**OCB AWARD NUMBER: 2636**

SUBJECT: Arb Summary # 2636

TO: All Advocates

FROM: Rachel Tollefsrud

OCB GRIEVANCE NUMBER: DRC-2019-01033-11

DEPARTMENT: Ohio Department of Rehabilitation and Correction

UNION: 1199

ARBITRATOR: Mitchell B. Goldberg

GRIEVANT NAME: Nancy Greathouse

MANAGEMENT ADVOCATE: Allison Vaughn

UNION ADVOCATE: Josh Norris

OCB REPRESENTATIVE: Victor Dandridge

ARBITRATION DATE: 12/11/2019

DECISION DATE: 2/26/2020

DECISION: GRANTED

CONTRACT SECTIONS 5, 6

OCB/BNA RESEARCH CODES: 93.241 – Access to Information; 2.22 – Furnishing Information to the Union; 24.351 – Past Practice-In General; 116.205 – Paid Time Off for Union Activities

KEYWORD SEARCH TERMS: Access to information, Union delegate rights, Inmate Medical Records, HIPAA, Confidentiality, Formal Written Requests

**HOLDING: GRANTED**.The termination was without just cause because there is insufficient proof the Grievant knew or should have known access to the records was a prohibited act within her overall rights as a Union delegate. The Grievant should have received clear notice from management about the limits of her Union duties corresponding to her access to inmate medical records.

**Facts:** The Grievant was removed from her position as a licensed registered nurse providing nursing services to inmate patients at Franklin Medical Center for accessing and sharing medical records of inmates. Grievant had a prior written reprimand from 2017 for unrelated activities. Grievant was on a scheduled leave for purposes of working on Union business at her place of work, and, using a state issued computer, the Grievant accessed the files in question.

**The Union argued:** The Union argued the Grievant had proper authorization to access the files due to the work policy allowing Nurses to access files in the course of their specific duties, including those as a Union delegate. The information obtained was also no longer unauthorized confidential information because it was already provided to her in the Pre-D packet supplied to the Grievant by the Employer. The Grievant was merely checking the accuracy of the STNA flow sheets in the packet. Requests to access inmate medical records were largely informal.

**The Employer argued:** The Employer argued that the Grievant did not have authority to access those records and that she accessed not only the STNA flow sheets but also the confidential progress notes. The Grievant failed to obtain prior authorization to access the records, which she could have done either under Article 7 of the contract or through a Public Records Act request under ORC Chapter 149.

**The Arbitrator found:** It is reasonable to conclude that the Grievant was operating under an understanding shared by her fellow Nurse Union delegates that they could access inmate medical records as a part of their grievance investigations. This implied authority permitted the Grievant to review the material which was in the Pre-D packet. The Grievant did go beyond her authorization by viewing the progress notes. Discipline must be proportional to the offense, and the Employer failed to show how access to the records was an offense serious enough to warrant discharge. The Grievant has a good work record. There is no evidence the Grievant would not now make formal written requests for the same information. Therefore, the grievance is **GRANTED.**