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.
	)	24-08-20140506-
Ohio Department of Developmental	)	0020-02-11
Disabilities	)	
	)	ARBITRATION
and	)	OPINION AND
	)	AWARD
SEIU District 1199 WV/KY/OH	)	
	)	DATE: August
Re: LaShanta Roberson Termination	)	28, 2015

APPEARANCES:
Victor Dandridge, Labor Relations Administrator, Ohio Office of Collective bargaining, for the Employer; and Kristie Branch and Amanda Schulte, Advocates for the Union.

INTRODUCTION

This arbitration arises pursuant to a collective bargaining agreement between the State of Ohio and its Department of Developmental Disabilities (DODD) and the Service Employees International Union District 1199. The parties are in disagreement regarding the termination from employment of LaShanta Roberson who had been employed as a registered nurse on a part time basis at the Montgomery Developmental Center near Dayton, Ohio. The Grievant, LaShanta Roberson, had been terminated by the Employer on May 2, 2014. The Employer claims probationary removal. Ms. Roberson grieved the termination on May 2, 2014, and the Employer denied the appeal. The Union appealed the grievance to arbitration.

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 at the Montgomery Developmental Center on July 10, 2015. 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 stipulated that the matter was properly before the Arbitrator.

ISSUE

The parties were unable to agree upon a stipulated issue before the Arbitrator. The Employer states the issue as follows. "Did the Employer violate the Agreement when it 'probationary' removed the Grievant from employment on May

2, 2014? If not what shall the remedy be?" The Union states that the issue is as follows. "Did the Employer violate the Agreement and the doctrine of promissory estoppel when it removed the Grievant from employment on May 2, 2014; if so, what shall the remedy be?"

JOINT STIPULATIONS

1. The grievance is properly before the Arbitrator.

2. The Grievant was hired by the Employer on February 23, 2014 as Psychiatric/Mental Retardation Nurse (Psych/MR Nurse).

3. The Grievant was "probationary" removed from her position on May 2, 2014.

The parties submitted seventeen joint exhibits at hearing.

WITNESSES

TESTIFYING FOR THE UNION:
LaShanta Roberson, Grievant

TESTIFYING FOR THE EMPLOYER:
Jill Moore, Human Capital Manager
Caroline Anderson, Former DODD employee
Tammi Wells, RN Clinical Nurse
Christine O'Connor, Director of Nursing
Melinda Armstrong, Labor Relations Administrator

RELEVANT PROVISIONS OF AGREEMENT

The Union cited a number of contract provisions at the time the grievance was filed at Step 1 of the Grievance Procedure. Based on the proceedings at hearing

and the arguments of the parties, the following provisions of the Agreement are

most relevant regarding the matter.

Article 8 – Discipline
8.01 Standard
Disciplinary action may be imposed upon an employee only for just cause.

8.02 Progressive Discipline
The principles of progressive discipline shall be followed. These principles usually include:
A. Verbal Reprimand
B. Written Reprimand
C. A fine in an amount not to exceed five (5) days pay
D. Suspension
E. Removal
The application of these steps is contingent upon the type and occurrence of various disciplinary offenses.
The employee's authorization shall not be required for the deduction of a disciplinary fine from the employee's paycheck.
If a bargaining unit employee receives discipline, which includes lost wages or fine, the Employer may offer the following forms of corrective action:
1) Actually having the employee serve the designated number of days suspended without pay; or receive only a working suspension, i.e., a suspension on paper without time off; or pay the designated fine or;
2) Having the employee delete his/her accrued personal leave, vacation, or compensatory leave banks of hours, or a combination of any of these banks under such terms as may be mutually agreed to between the Employer, employee, and the Union.
The employee is not required to accept the Employer's option to issue a working suspension or leave depletion set forth in items 1 and 2 above.

8.03 Pre-Discipline
Prior to the imposition of a suspension or fine of more than three (3) days, or a termination, the employee shall be afforded an opportunity to be confronted with the charges against him/her and to offer his/her side of the story. This opportunity shall be offered in accordance with the "Loudermill Decision" or any subsequent court decisions that shall impact on pre-discipline due process requirements.

Article 9 – Probationary Periods
9.02 C. Inter-Agency Transfer
Employees who accept an inter-Agency transfer pursuant to Article 30, shall serve an initial probationary period. If the employee fails to perform the job requirements of the new position to the Employer's satisfaction, the Employer may remove the employee. The employee has the right to grieve such decision. Upon mutual agreement, the releasing Agency may agree, in writing, to allow the employee to return to a mutually agreed upon classification. The employee does not have the right to grieve the releasing Agency's refusal to consider allowing the employee to return to the releasing Agency. Such agreement shall take precedence over any other Section/Article of this Agreement. An employee who is returned to the releasing Agency by mutual agreement shall serve an initial probationary period. If the employee fails to complete the probationary period served upon return to the releasing Agency, the Employer may remove the employee and the employee has no right to grieve such decision.

Article 12 –Personal Leave
12.01 Eligibility for Personal Leave
Each employee shall be eligible for personal leave at his/her regular rate of pay.

12.04 Notification and Approval of Use of Personal Leave
Employees shall be granted personal leave upon giving twenty-four (24) hours notice to the supervisor. In emergency situations, requests may be granted with a shorter notice. Requests for the use of personal leave shall not be unreasonably denied. The provisions of this Section shall not be construed to require the release of an unreasonable number of employees in the same Agency at the same work area at the same time.

GRIEVANCE

The termination of LaShanta Roberson was appealed by the Union. Grievant related a number of concerns on the official grievance form including the appeal of her termination. "Resolution Requested" states the following. "To be treated fairly, to have my position and job duties as agreed upon on hire, pay for time not worked,

including holidays and any overtime I would have missed, vacation, personal, sick leave accrual restored to what I would have earned.

BACKGROUND

LaShanta Roberson was employed by the Ohio Department of Rehabilitation and Correction at the Allen Correctional Facility in Lima, Ohio for over fifteen years as a Registered Nurse. Due to a change in her personal life, the Grievant applied for a vacant part-time registered nurse position at the Montgomery Developmental Center near Dayton, Ohio, a facility managed by the Ohio Department of Developmental Disabilities. Pursuant to provisions of the collective bargaining agreement, this move resulted in a lateral transfer. The Grievant had also applied for and attained a second job in the Dayton area not related to state service. Following her application for the position, the Grievant interviewed with the Montgomery Developmental Center's Director of Nursing, Janice Moore, in January 2014. The Grievant stressed the importance of her assigned work days and hours based on her second job and ability to spend time with her children. It appears that Moore indicated that the Center would facilitate her request. The Grievant did not discuss issues related to probationary period in her meeting with Ms. Moore. The Grievant's transfer was approved. While still employed at Allen Correctional, manager Glenda Turner presented the Grievant with a transfer approval form to be signed. The third paragraph stated the following.

> I understand, per the contract between the State of Ohio and SEIU District 1199 Bargaining Unit, Article 9.02C, I will serve and must successfully complete a one hundred eighty (180) day initial probationary period. (J T Exb. 5)

The Grievant stated that she did not wish to serve an initial probationary period, but Ms. Turner stated that the form did not finalize the transfer and that she should question the issue of probationary period with management at the Montgomery Developmental Center. The Grievant signed the form on February 12, 2014. Two days later, on February 14, 2014, the Grievant met with Caroline Anderson, an employee in the Center's Human Resources Department. The Grievant was asked to sign a form indicating her acceptance of her new position. The form listed the job title of Psych/MR Nurse and that the position was part-time permanent. The form stated "The probationary period will be _____ days." Ms. Anderson wrote "NA" on the line indicating the length of the probationary period. She may have stated to the Grievant that she was not subject to a probationary period. The Grievant began her employment at the Montgomery Developmental Center on February 24, 2014. Her first assignment was a six week orientation and training period on the first shift. The schedule conflicted with the Grievant's work schedule at her other place of employment. Believing that she had been promised a second shift assignment including orientation and training, the Grievant wrote a detailed letter to the Superintendent, Nancy Banks, on March 12, 2014 outlining her concerns regarding the shift assignment and the family problems the assignment caused (Union Exb 1). Superintendent Banks responded to the Grievant's letter in a meeting on March 14,

2014. A memo had been drafted and presented to the Grievant which outlined expectations of the Employer. The first paragraph of the memo stated the following.

> You began your employment with Montgomery Developmental Center on Monday, February 24, 2014. While you are not new to state service, you are new to this facility and the individuals we serve. As is the case with every new employee, you are expected to participate in and successfully complete an orientation and to successfully perform during your 6 month probationary period in order to continue your employment.

In addition, the memo outlined shift rotation to which the Grievant would be assigned for a period of time which was in conflict to what she believed had been promised. The Grievant was requested to sign the memo indicating that it had been presented to her. She refused to sign the memo.

Following the issuance of the March 14 memo, the Grievant and her Union Delegate met with Superintendent Banks to discuss concerns raised in the document. The Grievant and Union then filed a grievance regarding the concerns on April 1, 2014. Although the grievance mentioned the probationary period ("At this time Jill stated to me that I was on six months probation."), the "Resolution Requested" did not make mention of the probation concern (Management Exb 1). "I want my four day set schedule and position I was told I would have. I want financially compensated for difference of what I would have made at my second job, had I been able to work the original schedule."

There was confusion regarding the nursing schedule on April 15, 2014. The Grievant was late to work, possibly due to this confusion. The shift was overstaffed, and the Director of Nursing asked for a volunteer to go home. A co-worker overheard the Grievant state that she was feeling ill and indicated to management

that she was sick. The Grievant volunteered to leave the facility and stated she would use personal leave. Believing that the Grievant was ill, management directed her to complete a sick leave form. The Grievant insisted that she was not ill and would use personal leave although a member of management stated that she had admitted to not feeling well. At a later time, Director of Nursing O'Connor requested the Grievant to complete a sick leave form stating it was departmental policy that only sick leave could be used in the case of an illness. She suggested further that to not complete the form could be viewed as insubordination. The Grievant refused to complete and sign a sick leave form for April 15, 2014.

On May 2, 2014 Superintendent Banks met briefly with the Grievant and stated that she was being discharged due to failure to complete probation. Banks stated further that the Grievant was "not a good fit." The Grievant was denied Union representation and was asked to leave the premises immediately. The Employer did not conduct a pre-disciplinary hearing prior to the discharge of the Grievant. The Union grieved the termination of employment and appealed the case to arbitration.

POSITION OF THE UNION

The Union states that the termination of employment of the Grievant was not supported by the collective bargaining agreement. Had this been a probationary removal as outlined in Section 9.02 C of the Agreement, there may have been substance to the action of the Employer. Instead, the Union argues, the Grievant is protected by the just cause provisions of the Agreement. The Union states that, although inter-agency transfers require affected employees to serve an initial

probationary period, this provision was waived for the Grievant based on promises made by management. Manager Turner at the Allen Correctional Facility stated she did not know if the Grievant was to serve a probationary period, and Caroline Anderson made it clear that probation had been waived due to the request of the Grievant. The Union states that it is clear that management waived the probationary period and therefore was barred from terminating the employment of the Grievant without conducting a pre-disciplinary hearing as outlined in the "Loudermill" due process decision and as contained in Section 8.03 of the Agreement. The Union states further, that based on the waiver, the Grievant could only be discharged for just cause. The Grievant was a fifteen year employee of the State of Ohio. The Union states that the principle of promissory estoppel acts as a bar to the Employer's enforcement of initial probationary period. The Union argues that the promise of probationary period waiver bars the Employer from enforcing Section 9.02 C of the collective bargaining agreement. The Union cites a number of cases at arbitration in which the principle of promissory estoppel bars enforcement of explicit provisions of collective bargaining agreements and argues that the Arbitrator in the instant matter must dismiss the action of the Employer to discharge the Grievant without due process rights as outlined in Loudermill and the Agreement. The Union states that the Employer made a promise which the Grievant believed and upon which she relied. She would not have proceeded with the inter-agency transfer had the Grievant been required to serve an initial probationary period. The Union states that "injustice can only be prevented by use of estoppel" as determined in a previous matter between the State of Ohio and the Professional Educators Ohio Association

(Award No. 406, Rivera). The Union argues that the Employer made a substantial promise to the Grievant, that she would not be required to serve a probationary period. Therefore the Employer violated the Agreement and due process rights as provided by the Loudermill decision. The Union argues that the Arbitrator must reinstate the Grievant with all back pay, and she must be made whole in every respect.

POSITION OF EMPLOYER

The Employer argues, with emphasis, that it has the right to terminate an employee during initial probation, and this is a clear case of probationary removal. The Employer states that Section 9.02 C of the Agreement states that employees who transfer from one state agency to another must serve an initial probationary period. The Employer has the right then to remove an employee for failure to perform to its satisfaction. The Employer argues that the parties have agreed to this language, and the Union understands the consequences of a failure to perform adequately during this probationary period. The Grievant signed the memo, dated February 12, 2014, which states clearly that she must serve a 180 day initial probationary period. The Grievant attempts to rely on the memo of February 14, 2014 which was presented to her by Caroline Anderson and which indicates "NA" regarding length of probationary period. The Employer states that this was the first time Ms. Anderson handled an inter-agency transfer and was not certain what was to be written in the space regarding number of probation days. The Employer argues that Anderson never stated that probation had been waived for the Grievant.

Furthermore, the Grievant was presented with a memo from Superintendent Banks which again stated that the Grievant was serving an initial probationary period. The Employer argues that no one from management committed to the Grievant that probation was waived. And, the Employer states, to waive probation would require an agreement to do so with the Union. No such agreement was negotiated between the parties. The Employer states that the Grievant had the opportunity to grieve the disagreement regarding her probation. This did not occur. Her April 1, 2014 grievance mentioned probation in passing, but the resolution requested never mentioned a waived probationary period. The Employer states that the probationary removal was based on failure to perform to the satisfaction of the Center. Bargaining unit member, Nurse Tammi Wells, submitted a statement regarding the Grievant's failure to perform routine duties required of her position. The Employer states that the refusal to complete a sick leave form regarding leave on April 15, 2014 was insubordinate especially in light of the Grievant being a probationary employee. The Employer reminds that the principle of following a direct order and then grieving was ignored by the Grievant. The Employer states that it is not required to conduct a pre-disciplinary hearing, Loudermill, in the case of a probationary removal. The Employer states that the Union has challenged the reason for termination, "not a good fit," as being insufficient, but it argues that, in the case of a probationary removal, there is no requirement to provide detailed rationale as would be expected in a just cause termination. Further, in a similar arbitration case between the parties, Arbitrator Nels Nelson advised that the Agreement does not require the Employer to explain why it concluded that a

probationary employee's performance was unsatisfactory. The Employer states that there were a number of complaints regarding the Grievant's performance, including a bargaining unit nurse; the Grievant was late on a number of occasions during her first sixty days in the position; and there is the issue of insubordination. The Employer argues that the probationary removal was well justified. Any suggestion that the removal was arbitrary or capricious is without merit. The Employer states that the grievance of LaShanta Roberson is without merit and should be denied in its entirely.

DISCUSSION AND ANALYSIS

The parties have submitted separate issue statements, and the Arbitrator must determine which is most accurate and consistent with the merits of the grievance. The difference of the issue statements is at the heart of the dispute. The Employer's issue statement asks if the termination of the Grievant was a probationary removal consistent with Section 9.02 C. The Union asks if the Employer violated the Agreement and the doctrine of promissory estoppel.

The Union's argument is based largely on a promise, which is alleged to have been made to the Grievant, that she was exempt from the initial probationary period for inter-agency transfers as outline in Section 9.02 C. The Union argues, that based on promises made, the Employer is barred from enforcing Section 9.02 C based upon the principle of promissory estoppel. The Union notes an explanation of the estoppel doctrine as contained in Elquori and Elquori, How Arbitration Works, Sixth Edition. The writer in Elquori states that there are a number of exceptions and

erosions to the doctrine of at-will employment. Promises made by an employer may trump its freedom to terminate at-will employment based on the principle of promissory estoppel.

> Numerous exceptions to the employment-at-will doctrine, both judicially and legislatively created, have developed since the Jones and Laughlin Steel decision. Among these exceptions based on public policy, an implied contract of employment, and promissory estoppel.
> How Arbitration Works, Elquori & Elquori, Sixth Edition, pg. 926

The writer in Elquori continues.

> In the absence of a collective bargaining agreement, most arbitrators have recognized the employment-at-will principle, concluding that the only restrictions on management's right to discipline and discharge employees not hired for a definite term are those contained in federal and state labor relations acts or other laws dealing with forms of discrimination. However, at least one arbitrator has held that management does not have an unrestricted right to discharge at its own discretion, even where no bargaining relationship exists, because "fair and general accepted understanding of employer-employee relations is that there are obligations on the part of both parties," and that an obligation of the employer is that an employee shall not be terminated without just cause.
> How Arbitration Works, Elquori & Elquori, Sixth Edition, pgs. 925 – 926

There are those few collective bargaining agreements which do not contain a just cause provision. Nevertheless, as stated above, an employer may yet be bound by the principle of just cause based upon the existence of the collective bargaining relationship. Here though, in the instant matter, the parties have bargained a provision which is clear and unambiguous, that inter-agency transfers are subject to initial probationary periods.

> "…the weight of arbitral authority supports the proposition that Management has broad, if not almost unlimited, discretion where probationary employees

> are concerned." Some arbitrators, however have set aside the discharge of a probationary employee if management's action was 'arbitrary, capricious, or discriminatory.'
> How Arbitration Works, Elquori & Elquori, Sixth Edition, Pg. 934

Section 9.02 C provides that an employee who transfers from one State of Ohio department to another, regardless of overall state employment seniority, must serve an initial probationary period, and the Employer may terminate said employment based on failure to perform in a satisfactory manner. This provision of the Agreement also states that "The employee has the right to grieve such decision." This statement suggests that a terminated probationary employee may grieve based on an arbitrary, capricious or discriminatory act of the Employer. In this matter, the Union has not specifically claimed an arbitrary and capricious act of the Employer. Instead, the Union argues that the Grievant was promised a waiver of the probationary period by the Employer. The Union cites a number of cases in which certain promises or guarantees were clearly made by representatives of various Employers. In this case the Grievant made application to transfer from Allen Correctional to the Montgomery Developmental Center. While still employed at Allen, the Grievant was presented with a transfer statement prepared by the Employer. Paragraph three states the following.

> I understand, per the contract between the State of Ohio and SEIU District 1199 Bargaining Unit, Article 9.02C, I will serve and must successfully complete a one hundred eighty (180) day initial probationary period.

Although the Grievant stated to the management representative that she did not wish to serve an initial probationary period, Ms. Turner stated that she must discuss this with management at the Developmental Center. It is critical here that the

Grievant was not promised a waiver of probation, and she signed the transfer document which contained the stated probationary period of 180 days.

The Grievant met with the Developmental Center's Director of Nursing, Janice Moore, to interview for and discuss issues of shift and schedule in January 2014. At no time did the Grievant discuss issues of probationary period, and it is clear, from the record of hearing, that no promise to waive the probationary period was made by Ms. Moore.

Upon arrival at the Developmental Center, the Grievant met with Caroline Anderson, a representative of the Human Resources office at the Center. Ms. Anderson presented the Grievant with another transfer document in which it was noted that she agreed to accept the position of Psych/MR Nurse. The document stated that the probationary period "will be _____days." Ms. Anderson wrote "NA" on the line. The Grievant states that Ms. Anderson indicated that she would not be required to serve a probationary period. Ms. Anderson's testimony at hearing confirms that she wrote NA on the line. She testified that she did this because she believed that Jill Moore, the Center's Human Capital Manager, had already discussed the probationary period with the Grievant. She testified further that she never stated that the Grievant would not be required to serve a probationary period. The Union argues that the testimony of Ms. Anderson was contradictory and confusing. The testimony of the Grievant and Anderson were in contradiction to one another at hearing. It is difficult to conclude what the parties said to one another regarding the probationary period. Nevertheless, the document might be interpreted as no requirement to serve a probationary period, but there is no evidence that a promise

was made to the Grievant. Ms. Anderson would not, in any event, have had the authority to make such promise or guarantee. This single document and the uncertain testimony surrounding it do not have the weight to substitute for the clear and unambiguous language the parties bargained regarding inter-agency probationary period. Two official documents produced by the Employer stated that the Grievant was subject to a probationary period. No document exists which waived the probationary period of the Grievant.

Following the written note of March 12, 2014, which expressed the concerns of the Grievant regarding her shift schedule and the conflict with her second job, the Superintendent of the Developmental Center, Nancy Banks, responded by memo on March 14, 2014. Paragraph One makes reference to probationary period as follows.

> You began your employment with Montgomery Developmental Center on Monday, February 24, 2014. While you are not new to state service, you are new to this facility and the individuals we serve. As is the case with every new employee, you are expected to participate in and successfully complete an orientation and to successfully perform during your 6 month probationary period in order to continue your employment.

This matter of fact statement clearly suggests that management of the facility had not made a promise of waiving the probationary period of the Grievant.

Following Employer's memo of March 12, the Grievant completed and filed a grievance on April 1, 2014. The general concern of the Grievant was her shift and scheduling of orientation. Again, the Grievant was attempting to balance her second job and personal obligations with her responsibilities at the Center. The grievance goes into great detail regarding the conflicts her shift assignments had caused. One sentence of the grievance states, "At this time, Jill stated to me that I was on six

months probation." The grievance does not state that management had made a promise of waiver of probation, and the "Resolution Requested" makes no mention of any such promise or reinstatement of alleged guarantee.

> I want my four day set schedule and position I was told I would have. I want my training to be more focused on the clinic responsibilities. I want financially compensated for difference of what I would have made at my second job, had I been able to work the original schedule.

Probationary period or any promises regarding such were not the focus of the grievance which was filed following the March 14, 2014 memo from Superintendent Banks which mentioned the requirement to complete a probationary period. The grievance of April 1 was denied by the Employer, and there is no evidence that it was pursued further by the Grievant or Union.

Finally, on May 2, 2014 the Employer terminated the Grievant as having failed to complete probation in a satisfactory manner. As outlined above, there is a lack of conclusive evidence that the Grievant was promised or guaranteed a waiver of the probationary period as outlined in Section 9.02 C of the Agreement by an authorized member of management. The Employer suggests that such guarantee would require an agreement between the Union and Employer. This argument has merit. The parties bargained the clear and unambiguous provision which requires initial probationary period for an inter-agency transfer. The question here, in part, is whether promissory estoppel, promise made by the Employer, has the contractual authority to supersede clear and unambiguous contract provision. Citations offered by the Union, in which a number of arbitrators conclude that promises made by Employers must be honored, involved cases in which contract language was vague;

guarantees regarding teacher tenure were continued in spite of general contract language; and a promise to be paid when an Employer sent workers home during a snow storm. None of the cited cases involved probationary removal in which clear and unambiguous contract language existed. The Grievant signed the February 2, 2014 memo which stated she would serve the standard probationary period. She was never promised a waiver of probation in her meeting with Director of Nursing Moore. The memo of March 14, 2014 from Superintendent Banks states that the Grievant was serving a probationary period, and her grievance of April 1 does not challenge this assertion. A promise made by the Employer, which would supersede clear and unambiguous provision of the Agreement, is not supported by the evidence and testimony in this matter.

Arbitrator Susan Grody Ruben stated, in a similar case between the parties regarding Section 9.02 C, that the State does not have unfettered right to terminate a probationary employee if it is shown that such removal was arbitrary, capricious or discriminatory, but in the absence of such evidence, the Employer has the right to terminate. Ruben then states, in relation to Section 9.02 C the following.

> Words in a collective bargaining agreement have meaning. Neither party to a collective bargaining agreement has the luxury of ignoring contract language when it does not reflect that party's view of a particular situation.
> Ohio Department of Health and SEIU 1199, Case No. 14-50-20100325-0010-02-12, August 11, 2011

In another arbitration case between the State and SEIU District 1199 involving probationary removal pursuant to Section 9.02 C of the Agreement, Arbitrator Nels Nelson states that, "It is universally recognized that an employer has broad discretion in terminating a probationary employee." (State of Ohio Department of

Job and Family Services and SEIU District 1199, Case No. 27-11-20110215-0011-02-12, July 26, 2012).

This case is not one of arbitrary, capricious or discriminatory removal. The Grievant had issues of absences and tardiness. Her refusal to sign sick leaves forms, when warned that failure to comply would be considered insubordination, gave management at the Center concerns that the Grievant was becoming a problem employee. A co-worker and bargaining unit member questioned her attitude and focus. The Grievant's frustration over her training and orientation schedule and the impact this had on second job clearly affected her performance at the Developmental Center. The Grievant was a fifteen year state employee. Nevertheless, she provided the Employer reason to terminate her employment as a probationary employee.

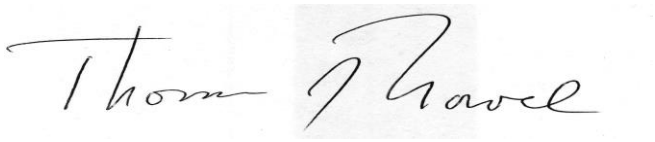
There is no violation of Article 8 of the Agreement. The termination of the Grievant's employment was not a just cause removal, and therefore there is no failure on the part of the Employer regarding the absence of a pre-disciplinary hearing pursuant to the Agreement and Loudermill decision. The Employer did not violate Article 9, Section 9.02 C, as the termination of the Grievant was a proper probationary removal. The principle of promissory estoppel does not apply as there is no conclusive evidence that a promise was made by any properly authorized agent of the Employer. There is insufficient evidence to void the clear and unambiguous language of Section 9.02 C as negotiated by the parties. There is no evidence that the removal was arbitrary, capricious or discriminatory. The

Employer did not violate the Agreement when it terminated the Grievant pursuant to Article 9, Section 9.02 C. Grievance is denied.

AWARD

The grievance is denied.

Signed and dated this 28th Day of August 2015 at Cleveland, Ohio.



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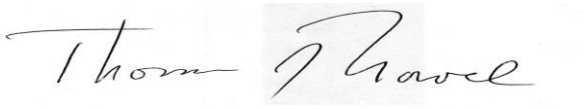
Thomas J. Nowel
Arbitrator

CERTIFICATE OF SERVICE

I hereby certify that, on this 28th Day of August 2015, a copy of the foregoing Award was served, by way of electronic mail, upon Kristie Branch and Amanda Schulte, for the Union; and Victor Dandridge and Cassandra Richards, for the Employer.



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Thomas J. Nowel
Arbitrator