VOLUNTARY ARBITRATION PROCEEDINGS
GRIEVANCE NO. 33-00-20080603-0033-01-05
GRIEVANT: TANEQUA PHILLIPS

OFFICE OF COLLECTIVE BARGAINING, THE STATE OF OHIO	:	
The Employer	:	
and	:	OPINION AND AWARD
THE OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, AFSCME LOCAL 11	:	
The Union	:	

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LICENSED TO PRACTICE LAW IN THE STATE OF OHIO AND COMMONWEALTH OF KENTUCKY

APPEARANCES

For the Employer:

Buffy Andrews, Advocate
Joe Trejo, 2nd Chair
Donna Green, Witness
Adam Bravie, Witness

For the Union:

Deborah Bailey, OCSEA Staff Representative
Tanequa S. Phillips, Grievant
Donnia M. Pearson, Secretary

I. SUBMISSION

This matter came before this arbitrator pursuant to the terms of the collective bargaining agreement by and between the parties, the parties having failed resolve of this matter prior to the arbitral proceedings. The hearing in this cause was scheduled and conducted on April 14, 2009, at the conference facility of the Ohio Veterans Home in Sandusky, Ohio, whereat the parties presented their evidence in both witness and document form. The parties stipulated and agreed that this matter was properly before the arbitrator; that the witnesses should be sworn but not sequestered and that post hearing briefs would not be filed. It was upon the evidence and argument that this matter was heard and submitted and that this Opinion and Award was thereafter rendered.

II. STATEMENT OF FACTS

The grievant was a near ten-year employee at that facility. As a result of certain discipline problems, the grievant entered into a Last Chance Agreement which was signed off, not only by her, but by the union as well. That Last Chance Agreement revealed the following:

> **"Last Chance Agreement**
>
> The following constitutes a last chance agreement between Tanequa Phillips, FSW OCSEA Local 11 and the Ohio Veterans Home in conjunction with the Department of Administrative Services, Human Resources Division, Office of Collective Bargaining.
>
> The Ohio Veterans Home agrees to hold the attached letter dated January 8, 2008 notifying Ms. Phillips of her termination in abeyance. This letter shall be held in abeyance for a period of two (2) years from the signing of

this agreement unless Ms. Phillips violates any portion of the Ohio Veterans Home Corrective Action Standard(s) not including the Tardiness section.

It is agreed by all parties that if the employee violates the **Last Chance Agreement** or if there is any violation of the Ohio Veterans Home Corrective Action Standard(s), not including the Tardiness section, the appropriate discipline shall be termination from her position. The Ohio Veterans Home need only prove that the employee violated the above agreement or work rules. The arbitrator shall have no authority to modify the discipline. All parties acknowledge the waiver of the contractual due process rights to the extent stated above.

The **Last Chance Agreement** is in force and effect for two years from the date of the signature on this agreement. The agreement shall be extended by any periods of leave in excess of thirteen (13) days, but not limited to vacation, personal leave, sick leave, disability, and worker's compensation.

In Agreement:

/s/ Tanequa S. Phillips	1/11/2008
Tanequa Phillips, FSW	date
/s/ Carolyn Smith	1/11/2008
Union	date
/s/ Donna Green	1/11/2008
Ohio Veterans Home	date"

At the same time that the Last Chance Agreement was in effect, there was also in use, posted and knowledgeable to the union, a corrective action standard. In other words, a violation of any one of those standards would trigger some discipline. Standard Code A-05 revealed the following:

"A-05	**AWOL**: Made contact but not in an approved status OR Absent less than 1 full day"

By way of memorandum under date of May 28, 2008, it was revealed by the Agency Acting Superintendent that it was for the best interest of the Agency to terminate the seniority of the grievant as a result of an absence of the grievant by way of tardiness of February 5, 2008. That memorandum revealed the following:

"TO: Richard D. Hatcher, Agency Acting Superintendent

FROM: Donna Green, Agency Labor Relations Officer

RE: Recommended Discipline for Tanequa Phillips, FSW

DATE: May 28, 2008

Facts leading to charge

On February 5, 2008, according to the call in log, Ms. Phillips went home at 1010 am from her 0530-1400 shift.

On February 21, 2008 I posted an AWOL Posting with her on it showing that she was considered to be AWOL for this date, this Posting allows another week for employees to submit a request for leave to cover their absence. Ms. Phillips did not respond.

Ms. Phillips has alleged to have violated OVH Corrective Action Standard A-05); AWOL - No approved request for leave.

Ms. Phillips has been off on leave since February 24, 2008, she returned to work on May 12, 2008.

Absenteeism negatively impacts the agency financially by increasing overtime costs and affects employee morale due to increased workload.

Ms. Phillips has received the following corrective actions for same or similar infractions:

09/08/05	**1st Level of Suspension** - Acknowledged a one day "paper suspension" for being AWOL (submitted a waiver).
02/27/06	**2nd Level of Suspension** - Acknowledged a two (2) day "fine suspension" for A-09); "No Physician Verification" (submitted a waiver).
01/19/07	**3rd Level of Suspension** - Acknowledged a five (5) day suspension for N-05): Poor Judgment (Non-Resident Related), I-01); Improper Conduct - Failure to accept authority or supervision (e.g. use of obscene, abusive language or discourteous treatment of co-worker, supervisor or general public, lack of cooperation, argumentative, disrespect of authority).
01/11/08	Acknowledged a **termination letter** for being AWOL
01/11/08	Entered into a **Last Chance Agreement** for all work rules, except tardiness for two years.

Pre-Disciplinary Meeting

On May 19, 2008 in accordance with OCSEA/AFSCME 24.05, a pre-disciplinary meeting was held to discuss this allegation. During this meeting Ms. Phillips allowed the union to speak on her behalf.

Vanessa Brown, Union Representative, stated that Ms. Phillips may not have had the opportunity to see the AWOL posting since Ms. Phillips only worked until 1400 on February 21, 2008 the day the AWOL posting went up. If the posting went up after that time, Ms. Phillips would have already left for the day.

The pre-disciplinary meeting officer assigned to this case found that the AWOL Posting went up on February 21, 2008 and remained posted for one week. Ms. Phillips worked on the day the posting went up plus she worked on Sunday, February 24, 2008. Both of these dates fall within the one week time period that this AWOL posting was available for Ms. Phillips to view. By posting the AWOL list, OVH is giving notice to employees that they

must rectify the situation, which is the very reason for such a posting. No other notice is required to be given to the employee. Therefore, I find there to be just cause for discipline.

Recommendation

Management felt that it is in the best interest of the Agency to terminate Ms. Phillips.

In Concurrence:

/s/_____
Richard D. Hatcher
Agency Acting Superintendent"

As a result of the letter of removal, the union, on behalf of the grievant, filed a protest. That protest, in pertinent part, revealed the following:

"**Statement of facts (who, what, where, when?).**
The grievant was removed from her FSW position for the alleged violation of Corrective Action Standard A-05. The union feels that the termination was unfair and unjust."

The denial of the grievance, in its entirety, under memorandum of November 17, 2008 from the Agency revealed the following:

"TO: Vanessa Brown, President, OCSEA/AFSCME, Local 11

FROM: Donna Green, Agency Labor Relations Officer

DATE: November 17, 2008

RE: Step Three Grievance Response - #33-00-20080603-0033-01-05
Grievant: Tanequa Phillips
1st Step: received: 00/00/08; meeting: 00/00/08; response: 00/00/08
2nd Step: received: 00/00/08; meeting: 00/00/08; response: 00/00/08
3rd Step: received: 06/03/08; meeting: 11/04/08; response: 11/21/08

CONTRACT ARTICLES 24.05

UNION POSITION AS WRITTEN ON GRIEVANCES STATEMENT:

The grievant was removed from her FSW position for the alleged violation of Corrective Action Standard A-05. The union feels that the termination was unfair and unjust.

REMEDY SOUGHT AS WRITTEN ON GRIEVANCE STATEMENT:

No Remedy.

MANAGEMENT POSITION:

On February 5, 2008, according to the call in log, Ms. Phillips went home at 1010 am from her 0530-1400 shift.

On February 21, 2008 Donna Green, Labor Relations Officer, posted an AWOL Posting with her on it showing that she was considered to be AWOL for this date, this Posting allows another week for employees to submit a request for leave to cover their absence. The grievant did not respond.

The grievant violated OVH Corrective Action Standard A-05); AWOL - No approved request for leave.

The grievant had been off on leave since February 24, 2008, she returned to work on May 12, 2008.

The grievant has received the following corrective actions for same or similar infractions:

09/08/05	**1st Level of Suspension** - Acknowledged a one day "paper suspension" for being AWOL (submitted a waiver).
02/27/06	**2nd Level of Suspension** - Acknowledged a two (2) day "fine suspension" for A-09); "No Physician Verification" (submitted a waiver).
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01/11/08	Acknowledged a **termination letter** for being AWOL
01/11/08	Entered into a **Last Chance Agreement** for all work rules, except tardiness for two years.

FINDINGS:

The AWOL Posting went up on February 21, 2008 and remained posted for one week. The grievant worked on the day the posting went up plus she worked on Sunday, February 24, 2008. Both of these dates fall within the one week time period that this AWOL posting was available for her to view. By posting the AWOL list, OVH is giving notice to employees that they must rectify the situation, or be AWOL. There is nothing in the OCSEA Contract that says management will put such a posting up in order to help employees *not* be AWOL.

Upon talking with the Dietary Supervisors, they post the Posting the day it comes out.

Based on these findings and the consistent application of the work rules, and the past practice of the AWOL Posting, this grievance is denied in its entirety."

The testimony at the hearing revealed that the grievant asserted that she received permission for the tardiness. The grievant also asserted that she had a written memorandum of her notice and

permission, but that she no longer had it. The union asserted at hearing that it made a request upon the agency for a copy of that notice of permission but the agency not only denied the existence of any permissive activity on its part based upon a reply of notification of absence, but the agency also presented evidence by and through the person who allegedly received that notice, that such notice had never been filed, never been signed off by the agency, and that the agency was clearly unknowing of any permission given to the grievant. Thus, the matter is based upon the tardiness, inexcusability of that tardiness, all being in violation of the Last Chance Agreement, hereinabove stated.

There was some evidence at hearing that the Last Chance Agreement wasn't understood or was too far-reaching and that the discipline in this matter, therefore while easily explainable, caused a draconian approach in that the grievant was terminated as a result of a violation of the Last Chance Agreement.

It was upon these facts that this matter rose to arbitration for Opinion and Award.

III. OPINION AND DISCUSSION

The facts in this case clearly reveal that the grievant entered into a Last Chance Agreement. It was signed off by the union; it was signed off by the grievant in the presence of the union and it was signed off by management at the same time. I found that the writing of the Last Chance Agreement and the contents therein are fair, just and equitable and the grievant's complaint that its

use was too draconian must fall on dead ears. The grievant was knowledgeable of the corrective action standards and there was no evidence in the record showing that those corrective action standards were not published or selectively used rather than even-handedly applied. As a matter of fact, the record is clear of any evidence showing any impropriety of the rules as used by the employer in this particular matter.

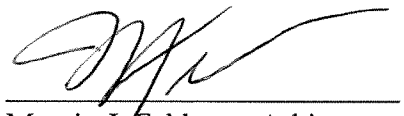
Simply put, the grievant was absent. It was an admitted absence. The grievant defended it on the basis that it could have been excused and she became excused when she obtained permission from a foreman. The grievant could provide no substantiation of her oral testimony in that regard and the lack of corroboration makes me feel as if the grievant was less than candid in her testimony in this matter. It appears to me that if an excuse had been obtained, the grievant would have retained it, rather than throwing it away as she testified to. Management has no reason to tell untruths about the absence since the grievant had a responsible job and probably had to replace the grievant with another person. From all of the evidence, I find that the defense of the union is without merit. I further find that the Last Chance Agreement was fair, just and reasonable. I further find that the excuse of the grievant lacks corroboration in any manner or respect and I must deny the grievance on that basis.

It might be noted that the termination of the seniority of the grievant in this particular matter is not necessarily based upon the fair, just and reasonable activity found in the contract of collective bargaining but rather in violation of the Last Chance Agreement. It might be noted that I didn't

discuss the fair, just and reasonable aspect in this case because this case has its predicate in the Last Chance Agreement and a violation of a further rule triggering the Last Chance Agreement usage. The parties might keep in mind in any further cases involving Last Chance Agreements that if a termination is based upon the Last Chance Agreement, the just cause provision may not apply, but rather the application is under the Last Chance Agreement.

IV. AWARD

Grievance denied.



Marvin J. Feldman, Arbitrator

Made and entered
this 30th day
of April 2009.