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 In the Matter of Arbitration *
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 Between * Case Number:
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 OCSEA/AFSCME Local 11 * 16-11-20040408-0041-01-09
 *
 and * Before: Harry Graham
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 *
 The State of Ohio, Department *
 of Job and Family Services *
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APPEARANCES: For OCSEA/AFSCME Local 11:

Deborah Bailey
 Staff Representative
 OCSEA/AFSCME Local 11
 390 Worthington Rd.
 Westerville, OH. 43082

For The State of Ohio:

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OCSEA-OFFICE OF
GENERAL COUNSEL

INTRODUCTION: Pursuant to the procedures of the parties a hearing was held in this matter before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. The record in this dispute was closed at the conclusion of oral argument in Cleveland, OH. on August 19, 2005.

ISSUE: At the hearing the parties agreed upon the issue in dispute between them. That issue is:

Did the Department of Job and Family Services (ODJFS) have just cause to suspend the Grievant for ten (10)

days? If not, what shall the remedy be?

BACKGROUND: There exists substantial agreement on the facts prompting this proceeding. The Grievant, Marie Thornhill, is an employee in the Department of Job and Family Services. Her employment commenced on October 30, 2000. At the time of the incidents under review she was classified as an Established Term Appointment employee. That is an employee who works less than 40 hours per week. As an employee of ODJFS Ms. Thornhill was involved in processing claims for Unemployment Compensation. More specifically, her tasks were concerned with what is termed Next Day Review. That process involves the initial review of claims for benefits, use of a computerized information system, occasional contact of claimants and forwarding of claims in the system for further processing.

It developed that the Employer had concerns over Ms. Thornhill's job performance. Discipline was administered to her commencing in September 2002. (Detailed further below). In March 2004 Ms. Thornhill received a 10 day suspension. That suspension was protested in the grievance procedure of the parties. It was not resolved and the parties agree it is properly before the Arbitrator for determination on its merits.

POSITION OF THE EMPLOYER: The State points to Ms. Thornhill's

employment history in support of its action in this case. That history is not good. The Grievant has a history of discipline. Thus, in September, 2002 she received an oral reprimand. This was followed by a written reprimand in February, 2003 and a three day suspension in July, 2003. In December, 2003 a five day suspension was imposed. The three day and five day suspensions were arbitrated in the Non-Traditional Arbitration procedure of the parties. They were both upheld by the Arbitrator.

In the normal course of business Ms. Thornhill received performance evaluations. These were done after she became an Established Term Regular employee in February, 2002. Two performance evaluations were conducted. Both showed her performance to be unsatisfactory. It is against this background that the ten day suspension under review in this proceeding must be viewed according to the Employer.

In December, 2003 a number of deficiencies in Ms. Thornhill's performance were noted by the Employer. Thus, on December 4, 2003 a claim for benefits that should have been processed by the Grievant in November, 2003 was found in the inactive file. It had not been processed. On December 8, 2003 a claimant called the office about a claim filed on November 20, 2003. It had not been processed by Ms. Thornhill. A similar event occurred on December 23, 2003. On that date as

well, Ms. Thornhill was found to have mislabeled various file folders. On January 5, 2004 management found three claims on Ms. Thornhill's desk dating back to December 26, 2003. These should have been, but were not, processed by her. On that date the Employer also found five claims mis-filed by the Grievant. These dated back to November 25, 2003. On January 6, 2004 Ms. Thornhill told her supervisor, Brenda Gant, that her work for the day was complete. A check of the work showed that not to be the case. On January 7, 2004 a claim processed by the Grievant was found to be misfiled by her. Additionally, it was mischaracterized in the system of the Agency.

Ms. Thornhill received a ten day suspension for violation of ODJFS Rule N1. That Rule prescribes discipline for "Failure to carry out and/or follow directions, assignments, policies, procedures, and/or work rules." Under the circumstances set forth above the Employer contends it had just cause for that suspension. Ms. Thornhill had a history of discipline. That discipline had been upheld in arbitration. She had received unsatisfactory performance reviews. Her performance did not improve. To the contrary, within a short period a number of deficiencies were found. Under these circumstances just cause existed for the ten day suspension administered the Grievant according to the State.

It urges the grievance be denied in its entirety.

POSITION OF THE UNION: The Union points out that there is an accuracy goal of 90% for members of the Next Day Review team. It was not shown by the Employer that Ms. Thornhill breached that standard. Further, while Ms. Thornhill had poor performance reviews, she contested them in the performance appeal procedure of the State. On March 29, 2004 her 2002-2003 was modified. (Jt. Exs, G20). That occurred as well on June 19, 2003 for the same period. (Jt. Exs, G21).

Additionally, on August 30, 2002 Ms. Thornhill's Special Performance Review received by her on August 26, 2002 was expunged from her file. (Jt. Exs, G30). That was the case with her 2001-2002 performance review as well. It too was expunged from her file on appeal. (Jt. Exs., G31). given these facts, the performance reviews cannot count against Ms. Thornhill in this proceeding according to the Union. It urges the grievance be sustained and the Grievant made whole.

DISCUSSION: The Grievant, Marie Thornhill, was first employed by ODJFS in late 2000. She received the ten day suspension under review in this proceeding in March, 2004. The Grievant was not a long serving employee when this suspension was administered. She has no bank of long service to draw upon to offset or mitigate this suspension. Of course, were it the case that the suspension were found to be completely

unwarranted, her short service would not factor into this situation. To the contrary, the suspension of the Grievant was for just cause. No offset for any consideration of seniority may be had as the Grievant is of short service.


During her brief employment with the State Ms. Thornhill has accumulated substantial discipline. The record shows an oral reprimand, a written reprimand, a three day suspension and a five day suspension prior to the ten day suspension considered here. The three and five day suspensions were arbitrated in the less formal procedure of the parties. They were sustained. The Employer has followed the practice of progressive discipline in dealing with the Grievant. Its actions have withstood neutral scrutiny. It is against this background that the propriety of the ten day suspension must be evaluated.

In late 2003 and early 2004 the Employer became aware of shortcomings in Ms. Thornhill's performance. These have been detailed above. Files were misplaced. Claims were improperly processed. Work claimed to have been performed was uncompleted. At some point an employer may impose discipline for non-performance of the tasks associated with an employee's job. That point has been reached and then some in this case. Instances of progressive discipline, by definition increasingly serious, have failed to alter Ms. Thornhill's

quality of work. Her deficiencies in late 2003 and early 2004 were recurring. Given that history the Employer can have no confidence that her performance will reach an acceptable level. The record made in this proceeding fully justifies imposition of the ten day suspension at issue. Ms. Thornhill's short service and poor performance coupled with her history of progressive discipline compel the conclusion the Employer had just cause for discipline.

AWARD: The grievance is denied.

Signed and dated this 5th day of September, 2005 in Cuyahoga County, OH.



Harry Graham
Arbitrator