

ARBITRATION PROCEEDING PURSUANT TO  
COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PARTIES

In the Matter of	♦	
	♦	
SEIU DISTRICT 1199	♦	
	♦	
and	♦	Arbitrator's
	♦	Opinion and Award
	♦	
OHIO DEPARTMENT OF REHABILITATION	♦	
AND CORRECTIONS	♦	
	♦	
Grievant: Ricci Nolen	♦	
Case No. DRC-2018-00192-12	♦	

This Arbitration arises pursuant to the collective bargaining agreement ("the Agreement") between the Parties, SEIU DISTRICT 1199 ("the Union") and the OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS ("DRC" or "the State") under which Susan Grody Ruben was appointed to serve as sole, impartial Arbitrator. Her Award shall be final and binding pursuant to the Agreement and pursuant to stipulation of the Parties.

Hearing was held October 23, 2018. Both Parties had advocates who had full opportunity to introduce oral testimony and documentary evidence, cross-examine witnesses, and make argument. Both Parties filed post-hearing briefs on or before December 21, 2018.

## APPEARANCES:

On behalf of the Union:

Peter J. Hanlon, SEIU District 1199 Representative, Columbus, OH.

On behalf of DRC:

Karen Maschmeier, ODRC Labor Relations Officer 3, Columbus, OH.

## ISSUE

Was the removal of the Grievant for just cause? If not, what shall the remedy be?

## RELEVANT SECTIONS OF THE AGREEMENT

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## 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. 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 and occurrence of various disciplinary offenses.

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### 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 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 pre-discipline due process requirements.

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### FACTS

The Grievant, Ricci Nolen, was hired by the State on July 31, 2000. At the time of her January 16, 2018 removal, her position was Correctional Program Specialist.

The Grievant's Notice of Removal, dated January 11, 2018, provides in pertinent part:

On 5/26/17 you were involved while you were off duty at a campground in Bluffton, Ohio. The incident involved the use of a firearm by your partner and you were arrested and charged with Obstruction of Official Business. After your arrest were news articles surrounding the campground incident in which your mug shot

picture, details of the incident and naming you as a Toledo Correctional Institution employee was included in those articles. News articles and details of the incident were also sent into an Offender's J-pay account. You also failed to fully cooperate when being interviewed.

The Grievant was charged with three Rule violations:

Rule 37 – Any act of failure to act that could compromise or impair the ability of an employee to effectively carry out his/her duties as a public employee to include, but not limited to, being removed from duty due to having a blood alcohol level at or about .02% and bellowing .04%

Rule 39 – Any act that would being discredit to the employer

Rule 24 – Interfering with, failing to cooperate in, or lying in an official investigation or inquiry

The Union filed the instant grievance on January 16, 2018. It

provides in pertinent part:

Statement of Grievance: On January 16, 2018, Correctional Program Specialist Ricci Nolan was wrongfully terminated from her position. The Employer alleges she violated Rules 24, 30, and 37 of the DRC Employee Code of Conduct. The incident in question took place outside of the workplace and resulted in a currently unsubstantiated misdemeanor charge for which she had not been found guilty. In addition, the Employer failed to follow the principles of progressive discipline as they chose removal on each charge rather than lesser discipline which is called for on each charge. Mr. Nolan had no prior discipline to justify removal for a first offense on each charge. The Employer lacks sufficient evidence to prove [its] allegations, therefore, the Employer did not have just cause to terminate Mr. Nolan.

Resolution Requested: That Correctional Program Specialist Ricci Nolen be made whole in every way. That Ms. Nolen be reinstated immediately with all pay and benefits, including backpay, seniority, and leave accruals from the time of her wrongful termination.

## POSITIONS OF THE PARTIES

### DRC Position

DRC had just cause to terminate the Grievant's employment. The Grievant engaged in serious rule violations:

1. She lied to law enforcement during the criminal investigation.
2. She lied to the ODRC investigator during the administrative investigative.
3. She brought discredit to her employer.
4. She impaired her ability to effectively carry out her duties.

The Grievant was removed for rule violations 24, 37, and 39.

As a Case Manager, the Grievant has the responsibility to advise the decisionmaking of inmates. The State must be able to trust case managers' decisions, statements when reporting incidents, and relaying factual information. The Grievant compromised that trust.

The Grievant knowingly and willingly participated om the events of May 26, 2017 with Bryan Jameson who was charged and convicted of

abduction, a 3<sup>rd</sup>-degree felony. The Grievant herself was arrested for obstruction of official business for lying on multiple occasions.

When asked at the arbitration when she would have done anything differently, she responded, “My answer is no. I might have tweaked a couple of things, but my answer is no.” A person who cannot tell the truth and shows no remorse for their actions clearly is not the person the State wants serving as a role model to offenders.

#### Union Position

DRC failed to prove it had just cause to terminate the Grievant’s employment. DRC conducted a cursory, flawed, unfair, and biased investigation.

First, the State relied on the investigation of the Hancock Sheriff’s Department, an investigation that was flawed, biased, and eventually led to the dismissal of the Grievant’s original criminal charge of Obstruction of Official Business. There was a lack of involvement on the Grievant’s part in the campground incident.

With regard to Rule 37, there is no evidence the Grievant had a blood alcohol level between .02% and .04%. Additionally, the Grievant was not on duty at the time of the incident.

With regard to Rule 39, the Unemployment Hearing Officer stated, “The evidence does not establish that claimant was sufficiently at fault for the criminal charges or subsequent newspaper coverage that occurred.” Additionally, since the charge of Obstruction of Official Business was dismissed due to the length of time pending, DRC did not provide substantial evidence that the Grievant was culpable for the events that brought her notoriety in the press.

With regard to Rule 24, the Grievant was consistent in her recounting of the events to law enforcement and administrative investigators. She has maintained her innocence.

The State failed to take into account the stress the Grievant was under regarding the unknown whereabouts of her son at the campground. The State also failed to take into account the Grievant’s training in Human Trafficking contributed to a sense of urgency and upset.

Moreover, the State did not apply its work rules and penalties evenhandedly. At least one other employee continues to work at ToCI

subsequent to pleading guilty to OVI. Additionally, the Grievant's seniority and lack of disciplinary history was not sufficiently taken into account. Past arbitrations have resulted in a one-month suspension, last chance agreement, and time-served suspension.

### OPINION

DRC has the burden of proving it had just cause for the termination of the Grievant from her position. Just cause consists of: 1) whether the Grievant did what she is accused of doing; and 2) whether the level of discipline fits the charges under all the circumstances.<sup>1</sup>

#### 1. The Charges

DRC charged the Grievant with Rule violations 24, 37, and 39.

Perhaps most seriously, the Grievant was charged with Rule violation 24:

Interfering with, failing to cooperate in, or lying in an official investigation or inquiry.

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<sup>1</sup> See Board of Trustees of Miami Twp. v. FOP, Ohio Labor Council, Inc., 81 Ohio St.3d 269 (1998); see also City of Piqua v. FOP, Ohio Labor Council, 183 Ohio App. 3d 495 (2009).



The record definitively shows the Grievant materially lied to both law enforcement officials in a criminal matter, as well as to ODRC investigators in an administrative investigation.

The Grievant's repeated and material lies to both law enforcement and to ODRC investigators make her unfit to serve as an ODRC employee. For the proven charges, removal was appropriate.

The Arbitrator understands the Grievant had serious concerns when her son went missing at the campground. Her serious concerns, however, did not give her license to lie during the subsequent investigations.

#### AWARD

For the reasons set out above, the State had just cause to terminate the Grievant's employment. The grievance is denied.

January 30, 2019

*Susan Grody Ruben*  
Arbitrator