IN THE MATTER OF THE ARBITRATION

BETWEEN

THE STATE OF OHIO
DEPARTMENT OF MENTAL HEALTH
AND ADDICTIVE SERVICES

AND

THE OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION
AFSCME, AFL-CIO LOCAL 11

Arbitration Date: January 26, 2017

GRIEVANT, Anthony Hawkins
CASE NO. DMH-2016-01155-4

BEFORE: Arbitrator Craig A. Allen

Advocate for the Employer:

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Advocate for the Union:

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I. HEARING

The hearing was held January 26, 2017 at the OCSEA Union Hall. The hearing commenced at 9:00 A.M.

The Stipulated Issue before the Arbitrator is "Was the Grievant on probation when he was removed from his position, effective March 8, 2016?"

II. STATEMENT OF THE CASE

The Grievant was removed March 8, 2016 from his position at Turn Valley Behavioral Healthcare (TVBH).

The sole issue is whether or not the Grievant was on probation when he was removed.

III. THE UNION'S CASE

The Union's sole witness was Anthony Hawkins, the Grievant. Mr. Hawkins is a Therapeutic Program Worker (TWP). He started in 2015 and his job is to provide care for psychiatric patients.

Mr. Hawkins reviewed Joint Exhibit 1 and said it is the Consent to Voluntary Promotion. He said he had signed the form. Mr. Hawkins testified that the Employer had given it to him. He said he thought he had a one hundred ten (110) day probationary period.

Mr. Hawkins testified that he signed the Consent to Voluntary Promotion June 19, 2015 and was awarded the job July 15, 2015 and that the Employer never told him the probation times changed with the new Collective Bargaining Agreement (CBA).

Mr. Hawkins said that after he left the facility his only communication was with Marcia

McKeen. He looked at Exhibit Union 1 and testified it is E-Mails between himself and Marcia McKeen concerning probation. Mr. Hawkins testified that he was already a permanent new hire at Turn Valley. Mr. Hawkins said that Exhibit Union 1 said the mistake would not apply to him.

On Cross-Examination Mr. Hawkins said he was not involved in the contract negotiations. He said he did not vote to ratify the Contract. Mr. Hawkins was asked "Did you tell Jennie Lewis and Victor Dandridge you voted to ratify?" He said: "No".

Mr. Hawkins then read Section II page 311 of the CBA which concerns Established Term Appointments (ETA) and paragraph C on page 313 of the CBA which says the employee "will be credited with their time served but no more than one-half (½) of the length of the probationary period for that classification".

Mr. Hawkins then read Article 6.01 of the CBA. This says "The initial probationary period for employees newly hired on or after July 1, 2015 shall be three hundred sixty-five (365) days from the effective date of the hire."

Mr. Hawkins read Article 6.02 of the CBA which says : "An employee who becomes a permanent employee in the same Agency, classification and job duties will be credited with time served if it is connected to their permanent appointment, but no more than one-half (½) the length of the probationary period for that classification".

Mr. Hawkins was asked: "If you were hired after July 1 would you be a new hire?" He said: "Yes".

Mr. Hawkins then read Joint Exhibit 1 paragraph 2 which says "the probation period would be per contract." The Contract changed July 1 and Mr. Hawkins was aware of the change. Mr. Hawkins testified he thought he started when he signed the Consent Form.

Mr. Hawkins then read Employer Exhibit 1 (ER-1) and said it is his Employee history report (EHOC). It shows a pay change June 28 and on July 15, 2015 he became a permanent employee.

On Re-Direct Examination he read ER-1 and testified March 12 he was a TPW and a TPW in July. Mr. Hawkins testified he is not a steward and has had no CBA language training.

IV. THE EMPLOYER'S CASE

The Employer's only witness was Victor Dandridge. Mr. Dandridge is employed by the Office of Collective Bargaining where he is in charge of Labor Relations and an Assistant Manager. Mr. Dandridge helps to negotiate and administer the various CBAs.

Mr. Dandridge is on the state wide negotiating team. Mr. Dandridge testified that per Section II of the CBA and ETA is for a limited amount of time and not a permanent employee. Mr. Dandridge testified that per the CBA that if an employee was in a temporary position and then became a full time employee who has a years probation they would receive credit for one-half (½) of their time served. Mr. Hawkins was an employee and had worked seventy (70) days before his new job. Mr. Hawkins therefore gets seventy (70) days credit against three hundred and sixty-five (365). He said Article 6.02 of the CBA gives the same seventy (70) days credit.

Mr. Dandridge testified that Mr. Hawkins was not grand fathered under Article 6.01 of the CBA. Mr. Dandridge said Article 44.01 of the CBA takes precedence over laws and regulations and promises made prior to July 1, 2015 are irrelevant. The CBA at Article 44.03 says all prior benefits are discontinued.

Mr. Dandridge read Exhibit J-1 and said the CBA rules. He then read Exhibit U-1 and said Marcia does not say she agrees. Even if Marcia agreed with Mr. Hawkins it wouldn't matter.

The Union has the responsibility for their members.

On Cross-Examination Mr. Dandridge said Exhibit J-1 had been filled in by the employer. Mr. Dandridge testified that if the Grievant had been disciplined in June 2015 it would have remained active in his file for two (2) years. On July 1, 2015 the CBA changed and it would be active in his file for three (3) years. It would not have changed for the Grievant. Mr. Dandridge testified that the new contract did not change prior discipline retention times.

Mr. Dandridge cited Article 6.01 of the CBA and said the first sentence says all are to serve probation. Mr. Dandridge read Exhibit J-1 and testified that the Department of Administrative Services (DAS) has to approve promotions. Exhibit J-1 outlines a promotion.

On Re-Direct Examination Mr. Dandridge testified that Exhibit J-1 does not supersede the Contract. There is nothing set in stone until DAS approves the promotion.

Mr. Dandridge read Exhibit ER-1 and testified it showed an appointment change July 12. It does not say promotion nor is there a change in pay range.

VI. OPINION AND AWARD

The Advocates for the parties have done an excellent job in presenting their case.

The Union argues that the Consent to Voluntary Promotion is a promise.

The Union also argues that the Marcia McKeen E-Mail says it will not effect the Grievant personally.

The Union claims the Grievant had Detrimental Reliance upon the Consent to Voluntary Promotion.

The Union says its members ratified the new CBA on May 19 and argues the Employer knew of the new probation rules then. The Union says the Employer had a duty to advise the

Grievant of the probation rule change then.

The Union and the Employer agree that the Grievant was an employee. The Union contends Article 6.01 says probation one hundred and eighty days (180) and it was reasonable for the Grievant to assume this was still correct. The Union argues that promotion means movement within a business and that the Employer says it was a promotion.

The Union argues that the Employer knew on June 19 what the change was concerning probation.

The Union also argues that changes in the contract do not necessarily change benefits under the prior contract. The Union uses the discipline retention clause as an example.

The Union concludes by arguing that the Grievant relied upon a promise and was not on probation at the time of removal.

The Employer argues that it never contested the fact that the Grievant was an employee. Under the CBA he was a temporary employee. The Employer says if he became a permanent employee he would be given one half (½) credit per Article 6 of the CBA.

The Employer argues that the Grievant was a new hire per Article 6.02 of the CBA. The Employer says the Grievant's offer was June 19 and the CBA changed July 1. The CBA Article 44.03 says: "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." The Employer says this CBA Article is what it is.

The Employer points out that Article 24.07 was an agreement solely to cover retention of

discipline records and nothing else.

The Employer also argues that the CBA requires a raise in pay to constitute a promotion. The Grievant got no raise in pay so he wasn't promoted.

The Arbitrator is bound by the provisions of the CBA.

Joint Exhibit 1, which is the Consent to Voluntary Promotion says, in bold print: "**If this is completed during the Interview Process, I understand that this consent to transfer letter is part of the application process and does not Constitute a Commitment that I will receive the position.**" It also says "probationary period per contract". The Consent to Voluntary Promotion also says "this promotion will not be final until approved by the Department of Administrative Services".

The Arbitrator finds that the language in the Consent to Voluntary Promotion is not a promise and the Grievant had no Detrimental Reliance based upon the document.

There was some dispute as to whether or not the Grievant had voted to ratify the Agreement. This is not material as the Grievant is bound by the CBA.

Union Exhibit 1, the Marcia McKeen E-Mails, are not persuasive. Ms. McKeen says in response to the Grievant's Complaint that "you make a valid point" also says "this will not impact you personally".

The Union argument that the Employer knew of the CBA changes May 19 and should have told the Grievant of the changes is not well taken. There was no citation to any Article of the CBA that imposes this duty upon the Employer.

In addition the Employer is correct that Article 44 of the CBA makes the July 1 date an entirely new ball game.

The fact that Article 24 carried forward some discipline retention standards from the previous CBA does not alter the fact that the July 1 CBA changed the Probation Standards.

The Arbitrator finds the Grievant was on probation and his grievance cannot be arbitrated per the CBA.

The Grievance is denied.

Issued at Ironton, Ohio this 8th day of February, 2017.

Craig A. Allen
Arbitrator