Thomas J. Nowel, NAA
Arbitrator and Mediator
Cleveland, Ohio

IN ARBITRATION PROCEEDINGS PURSUANT TO
AGREEMENT OF THE PARTIES

In the Matter of a Controversy Between	)	Grievance No.
	)	DYS-2017-00142-11
Service Employees International Union	)	
District 1199	)	ARBITRATION OPINION
	)	AND AWARD
and	)	
	)	January 31, 2018
Ohio Department of Youth Services	)	
Indian River Juvenile Correctional Facility	)	

Re: Dr. James Buccigross Termination

APPEARANCES:
Peter J. Hanlon, Union Advocate for SEIU District 1199; Larry L. Blake, Labor Relations Officer for the Ohio Department of Youth Services; and Jessie Keyes for the State of 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 parties are in disagreement regarding the termination of employment of Dr. James Buccigross who had been employed as a Psychologist at the Indian River Juvenile Correctional Facility in Massillon, Ohio. Dr. Buccigross, the Grievant in this matter, was charged with violation of Department Rules 5.01P and 5.14P, and his employment was terminated on January 11, 2017. The grievance appealing the termination was filed with the Employer on January 12, 2017. The grievance was denied at Step 2 of the Grievance Procedure, and the matter was appealed to arbitration by the Union.

The arbitrator was selected to hear this case pursuant to Article 7 of the collective bargaining agreement. Hearing was held on December 12, 2017 at the offices of SEIU, District 1199. At hearing, the parties were afforded the opportunity for examination and cross-examination of witnesses and for the introduction of exhibits. Prior to the hearing, the parties stipulated to a series of joint exhibits. At the close of the hearing, the parties agreed to submit post hearing briefs no later than January 12, 2018.

The parties submitted the following stipulations.

1. The Grievant was hired on December 31, 2001.
2. The Grievant was removed from his position as a Psychologist on 01/11/2017.
3. The Grievant had no active performance discipline at the time of his removal.
4. The date of the incident, which lead to his removal, was on 10/25/2016.
5. The grievance is properly before the arbitrator.

ISSUE

The parties stipulated to the following issue to be decided by the arbitrator. "Was the Grievant, James Buccigross, removed for just cause? If not, what shall the remedy be?

WITNESSES

TESTIFYING FOR THE EMPLOYER:
Dr. Bob Stinson, Formerly Chief of Behavioral Health Services
Terri Woodward, Investigator with Chief Inspectors Office
Dena Freeman, Social Work Supervisor
Chris Freeman, Superintendent Indian River Juvenile Correctional Facility

TESTIFYING FOR THE UNION:
James Buccigross, Grievant
Ginine Trim, Former Deputy Director of the facility (subpoena – as if on cross-examination)
Melvin Gonzalez, Unit Manager (subpoena – as if on cross-examination)

RELEVANT PROVISION OF THE AGREEMENT

The Grievant appealed his termination of employment pursuant to the Grievance Procedure as contained in the collective bargaining agreement. The initial grievance cited numerous contractual violations including Management Rights, Purpose and Intent of the Agreement, Non Discrimination and other provisions of the Agreement. The parties stipulated that the question before the arbitrator asks if the discharge was for just cause. The relevant provisions of the Agreement are therefore limited to Article 8, Discipline.

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

8.02 Progressive Discipline

The principle of progressive discipline shall be followed. These principles usually include:

A. Written Reprimand

B. A fine in an amount not to exceed five (5) days' pay

C. Suspension

D. Removal

The application of these steps is contingent upon the type of 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 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 deplete 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.

If a working suspension is grieved, and the grievance is denied or partially granted and all appeals are exhausted, whatever portion of the working suspension is upheld by an arbitrator will be converted to a fine. The employee may choose a reduction in leave balances in lieu of a fine levied against him/her.

GRIEVANCE

Statement of Grievance: Dr. Buccigross was improperly removed from his position as Psychologist with DYS on 1/11/16 [2017] without just cause and in violation of the tenets of progressive discipline. Additionally, he was targeted for harassment and disparate treatment due to being vocal about safety concerns at IRJCF and being a member of several federally protected classes.

Resolution Requested: To be made whole in every way, including being restored to his position as Psychologist at DYS with the same schedule, assignment, restoration of seniority credits, any back pay including supplements, overtime, and other pay supplements, restoration of all leave balances and credit of leave balances due while being removed, restoration of all previous benefits including but not limited to medical, dental, vision, behavioral health and reimbursement for COBRA and any expenses incurred while removed, restoration of payments to PERS due while in removed status, and any other benefits or terms and conditions of

employment not mentioned. That the discipline and all documentation supporting such discipline be removed from his personnel and discipline files. That any information regarding the discipline be stricken from his EHOC or other electronic record.

BACKGROUND

The Grievant, Dr. James Buccigross, was employed as a staff Psychologist at Indian River Juvenile Correctional Facility prior to the termination of his employment on January 11, 2017. In the past, the Grievant was a volunteer with the Department of Youth Services in the 1980s and was also a contract employee during this time. He was a staff Psychologist with the State in 1994 and worked for a period of time in the Department of Rehabilitation and Correction. He received board certification as a Forensic Psychologist in 1999. The Grievant worked in Bermuda for a period of time and was engaged in hostage negotiations. Following the 911 terrorist attack in 2001, the Grievant engaged in criminal profiling. He was hired as a full-time staff Psychologist for DYS on December 31, 2001 and continued full time employment until the termination of his employment at Indian River. Dr. Buccigross was a member of the SEIU, District 1199 bargaining unit in his capacity of Psychologist.

Leading up to the incident which resulted in termination of employment, the Grievant experienced a number of health concerns including high blood pressure, a silent heart attack and then a massive heart attack in 2015. The Grievant was on approved medical leave for a significant period of time. Immediately prior to the incident leading to his removal, the Grievant was on medical leave for stress related blood pressure issues beginning in August 2016. The Grievant returned from medical leave on October 19, 2016, and his supervisor, Dena Freeman, asked that he work a number of hours outside his regular schedule. The Grievant

worked 1.7 hours when he returned from leave on October 19, 2016. He then worked 8.6 hours on Thursday, October 20; 6.3 hours on Saturday, October 22; 2 hours on Sunday, October 23; and he then worked 9.6 hours on Monday, October 24. The Monday shift extended into the evening (Management Exhibit 3).

During the time of the Grievant's return from medical leave, Indian River had experienced a significant shortage of staff Psychologists. There were between six and seven vacancies in the position. A number of the staff Psychologists had left the facility due to safety concerns and not wishing to be assigned to difficult units (testimony of Chris Freeman, Superintendent). There were approximately 15 codes indicating unruly youth on October 23, 2016 and approximately 25 on October 24. According to the Grievant, a number of youth were claiming potential suicide as a way to get to safety. In addition to the shortage of staff Psychologists, there were vacancies in the position of Correctional Officers. There were more opportunities for youth to be unattended, and they were able to pop doors open in the facility (testimony of Superintendent Freeman). During this time, the chair of the Union, which represents Correctional Officers, Ohio Civil Service Employees Union, AFSCME, stood outside the facility during his off-duty time holding a sign for the public to see regarding unsafe working conditions at Indian River.

Upon the return of the Grievant from leave, his computer was inoperative, and he was unable to retrieve emails related to his duties. He was asked to work on Sunday, October 23 although this was not his regular schedule. He then worked on Monday, October 24 for 9.6 hours. This was his scheduled day off. The Grievant reports that there were a number of difficult incidents on this date, "a small amount of chaos." Youth had kicked out doors in the

facility requiring staff to respond to volatile circumstances. An employee was injured although not seriously. Youth had broken into an office making the conditions additionally volatile. They spread soap and water on the floor making it difficult to contain and control them. The Grievant was not directly involved. The Grievant clocked out of the facility at approximately 11:30 pm and returned home at approximately 2:00 am the following morning. The Grievant states that his blood pressure was elevated; he experienced stress; and he was unable to sleep due to the stress of safety concerns at the facility.

The Grievant composed a lengthy text message to his supervisor, Dena Freeman. The Grievant states that he enjoyed a personal friendship with his supervisor although Ms. Freeman denied any sort of a relationship outside of a professional working relationship. The Grievant sent the following text message to Supervisor Freeman at 8:28 am, October 25.

> I was stuck at the River last night until after 11:30 pm because of all the bullshit going on last night. Three more staff injured in the big 88 on B unit, plus dealing with all the suicide bullshit. I will be in LATE in the afternoon, I will see the youth on precautions – there are three- and that's all. I don't know if I will be back tomorrow. The dept is in total shambles. Chris Freeman needs to go and so does that chicken shit incompetent asshole Harvey Reed. I have half a mind to go to Columbus and tell him to his face what I think of him. I am texting you because once again I come back from being out and I can't get on my email and frankly, it pisses me off so bad I haven't called MIS because last time they couldn't fix it and that was when that idiot Alexis Twitte got things working. She should stick with computers because she's clinically incompetent. Tiffany told me that she and I were criticized for our clinical notes behind out backs by Stinson at a SW meeting – that is bullshit and if someone can't say it to my face, then let's take it up with the state board. I was doing this when Stinson was still in gradeschool, I'll be damned if I'll let some upstart criticize me. I'm not upset with you, you're stuck in the middle. I have decided to go to the Inspector General and file a formal complaint and I don't care who knows it. I hope it's true that Trim is facing possible charges – they all need to be charged. Sorry to vent. By the time I got home and got something to eat last night it was almost 2:00am. I really haven't had much sleep. I am disgusted and ashamed of what that nest of incompetent vipers in Columbus have done to that Dept.

> Like I said, I'll be in later – after dinner – to check the youth on precautions and then I'm going back home, and nobody better say a damn thing to me. I thought there was some hope that things were turning the corner, but the whole administration, all the way to Columbus, has lost all contact with reality and reason. They all need to be fired immediately and charged. I'm not going to watch my mouth and I am going to the inspector general of the state of Ohio. I don't care who knows it. Those assholes are going to get everyone killed I'd [if] it's not stopped. It's criminal what they are doing. Reed wanted to make DYS Disneyland? He certainly has – we have a Mickey Mouse director who doesn't know his ass from a hole in the ground and the rest are just evil. They have succeeded in destroying that dept. I'm not going to shut up – I actually have half a mind to have a press conference. I'm sorry that you have to deal with all this shit. I'm not having another heart attack for those worthless assholes – it's disgusting and revolting. Rogers would make a better director.

Supervisor Freeman responded to the text message from the Grievant later in the day, October 25, at 2:37 pm as follows.

> If you're not here and clocked out by 5:30 there is no reason for you to come in. Your schedule is 9-5:30 Monday thru Thursday. If you had clocked out yesterday at 5:30 you would not have been involved with B unit. Work your schedule.

The Grievant responded by text message at 4:52 pm as follows.

> That is going to be revisited by the Federal Dept of Labor. And I had to get a prescription before that, which is covered under the ADA. And the shit started well before 5:30pm. From now on, I will walk away from everything at 5:30pm, even if someone is dying and I will quote you on that. But it's fine when I come in to cover when I'm not scheduled, it's fine when I get a desperate call from the OM when I'm on scheduled vacation because they have an emergency PREA, and not a single other person will answer their cell phone. It's fine to ask me at 4:30pm to stay for an emergency admission from Circleville that needs to be sent to Massillon State that doesn't get there until 10:30pm, then because I didn't go to get something to eat because I was afraid they'd get there while I was gone, I'm told I still lose a half hour because it's on me. I could go on and on, but no cell phone on earth has the capacity to hold a message that long. It's fine to stick me with the highest caseload while Rupple gets away with a caseload of five BEFORE he started doing intakes – a caseload he sees in dietary during lunch going from table to table in five minutes then puts down for an hour each then brags about it. I handled the whole institution BY MYSELF when we had

> 350 +. And it ran like a Swiss watch. No other psych staff other than Kinsley who did the testing. And everything got done. And we were considered the best in the country. I was there when half the staff were in diapers. What do you expect me to do when the shit is hitting the fan? Just walk away like the administration? I know my job and I don't need micromanaged. With no safety and security there can be no treatment. I don't need any sermons. But if you think Rupple can do it all, fine – he's back next week. Good luck getting him to go to a unit – he's already said he won't because he's afraid. And I won't keep my mouth shut – in fact, it gonna open even wider. I have no issue with you – but I will tell the whole world the Emperor has no clothes. My loyalty is to my profession first, not DYS. I think that the dept should be Federalized.

Except for the response regarding coming in to the facility sent via text message at 2:37 pm, Supervisor Freeman did not respond to the text messages sent to her by the Grievant. He had written and sent the text messages off duty and sent them to Supervisor Freeman's state issued cell phone. She forwarded the two messages from the Grievant to Dr. Stinson who at the time was the Chief of Behavioral Health Services for DYS. The Grievant was placed on administrative leave on October 26, 2016 pending an investigation by the Employer.

A pre-disciplinary hearing was scheduled on November 29, 2016. The Grievant had been charged with violations of the following Department Rules.

Rule 5.01P: Failure to follow policies and procedures (Specifically: DYS Policy 103.17 – General Work Rules).

Rule 5.06P: Threatening, intimidating or coercing another employee or a member of the general public.

Rule 5.14P: Bringing discredit to the Agency. Any act that brings discredit to the Department, including acts occurring off-duty.

Rule 5.28P: Failure to follow work assignment or the exercise in poor judgement in carrying out an assignment. Failure to perform assigned duties in a specified amount of time or failure to

adequately perform the duties of the position or the exercise in poor judgement in carrying out an assignment.

Following the pre-disciplinary hearing, Melvin Gonzalez, the hearing officer in the matter, recommended that there was just cause for discipline. The Grievant received notice from the DYS Director, Harvey Reed, and Indian River Superintendent, Chris Freeman, that his employment was terminated on January 11, 2017 based on violation of Rule 5.01P, failure to follow policies and procedures, and Rule 5.14P, bringing discredit to the agency. The termination was grieved and then appealed to arbitration by the Union.

POSITION OF THE EMPLOYER

The Employer states that the Grievant's employment was terminated for just cause as he violated Department Rule 5.01P and Rule 5.14P. The Grievant engaged in unprofessional conduct in respect to the text messages sent to his supervisor, and any argument proffered by the Union regarding stress or venting does not justify the Grievant's behavior. The Employer states that any argument suggesting that the Grievant was a whistleblower lacks credibility. State statute requires that a potential whistleblower present a written report. No such report was filed by the Grievant regarding safety concerns at the facility.

The Employer states that there were no "Signal 5s or Signal 88s" called during the time worked by the Grievant prior to the sending of the text messages. The Union's argument regarding stress, therefore, is not credible. Further, the Grievant was not personally involved with an incident regarding threats of suicide. The Employer argues that the inclusion of suicide issues in the text message violated the Grievant's ethical responsibility.

The Employer states that testimony at the hearing indicated that the Grievant was on a Performance Improvement Plan, and he had attendance issues. The Employer suggests that the Grievant had a number of workplace problems and deficiencies.

The Employer states that the Grievant sent the text messages to Supervisor Freeman on her state issued cell phone. It was therefore not a private communication, and any message sent to a state owned cell phone is considered Employer domain. The Grievant made inflammatory and discrediting statements which were offensive regarding DYS employees and the Department Director. The Employer argues that statements of this nature by employees are not tolerated by the Department. And while the Union argues that the text messages were composed and sent when the Grievant was off-duty, the Employer argues that there was a direct nexus between the off-duty conduct and business of the Employer. Rule 5.14P states that an act which brings discredit to the Department is a clear violation and this includes off-duty acts or behavior. The Employer argues that there was no evidence or proof offered that would indicate that the Grievant and his supervisor ever had a personal friendship or relationship.

The Employer states that there is no evidence that the Grievant was targeted for discipline or removal. The Union points to the attempt to bring in contracted Psychologists, but it was made clear at the hearing that there were numerous vacancies in the classification, and it was necessary, at the time, to provide these services to the juveniles who were housed at Indian River. The Employer states that the Union's argument, that the Grievant was targeted, completely fails.

The Employer argues that its investigation in this matter was completed according to policy, that it was conducted appropriately. Additionally, the pre-disciplinary hearing process was conducted appropriately. The Employer argues that the Union's contention regarding the lack of impartiality on the part of the hearing officer, that he was biased, is without merit. The hearing officer recommended that there was just cause for potential discipline, although he did not make the final decision regarding penalty. Additionally, the Employer states that there was no contractual violation regarding the time involved between the pre-d hearing and issuance of the report.

The Employer cites DYS Policy 103.17 which directs all employees to "conduct themselves in such a manner that their activities both on and off duty shall not adversely affect their ability to perform their duties as public employees." The Employer further cites the aforementioned policy. "Employees shall conduct themselves in a professional manner towards any individual under custody and control of the Department, other staff members, visitors, volunteers, and members of the general public." The Employer argues that the Grievant's behavior may be categorized as workplace bullying. The Employer argues further that the Grievant's length of service should not mitigate the level of discipline imposed. The Employer argues that the grievance of the Union be denied, and the termination of the Grievant's employment be upheld

POSITION OF THE UNION

The Union emphasizes that the Grievant was a long term employee of the Department, and there was no active discipline in his personnel record at the time of removal. The Union

states that Article 8 of the collective bargaining agreement requires that discipline must only be for just cause, and Section 8.02 states that the principles of progressive discipline "shall be followed." The Union argues that the termination of employment in this matter was not for just cause, was not based on progressive discipline and is therefore in violation of Article 8.

The Union argues that the Grievant did not violate Rule 5.14P. While the text messages may have been unprofessional, they did not bring discredit to the agency. The Union states that the Grievant was venting his frustration to his supervisor regarding safety concerns at the facility. The content of the messages was viewed only by his supervisor and other members of management who were provided with of the messages. The Union states that, although the Grievant was initially charged with violation of Rule 5.06P, threatening or intimidating behavior, he was found not to have been in violation of the policy. The Union states that the Employer's investigation did not substantiate threatening behavior toward the Grievant's supervisor or anyone else. Further, evidence indicates that the Grievant never took his concerns or issues outside of the Department. The Union argues that there is no evidence that Grievant's actions harmed the reputation of the Department or relationship with the general public, and there is no indication that he is unable to perform his duties. The Union states that the Employer did not direct the Grievant to submit to an Independent Medical Examination to determine if he was fit to continue his employment and argues that there is no impediment to reinstatement.

The Union argues that the statements, which the Employer found to be derogatory, are protected activity as determined by the National Labor Relations Board. The Union states that the theme of the text messages included safety and security concerns and issues which the NLRB would consider concerted activity. Additionally, the Grievant's statements are protected

by Ohio Revised Code Section 124.31 which states that no retaliatory or discriminatory action may be taken against an employee who reports dangerous or unhealthful working conditions. The Union argues that the termination of the Grievant's employment, therefore, violated state statute.

The Union argues that the pre-disciplinary hearing was flawed, and the Grievant was not afforded due process. The hearing officer had engaged in disagreements with the Grievant in the past and should not have presided over the matter. Further, the Union states that the hearing officer is responsible for determining if just cause existed, but he testified at the arbitration hearing that he was unaware of the tests and elements of the just cause principle. The Union argues further that the investigation was incomplete and lacked fairness. Certain involved managers were never interviewed including Dr. Stinson, Superintendent Freeman and others. The investigator was unclear whether the potential rule violations fell into Tier II or Tier III for purposes of potential level of discipline. The Union argues that the investigation was little more than a formality as the Department had targeted the Grievant for removal.

The Grievant was a 15 year employee with no active discipline. He expressed regret for the words used. The Employer failed to consider the level of stress he and other employees experienced at the facility. The Union argues that just cause did not exist for terminating the Grievant's employment, and this penalty violates the Employer's discipline grid and does not recognize the contractual obligation regarding progressive discipline. The Union argues that the purpose of discipline is to correct certain behavior. The disciplinary penalty in this case is excessive and arbitrary. The Union argues for the reinstatement of the Grievant as Psychologist at Indian River Juvenile Correctional Facility with the same schedule and assignment and to

make the Grievant whole in respect to lost pay, seniority credits, PERS pension credits, leave balances, COBRA payments and other lost benefits which may have occurred. The Union states that all records of discipline regarding this matter be removed from the personnel record of the Grievant.

ANALYSIS AND OPINION

The parties to this matter have adequately presented compelling arguments. The text messages sent by Dr. Buccigross were unprofessional. Evidence indicates that the facility was short staffed, that a number of Psychologists had left Indian River for a variety of reasons, and the OCSEA chapter chair demonstrated what he determined to be unsafe working conditions at the facility. But the Grievant, instead of bringing his concerns to Department management in a professional manner, decided instead to insult various individuals and trash the Department with his text messages. He referred to the Superintendent as "chicken shit incompetent asshole." He referred to a co-worker as a "Twitte." The lengthy text messages are laced with personal insults, attacks and profanity. If the Grievant was concerned about short staffing and safety concerns within the facility, as evidence indicates it existed at this time, he had an opportunity to address the issues in a professional and proactive manner. His thoughts would have mattered considering the position he held and his experience in the Department. He may have had an ethical responsibility to do it the right way. He chose instead to go in a different direction by sending inflammatory text messages to his supervisor. Where did he expect texts of this nature to go? Of course they were forwarded to a higher level of management. As a member of management, Ms. Freeman had an obligation to forward them. The Grievant claims

he had a friendship with Supervisor Freeman, which she denies, and believed that the text messages would stay between the two of them. But the Grievant is not new to the organization and profession, and he should have recognized the distance required between supervisor and employee. He is a certified Psychologist with decades of experience. His frustration at the condition of Indian River, at the time, is understandable. He failed to address the issues in a professional manner, and he admitted that the words used were not appropriate.

The Union argues that the Grievant is protected from discipline by the State's whistleblower statute, Ohio Revised Code Section 124.31. This argument is not convincing. The statute states that "the employee may file a written report identifying the violation or misuse with the supervisor or appointing authority." "In addition to or instead of filing a written report with the supervisor or appointing authority, the employee may file a written report with the office of internal audit . . . ." The Grievant sent text messages to his supervisor. He did not file a written report as the statute directs. There is no evidence that the Grievant was acting in the role of whistleblower when he sent two inflammatory and profane text messages to his supervisor.

The Union suggests further that the Grievant's text messages would be protected activity as determined by the National Labor Relations Board (NLRB). Historically, the NLRB has allowed significant latitude in the use of provocative language when used by an employee(s) in the area of concerted activity. It is questionable whether the message, language and approach taken by the Grievant would be considered protected concerted activity. While state public

employee labor boards and agencies consider NLRB decisions as possible models, the jurisdiction of the NLRB is limited to private sector employment.

The Union argues that the Employer's investigation was flawed, a number of potential witnesses were never interviewed. While this may be true, the investigation generally confirmed that the text messages were sent by the Grievant to his supervisor's state issued cell phone. The investigator fell short in not understanding the differences between Tier II or Tier III violations of policy, and the failure to interview the Superintendent, who claims the text messages posed a threat to his person, are short comings in the investigation process but not determinative.

During the hearing at arbitration, the Superintendent was questioned regarding his perception that the text messages posed a threat to him personally. He responded affirmatively. Nevertheless, testimony regarding this issue was irrelevant. Prior to the pre-disciplinary hearing, the Grievant was initially charged with violation of Rule 5.06P, Threatening, intimidating, or coercing . . . . It was determined that the Grievant had not violated the rule, and his termination was for violation of Rules 5.01P and 5.14P. Additionally, the Union argues that the Pre-disciplinary hearing was flawed due to the hearing officer and Grievant having professional disagreements in the past. This would not necessarily disqualify Mr. Gonzalez from acting as the hearing officer in this matter, but it was problematic that testimony indicated that he was not informed regarding the meaning of the just cause principle. It was his responsibility to determine just cause. The issue before the arbitrator does not question the conduct of the pre-disciplinary hearing, Section 8.03 of the collective bargaining agreement, although the conduct of the hearing would probably be deemed sufficient.

The Union contends that the Grievant was targeted for termination of employment as the Employer was giving consideration to contracting with outside or agency Psychologist services. This argument is not compelling. Evidence indicates that, at the time, there was a significant shortage of staff Psychologists at the facility. There was an immediate need to provide said services as the youth population was experiencing stress, conflict and a lack of adequate supervision. There is no evidence that the Employer targeted the Grievant or was in the process of privatizing services provided by staff Psychologists.

The Union asserts a compelling argument, that the termination of the Grievant's employment was a violation of just cause based on his long term service to the Department and discipline free work record. Section 8.01 directs the Employer to impose discipline only for just cause. The just cause principle takes into account an employee's length of service and record of discipline. In addition, the parties have emphasized, through the bargaining process, the requirement to consider progressive discipline as stated in Section 8.02 of the collective bargaining agreement. The Grievant had just returned from medical leave for reasons of health related stress. At hearing, the Grievant detailed a number of serious health issues which he had recently experienced. The Employer did not take this information into account when it was decided to discipline the Grievant. Evidence indicates that a number of disruptive incidents had taken place in the facility, when the Grievant was released from medical leave, which were compounded by the lack of adequate staff. A picture of general chaos was depicted. Management was making a good faith attempt to resolve the issues, but there were serious safety concerns among staff. The OCSEA officer had demonstrated those concerns outside the facility. The Grievant was not directly involved with safety related incidents upon his return

from leave, but evidence is clear that the workplace was stressful. The Grievant's response after a night without sleep was to send text messages to his supervisor albeit they were unprofessional, derogatory and misguided. The Employer, when determining that termination was the appropriate penalty, failed to take into consideration the stressful work environment, the Grievant's length of service, his personnel record and the principle of progressive discipline. The Employer violated the just cause principle when the Grievant's employment was terminated. Additionally, there is no evidence that the Grievant violated Rule 5.14P. The Employer failed to prove that the Grievant's actions brought discredit to the Department of Youth Services. Although the text messages were circulated among managers for purposes of investigation and determining potential disciplinary action, Department employees in general were not privy to them. There is no evidence that the text messages were seen by the general public, Department customers, media or anyone else.

The Grievant was in violation of Rule 5.01P which is included in Policy Number 103.17, General Work Rules. As this is a Level 5 discipline, the Employer's discipline grid allows for the imposition of disciplinary suspensions/fines of 1, 3 or 5 days and termination. The Employer as noted above, failed to consider progressive discipline, as outlined in the collective bargaining agreement and Department Policy 103.7 which also references progressive disciplinary steps.

The termination of the Grievant is a violation of Article 8 of the collective bargaining agreement, Sections 8.01 and 8.02, and is modified to a five day disciplinary suspension/fine consistent with the Employer's disciplinary grid for a Level 5 violation as outlined in DYS Policy 103.17. The Grievant is reinstated to the position of Psychologist at the Indian River Juvenile Correctional Facility with the schedule and assignment in effect at the time of termination. The

Grievant will be made whole including lost wages minus any interim earnings including unemployment compensation, if applicable, and earnings from outside independent work as a Psychologist; restoration of leave balances; reimbursement for the cost of COBRA, if applicable; restoration of PERS (pension) credits; and restoration of any other lost benefit less a five day suspension/fine. Any record or reference to termination of employment in Employer personnel records will be modified to reflect a five day suspension/fine.

AWARD

The termination of the Grievant's employment was not for just cause and violated Article 8 of the collective bargaining agreement, Sections 8.01 and 8.02, and is modified to a five day disciplinary suspension/fine consistent with the Employer's disciplinary grid for a Level 5 violation as outlined in DYS Policy 103.17. The Grievant is reinstated to the position of Psychologist at the Indian River Juvenile Correctional Facility with the schedule and assignment in effect at the time of termination. The Grievant will be made whole including lost wages less any interim earnings including unemployment compensation, if applicable, and earnings from outside independent work as a Psychologist; restoration of leave balances; reimbursement for the cost of COBRA, if applicable; restoration of PERS (pension) credits; and restoration of any other lost benefits less a five day suspension/fine. Any record or reference to termination of

employment in Employer personnel records will be modified to reflect a five day suspension/fine.

Arbitrator retains jurisdiction for 45 days for purposes of remedy only.

Signed and dated this 31st Day of January 2018 at Cleveland, Ohio.

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Thomas J. Nowel, NAA
Arbitrator

CERTIFICATE OF SERVICE

I hereby certify that, on this 31st Day of January 2018, a copy of the foregoing Award was served, by electronic mail, upon Peter J. Hanlon, Advocate for SEIU, District 1199; Larry L. Blake, Labor Relations Officer for the Ohio Department of Youth Services; and Jessie Keyes for the State of Ohio Office of Collective Bargaining.

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Thomas J. Nowel, NAA
Arbitrator