#1932

In the Matter of Arbitration

Between

OCSEA/AFSCME Local 11

And

The State of Ohio, Department
of Job and Family Services

Before: Harry Graham

Case No.: 16-11-06-09-22-1090-01-09

APPEARANCES: For OCSEA/AFSCME Local 11:

Deborah Bailey
Staff Representative

For the Department of Job and Family Services:

Pam Fisher
Labor Relations Officer

INTRODUCTION: Pursuant to the procedures of the parties a hearing was held in Cleveland, OH. on April 11, 2007 before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. Both at the hearing and subsequently serious and well-intentioned efforts were made to resolve this matter. Those ended unsuccessfully on May 7, 2007.

ISSUE: At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Was the Grievant removed for just cause? If not, what shall the remedy be?

BACKGROUND: The events prompting this proceeding are undisputed. The

Grievant, Deborah Watts, is a long-time employee of the State. At her discharge she had over twenty-nine years of service. In recent years Ms. Watts has accumulated a history of discipline. The record shows that at her discharge she had the following live discipline:

December 14, 2004	Verbal Reprimand
June 30, 2005	Written Reprimand
August 8, 2005	Written Reprimand
December 15, 2005	Five Day Suspension
June 16, 2006	Nine Day Suspension
September 15, 2006	Discharge

In July 2006 Ms. Watts was on notice that she was required to bring in a doctor's note for any absence involving the use of sick leave. On July 6 and 7, 2006 Ms. Watts called-in sick. On July 10, 2006 Ms. Watts neither called-in nor reported to work. She was a no-call, no-show. As she had the record of disciplines itemized above she was discharged. A grievance protesting that discharge was properly filed. It was processed in the procedure of the parties without resolution and they agree it is properly before the Arbitrator for determination on its merits.

POSITION OF THE EMPLOYER: The State points to Ms. Watts' disciplinary record. As set out above, in recent years it has been poor. At her discharge she had five instances of live discipline on her record. It is against that background her discharge should be viewed according to the Employer. Ms. Watts had over twenty-nine years of service at her discharge. She knew to call-in when she was going to be absent from work. In fact, she called-in on July 6 and 7, 2006. She obviously knew the call-in procedure. Yet, on July 10, 2006 she did not call-in. She was a no-call, no show. No management or supervisory official knew of her

whereabouts. As she knew the call-in procedure and did not follow it and had live discipline on her record the discharge is appropriate according to the State.

In this situation the State did not act precipitously. The record shows Ms. Watts was subject to progressive discipline. At some point enough is enough. That point has been reached in this situation. As that is the case the State contends the grievance should be denied

POSITION OF THE UNION: This situation is not as simple as portrayed by the Employer according to the Union. Ms. Watts has a serious health problem. She has sleep apnea. The record as shown in the exhibits entered by the Union leaves no doubt of that. She was ill on July 6, 7 and 10, 2006. Based upon her call-offs on July 6 and 7 Ms. Watts believed she did not have to call-off on July 10, 2006.

Ms. Watts has received treatment for her condition. There is reason to believe it has improved and that she will be able to perform her duties. Significantly, the Grievant has over 29 years of service. For the most part, that service has been good. Now, toward the end of her career with the State she has been subject to discharge for factors beyond her control. As that is the case, the Union urges she be restored to employment with full back pay and benefits.

DISCUSSION: Needless to say, this is a difficulty situation. Were Ms. Watts' disciplinary record to stand in isolation there would be little doubt her discharge would be sustained. The problem, which was recognized by the parties at the hearing and subsequently, is that her discipline does not stand in isolation. It must be viewed through the prism of her 29+ years of service with the State and

her illness. Until recently Ms. Watts' service with the Employer has been satisfactory. Not until 2004 does the record show discipline. Further, the record clearly shows that she has been diagnosed with sleep apnea and has embarked upon treatment. As is often the case, neither the Employer nor the Union are entirely in the right in the case. Nor are either entirely in the wrong. The Employer acted properly in administering progressive discipline to the Grievant. Her failure to call-in on July 10, 2006 did indeed represent a sort of "last straw" that prompted the Employer to discharge her. On the other hand, Ms. Watts was ill. She had called-off the two work days prior to July 10, 2006. She had a reasonable belief, albeit erroneous, that the Employer knew she would not report. Under the circumstances of Ms. Watts' illness and her long service to the State her discharge cannot stand. That does not mean that the position of the Union, that the Grievant should return to work with a make-whole remedy, must be adopted in its entirety. Ms. Watts erred in not calling-in. She had been subject to recent and increasingly serious discipline. As a veteran of many years of service with the State she knew, or should have known, that she should call-in on July 10, 2006. Based upon this discussion neither the position of the Employer nor the Union may be sustained in their entirety.

AWARD: The grievance is sustained in part and denied in part. The discharge of the Grievant, Deborah Watts, is to be converted to a thirty (30) day suspension without pay. The grievant is to be restored to employment with all back pay and benefits, less the thirty day suspension. This restoration to employment is to be regarded as a "last chance" by the Grievant. Further instances of discipline, if not

overturned or modified in the grievance procedure of the parties, will result in her discharge.

Signed and dated this 14th day of May, 2007 at Solon, OH.

Harry Graham
Arbitrator