**OCB AWARD NUMBER: 2122**

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| **SUBJECT:** | **ARB SUMMARY # 2122** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **70-00-20101008-0001-01-09** |
| **DEPARTMENT:** | Office of the Ohio Public Defender |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | Craig A. Allen |
| **GRIEVANT NAME:** | Mary Emmons |
| **MANAGEMENT ADVOCATE:** | Katherine Nicholson |
| **2ND CHAIR:** | Sharon Allison |
| **UNION ADVOCATE:** | Dan Ely |
| **ARBITRATION DATE:** | April 29, 2011 |
| **DECISION DATE:** | May 9, 2011 |
| **DECISION:** | DENIED |
| **CONTRACT SECTIONS:** | Article 24.01; Article 24.02; Article 24.05; Article 24.06 |
| **OCB RESEARCH CODES:** | 118.01—Discipline-In General; 118.301—Progressive Discipline; 115.2011—Flextime; 118.6368—AWOL  |
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**HOLDING: Grievance DENIED. The Arbitrator found that there was just cause to remove Grievant because Grievant had clear notice of work expectations regarding time away, and the Employer made multiple attempts to counsel the Grievant before she was removed. Although the Employer used a different discipline grid than other state agencies, the Employer’s grid is not unreasonable given the critical nature of the work and impact that call-offs had on office productivity.**

Grievant was removed for violation of Rule 13(c) of the Agency Work Rules. The Grievant is one of four Secretaries at the Ohio Public Defender, in a very time sensitive position where a single absence results in the other secretaries being overloaded. Increasingly, Grievant began to call off from work and exhausted her leave balance. Grievant was counseled by her supervisor and Human Resources on numerous occasions about her absences, and she was aware that future absences would result in unpaid leave status for that time away. Following this, Grievant was away without leave (AWOL) in May and again in June, and was notified that if she was AWOL again she would be disciplined. In September, Grievant was removed for being AWOL per Rule 13(c) which provides for automatic removal when an employee is AWOL for three or more days.

The Employer arguedthe Grievant had a critical job that was time sensitive. The employer testified that they chose to rely on counseling, as opposed to discipline, earlier on to correct the behavior. Overall, Grievant did a good job at work and her only issues dealt with unapproved absenteeism. Earlier incidents were not as serious but her absenteeism became more frequent. The Grievant was warned by the Employer that the next time she was AWOL she would be removed. Grievant acknowledged that she did not have leave time and was aware of the discipline process, which included Rule 13(c). Grievant was then AWOL for three days and terminated.

The Union arguedthat starting with Removal for being AWOL is unusual. Grievant claims she was being sent mixed messages because the Employer was too lax in its policies and did not discipline her in earlier situations for going into unpaid leave status; thus, Grievant believed her behaviors would be tolerated.

The Arbitrator foundthat the operational needs of Agencies differ and the Ohio Public Defender’s Rule 13(c) is reasonable. The too lax argument by the Union is out weighed by the extensive evidence of counseling and warnings given to Grievant, and that Grievant was aware that any further infractions would result in discipline. It is unlikely that fines or a short term suspension would have changed Grievant’s behavior, given her track record following all the counseling and warnings. Therefore, the grievance is denied.