicate to Ms. Blevins any information about this matter. Ms. Bush testified that she attempted to talk to Ms. Blevins about the matter during this time but that Ms. Blevins was unavailable. On October 13, Ms. Blevins did contact Ms. Bush about the Creative Child Care matter, the witness testified. Ms. Bush informed Ms. Blevins on October 13 that she had tried to contact her previously about the Creative Child Care matter but had been unsuccessful.

Next, Ms. Bush testified about the Kinder Care investigation. Ms. Bush testified that she submitted the Kinder Care report with some pages missing; that is why the report appears to overlook some matters raised in the parent's complaints. The witness testified that the pages were lost in the transfer of the disk from her computer to the central office computer which prints the reports. Mr. Klos asked Ms. Bush if any critical material was left out of the report and Ms. Bush testified that no critical material was left out of the report.

Next, Mr. Klos asked Ms. Bush about the harassment and office procedures grievances. Ms. Bush testified that she thought that all matters of discipline pending against her were to be resolved in the corrective action plan of November 17, 1993. Ms. Bush testified that she became aware of the pending discipline involving the Creative Child Care matter on November 3, 1993. Ms. Bush testified that when she received the corrective action plan in late November, she presumed that all discipline against her had been dropped. Ms. Bush testified that the stipulations of the corrective action plan of November 17 were not followed in a good faith manner. Ms. Bush testified that the suspension in February of 1994 was totally punitive and that nothing was done prior to this to help her correct her performance deficiencies.

On cross examination, the witness was asked when Ms. Blevins contacted her about the Creative Child Care investigation. The State's advocate directed the witnesses attention to OCB exhibit # 15 which was dated September 15, 1993 in which Blevins inquires about the investigation at Creative Child Care. Next, the State's representative asked the witness if she had ever lost data from her computer prior to the incident involving Kinder Care. The witness testified that this type of data loss has happened to her before. The State's advocate asked the witness if she proof read the Kinder Care report prior to submitting it to Kinder Care and Ms. Bush testified that she had proof read the report prior to submitting it. At this point, the witness was excused. No other witnesses were called. The hearing was closed by the Arbitrator. Written briefs were to be submitted by December 19, 1994.

**IV. POSITIONS OF THE PARTIES -  
SUMMARY OF BRIEFS AND CLOSING STATEMENTS**

**A. EMPLOYER POSITION**

The employer's position on this matter is stated in its closing statement and closing brief which may be summarized as follows:

1. With regard to the matter of arbitrability the State maintains that the bench award issued by the Arbitrator on November 21, 1994 should stand without reconsideration.
2. Article 7 section .08 (F) of the collective bargaining agreement provides that "arbitrators decisions shall be final and binding."
3. Grievant's counsel made no objection to, and concurred with, the States request for a bench award on the matter of arbitrability on November 21, 1994.
4. With regard to the merits of grievance itself, the State notes that the Grievant has been employed as a Day Care Licensing Specialist since 1985. The State asserts that the Grievant has been properly trained and instructed in her job.
5. The State maintains that the Grievant failed to adequately investigate matters of alleged breach of licensure rules for Creative Child Care and Kinder Care Learning Center.
6. The State contends that the Grievant's failure to properly investigate these allegations of violations of licensure rules and regulations created an atmosphere of serious potential risk for the children in these facilities.
7. The Department adhered to its own work rules in determining the level of discipline to apply in this case.
8. The Department took into consideration the Grievant's length of service and record of prior discipline in determining the level of discipline to be used in this case.



9. The Department has transferred the Grievant to another supervisor after her return from this suspension to give her an opportunity for a "fresh start." In addition, a "transition to work plan" has been developed to provide for more close supervisory follow-up of the Grievant's work activities than had existed previously.

**B. *UNION POSITION***

As of the date this decision was written (December 31, 1994) no brief or closing statement has been received from the Grievant's representative. Based on the Union's opening statement, however, the following may be summarized as the union position.

1. The Grievant was assigned the Creative Child Care investigation by her supervisor, Ms. Blevins on June 30, 1993.
2. The Grievant had just returned to work from a 20 day suspension on June 30, 1993.
3. The Grievant and her supervisor agreed that the Grievant should postpone any action on the Creative Child Care investigation until Franklin County Children Services had completed their investigation of the matter.
4. The Grievant was notified on July 14, 1993 that Franklin County Children Services had completed their investigation of Creative Child Care and that no child abuse had been found.
5. On or about July 15, 1993, the Grievant requested that another supervisor (Ms. Ankrom) accompany her to Creative Child Care to conduct an investigation due to the fact that her supervisor (Blevins) was on vacation.

6. Ms. Ankrom was unable to accompany the Grievant on the investigation due to schedule conflicts and she recommended that the Grievant wait until her supervisor, Ms. Blevins, returned from vacation on July 26, 1993 to conduct an investigatory interview.

7. The Grievant documented the call from Franklin County Children Services regarding the Creative Child Care matter in a memo to "files" on July 14, 1993.

8. Upon her return from vacation on July 26, 1993, Ms. Blevins did not ask the Grievant about the status of the Creative Child Care investigation.

9. The Grievant encountered difficulty scheduling appointments with her supervisor during August and September of 1993.

10. The Grievant was disciplined for an unrelated matter in September of 1993. The Grievant filed two grievances against her supervisor in August and September of 1993.

11. In mid September 1993, Ms. Blevins questioned the grievant about the status of the Creative Child Care investigation.

12. On October 29, 1993 the Grievant met with Mr. Jenkins, Ms. Blevins and Mr. Robinson about her grievances of August and September of 1993. The Grievant agreed to withdraw her grievances. The employer agreed to withdraw the reprimand.

13. On November 17, 1993 a corrective action plan was developed for the Grievant to help her improve her work performance.

14. On November 12, 1993 Ms. Blevins wrote to Ms. Hosenfeld about the Creative Child Care investigation.

15. On November 23, 1993 Ms. Hosenfeld asked Ms. Alsop to discipline the Grievant for her handling of the Creative Child Care matter.

16. The employer had an obligation to inform the Grievant at the October 29, 1993 meeting that discipline against her was being contemplated due to her failure to investigate Creative Child Care.

17. The corrective action plan of November 17, 1993 was assumed by the Grievant to address all disciplinary matters pending against her.

18. The actions of the supervisor against the Grievant in the conduct of this matter were punitive not corrective.

## **V. DISCUSSION**

### ***A. ON THE MATTER OF DISCIPLINE***

The facts of the matter are clear to me and the arguments are logical and worthy of consideration. The Grievant is an employee of nine years experience with the Ohio Department of Human Services and one who understands the requirements of her job. The Grievant is also well aware of her rights under the collective bargaining agreement and the grievance procedure contained therein. The Grievant has had experience with the arbitration process having had her previous suspension arbitrated and the discipline reduced as result.

I have no doubt that Ms. Bush was reluctant to investigate the allegations of child abuse made against Creative Child Care in July of 1993. I could understand why Ms. Bush would request assistance from Ms. Ankrom when the word came from Franklin County Children Services that they were turning the matter back to ODHS after their preliminary investigation.

What I can not understand, and can not condone regarding this matter, is Ms. Bush's actions after Ms. Ankrom told her that she would have to conduct the investigation after Ms. Blevins returned from vacation on July 26, 1993. Why, for example, didn't Ms. Bush copy Ms. Blevins on the memos she sent to files on July 14 and July 15? Why, didn't Ms. Bush ask Ms. Blevins for open dates in August to schedule interviews with the administrators of Creative Child Care? In short, why didn't Ms. Bush take the initiative in conducting the Creative Child Care investigation? The record shows that the only initiative Ms. Bush took in this matter was to request assistance from Ms. Ankrom and to write two memos to files. As a result, the investigation was not conducted until late October of 1993 and was conducted by Ms. Blevins not Ms. Bush.

The months of August and September of 1993 were not without their conflicts between Ms. Bush and Ms. Blevins. The harassment grievance of August 9 and August 16 filed by Ms. Bush against Ms. Blevins and the written reprimand given Ms. Bush by Ms. Blevins on September 14, 1993 must have created a level of tension and conflict between these two individuals that would surely be an interference to the normal discharge of their duties. However, the fact remains that Ms. Bush had a job to do, and investigations to complete, that involved the safety and welfare of day care clients - both children and their families. Ms. Bush was not meeting her obligations as an employee of the Ohio Department of Human Services by her actions and inactions in July and August of 1993.

The meeting on October 29 of 1993 with Mr. Jenkins was clearly in regard to the grievances filed by Ms. Bush in August and September. Mr. Jenkins testified that when he conducted the October 29 meeting he was not aware that any additional discipline was

pending against Ms. Bush. I credit this testimony and can not find any evidence that would lead me to believe that the October 29 meeting was about anything other than the grievances filed by Ms. Bush in August and September.

Ms. Bush had an obligation as an employee of the Ohio Department of Human Services to fully and completely investigate the allegations made against Creative Child Care in July of 1993. In looking over the evidence pertaining to this case and in reviewing the testimony surrounding this matter, I do not find that Ms. Bush acted responsibly or competently in her conduct of the Creative Child Care investigation. The testimony of Ms. Blevins and Ms. Ankrom both indicate that Ms. Bush was notified in mid September

about the Creative Child Care investigation and she took no action to initiate the investigation. By mid October, Ms. Blevins made the decision to remove Ms. Bush from the investigation and to conduct it herself.

A related matter involves the investigation of Kinder Care which Ms. Bush conducted in August and September of 1993. In her letter of October 26, 1993 to the administrator of Kinder Care, Ms. Bush outlines the violations of the licensure rules she observed. In her subsequent review of Ms. Bush's letter to Kinder Care, Ms. Blevins observed that some complaints that had been made by "concerned parents" were not addressed in Ms. Bush's report. In particular, threats made to children, and the frequent absence of the Director from the facility were not addressed in Ms. Bush's letter. In her testimony on this matter, Ms. Bush admitted that her report was not complete and that some items had been omitted. It was Ms. Bush's testimony that a computer error was responsible for missing pages of the report. Ms. Bush testified further that she had proof read the report prior to mailing it to Kinder

Care.

The Kinder Care report, by everyone's admission, was incomplete; whether the omissions were due to computer malfunction (Ms. Bush's contention) or to incompetence and inattention to detail (the State's contention). The fact remains that the report was incomplete. It is a little hard for me to grasp the consequences of these omissions or the seriousness of the incident, however. There was little direct testimony about this matter other than to tie it in to the Creative Child Care incident and to establish this as one more example of the grievant's inattention to her job.

In looking over all the evidence and testimony relating to this case it is hard to come to any conclusion other than the one that Ms. Bush was disciplined for just cause. By her own admission, Ms. Bush did not conduct an investigation of Creative Child Care even though she received the assignment on June 30 and was questioned about the matter by her supervisor in September. Ms. Bush bore the responsibility to conduct the investigation and that responsibility was not absolved by Ms. Ankrom in her conversation with Ms. Bush about the matter in July. Ms. Bush bore the responsibility for scheduling an interview with the administrators of Creative Child Care either on site as Ms. Blevins recommended, or off site as Ms. Ankrom recommended. Ms. Bush did not discharge this responsibility in July or August or September. As a consequence, potential violations of the Day Care Licensure requirements were left uninvestigated and potential harm to day care clients was allowed to continue. In my opinion, this is neglect of duty in its most obvious form and an action which is deserving of discipline.

The matter of the Kinder Care report is less problematic to me, and the issues less clear cut. The omission of certain matters from the report is cause for some concern, but seems to indicate carelessness and inattention to detail rather than an obvious dereliction of duty or insubordination. The Kinder Care memo is a matter of lesser concern to me than the failure to investigate the allegations made against Creative Child Care.

Based on the evidence and testimony, I have received relating to this case I find that Ms. Bush was disciplined for just cause and within the context of progressive discipline allowed for in the Ohio Department of Human Services Human Resources Policy Directive. The grievance is therefore denied.

#### ***B. THE MATTER OF ARBITRABILITY***

I have reviewed the issue of arbitrability of this case under Article 7 section .06 and .09 of the collective agreement. As I stated in my bench award and opinion, I find that OCB exhibit # 1 signed and dated by Ms. Bush on April 6, 1994 clearly authorizes her union to process the grievance to arbitration under Article 7 section .06 of the agreement. I find no reason to reconsider this ruling made on November 21, 1994.

## **VI. AWARD**

### **A. DISCIPLINE GRIEVANCE**

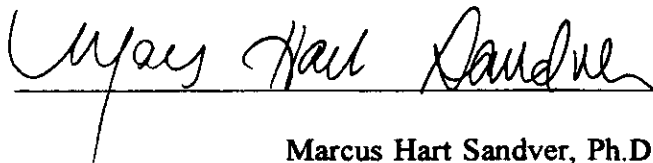
The grievance is denied. Grievant was properly disciplined.

### **B. ISSUE OF ARBITRABILITY**

The matter is arbitrable under Article 7 section .06 of the agreement.

## **VII. CERTIFICATION**

This arbitration Decision and Award is based upon evidence and testimony presented to me at an arbitration hearing conducted on November 21, 1994 and on briefs and closing statements submitted subsequent to the hearing.

A handwritten signature in cursive script, reading "Marcus Hart Sandver", is written over a horizontal line.

Marcus Hart Sandver, Ph.D.  
Arbitrator

Upper Arlington, Ohio  
December 31, 1994