

Thomas J. Nowel
Arbitrator and Mediator
Cleveland, Ohio

IN ARBITRATION PROCEEDINGS PURSUANT TO
AGREEMENT OF THE PARTIES

In The Matter of a Controversy Between:)	Grievance No.
)	35-04-20120523-
Service Employees International Union,)	0014-02-12
District 1199)	
)	ARBITRATION
and)	OPINION AND
)	AWARD
Ohio Department of Youth Services)	
Indian River Juvenile Detention Facility)	DATE:
)	July 23,
Re: Grievance of Jurldine Hicks)	2013

APPEARANCES:

Casey Whitten-Amadon Esq., Advocate for SEIU District 1199; Larry L. Blake, Advocate for the Ohio Department of Youth Services; and Victor Dandridge for the Ohio Office of Collective Bargaining

INTRODUCTION

This arbitration arises pursuant to a collective bargaining agreement between the State of Ohio and the Service Employees International Union, District 1199. The dispute involves the grievance of Jurldine Hicks regarding her denied promotion to Social Worker 3 at the Indian River Juvenile Correctional Facility. The Employer contends that there is no violation of the Agreement. The Union states that the Grievant was improperly denied the promotion to Social Worker 3 and that the Employer modified the qualifications of the position in violation of certain agreements. Ms. Hicks grieved the Employer's decision on May 23, 2012, and the grievance was denied on July 25, 2012. The Union appealed the grievance to arbitration. The Employer holds that the grievance was not timely filed.

The Arbitrator was selected by the parties, pursuant to Section 7.07 of the collective bargaining agreement, to conduct a hearing and render a binding arbitration award. Hearing was held on May 15, 2013 at the Indian River Juvenile Correctional Facility in Massillon, Ohio. At hearing, the parties were afforded the opportunity for examination and cross examination of witnesses and for the introduction of exhibits. Witnesses were sworn by the Arbitrator. The parties submitted post hearing briefs.

ISSUE

The parties were unable to agree on the specific issue to be decided by the Arbitrator. The Union states that the issue is as follows. 1. Did the reposting of the PN# 20016795 as a Social Worker 3 with an LISW and an LPCC licensure

requirement violate the MOU's between SEIU 1199 and the Department of Youth Services dated October 10, 2005, August 4, 2008, and September 25, 2008, respectively? 2. Did management violate Article 28.03 by not awarding Jurldine Hicks PN# 20016795 when it was posted as a Social Worker 3? 3. Did the reposting of the PN# 20016795 violate Article 30 Vacancies? 4. Did Management violate Article 6.01 and 6.02 when they failed to award Ms. Hicks PN# 20016795 as a Social Worker 3?

The Employer states that the issue is as follows. Did Management violate Article(s) 1.01, 1.02, 1.03 or 28.03 when Jurldine Hicks was not selected for the Social Worker 3 position posted April 4, 2012? If so, what shall the remedy be?

JOINT STIPULATIONS

1. PN #20016795 was posted on 08/04/10 as a Social Worker 3 position. The Position Specific Qualifications for this position were the licenses LSW, LPC, and LCDC only.
2. On 8/31/10 Jurldine Hicks consented to her voluntary transfer and promotion to PN #20016795 Social Worker 3 at Indian River Juvenile Correctional Facility.
3. During the posting and application process of Mrs. Hicks all three MOUs between SEIU 1199 and the Department of Youth Services were in effect through October 5th 2010.
4. On September 21st, 2010 Central Office did not approve of the promotion of Mrs. Hicks.

5. On April 4th, 2012 Central Office reposted a Social Worker 3 position under the same PN number 20016795, requiring as licensure an LISW or an LPCC. No formal notice was given to Mrs. Hicks that she did not receive this position.
6. On May 22nd, 2012 they reposted the same position again. Mrs. Hicks filed a grievance the next day.

The parties submitted a number of joint exhibits at the onset of the hearing.

WITNESSES

TESTIFYING FOR THE UNION:

Josh Norris, Union Public Division Director

Jurldine Hicks, Grievant

Tyler Hitzfield, Former Social Work Supervisor

Joan Olivieri, Former DYS Labor Relations Administrator (as if on cross examination)

Laura Dolan, Bureau Chief of Facility Programs (as if on cross examination)

Rochelle Jones, Bureau Chief Human Resources and Employee Relations (as if on cross examination)

TESTIFYING FOR THE EMPLOYER

No additional witnesses.

RELEVANT PROVISIONS OF AGREEMENT

Article 1 – Purpose and Intent of the Agreement

Section 1.01 Mid-Term Contractual Changes

The Employer and the Union have the power and authority to enter into amendments of the Agreement during its term constituting an addition, deletion, substitution or modification of this Agreement. Any amendment providing for an addition, deletion, substitution or modification of this Agreement must be in writing and executed by the President of the Union or designee and the Director of the Department of Administrative Services or designee. Upon its execution, such amendment shall supersede any existing provision of this Agreement in accordance with its term and shall continue in full force and effect for the duration of this

Agreement. All other provisions of this Agreement not affected by the amendment shall continue in full force and effect for the term of this Agreement.

Section 1.02 Memorandum of Understanding, Duration

All Memoranda of Understanding, amendments, Letters of Intent, or any other mutually agreed to provisions, shall be reviewed by the Union 1199, the Office of Collective Bargaining, and the Agency representatives for determination of their force and effect. Unless otherwise mutually agreed by the parties, those Memoranda of Understanding, amendments, Letters of Intent, or any other mutually agreed to provisions entered into prior to June 1, 2003, shall expire and have no further force and effect upon the expiration of this Agreement, except those which have or do confer an economic benefit.

Section 1.03 Total Agreement

This Agreement represents the entire agreement between the Employer and the Union and unless specifically and expressly set forth in the express written provisions of this Agreement, all rules, regulations, practices and benefits previously and presently in effect, may be modified or discontinued at the sole discretion of the Employer. This Section alone shall not operate to void any existing or future ORC statutes or rules of the OAC and applicable Federal law. This Agreement may be amended only by written agreement between the Employer and the Union.

Article 28 – Seniority

Section 28.03 Seniority Lists

The Employer shall prepare and maintain seniority lists of all employees and shall furnish said lists quarterly to the Union and to the appropriate State of Ohio agencies. Where available, the Employer may provide an electronic posting of the roster in lieu of a paper roster.

The seniority list will describe employees in descending order of state seniority credits and will contain the employee's name, classification title, state seniority credits, and the last four digits of each employee's Employee ID number. Each employee's individual employee seniority credits will be displayed on the employee's earning statement.

GRIEVANCE

The grievance of Jurldine Hicks reads as follows.

“Grievant filed a grievance on 1-1-10 as a result of being unjustly denied social worker 3 position for PN #20016795 and has ran the grievance through the collective bargaining process, however central office lied and stated that they had downgraded the position to a Social Worker 2 position and has reposted the original general population social worker 3 position with identical PN #20016795 with different PSMQs, requiring an independent license LISW or LPCC. The Union did not agree to attach said PSMQs to the position and the agency did not acquire a signed MOU with 1199 SEIU to do so.”

Contract Article(s) and Section allegedly violated, including but not limited to: 1.01 Mid-Term Contractual Changes, 1.02 Memorandum of Understanding, 1.03 Total Agreement, 28.03 Seniority Lists.

Resolution Requested: Grievance be resolved and employee be elevated to pay range for Social Worker 3 and settlement be paid to harmed employee retroactive to the time the employee was disallowed the promotion by the agency.

BACKGROUND

Jurldine Hicks, the Grievant, has been employed with the Department of Youth Services at the Indian River Juvenile Detention Facility for approximately twenty-nine years. She was hired as a Youth Specialist and served in this position for eight years. She then moved into a Social Worker 1 position and performed substance abuse assessments. In 1994 the Grievant became a Social Worker 2 and

has served in this capacity since that time. In June, 2010, Allison Burley vacated a Social Worker 3 position at the facility. Ms. Burley was an LSW (Licensed Social Worker). The Grievant applied for the position, and the local facility initially accepted her application and indicated that the promotion would be granted. The Grievant possesses an LCDC (chemical dependency certification) license, and the job posting indicated that the qualified applicant must possess one of a number of licenses including an LCDC. Ms. Hicks was the most senior qualified applicant for the position. Management indicated that the Grievant's duties would involve sex offenders, and, although she at first resisted this assignment, she agreed to provide services to the sex offender unit. The Grievant began meeting with juveniles assigned to the sex offender unit but was notified that the central office of the Department wished to upgrade the position by requiring an LISW, a higher level licensure and one the Grievant did not possess. The Grievant's promotion was then denied, but management continued to assign her to sex offender duties although she remained a Social Worker 2. Department policy states that a transfer from one position to another is not final until approved by the Department of Administrative Services. The state position number of the position vacated by Ms. Burley was PN# 20016795.

Ms. Hicks grieved the denial of the promotion to Social Worker 3 and the downgrading of the position. The Union argued that the reduction of the position to Social Worker 2 was a violation of the collective bargaining agreement and a Memorandum of Understanding (Union Exb. 2) which had been negotiated between the parties regarding social worker position at DYS and licensure requirements.

The Employer denied the grievance on December 13, 2010 citing the lack of requirement for the chemical dependency license (LCDC) which was held by the Grievant. The response also stated that the Employer was most interested in Social Worker 3 positions which required LISW (Licensed Independent Social Worker) and LPCC (Licensed Professional Clinical Counselor) licensure (Jt. Exb. 3). The Union decided not to appeal the grievance to arbitration and withdrew it on April 10, 2012. PN# 20016795 appeared to no longer exist on the Department's table of organization.

The Employer posted notice for a Social Worker 3 at Indian River Juvenile Correctional Facility on April 4, 2012 (Jt. 4, pg. 4). The position required an LISW or LPCC. This position was assigned the same position number as the previous Social Worker 3 position which had been denied the Grievant in 2010, PN# 20016795. Although the Grievant did not possess an LISW or LPCC, she applied for the position. The Employer did not award the position to the Grievant and did not send her a rejection notice. When the position was re-posted on May 22, 2012, Ms. Hicks filed the instant grievance on May 23, 2012. The Employer denied the grievance on July 25, 2012 on the basis that the Grievant did not possess the licensure that it determined was necessary for the Social Worker 3 position. The Union appealed the decision to arbitration.

The Employer (DYS) and Union entered into a Memorandum of Understanding on October 10, 2005 following agency specific negotiations regarding social worker licensure and certain incentives available to existing social workers who obtained various licenses. Incentives included additional vacation

credits and compensatory time. Unlicensed social workers generally were given three to five years to obtain licensure. The Department was under court and administrative order to upgrade its social work staff. The Memorandum expired five years from the date of its execution. The parties then developed and signed an “MOU Addition and Agreement” regarding the need for an additional Social Worker 3 position to be assigned to a specialty unit at three facilities including Indian River. The parties agreed that the position would require an LISW or LPCC. The agreement was signed by the parties on August 4, 2008. One month later, the parties developed an additional “MOU Clarification and Agreement” which outlined in detail the requirements regarding licensure and the placement of Social Worker 3 positions in the various facilities of the Department. Paragraph # 10 states, “If a licensed social worker 3 leaves, the resulting vacancy will remain a PSMQed social worker 3 position.”

The Grievant, Jurldine Hicks is a Union delegate and has served in this capacity at Indian River for a number of years.

POSITION OF THE UNION

The Union states that the Employer’s assertion, that the grievance was not filed timely, lacks merit. The grievance was in fact filed within the twenty days required by the Agreement. The Grievant was not formally informed of management’s rejection of her bid for the Social Worker 3 posting and submitted her grievance one day following the re-posting of the position. The Union argues that the Grievant clearly filed her grievance in a timely manner. The Union argues

further that management's response to her grievance was untimely in any event. The Union argues that any confusion caused by the Employer is resolved in the favor of the Grievant. Management failed to officially notify Ms. Hicks that she was not selected as a Social Worker 3 following the April 4, 2012 posting.

The Union states that it withdrew the 2010 grievance on the basis that it believed the Employer had decided to leave the position, PN# 20016795, vacant. The Union acknowledges the right of management to not fill a vacated position. But the Employer re-posted the same position on April 4, 2012, and, the Union argues, it is clear that it was a renewal of the original job posting which had been the subject of the withdrawn grievance. The Union argues that the Employer wished to avoid awarding the position to the Grievant.

The Union states that Article 6, Non-Discrimination, and Article 30, Vacancies, should be considered by the Arbitrator as violations in the instant case despite the objections of the Employer. Although the printed copy of the grievance does not contain these contractual violations, the electronic grievance filing system, which is managed by the Employer, is mistake prone and does not always allow for complete information to be entered on the grievance form. Furthermore, the Union argues, the Employer was aware from the beginning that these provisions of the Agreement were integral components of the dispute. The Union states that it is a general principle that grievances should not be dismissed based on technical grounds.

The Union states that the Grievant applied for the Social Worker 3 position in 2010 which was vacated by Allison Burley. The Grievant was qualified for the

promotion and was selected for it by local Indian River management. Although the Grievant had transitioned into the position and was working with her new client base, the Employer decided that she was not ultimately qualified because she did not possess an LISW. The Employer had decided to upgrade the position to include this higher level licensure in violation, the Union argues, of the Memorandum of Understanding. The Union states that paragraph # 10 of the 2008 MOU is clear. "If a licensed social worker 3 leaves, the resulting vacancy will remain a PSMQed social worker 3 position." Although the Grievant continued to work with the sex offender unit, the former work load of Ms. Burley, her position was downgraded to Social Worker 2 in violation of the Agreement, the Union argues, and the MOU. Ms. Hicks grieved the matter, and position PN# 20016795 appeared to have been removed by the Employer from the table of organization. The Union states that the "disappearance" of the position prompted it, after debating the pros and cons, to withdraw the initial grievance.

The Union argues that the reposting of PN#20016795 on April 4, 2012 is clearly the same vacancy which was posted in 2010. The Employer maneuvered the re-posting following the grievance withdrawal in violation of the Grievant's right to the position based on the three MOUs. The Union states that the Employer has violated Section 28.03 of the Agreement in failing to award the April 4 Social Worker 3 position to the Grievant. The Grievant possesses an LCDC and is therefore qualified for the position based on the negotiated understanding of the parties as codified in the MOUs. Additionally, the Grievant is the most senior and qualified applicant for the position. The Union argues further that the Employer violated

Article 30 on the basis that the Grievant was the most qualified and senior applicant. She possessed the most state seniority of applicants.

The Union asserts that the Employer violated Sections 6.01 and 6.02 when it manipulated the posting of PN# 20016795 as the Grievant is a Union delegate and outspoken advocate for the Union. The Central Office of the Department of Youth Services is well aware that the Grievant is outspoken and often blunt in her responses to labor issues. The Union argues that management waited for the Union to withdraw its initial grievance before re-posting the same position with a level of licensure not possessed by the Grievant. The Union states finally that the 2008 MOUs had no expiration dates and are still in effect.

The Union asks the Arbitrator to grant the grievance of Jurldine Hicks by making her whole; granting her the promotion to Social Worker 3 (PN# 20016795) with full back pay, that being the difference between the Social Worker 2 and 3 positions from September 22, 2010 to the present; or granting back pay to April 4, 2012; or ordering the promotion effective on the date of the Award at arbitration (no back pay); or other monetary financial award based on equity; and issue a cease and desist order regarding contractual violations and bad faith bargaining on the part of the Employer.

POSITION OF THE EMPLOYER

The Employer states that the grievance was filed forty-nine days following the posting of the Social Worker 3 position. The Employer states further that Section 7.06 provides that formal written grievances must be filed within twenty

days of the date on which the Grievant knew or reasonably should have known of the event. The grievance, the Employer argues, is therefore late and not arbitrable. Furthermore, the grievance cites specific contractual violations, but at arbitration, the Union attempted to include Articles 6 and 30. The Employer argues that the Union is precluded from doing so as Section 7.02 requires that the grievance must contain "... specific Article(s) or Section(s) of the Agreement." The Employer states that the Union's argument, that the state's grievance filing system has glitches, is disingenuous.

The Employer states that, the Union's reliance upon the Memorandum of Understanding dated 10/5/2005 and the two supplemental MOUs of 2008, are not controlling. The original MOU expired on 10/5/2010, and the Employer states that testimony at hearing clearly indicated that the 2008 supplemental MOUs were connected to the 2005 MOU and therefore expired also in 2010. The Employer argues that there is no evidence to indicate that an additional MOU regarding Social Work positions was negotiated in 2011. Therefore, the Employer argues, there is no MOU regarding social worker positions which would have any impact on the instant grievance. The Employer argues further that the only question before the Arbitrator is the Grievant's qualifications for the Social Worker 3 position which was posted on April 4, 2012. The Grievant, Ms. Hicks, stated that she did not meet the minimum qualifications. The Employer states that the 2010 grievance regarding the Social Worker 3 position was still open when management posted the new position which is the subject of the instant matter. Union Delegate, Pete Hanlon, became aware of the posting on April 4, 2012 and advised the Grievant to apply for the position.

Nevertheless the Union withdrew the 2010 grievance on April 10, 2012. The Employer argues that the dispute involving the 2010 grievance became a moot issue following its withdrawal. The MOU regarding Social Worker positions at DYS had expired. The Employer argues that it was no longer limited in respect to modifying or increasing qualifications (PSMQs) for Social Worker positions, and, in the instant matter, the Social Worker 3 position which was posted on April 4, 2012.

The Employer states that the Grievant is not, by her own admission, qualified for the Social Worker 3 position for which she applied on April 10, 2012. The three MOUs between the parties had expired, and the 2010 grievance regarding the earlier Social Worker 3 position had been withdrawn by the Union. The Employer argues that there is no contractual basis to grant the April 4 Social Worker 3 position to the Grievant. The Employer therefore asks that the Arbitrator deny the grievance of Ms. Hicks in its entirety.

DISCUSSION AND ANALYSIS

This case involves numerous issues, the first being arbitrability based on the timeliness of the filing of the grievance by Ms. Hicks. The Social Worker 3 position was posted on April 4, 2012, and the Grievant applied for it on April 10, 2012. The position was again posted on May 22, 2012 as the Employer determined that there were no qualified applicants. Ms. Hicks grieved on May 23, 2012. Section 7.06 of the Agreement requires that grievances must be filed no later than twenty days following the date “on which the grievant knew or reasonably should have had knowledge of the event.” Although the Employer suggests that the Grievant knew

she did not possess the licensure requirements for the position, evidence indicates and the parties stipulated that she did not receive formal notice of rejection. She therefore filed the grievance following the re-posting of the Social Worker 3 job on May 22, 2012. The grievance was filed on May 23, 2012. The argument of the Union is meritorious. Clearly the twenty day clock would have begun ticking had the Employer notified the Grievant directly that she was not to be awarded the position. Failing to do so, the Grievant was made aware of the rejection for the position when it was re-posted. The Grievant is a seasoned Union delegate and was aware of the grievance submission requirements contained in the Agreement. The grievance of the Union, filed in behalf of Ms. Hicks on May 23, 2012, is timely filed, and the grievance is therefore arbitrable.

The Union's grievance contains the following alleged violations, Section 1.01, Mid-Term Contractual Changes; Section 1.02, Memorandum of Understanding; Section 1.03, Total Agreement; and Section 28.03, Seniority Lists. During hearing at arbitration, the Union stated that Article 6, Non-Discrimination, and Article 30, Vacancies, were additional violations of the Agreement and argued that the Union attempted to include this information on the original grievance form, but, due to "glitches" in the Employer's system, the information was not included. The Employer cites Sections 7.02 and 7.03 in its argument that the Arbitrator should not consider these provisions of the Agreement. Arbitrators recognize that the grievance process is not perfect and often do not dismiss grievances on the basis of technical deficiencies. Union officers and delegates are generally not labor relations professionals but rather are volunteers who may or may not receive training in

grievance administration. Therefore some leniency may be granted when the Union's original grievance is lacking in some manner. In the instant case, the Employer's argument is meritorious. Section 7.03 of the collective bargaining agreement states as follows. "The grievant shall cite on the grievance form the specific Article, Section, or combination thereof. . . ." The Grievant is a seasoned Union delegate. Section 7.03 states further that "The grievance may be amended at the Step One (1) meeting." If there had been a problem with the Employer's automated system when the grievance was initially submitted, the Union had the opportunity to amend it when the parties met over the matter at Step One. There is no evidence that the Union made an attempt to amend the grievance at Step One or at any other time. When the parties bargained specifically that grievances may be amended at Step One, this opened the door for the Union to include additional contractual violations at that time. This is what the parties bargained, but there is no evidence that this occurred in the instant matter. Evidence also indicates that the Union's 2010 grievance (Jt. Exb. 3), which was generally of the same or similar subject matter, did not contain violations of Article 6 or Article 30. Although the Union argued that there was a glitch in the system, there was no evidence that the system was defective on the day or time period when the instant grievance was processed. The collective bargaining agreement precludes consideration of Articles 6 and 30 in the instant matter.

The parties negotiated and executed a department specific Memorandum of Understanding regarding licensure at the Department of Youth Services on October 10, 2005. Provisions of this MOU are clear that it expired five years from its

effective date, October 10, 2010. Based on a “consent decree” and the Employer’s interest in increasing licensure among social workers employed at the various DYS facilities, the parties entered into a number of agreements which included protections for existing employees, vacation and compensatory time incentives for unlicensed social workers to obtain licensure and other matters regarding job description qualifications. The parties then agreed to an “MOU Addition and Agreement” on August 4, 2008 which allowed the Employer to require additional licensure, LISW and LPCC in order to “meet paragraph 91 of the consent decree implementation plan” The Union argues, in the instant matter, that there is no ending date of this “MOU Addition and Agreement” (Union Exb. 2 – 3). But the MOU states that the parties “hereby mutually agree to addend the MOU regarding social worker licensing with the following” As this document was an addendum to the original MOU, with an expiration date of October 10, 2010, and there is no evidence that there was an agreement to extend the “MOU Addition and Agreement” beyond the ending date of the first Agreement, then clearly the August 4, 2008 MOU expired with the original. The parties negotiated and executed an additional “MOU Clarification and Agreement” on September 25, 2008 (Union Exb. 2 – 4). The Union suggests again that there was no end date to the MOU. Paragraph 10 of this document is of particular importance. “If a licensed social worker 3 leaves, the resulting vacancy will remain a PSMQed social worker 3 position.” This was the basis of the initial grievance filed by Ms. Hicks in 2010. But the Employer’s argument that this document expired with the original MOU has merit. It clearly is an enhanced and detailed explanation of the original, and its title, “MOU Clarification

and Agreement” relates directly to provisions of the 2005 document with an expiration date of October 10, 2010. Paragraph 14 of the document makes specific reference to the October 10, 2005 MOU. There was no conclusive evidence at hearing that the terms of the additional 2008 MOUs extended beyond the expiration date of the original, and management employees, called as witnesses by the Union to testify, confirmed this. Additionally, there was no evidence that an additional 2011 MOU ever existed or was discussed by the parties.

The Union argues that the 2010 grievance of Ms. Hicks is relevant to the instant case and suggests that the 2012 grievance is an extension of the original case. At hearing, the Union examined witnesses extensively regarding the 2010 Social Worker 3 posting and modified PSMQ. But the Union had withdrawn this matter, Grievance No. 35-04-20101001-0039-02-12, on April 10, 2012 stating, “Decision upheld not to arbitrate by Union’s executive board appeals committee” (Jt. Exb. 3 – 6). The Arbitrator is therefore unable to make a determination regarding the merits of the 2010 grievance although it appeared that Paragraph 10 of the September 25, 2008 MOU may have had some relevance regarding the Social Worker 3 position vacated by Ms. Burley as it was posted prior to the expiration of the MOUs. Furthermore, the notice of vacancy for Social Worker 3, which is the subject of the instant grievance, was posted by the Employer on April 4, 2012, eight days prior to the Union’s withdrawal of the 2010 grievance. If the Union had determined that the April 4, 2012 posting of PN# 20016795 was the same position which had been vacated by Ms. Burley in 2010, there may have been merit to pursue the original grievance. This did not happen.

Tyler Hitzfield was called as a Union witness. He had formerly acted as the Grievant's supervisor, and he testified that she was an excellent worker while under his supervision. He stated that he was no longer employed at the Department of Youth Services and was not aware if the Grievant had been denied the Social Worker 3 position by the Central Office. Joan Oliveri, DYS Labor Relations Administrator, was called as a witness by the Union. Ms. Oliveri stated that she signed the September 25, 2008 MOU, and remembered that Paragraph 10 indicated that vacated Social Worker 3 positions would not be reduced in classification series under the negotiated agreement. She testified that this MOU was directly related to the 2005 MOU and its expiration and testified further that the Employer had the right to add or change qualifications following the expiration of the MOUs. Ms. Oliveri struggled to remember the series of email communications between herself and Union Director Norris regarding the 2010 posting of the Burley vacancy. Laura Dolan, Bureau Chief of Facility Programs was called by the Union. She testified that the Federal Court ordered the Department to require social workers to possess professional licenses and also dictated that certain facility units be staffed by social workers with LISW and LPCC licensure. Ms. Dolan recommended that Indian River not promote the Grievant to Social Worker 3 following her 2010 bid for the position vacated by Ms. Burley. She stated that an LISW was required on a mental health unit. (Interestingly the Grievant continued to work with sexual abusers following her denied promotion.) Ms. Dolan could not remember if the parties engaged in additional negotiations over these issues in 2011. She testified that 50% of all youth held in DYS facilities are on a mental health caseload which requires an LISW or

LPCC and stated that the Grievant did not qualify for either of the positions for which she had applied. The Union also called Rochelle Jones, Bureau Chief of Human Resources and Employee Relations. She testified that the Grievant was not qualified to serve as a Social Worker 3 following her application in 2010 based on the need for an LISW or LPCC at the facility. But she also testified that it was not her call to reduce the position to that of a Social Worker 2, and she stated that it was Ms. Oliveri's decision to deny the grievance. She also stated that she was not in her current position when the three MOUs were negotiated between the parties and was not familiar with the discussions. Ms. Jones testified that the 2010 grievance was withdrawn, and the subject matter is now a moot issue.

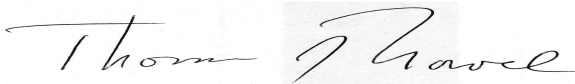
The three MOUs expired in 2010. Ms. Hicks grieved the denial of the Social Worker 3 position in 2010, and the Union withdrew the grievance. The Employer posted notice of a Social Worker 3 position on April 4, 2012, a number of days prior to the withdrawal of the 2010 grievance. The Employer did not violate the former MOUs when the Grievant was determined to be unqualified for the April 4, 2012 Social Worker 3 position as they had expired. Although the position number, PN# 20016795, was the same as the position held by Ms. Burley from 2008 to 2010 and that upon which the Grievant applied in 2010, there was no evidence at hearing that it involved the same job duties in 2012. Therefore the Employer was not bound to maintain the licensure qualifications which the former Burley position had included and was not barred from requiring an LISW or LPCC. The Employer did not violate Sections 1.01, 1.02, 1.03 or 28.03 when the Grievant was not selected for the Social Worker 3 position which was posted on April 4, 2012. She did not meet the

licensure requirements. There was no evidence presented at hearing to show that the Grievant has been discriminated against on the basis of her Union position, activity and staunch advocacy. The grievance of Jurldine Hicks is denied.

AWARD

The grievance of Jurldine Hicks is denied.

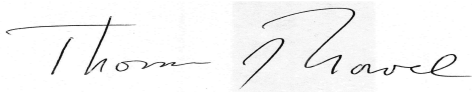
Signed and dated this 23rd Day of July, 2013 at Cleveland, Ohio.

A handwritten signature in cursive script, reading "Thomas J. Nowel". The signature is written in dark ink on a light-colored background.

Thomas J. Nowel
Arbitrator

CERTIFICATE OF SERVICE

I hereby certify that, on this 23rd Day of July, 2013, a copy of the foregoing Award was served upon Casey Whitten-Amadon Esq., Advocate for SEIU District 1199; Larry Blake, Advocate for the Ohio Department of Youth Services; Victor Dandridge, Office of Collective Bargaining; and Alicyn Carrel, Office of Collective Bargaining, by way of electronic mail.

A handwritten signature in cursive script, reading "Thomas J. Nowel". The signature is written in black ink on a light gray rectangular background.

Thomas J. Nowel
Arbitrator