

#1444

**IN THE MATTER OF ARBITRATION**  
**BETWEEN**  
**THE OHIO DEPARTMENT OF MENTAL RETARDATION**  
**AND DEVELOPMENTAL DISABILITIES**  
**AND**  
**THE OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION**  
**LOCAL 11 /AFSCME-AFL-CIO**

**Before: Robert G. Stein**

**PANEL APPOINTMENT**

**CASE # 27-06-990809-631-01-04**  
**Classon Martini, Grievant**

**Advocate(s) for the UNION:**

**Robert Robinson, Field Staff Representative**  
**Michael Scheffer, 2<sup>nd</sup> Chair, OCSEA**  
**OCSEA Local 11, AFSCME, AFL-CIO**  
**1680 Watermark Dr.**  
**Columbus OH 43215**

**Advocate(s) for the EMPLOYER:**

**Ruth A. Rehak, MLHR**  
**Labor Relations Coordinator**  
**Carolyn Borden-Collins, 2<sup>nd</sup> Chair, MRDD**  
**Brian Walton, 2<sup>nd</sup> Chair, MRDD**  
**OHIO DEPARTMENT OF MENTAL RETARDATION**  
**AND DEVELOPMENTAL DISABILITIES**  
**Columbus OH 43215**

**RELEVANT CONTRACT LANGUAGE**  
(Listed for reference, see Agreement for language)

**ARTICLE 24 DISCIPLINE**

**BACKGROUND**

The issue in dispute in this matter involves the termination of Classon Martini, a Therapeutic Program Worker (TPW) at the Columbus Developmental Center (CDC). CDC is a facility of the Ohio Department of Mental Retardation and Developmental Disabilities (hereinafter referred to as "Employer" or "Department"). Mr. Martini, a twenty-one year employee with no active discipline on this record, was terminated from his employment on August 6, 1999 for violation of an Employer rule. The rule that Mr. Martini was accused of violating was "Creating a Disturbance/Failure of Good Behavior." This rule is considered a Category A offense and according to the Department's policies, the level of discipline (including discharge) is based upon the seriousness of the offense.

On April 12, 1999, the Grievant was accused of grabbing a co-worker, TPW, Janice Martin, around her neck and attempting to kiss her on the lips. Ms. Martin pushed the Grievant away and stated, "*Don't do that.*" "*Don't do that and I mean it.*" Ms. Martin, visibly upset by the incident (JX 21), reported it to her Residential Care Supervisor, David Grant. Mr. Grant notified Human Resources Administrator, Brenda Gerhardstein, of the incident. That same day, Ms. Gerhardstein met with the Grievant and a Union Representative in her office. During the meeting Ms. Gerhardstein notified the Grievant of the complaint made by Ms. Martin. The Grievant denied that he grabbed

The Employer conducted a further investigation into these allegations and the Union agreed to extend the timeliness of the disciplinary process to accommodate the investigation. Ms. Gerhardstein led the investigation and conducted eight additional interviews during the weeks following the May 5<sup>th</sup> "face off" meeting. According to the Employer, the interviews yielded several additional allegations of inappropriate conduct by the Grievant against female coworkers. When questioned about these additional allegations, Mr. Martini denied being involved in them.

The specifics of the statements gathered during Ms. Gerhardstein's investigation are included in the record (See Joint Exhibits and Employer Exhibits). Statements from Edna Rivers, Willogean Bell and Linda Smith painted a picture of the Grievant grabbing and pulling female workers close to him. Ms. Bell stated that about a year ago the Grievant "*grabbed me and kissed me in my mouth.*" (JX 22). Cathy White Moore recounted an incident that occurred years ago in which the Grievant grabbed her wrist and asked her where her husband was (JX 28). She stated she set him straight and has never had a problem with him again. Ms. Moore characterized the Grievant as a "*touchy-feely*" guy. Ms. Cynthia Mahoney stated that she has never observed the Grievant being inappropriate with her or with other women. Ms. Linda Riley stated that years ago Mr. Martini stated he was going to "*get one of them,*" referring to her and Ms. Martin. She said she thought the Grievant was joking, and she never took it personally.

The Employer determined that the incident involving Ms. Martin that occurred on April 12, 1999 was not an isolated incident, but was indicative of a pattern of sexual harassing behavior. The Employer determined that the Grievant was well aware of the Department's rules on sexual harassment. He had been given copies of the rules (JX 20)

addition, the testimony of the Union's witnesses must be discounted because they are his friends, contends the Employer.

The Employer acknowledges the fact that the Grievant is a long term employee. However, the Employer argues that his longevity does not overcome what he has done to female employees over the past several years. The Employer rejects the Union's argument that the Grievant had not attended training sessions regarding sexual harassment. Common sense dictates that grabbing a fellow employee and sticking your tongue down into her mouth is not appropriate behavior, argues the Employer (JX 22). The Employer also rejects that Mr. Martini was treated in a disparate manner. It contends that the testimony of Union witness, Bobby Hooper, testified about an incident that is dissimilar to the instant matter. It is involved an incident that involved welcomed sexual attention and not unwelcome or unwanted attention.

Based upon the above, the Employer requests that the grievance be denied.

## **UNION'S POSITION**

The Union and the Grievant have a very different view of the facts from that of the Employer. The Union argues that the Mr. Martini is a victim of a conspiracy based upon "*...a mixture of lies, unsupported allegations, faked fear and total deceit.*" The Union argues that the Grievant is a dependable and respected employee who is not a threat to anyone.

The Union is sharply critical of the investigative methods employed by the Department through the offices of Ms. Gerhardstein. The Union claims that several people involved in the process of investigation and several who provided testimony had

Union. Ms. Smith portrayed herself on the witness stand as being as a shy person. The Union contends that its witnesses demonstrated that Ms. Smith is a loud and aggressive person. The Union argues that she was not afraid of the Grievant and is known to be a person who is physically flirtatious in her dealings with co-workers. In addition, Union witness Hooper testified that Ms. Smith told him that she was being forced by management to testify against the Grievant under the threat of being disciplined.

The Union also asked the Arbitrator to consider the fact that the atmosphere at CDC was one in which the behaviors of flirtation, hugging, and kissing were common, and romantic relationships that involved employees and supervisors occurred frequently. The Union argues that Mr. Martini is a long-term employee with a good record of employment. His testimony is credible, and his reputation as a trusted coworker was established in the evidence and testimony presented. On April 12, 1999, he did not grab Ms. Martin as she described. Ms. Martin wears heavy makeup, yet none of it ended up on the Grievant in this incident. This is proof of the fact that the Grievant simply touched her in a friendly manner and never grabbed her around the neck, pulled her toward him, and attempted to forcefully kiss her, argues the Union.

Based upon the above, the Union requests the grievance be granted.

## **DISCUSSION**

The Grievant was terminated for "Creating a Disturbance/Failure of Good Behavior." The central issue in this case is sexual harassment. The Employer first carries the burden of proof to demonstrate whether the Grievant sexually harassed Ms.

appropriate. On one occasion he hugged her and pressed himself against her breasts. On another occasion he hugged her and pressed himself against her pelvis area. She stated this made her uncomfortable and that on subsequent occasions when he attempted to hug her she would tell him, "*Stop Martini,*" or would elbow him and tell him, "*stop Martini stop.*" (See Martin testimony). While working with the Grievant at Parkside several years earlier, he picked her up and threw her on a bed. Ms. Martini testified that she was upset by this conduct. She also stated that, Kelly Sadler, sister of Ms. Martin and a former Department employee, was the recipient of an unwanted kiss from Mr. Martini while she was working in a bathroom.

Ms. Martin stated that she thought the Grievant would eventually stop this behavior and that she was strong enough to handle him. Several years ago the Grievant was accused of attacking (by pushing her to the floor) a female worker, Parthinia Lindsey, in a bathroom at Parkside 2. The Grievant denied that he attacked Ms. Lindsey and she received a suspension for using profanity against him. However, Ms. Martin testified that a few years after the alleged incident, Ms. Martini admitted to her that he did it. I found Ms. Martin's testimony to be credible. Her experiences with Mr. Martini strongly suggest a pattern of conduct that is distinguished from harmless and or playful conduct that can occur in a workplace. Instead, it suggests behavior that is more obsessive in character.

The statement and testimony of Willogean Bell, who appeared to bear no particular grudge against the Grievant, further supported the contention that the Grievant has a serious problem regarding his appropriate treatment of women. In a similar fashion to that described by Ms. Martin, Ms. Bell stated that in 1998, the Grievant "...came up to

Social relationships in a place of employment are sometimes complicated by personal interests. What is appropriate and what is offensive is a highly individualized matter. The standard that the courts and this Arbitrator adhere to is the “reasonable woman” standard (Ellison v. Brady, 924 F. 2<sup>nd</sup> 872, 54 FEP Cases 1346 (9<sup>th</sup> Cir. 1991)). Arbitrator Thomas Levak explained the reasonable woman standard in his 1992 Award:

*“[W]hat that means is that a man who makes comments or makes approaches to a female must determine how a woman would reasonably take his comments or approaches, not how this male’s co-workers feel she should take them” (100 LA 866)*

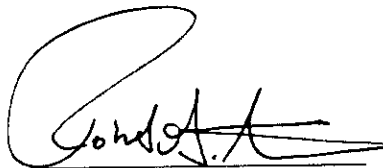
Article 2 of the Collective Bargaining Agreement is consistent with the intent of Title VII of the 1964 Civil Rights Act. In Article 2 the parties mutually agree that *“The Employer shall prohibit sexual harassment and take action to eliminate sexual harassment...”* The facts in this case support the Employer’s actions to terminate the employment of the Grievant. Mr. Martini was well aware of the rules against such behavior and on two occasions (1993 and 1996) was counseled about his conduct with female employees by Brenda Gerhardstein (See Gerhardstein testimony and EX 6).

I find that in applying a reasonable woman standard to his conduct, it is clear that the Greivant practiced a deliberate and repetitive pattern of sexual harassment. In spite of that fact that many women have rebuffed his advances and warned him, he continued his inappropriate behavioral pattern. After everything that has occurred, Mr. Martini remains remarkably unaware of the gravity of his actions and shows no remorse for his behavior. I believe that any reasonable woman would consider Mr. Martini’s behavior to be sexually harassing and in fact any reasonable man should come to the same conclusion. Mr. Martini’s actions were clearly demeaning and offensive.

**AWARD**

The grievance is denied.

Respectfully submitted to the parties this 5<sup>th</sup> day of July, 2000.

A handwritten signature in black ink, appearing to read "Robert G. Stein", written over a horizontal line.

Robert G. Stein, Arbitrator