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In the Matter of the Arbitration

- between -

Ohio Civil Service Employees Association,  
AFSCME Local 11

- and -

State of Ohio Department of Agriculture

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Arbitrator: John J. Murphy  
Cincinnati, Ohio

For the Union: Barbara Follman  
Staff Representative  
OCSEA/AFSCME, Local 11  
390 Worthington Rd., Suite A  
Westerville, Ohio 43082

For the Department: John F. Kinkela  
Labor Counsel  
Office of Collective Bargaining  
State of Ohio  
100 E. Broad Street, 18<sup>th</sup> floor  
Columbus, Ohio 43215

BACKGROUND:

A.) The Procedure in This Case

This case had been scheduled for hearing on October 16, 2006. Prior to this date, the parties engaged the arbitrator in a telephone conference call and proposed that the matter be presented to the arbitrator by stipulated facts, stipulated issue, and joint exhibits. In addition, briefs with party exhibits, including arbitral or judicial decisions would be submitted to the arbitrator for exchange between the parties. The parties would be given two weeks to determine whether they would engage in reply briefs. Finally, the arbitrator would be given the privilege of an initiating a telephone conference call on any questions arising out of the record. Since the arbitrator would not have had any opportunity to hear any testimony directly, or receive any documents at a hearing, or raise questions with the advocates or witnesses, the time for submission of the arbitral decision would begin at the conclusion of any conference call that the arbitrator may initiate.

An additional point of importance was raised during the telephone conference call with the arbitrator. The arbitrator asked whether the grievance was in the nature of a personal grievance. On being told that the matter was a personal

grievance, the arbitrator requested that an affidavit by the Grievant be made part of the record, noting that this process including its advantages and disadvantages had been explained to the Grievant, and that the Grievant be informed of the Grievant's right to be present and to testify at an arbitration hearing. Such as affidavit was made part of the record and it appears below.

Finally, the stipulated facts, issue, and joint exhibits as well as the party briefs and party exhibits were received by the arbitrator on November 3, 2006. On November 15, 2006, the parties notified the arbitrator that neither party would submit a reply brief. The arbitrator decided not to exercise his privilege of initiating a conference telephone call on questions arising out of the materials submitted to him. Accordingly, the record in this case was closed on November 15, 2006.

B.) Joint Stipulations

1. The Grievance is properly before the Arbitrator
2. The Grievant began her employment with the Department of Agriculture on August 22, 1994 as a Secretary 1. She was promoted to Administrative Assistant 1 on November 14, 2004. She tendered a written resignation on November 10, 2005.
3. The Employer has no record of discipline being imposed against the Grievant.
4. The Grievance (sic) received satisfactory performance reviews during her tenure.

5. The Employer's records contain the following FMLA certifications for the Grievant: Migraine Headaches, Irritable Bowel Syndrome and Depression beginning April 8, 2005; Back pain due to herniated disc (her husband) beginning April 8, 2005.
6. When the Grievant submitted her resignation on November 10, 2005, she had not requested a leave related to any FMLA condition, nor did she indicate that she needed leave because of any previously recognized FMLA condition.
7. On November 10, 2005, the Grievant was an Administrative Assistant assigned to the Consumer Analytical Laboratory. Her immediate supervisor was Dr. Mohammed Amin, PhD, who supervised Ms. Woods and two (2) other employees. Dr. Beverly Byrum, PhD is the Lab Director and Dr. Amin's supervisor. Tracee Kilbourne is a Chemist and an OCSEA steward. Neni Valentine was an Administrative Assistant assigned to the Office of Human Resources. Rick Corbin was the Administrator of the Enforcement and Human Resources sections.
8. On November 10, 2005, at approximately 10:15 a.m., while in the proximity of her supervisor's office, the Grievant stated, "I just want you to know right here and right now that I quit!" She said it loud enough for her supervisor, Dr. Mohammed Amin, to hear her. She emptied several copy paper boxes and immediately began packing her belongings. She then sent an e-mail message to Rick Corbin, Neni Valentine and Beverly Byrum at approximately 10:23 a.m.:  
"Subject: I Quit"  
*Effective immediately I quit!!!*  
Prior to leaving the workplace, she spoke to Dr. Amin and to union representative Tracee Kilbourne. At approximately 10:30 a.m., she walked out saying "Bye everybody, I am quitting." She left her ID badge and building keys on her desk.
9. At approximately 12:42 p.m. on November 10, 2005, Dr. Byrum e-mailed a reply to the Grievant's e-mail message that stated: *"I behalf of the Ohio Department of Agriculture, I accepted your resignation."* A letter signed by Fred L. Dailey, Director, accepting her resignation was sent to the Grievant at her home address the same date.

10. The Grievant attempted to call Neni Valentine at her work number on the same day. The Grievant left a message indicating that she couldn't quit, and she asked Neni to call her at the Grievant's work number.
11. At approximately 4:13 p.m. on November 10, 2005, the Grievant faxed a message addressed to Rick Corbin, Neni Valentine and Beverly Byrum that stated, "*I hereby withdraw my resignation anxiety and panic attack this morning lead me to behave irrationally. I am currently under a doctor/psychologist care and will be able to return to work on Tuesday, Nov. 15, 2005.*" A message from the Moundbuiders Guidance Center was attached to the Grievant's message which supported the Grievant's statement that she was experiencing a panic attack and being treated for anxiety and crisis resolution.
12. On Friday, November 11, 2005, at approximately 4:19 p.m., the Grievant e-mailed another message to Neni Valentine, Rick Corbin and Tracee Kilbourne that reiterated her intention to rescind her resignation and return to work on November 15, 2005. On November 14, 2005 at approximately 9:42 a.m., Rick Corbin replied to her e-mail that her resignation had been accepted and that she was not being reinstated.
13. Ms. Hilma Slone retired in approximately July, 1995. The Human Resources section has no record of her resigning at any time prior to that date.

WAIVER OF ARBITRATION HEARING  
GRIEVANCE NO. 04-00-(05-11-10)-0035-01-08

I, Christine T. Woods, hereby waive my right to testify at an arbitration hearing, choosing instead to have my case argued through briefs submitted directly to the arbitrator.

My Union representative has explained the process, including the pros and cons of this choice. I have been given the opportunity to weigh this information and ask questions before making this choice. I believe I will be well-represented in this process.

/s/  
Christina T. Woods

11-1-06  
Date

Sworn before me this 1<sup>st</sup> day  
of Nov., 2006.

/s/  
Witness

11/1/06  
Date

[Notary seal]      Deidre N. Jackson  
Notary Public, State of Ohio  
Franklin County  
My Commission Expires Feb 19, 2009

JOINT ISSUE:

Did the Grievant voluntarily quit or was she constructively discharged on November 10, 2005 when she tendered a written resignation? Did the Employer violate the Contract by not allowing the Grievant to rescind her resignation? If the Employer violated the Contract, what is the appropriate remedy?

RELEVANT CONTRACT AND  
ADMINISTRATIVE CODE PROVISIONS:

**Contract Sections**

**5 - Management Rights**

Except to the extent expressly abridged only by the specific articles and section of this Agreement, the Employer reserves, retains and possesses, solely and exclusively, all the inherent rights and authority to manage and operate its facilities and programs. Such rights shall be exercised in a manner which is not inconsistent with this Agreement. The sole and exclusive rights and authority of the Employer include specifically, but are not limited to, the rights listed in the Ohio Revised Code, Section 4117.08 (C), Numbers 1-9.<sup>1</sup>

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<sup>1</sup> Section 4117.08 (C) states, in pertinent part: "Unless a public employer agrees otherwise in a collective bargaining agreement, nothing in Chapter 4117. of the Revised Code impairs the right and responsibility of each public employer to:

- (1) Determine matters of inherent managerial policy . . .  
.
- (2) Direct, supervise, evaluation, or hire employees;  
.
- (5) Suspend, discipline, demote or discharge for just cause, or lay off, transfer, assign, schedule, promote, or retain employees;  
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- (8) Effectively manage the work force; . . .

**25.01 - Process**

**A.** A grievance is defined as any difference, complaint or dispute between the Employer and the Union or any employee regarding the application, meaning or interpretation of this Agreement . . .

. . .

**44.02 Operations of Rules and Law**

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

Ohio Administrative Code

**123:1-25-02 Reinstatements after resignation.**

An employee in the classified service who resigns, having served the required probationary period, may be reinstated upon request of the appointing authority to the director to the same or a similar position in that agency, at any time within one year from the date of such resignation. An employee that is reinstated from resignation following a break in service shall be given an appointment date based on the date of reinstatement.

OPINION:

This opinion is divided into three parts reflecting the questions raised in the stipulated issue and the arguments of the parties in their briefs. First, we turn to the act of resignation itself. Did the Grievant have the mental capacity to resign such that the resignation was done knowingly and voluntarily? A separate question under the heading of resignation deals with whether the resignation was coerced by the Employer such that it would constitute a constructive

discharge? We then turn to the subject of the effort by the Grievant to rescind the resignation, and ask whether this effort was effective and should be respected by the Employer. Finally, we turn to the Employer's decision not to reinstate the Grievant, and ask whether that decision violated the contract or any rules that are incorporated by reference into the contract by Section 44.02.

A.) Resignation

The facts state what the Grievant orally and by e-mail communicated to her direct supervisor and three other persons, including the director of the laboratory between 10:15 a.m. and 10:30 a.m. on November 10, 2005. These communications manifested an intent to end the employment relationship. In addition, the intent to resign was manifested by accompanying action by the Grievant. She emptied several paper boxes and immediately began packing her belongings. Finally, as she departed, she again stated that she was "quitting," and this intention was further manifested by leaving her ID badge and building keys on her desk. This would constitute a resignation unless it was vitiated by lack of capacity by the Grievant to understand what she was doing and its consequences, or by coercion by the Employer.

There was no question that the Grievant was in a state of anxiety and emotional distress at the time she uttered her intention to resign and acted upon it. Even her supervisor recognized this. He heard her talking in a loud and angry voice while she was emptying boxes and filling them with her belongings. He twice entered the room and asked on one occasion whether she was "okay" and on another, "Is there anything that I can help you?"

This evidence shows that the Grievant was agitated, was excited and anxious, and was under some mental distress. However, the evidence does not show that the Grievant was in such a deteriorated mental condition that she was rendered incapable of understanding what she was doing, and the consequence of what she was doing. For example, she completed the orderly process of terminating the employment relationship by packing her belongings and leaving her identification papers as well as the building keys on her desk. While the Union characterized her e-mail resignation as "knee-jerk" (Union brief at 7), the record shows that the Grievant did have the mental capacity to resign and understood the consequences.

Another question is whether the resignation was coerced by the Employer, thereby constituting a constructive discharge. The question becomes whether the Employer's actions made the

working conditions for the Grievant so intolerable that she reasonably could be expected to feel a compulsion to resign. The Grievant submitted a 15-page typewritten statement of workplace conditions. It concentrated in large part upon a management decision to transfer her previous supervisor. She noted that the transferred supervisor "barely had anything to do (in) his new workplace." Lastly, she noted that the supervisor's job was abolished. She then compared the style of her current supervisor with that of the preceding supervisor. Other concerns were the lack of overtime, increased workload, and difficulties obtaining medical leaves.

Even accepting all of the statements by the Grievant as fact, her workplace situation cannot be found to be so intolerable that a resignation would be compelled.

The Union relied upon an arbitration award by Arbitrator Jonathan Dworkin in OCSEA and Ohio Department of Rehabilitation and Correction, Case 27-26 (89-06-29)-01-09-01-06 (July 13, 1990).<sup>2</sup> The facts of this case and Arbitrator Dworkin's opinion are instructive on the question of whether the Grievant in this case had the capacity to resign and whether the Employer coerced the resignation.

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<sup>2</sup> Arbitrator Dworkin sustained the grievance in part, and this matter will be discussed later in this opinion.

Arbitrator Dworkin found that the Grievant had been transferred from his previous position and from the first day of his transfer he had almost daily conflict with his supervisors. Over the next two years, the Grievant submitted at least two requests for transfer each month for a total of 27 transfer requests. Because of this daily conflict with his supervisors, and his frustration in attempts to remove himself from this situation, he tendered his resignation "in a state of severe anxiety-depression." Despite the fact that the Grievant had almost daily conflicts with his supervisors (not present in this record), and despite the fact that the Grievant felt trapped into his present job by the failure of his 27 requests for transfer, Arbitrator Dworkin found that the Grievant's act of resignation was "truly voluntary."

The evidence confirms that the Grievant's act was truly voluntary. His decision to quit may have been a thoughtless outburst, but it was nevertheless his decision (emphasis in text). There is no evidence that he was psychologically impaired to the extent that he could not be held responsible for his act. Simply saying that he was in a state of anxiety and depression when he resigned is not enough to relieve him from the natural and probable consequences. (Id. at 4).

This decision by Arbitrator Dworkin is instructive to this case. Despite quite severe and difficult conditions as the workplace--most of which were precipitated by the Employer--the resignation in Arbitrator Dworkin's decision was found to be

voluntary and not coerced. A similar conclusion is made in the case in this arbitration.

B.) Rescinding the Resignation

Stipulated fact 10. states that the Grievant left a message to a person in the office of human resources that she "couldn't quit" and asked for a return call. According to the stipulated fact, this call was made "on the same day" as the resignation.<sup>3</sup>

The record does clearly establish that at 4:13 p.m. on November 10, 2005 the Grievant faxed a message to three supervisors withdrawing her resignation. Furthermore, the Grievant e-mailed a message to two of the supervisors, a message reiterating her intention to rescind her resignation. This e-mail was sent on Friday, November 11, 2005, at approximately 4:19 p.m.

The question is whether these efforts at rescinding the resignation were effective.

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<sup>3</sup> The Union's brief stated that this call was received by human resources "in the area of 1:00 p.m." on November 10, 2005. The only other record reference to this telephone call by the Grievant to human resources is contained in a Union exhibit. This exhibit is a witness statement from the Union steward who was told by a person in human resources that she did in fact receive a telephone message from the Grievant. However, there is no time stated in the witness statement for the receipt of the telephone message.

We begin with the observation that this case does not involve an executory resignation--a resignation to take effect in the future by an employee still on the job. This is a fully executed resignation constituting a statement of an intent to resign, accompanied by acts that can be interpreted in no other way than a termination of the employment relationship.

The difficulty for the Grievant with respect to her efforts to rescind the resignation arises from the undisputed fact that the Employer had accepted the resignation before any manifestation to the Employer of an intention to rescind by the Grievant. The Grievant had sent her e-mail message of quitting "effective immediately" to the laboratory director at approximately 10:30 a.m. On learning of the Grievant's intention to resign, the director consulted the human resources administrator, Rick Corbin, and he recommended that the director follow normal procedure and reply to the Grievant's e-mail that we accept her resignation. By the stipulated facts, "at approximately 12:42 p.m. on November 10, 2005, the director e-mailed a reply to the Grievant's e-mail message that stated, "I behalf of the Ohio Department of Agriculture, I accept your resignation." On the same day, the director of the Ohio Department of Agriculture signed a letter to the Grievant accepting her resignation, which was sent to her home address on

the same day. The record, therefore, shows that the Employer acted upon the Grievant's decision to resign, and accepted the resignation before the Grievant initiated any effort to rescind the resignation.

Again, the decision by Jonathan Dworkin is instructive determining when an effort to rescind a resignation is effective. In the facts before Arbitrator Dworkin, the Grievant telephoned the personnel office to rescind his resignation an hour after he left the institution and signed the resignation papers. He was told that the matter was in the hands of the Superintendent who was not then available for a conference. The Grievant met with the Superintendent a few days later, asked to be reinstated, and was informed that his resignation would be accepted and his employment canceled retroactively to the date of his resignation.

According to Arbitrator Dworkin, the Grievant tried to rescind his resignation before it was acted upon was critical to the grievance being partially sustained.

Despite all the foregoing, the Grievant was partially sustained on a very narrow ground. The Employee tried to withdraw his quit before it was acted upon or approved. (Id. at 4).

By contrast, in this case the effort on the part of the Grievant to rescind his resignation did not take place until after the Employer had accepted his resignation.

C.) The Employer's Decision Not to Reinststate the Grievant

The Joint Issue asks, "Did the Employer violate the Contract by not allowing the Grievant to rescind her resignation?" This question is read to include two parts. Part one deals with the effectiveness of the rescission of the resignation--a matter discussed above. The second part deals with the question of whether the Employer had the duty to reinstate the Grievant.

This question is raised by the reference to Section 44.02 of the Contract in the face of the grievance. This section incorporates by reference rules that benefit employees in areas where the agreement is silent.

There is an administrative code provision, quoted above, that provides employees who resign the possibility of reinstatement at any time "within one year from the date of such resignation." The question becomes whether the Department of Agriculture had a duty under this administrative code provision to reinstate the Grievant.

The answer is in the negative. The administrative code provision creates a privilege on the part of the appointing authority to request a reinstatement. It does not create a legal duty upon the appointing authority to reinstate. Indeed, by the language of the administrative code, the impact of this code provision upon the employee is that he or she "may be reinstated." The consequence is that there is no right in the employee under this administrative code provision to be reinstated after a resignation.

AWARD:

The grievance is denied.

Date: December 11, 2006



John J. Murphy  
Arbitrator