

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

1148

IN ARBITRATION PROCEEDINGS PURSUANT TO
AGREEMENT OF THE PARTIES

In The Matter of a Controversy Between:)	Grievance No.
)	DMR-2015-
Ohio Civil Service Employees Association,)	02450-4
Local 11 AFSCME, AFL-CIO)	
)	ARBITRATION
and)	OPINION AND
)	AWARD
Ohio Department of Developmental)	
Disabilities)	DATE:
Cambridge Developmental Center)	February 26,
)	2016
Re: Diana Starcher (Wittenbrook) Termination)	

APPEARANCES:

Andy Bower for the Ohio Department of Developmental Disabilities;
Tim Watson for OCSEA, Local 11 AFSCME.

RECEIVED / REVIEWED

FEB 26 2016

OCSEA - OFFICE OF
GENERAL COUNSEL

INTRODUCTION

This arbitration arises pursuant to a collective bargaining agreement between the State of Ohio and the Ohio Civil Service Employees Association, Local 11 AFSCME. The parties are in disagreement regarding the termination of employment of Diana Starcher. At the time of her termination and subsequent appeal through the grievance procedure, the Grievant's last name was Wittenbrook. The Grievant was placed on administrative leave on May 6, 2015 and her employment was terminated on July 16, 2015. Ms. Starcher grieved the removal on July 19, 2015, and the Union appealed the grievance to arbitration following its denial at the various steps of the Grievance Procedure.

The arbitrator was selected to hear this case by the parties pursuant to Article 25 of the collective bargaining agreement. Hearing was held on January 11, 2016 at the Cambridge Developmental Center. At hearing, the parties were afforded the opportunity for examination and cross examination of witnesses and for the introduction of exhibits. Witnesses were sworn or affirmed by the Arbitrator. The parties stipulated that the grievance was properly before the Arbitrator and submitted a series of joint exhibits.

ISSUE

The parties stipulated to the following issue to be decided by the Arbitrator.

1. Did the Grievant, Diana Starcher, abuse an individual of the Cambridge Developmental Center?

2. If the Grievant did not abuse an individual, was the Grievant removed for just cause?
3. If the Grievant was not removed for just cause, what shall the remedy be?

JOINT STIPULATIONS

1. The grievance is properly before the Arbitrator.
2. The Grievant was hired by the Employer on April 2, 2012, as a Therapeutic Program Worker (TPW).
3. The Grievant was removed from her position as a TPW on July 16, 2015.
4. The Grievant was removed for a violation of the Ohio Department of Developmental Disabilities Standards of Conduct Policy, especially rules A-1 Abuse of a Client (Abuse of any type or nature to an individual under supervision or care of the Department or State. Including but not limited to, physical, sexual, or verbal).
5. The Grievant had an active written reprimand on her record at the time of her removal.

WITNESSES

TESTIFYING FOR THE EMPLOYER:

Shelly Fetzner, Witness
Thomas Faber, Witness
Douglas Bachmann, Investigator
Cathleen Ballinger, Superintendent

TESTIFYING FOR THE UNION:

Diana Starcher, Grievant
Jeanie Cantu, Former TPW
Candice Bates, LPN

Tisha Fackler, TPW
Tiffany Nealy, TPW

RELEVANT PROVISIONS OF THE AGREEMENT

Article 24 – Discipline

24.01 – Standard

Disciplinary action shall not be imposed upon an employee except for just cause. The Employer has the burden of proof to establish just cause for any disciplinary action. In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have the authority to modify the termination of an employee committing such abuse. Abuse cases which are processed through the Arbitration step of Article 25 shall be heard by an arbitrator selected from the separate panel of abuse case arbitrators established pursuant to Section 25.04. Employees of the Lottery Commission shall be governed by ORC Section 3770.021.

24.02 – Progressive Discipline

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense. Disciplinary action shall include:

- a. One (1) or more written reprimand(s);
- b. One (1) or more working suspension(s). A minor working suspension is a one (1) day suspension, a medium working suspension is a two (2) to four (4) day suspension, and a major working suspension is a five (5) day suspension. No working suspension greater than five (5) days shall be issued by the Employer. 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 will be converted to a fine. The employee may choose a reduction in leave balances in lieu of a fine levied against him/her.
- c. One (1) or more days(s) suspension(s). A minor suspension is a one (1) day suspension, a medium suspension is a two (2) to four (4) day suspension, and a major suspension is a five (5) day suspension. No suspension greater than five (5) days shall be issued by the Employer;
- d. Termination.

Disciplinary action shall be initiated as soon as reasonably possible, recognizing that time is of the essence, consistent with the requirements of the other provisions of this Article. An arbitrator deciding a discipline grievance must consider the timeliness of the Employer's decision to begin the disciplinary process.

The deduction of fines from an employee's wages shall not require the employee's authorization for withholding of fines.

If a bargaining unit employee receives discipline which includes lost wages, the Employer may offer the following forms of corrective action:

1. Actually having the employee serve the designated number of days suspended without pay;
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.

24.06 – Imposition of Discipline

The Agency Head or designated Deputy Director or equivalent shall make a final decision on the recommended disciplinary action as soon as reasonably possible after the conclusion of the pre-disciplinary meeting. The decision on the recommended disciplinary action shall be delivered to the employee, if available, and the Union in writing within sixty (60) days of the date of the pre-discipline meeting, which date shall be mandatory. It is the intent to deliver the decision to both the employee and the Union within the sixty (60) day timeframe; however, the showing of delivery to either the employee or the Union shall satisfy the Employer's procedural obligation. At the discretion of the Employer, the sixty (60) day requirement will not apply in cases where a criminal investigation may occur and the Employer decides not to make a decision on the discipline until after disposition of the criminal charges.

The employee and/or Union representative may submit a written presentation to the Agency Head or Acting Agency Head.

If a final decision is made to impose any discipline, including oral and written reprimands, the employee, if available, and Union shall be notified in writing. The OCSEA Chapter President shall notify the Agency Head in writing of the name and address of the Union representative to receive such notice. Once the employee has received written notification of the final decision to impose discipline, the disciplinary action shall not be increased.

Disciplinary measures imposed shall be reasonable and commensurate with the offense and shall not be used solely for punishment.

The Employer will not impose discipline in the presence of other employees, clients, residents, inmates or the public except in extraordinary situations which pose a serious, immediate threat to the safety, health or well-being of others.

An employee may be placed on administrative leave, without loss of pay (except in cases that fall within ORC Section 124.388 (B)), or reassigned while an investigation is being conducted except that in cases of alleged abuse of patients or others in the

care or custody of the State of Ohio, the employee may be reassigned only if he/she agrees to the reassignment or if the reassignment is to a position on the same shift and days off, without loss of pay and does not exceed 30 days. For cases that fall within ORC Section 124.388 (B) as referenced above, any payment due the employee under subsection (B) shall be based upon the employee's total rate plus any applicable roll call pay. For purposes of this paragraph, "without loss of pay" shall mean the employee's total rate plus any applicable roll call pay.

GRIEVANCE

The grievance of Diana Starcher reads as follows.

Diana Wittenbrook was terminated on July 15, 2015 for alleged neglect of duty.

Diana Wittenbrook stands that the removal is not warranted. She was not removed for just cause.

For Diana Wittenbrook to be reinstated. All back pay. Institutional and State seniority restored from date of removal. Back pay for any and all raises and bonuses missed as a result of the removal. To be made whole.

BACKGROUND

This case involves the alleged abuse of client/resident F (name omitted due to issues of privacy). F had been a resident of the Department of Developmental Disabilities at the Cambridge Developmental Center on a number of occasions. Evidence indicates that her capacity included "intellectual functioning is in the severe range with profound adaptive behavior deficits" (Jt. Exb. 4 - 80). F's "Individual Program Plan" (IPP) states in part:

F can spend 15 minutes alone during waking hours with 30 minute bed checks with the use of a motion monitor (15 minute checks without). She must be accompanied to the restroom with staff maintaining eyes-on

supervision due to a history of behavioral issues while toileting or showering. If F attempts to ambulate independently, staff are to initiate arms-length supervision for her personal protection due to a history of falls and related behavioral issues. . . .

(Joint Exhibit 4 – 80)

The Grievant, Diana Starcher, is a Therapeutic Program Worker (TPW) and had been employed at the Cambridge Developmental Center since April 2, 2012. Her employment was terminated on July 16, 2015, and, at the time of removal, her personnel record reflected a written reprimand for an issue regarding overtime assignment. At the time of the incident, which is the subject matter of the instant case, Ms. Starcher's last name was Wittenbrook.

On May 3, 2015 F was walking outside accompanied by two TPWs, Gard Buzard and Jeanie Cantu. Another client was also in their company. F has a history of dropping to the floor/ground in a sitting position. During F's brief outside walk, she dropped to a sitting position on either three or five occasions. Testimony indicates that the client engages in this behavior in order to gain attention. The client was housed in Rudolph Cottage, and, as she and the TPWs approached the door, F dropped to the ground in a sitting position with her legs crossed. TPW Buzard entered the cottage with the other client, and TPW Cantu called into Rudolph asking for assistance from the Grievant, TPW Starcher. There are conflicting statements if a wheel chair was brought out of Rudolph by the Grievant or if one was outside near the door. Ms. Cantu and the Grievant encouraged F to stand and to then sit in the wheel chair. They observed that the client may have been overheated as the day was hot. Simultaneous to the attempt to move F to the wheel chair, two clients of the Cambridge Behavioral Health Facility (CBH), Shelly

Fetzer and Thomas Faber, were observing Ms. Cantu and the Grievant through a window of the door which they were planning to exit and which was approximately thirty or forty yards from the incident. Cambridge Behavioral Health is a private rehabilitation facility, located on the grounds of Cambridge Developmental Center, which treats issues of drug abuse. Fetzer and Faber were both at the end of their treatment and were preparing for release from the facility. The Grievant states that she and Cantu engaged in appropriate techniques to assist the client from her sitting position and into the wheel chair. Witnesses Fetzer and Faber reported that the Grievant engaged in abusive behavior. They stated that F fell out of the wheel chair and that the Grievant kicked her in the buttocks and pulled on her arm. They state that they could not hear the words being used but indicated that the Grievant was screaming at the client in a loud voice. Fetzer felt that the police should be called and stated that the actions of the Grievant were "horrific." Witness Faber stated that the Grievant kicked and shoved the client. He stated that the actions of the Grievant were "so wrong." Faber and Fetzer had stated that they did not know the client or the Grievant. They stated that the individual, who they claim was engaged in abusive behavior, wore a teal colored shirt and blue jeans and that she had "bobbed hair." The Grievant wore a teal top and blue jeans on the day in question. Grievant stated that her hair was not bobbed. Witnesses struggled to identify the Grievant's photograph. The Grievant states that she did not kick F. Nor did she pull her arm or scream at her. She states that proper protocol was utilized in moving F back into Rudolph Cottage.

The following day, May 4, 2015, F again engaged in similar behavior. She sat on the floor of the bathroom while being encouraged to brush her teeth. An "Unusual Incident Report" (UIR) was completed following the behavior and a physical assessment was completed by an LPN. An abrasion on the right knee was observed and documented.

Ms. Fetzner and Mr. Faber reported to the administration of Cambridge Behavioral Health that they had observed the Grievant engage in abusive behavior toward a client. The CEO of CBH contacted the Superintendent of Cambridge Developmental Center, Cathleen Ballinger, on the morning of May 4, 2015 to report the allegations made by Ms. Fetzner and Mr. Faber. Superintendent Ballinger concluded that an investigation of the allegation was in order, and she assigned Douglas Bachmann to engage in a thorough review of the incident including interviews with those involved. Mr. Bachmann is Program Administrator at the Developmental Center and is the administrator responsible for internal investigations at the facility. After gaining permission from CBH, Mr. Bachmann interviewed Ms. Fetzner and Mr. Faber. He then spoke with client F. Bachmann was familiar with F as he had assisted in her care when he served as a Therapeutic Program Worker. He spoke with F on a second occasion approximately ten days following the interview. Mr. Bachmann interviewed the Grievant and other employees. He concluded that the Grievant had abused the client and forwarded his report to the Superintendent.

The Grievant was placed on administrative leave on May 6, 2015. The Employer conducted a pre-disciplinary hearing on June 29, 2015. Following the

hearing, the Employer concluded that the Grievant violated Policy A-1, "Abuse of a Client: Abuse of any type or nature to an individual under the supervision or care of the Department or State, including but not limited to physical, sexual or verbal." Policy states that "Removal" is penalty for first offense. The employment of the Grievant was terminated on July 16, 2015. The termination was appealed through the Grievance Procedure on July 19, 2015, and the Employer denied the grievance. The Union appealed the matter to arbitration.

POSITION OF EMPLOYER

The Employer states that witnesses Fetzner and Faber clearly observed the Grievant kick, pull and scream at F. They stated that the abusive employee wore a teal shirt and blue jeans. The Grievant admits that she wore the clothing observed by the witnesses. Although they may not have been accurate in describing her hair, they clearly identified the Grievant and her abusive behavior. The Employer argues that they had a clear view of the incident. The Employer states further that both witnesses were in a clear state of mind. They both had nearly completed their treatment and were to be released in a matter of days. Witness Fetzner is an RN who has worked with the Developmentally Disabled. The Employer states that both witnesses live almost three hours from Cambridge Developmental Center and yet made the long journey to testify at the arbitration hearing. Neither witness knows the client or Grievant and therefore have no reason to make an untruthful report or statement.

The Employer states that the investigation conducted by Douglas Bachmann was done so in a professional manner. Mr. Bachmann possesses significant experience in conducting investigations. In addition to interviewing the CBH witnesses, he spoke with F. The Employer states that F's statement closely parallels the witness statements of Fetzner and Faber. She clearly identified the Grievant as the individual who kicked and pulled her. The Employer argues that the client has never made a false accusation against staff.

The Employer states that the Department must be in compliance with Federal Medicaid Regulations which demand that clients must be free from abuse and neglect. These regulations require that the facility take steps to prevent recurrence. The Employer states that the termination of the Grievant's employment was necessary in order that the facility comply with federal regulations. The Employer states further that the actions of the Grievant violated sections of the Ohio Revised Code and Ohio Administrative Code related to physical harm and abuse of a client.

The Employer argues that the Grievant knew, from her training, that the protocol was to allow the client to get up from the ground on her own. The Employer states that the Grievant's version of the incident is in violation of the protocol, and she admitted at hearing that F was in the process of getting up on her own.

The Employer states that a number of Union witnesses at hearing testified that F has poor memory and recall, but they were not witnesses to the incident, and they testified that it was a violation of policy to kick, hit or shout at a client. The

Employer states that F is very sensitive and remembered the incident in great detail. The incident greatly traumatized her.

The Employer argues that the Grievant became impatient with the actions of F and did not want to take the time necessary to follow protocol. It was near the end of the Grievant's shift, and she was anxious to complete her tasks and leave the facility. The Employer states that the Grievant was called away from her regular group assignment and was frustrated that she now was required to work with F who was slow to lift herself from the ground. Her frustrations and impatience resulted in the abusive scene viewed by the witnesses.

The Employer cites Article 24.01 of the collective bargaining agreement which states that an arbitrator may not modify the termination of an employee who has committed abuse. The Employer argues that the grievance of Diana Starcher be denied in its entirety.

POSITION OF UNION

The Union states that Client F sat on the ground near the entrance to Rudolph Cottage. The Grievant and Ms. Cantu assisted F to a standing position and assisted her into a wheel chair. The client was then wheeled into Rudolph. The Union states that allegations suggesting that the Grievant kicked or pulled on the client are inaccurate. The Union argues that no injuries were reported regarding F on May 3. The Union states further that an abrasion on the client's knee was reported the following day, May 4, following F's deliberate sitting on the bathroom floor while brushing her teeth. The Union argues that there is no evidence that the abrasion

was the result of an injury suffered the previous day. The Union states that LPN Bates, who assessed the injury, indicated that the injury may have occurred due to bathroom incident or it could have been a result of an incident the previous day. The Union states that the cause of the injury is inconclusive. The Union states that the Developmental Center Superintendent, Ms. Ballinger, failed to document her knowledge of the incident in a timely and proper manner the following day when contacted by the administrator of Cambridge Behavioral Center. In addition, Investigator Bachmann interviewed the two alleged witnesses almost immediately as they were being discharged from CBH in a day or two. While Mr. Bachmann interviewed staff and clients from the Developmental Center on at least two occasions, he failed to conduct second, follow-up, interviews with Mr. Faber and Ms. Fetzer. This would have been critical in light of conflicting statements regarding their alleged observations of the Grievant leaving in her automobile on May 3. The Union argues that the Employer failed to conduct a complete investigation. The Union states a further concern in that Ms. Fetzer's original statement was dated May 3, 2015 while Mr. Faber's statement was dated May 13, 2015. Investigator Bachmann failed to obtain witness signatures regarding his interrogation of the witnesses.

The Union states that Ms. Fetzer and Mr. Faber lack credibility. They both stated that the person, who they accused of abusing F, wore her hair in a bob. The Grievant's hair flowed over her shoulders. The Union states further that the witnesses were unable to identify the Grievant when shown a number of staff photographs. The Union argues that the statements and testimony of Ms. Fetzer and

Mr. Faber are contradictory and inconclusive and therefore cannot be the basis of a just cause termination of employment.

The Union states that its witnesses at hearing provided conclusive testimony regarding client F's known inability to remember recent incidents. She is unable, at times, to remember her age, and she often points at various individuals as having done something to her or engaged in an act which is troubling to her. The Union states that F is unable to remember staff names from one day to the next. And, in any event, the Union was unable to question F, and she did not testify at hearing.

The Union states that evidence at hearing supports its case that the investigation in this matter was faulty and fails to prove that the Grievant abused client F. The Grievant and Ms. Cantu performed an approved lifting technique to assist in moving F into the wheel chair. The termination of the Grievant is not for just cause. The Union argues that the grievance must be sustained, and the Grievant be made whole in every respect including reinstatement, back pay and restoration of seniority and all benefits.

DISCUSSION AND ANALYSIS

The Employer and Union present compelling evidence and argument. At the commencement of the evidentiary hearing, the Arbitrator was taken to the site of the incident which was a short walk from the administrative offices of the Developmental Center. The distance between the doorway/window of Cambridge Behavioral Health, where the two witnesses observed the incident, and the sidewalk approaching Rudolph Cottage is approximately thirty or forty yards. Observing

activity would not be difficult as there are no obstructions between the two points involved. Witnesses Fetzner and Faber make convincing statements regarding what they observed. They state that the employee, who they believe engaged in abusive behavior, wore a teal shirt and blue jeans. The Grievant was wearing a teal shirt and blue jeans by her admission. Neither Ms. Cantu nor any other person, at the point that the witnesses made their observations, wore a teal shirt and blue jeans. The witnesses stated that the person who kicked and pulled on the Grievant had bobbed hair. Testimony indicates that the Grievant's hair was not bobbed and was laying over her shoulders. And the witnesses had difficulty identifying the photograph of the Grievant. Nevertheless, only the Grievant wore a teal shirt and blue jeans. Ms. Fetzner testified that what she observed was, in her words, "horrific." Mr. Faber testified that what he observed was, in his words, "so wrong." Not identifying the hair style of the Grievant does not mitigate the accuracy of the Fetzner and Faber witness statements. Both witnesses testified at hearing that they had a clear view of the incident. They testified that the Grievant was shouting or screaming at the client, but they were unable to hear the exact words. The Union argues that this admission weakens the credibility of the witness statements, but Ms. Fetzner and Mr. Faber viewed the incident from a window inside the facility. It is not unusual to hear loud shouting while not being able to identify exact words. It is also possible that Ms. Cantu was engaged in yelling or screaming. The Employer argues that the witnesses did not know the Grievant, Ms. Cantu and client F and therefore have no reason to make false accusations. This argument has significant merit. In addition to not knowing any of the players, the witnesses were short term residents in a

medical facility which is not administered or served by the Cambridge Developmental Center. They had no direct involvement with the Cambridge Developmental Center, and evidence indicates that they had no reason to fabricate their stories. It is noted that Ms. Fetzer and Mr. Faber travelled approximately three hours to testify at the arbitration hearing. Their testimony mirrored the original witness statements.

Union witnesses testified to client F's lack of cognitive skills and memory and her habit of making false accusations as a part of her developmental disability. The Union's argument, that her statements regarding the incident must be considered with some skepticism, is well taken. Nevertheless, the investigation conducted by Douglas Bachmann was performed in a professional manner. He testified to his background and work experience at the Developmental Center including having conducted over one hundred fifty investigations, thirty involving abuse and neglect. There was no evidence to suggest that Mr. Bachmann lacked impartiality or experience. The opposite is true. His testimony regarding his conversations with F was compelling. Mr. Bachmann had served as a Therapeutic Program Worker prior to promotion to an administrative position. During his service as a TPW, he became familiar with F and had developed a working relationship with her. Mr. Bachmann testified that F provided him with a description of the May 3rd incident, that she had been kicked and pulled. Her description mirrors the Fetzer and Faber witness statements. Although Union witnesses testified to F's lack of memory and general confusion, Investigator Bachmann testified that she remembered the incident well and pointed to the Grievant, who was in an adjacent room, as the guilty party during

his discussion with her at the facility. This is compelling testimony. None of the Union witnesses, who testified to the client's lack of memory, observed the May 3rd incident. Mr. Bachmann testified that the client still remembered the incident in some detail nine or ten days later. Mr. Bachmann testified that F occasionally drops to the floor or ground for attention, and TPWs are aware of her behavior. He stated that she blames others for her minor injuries, but he also stated that F has never made a false accusation against a member of the Developmental Center staff. Mr. Bachmann is a seasoned investigator and was a credible witness. His experience as a TPW becomes valuable in his role of investigating cases involving abuse and neglect. He may not have obtained witness signatures on one or two statements obtained during the investigation, and he admits that witness Faber wrote the wrong date on his statement, but an overall assessment of the investigation indicates that it was completed in a thorough and professional manner. The Union argues that Mr. Bachmann failed to complete a second interview with Ms. Fetzer and Mr. Faber, and this is accurate. But both witnesses were discharged from CBH two days later, and they traveled back to Pennsylvania. Nevertheless, they traveled three hours to attend the arbitration hearing, and their sworn testimony at hearing matched their original witness statements and description of what they had observed on May 3.

Beyond Ms. Fetzer and Mr. Faber, there was one other witness to the incident, former TPW Jeanie Cantu. Her testimony at hearing made the claim that no abuse, kicking or pulling of the client occurred. She stated that F was not resistant, and that neither she nor the Grievant screamed or shouted. Testimony at hearing

indicated that Ms. Cantu's employment at the Cambridge Developmental Center had been terminated. Testimony indicated further that she had been employed by the Center for approximately two years, and during that time she had been placed on a Last Chance Agreement. Her testimony regarding the Last Chance Agreement was, at first, vague, but on cross examination Ms. Cantu admitted that it was due, in part, to client neglect. She admitted that neither she nor the Grievant followed protocol when they moved F into a wheel chair due to hot weather and the client's need for drinking water. She testified that the Grievant was confused when she had initially stated that she brought the wheel chair out from Rudolph Cottage. Although Ms. Cantu was not singled out by Ms. Fetzer and Mr. Faber as an abusing party, her testimony at hearing failed to call into question their witness statements and testimony.

The issue regarding the abrasion on F's knee is inconsequential. It may have occurred when she sat on the floor of the bathroom, or it may have occurred during the incident of May 3. There was no evidence to confirm one or the other, and, in any event, it does not change the seriousness of the May 3 incident as witnessed by Fetzer and Faber.

Superintendent Ballinger provided testimony and evidence regarding the seriousness of patient/client abuse and the manner in which federal Medicaid regulations and the Ohio Revised Code address the issue. Although the Union suggested that Ms. Ballinger did not act appropriately regarding the investigation, evidence indicates that her response was timely and professional. Evidence indicates that the investigation itself was conducted timely and professionally. The

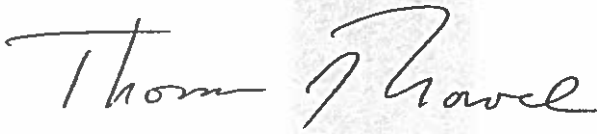
key in this case nevertheless centers on the actions of the Grievant and credibility of witnesses Fetzner and Faber.

The question before the Arbitrator is whether the Grievant abused an individual of the Cambridge Developmental Center, and was she removed for just cause, and, if not, what is the appropriate remedy. The Employer states that the Grievant violated Department Policy A-1 which states that "Abuse of any type or nature to an individual under the supervision or care of the Department or State. Including but not limited to, physical, sexual, or verbal" is subject to removal for first offense. Evidence confirms that the Grievant abused client F and therefore violated Policy A-1. Evidence also indicates that the Grievant had previously acknowledged her understanding of the policy and consequence of first time violation. In addition, the actions of the Grievant violated Ohio Administrative Code Section 5123:2-17-02 as argued by the Employer. The collective bargaining agreement states in Section 24.01 "if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have the authority to modify the termination of an employee committing such abuse." This is what the parties have bargained. Evidence indicates that the Grievant, Diana Starcher (known as Diana Wittenbrook at the time of the incident and appeal to the Grievance Procedure) abused client F. The termination of the Grievant's employment was for just cause, and the Employer therefore did not violate Article 24 of the Agreement. The Grievance is denied.

AWARD

The Employer did not violate Article 24 of the Agreement when it terminated the employment of Diana Starcher. Grievance is denied.

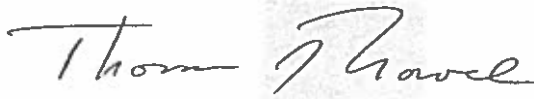
Signed and dated this 26th Day of February 2016 at Cleveland, Oho.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a light-colored background.

Thomas J. Nowel, NAA
Arbitrator

CERTIFICATE OF SERVICE

I hereby certify that, on this 26th Day of February 2016, a copy of the foregoing award was served upon Tim Watson, Advocate for OCSEA; Andy Bower, Advocate for the Department of Developmental Disabilities; Alicyn Carrel, Ohio Department of Collective Bargaining; and Jessica Chester, OCSEA.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a light-colored background.

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