

APPENDIX 2

Judgment Entry, Tuscarawas County Court of Common Pleas
(July 15, 2014)



Service Employees International Union District 1199 (hereafter "SEIU District 1199") was represented in the Courtroom by Attorney Jaclyn Tipton.

The matter came before the Court for consideration of Plaintiff's **Motion to Vacate or Modify Arbitrator's Award** contained in **Count Three of Plaintiff's Complaint** filed on January 10, 2012. The Court has reviewed the following filed briefs:

December 23, 2013	Plaintiff's Brief in Support of Motion to Vacate or Modify Arbitrator's Award
12/3/2013	<u>Provisional</u> Brief in Support of Plaintiff's Motion to Vacate or Modify Arbitration Award
12/4/2013	Appendix to <u>Provisional</u> Brief in Support of Plaintiff's Motion to Vacate or Modify Arbitrator's Award
12/23/2013	Appendices to Plaintiff's Brief in Support of Motion to Vacate or Modify Arbitrator's Award
1/8/2014	<i>Errata</i> Correcting Plaintiff's Brief in Support of Motion to Vacate or Modify Arbitrator's Award filed by Plaintiff
1/31/2014	Plaintiff's Amended and Restated Brief in Support of Motion to Vacate or Modify Arbitrator's Award
2/19/2014	Memorandum Pinpointing Origin of "Own Brand of Industrial Justice" as used in Plaintiff's Briefs
January 21, 2014	Defendant SEIU District 1199's Brief in Opposition to Plaintiff's Motion to Vacate or Modify the Arbitrator's Award

January 22, 2014

Defendant Ohio Department of Mental Health and Addiction Services' Memorandum Contra Plaintiff's Brief in Support of Motion to Vacate or Modify the Arbitrator's Award

1/22/2014

Defendant Ohio Department of Mental Health and Addiction Services' Appendix

January 31, 2014

Plaintiff's Reply to the State's Brief in Opposition to his Motion to Vacate or Modify Arbitrator's Award

2/6/2014

Errata Correcting Plaintiff's Reply Briefs filed on January 31, 2014

January 31, 2014

Plaintiff's Reply to the Union's Brief in Opposition to his Motion to Vacate or Modify Arbitrator's Award

2/6/2014

Errata Correcting Plaintiff's Reply Briefs filed on January 31, 2014

The Court has also reviewed the Arbitration Hearing Transcript: Volumes I, II, III, and IV of 796 pages and the Arbitration Hearing Exhibits, which were filed on February 15, 2012.

Procedural History

Plaintiff was hired by the State of Ohio on November 8, 1999. At the time of his termination, Plaintiff was employed as a Psychiatric/MR Nurse at Heartland Behavioral Healthcare. Plaintiff's employer brought charges against him based upon allegedly

inappropriate comments made to his coworkers on July 14, 2010.

A pre-disciplinary meeting to discuss these charges was held on September 28, 2010. Plaintiff was subsequently found guilty of violating Rule 5.1 Failure to follow policies and procedures; Rule 5.3 Inappropriate communication/correspondence with a member of the public or staff; and Rule 5.12 Violation of ORC 124.34. Plaintiff was removed from his position at Heartland Behavioral Healthcare, effective November 9, 2010.

SEIU District 1199 filed a grievance on November 23, 2010 on Plaintiff's behalf regarding the order of removal. A Step 1 Meeting was held on November 27, 2011. When the removal was upheld at the Step 1 Meeting, SEIU District 1199 elected to bypass mediation and proceed directly to arbitration of the grievance submitted on Plaintiff's behalf.

On February 24, 2011, counsel for Plaintiff submitted a Notice of Demand for Arbitration. An arbitration hearing was held before Arbitrator Susan Grody Ruben (hereafter "Arbitrator") on June 15, 2011, July 7, 2011, July 11, 2011, and July 22, 2011. At the arbitration hearing, Attorney S. David Worhatch appeared on behalf of the Union for the representation of Jeffrey Bair. The Union waived its representation rights, and the grievant was represented by his private attorney.

After the four day arbitration hearing, the Arbitrator provided the parties with

the opportunity to submit written closing arguments on or before August 29, 2011.

On October 10, 2011, the Arbitrator issued an Award to the parties. The Arbitrator found that the State met the seven tests of just cause in its decision to terminate Plaintiff's employment. The Arbitrator denied the grievance in its entirety and upheld Plaintiff's removal from employment.

Plaintiff filed a Complaint and Motion to Vacate, Modify, or Correct Arbitration Award in this Court on January 10, 2012. Count One of Plaintiff's Complaint alleged an Action for Declaratory Relief pursuant to R.C. Chapter 2721, requesting a declaration that Plaintiff could assert his own claim in this Court. Count Two of Plaintiff's Complaint alleged a cause of action for Breach of Express Contract, requesting relief under the union contract. Count Three of Plaintiff's Complaint raised a Motion to Vacate, Modify, or Correct an Arbitration Award under R.C. Chapter 2711.

In a Judgment Entry filed on July 23, 2012, this Court granted the motions to dismiss filed by Defendants ODMH and SEIU District 1199 on February 10, 2012, and denied Plaintiff's Motion for Summary Judgment on Count One of the Complaint filed on March 21, 2012. The Court further ordered that Plaintiff's Complaint and Motion to Vacate, Modify, or Correct Arbitration Award was dismissed with prejudice to refile.

Plaintiff appealed the July 23, 2012, Judgment Entry to the Fifth District Court of Appeals, and the Court's ruling was affirmed in part and reversed and remanded in

part. The Fifth District Court of Appeals found that the dismissal of Count Three was premature, and that the facts and law raised lend themselves for further consideration of Count Three beyond the four corners of the pleadings. However, the Court of Appeals agreed with the Court's dismissal of Count One and Count Two of Plaintiff's Complaint.

Therefore, the Fifth District Court of Appeals vacated only the portion of the July 23, 2012 Judgment Entry that dismissed Count Three of Plaintiff's Complaint and remanded this matter back to this Court for further proceedings as to Count Three of the Plaintiff's Complaint Only.

Plaintiff also filed a **Motion for Reconsideration of Judgment Entry of July 23, 2012, and Alternate Motions for Relief from Same** on August 8, 2012. In a Judgment Entry filed on January 31, 2013, the Court denied Plaintiff's Motion for Reconsideration and found that it did not have jurisdiction to consider the other relief requested in Plaintiff's motion because of the pending appeal.

Upon remand, the Court reviewed Plaintiff's Motion for Reconsideration of Judgment Entry of July 23, 2012, and Alternate Motions for Relief from Same and dismissed the motion as moot in a Judgment Entry filed on November 13, 2013, based upon the Fifth District's order of remand. The Court further ordered that this matter would proceed on Count Three of the Complaint upon the briefs of the parties to be

submitted in accordance to the schedule provided therein.

ARGUMENTS

Plaintiff argues that relief should be granted under R.C. Chapter 2711. Plaintiff claims that the arbitrator's award should be vacated or modified, and the Court should fashion an appropriate remedy. Plaintiff argues that the award should be vacated for want of jurisdiction because the Arbitrator failed to make her award within the strict time limits fashioned by the parties. Plaintiff further argues that the award should be vacated or modified because the Arbitrator substituted her own brand of industrial justice or otherwise exceeded her powers. Plaintiff argues that the Arbitrator acted arbitrarily, capriciously, or not in accordance with law. Plaintiff claims that the arbitrator failed to appropriately assess the uncontroverted evidence admitted by her. Plaintiff further argues that the arbitrator executed her powers so imperfectly that a mutual, final and definite award upon the subject matter of Plaintiff's grievance ultimately was not made in the context of enforcing protections expressly guaranteed to Bair under the collective bargaining agreement.

Defendant SEIU District 1199 asserts that Plaintiff's Motion to Vacate or Modify the Arbitration Award in this matter should be dismissed. SEIU District 1199 argues that Plaintiff does not have standing to request that the Court vacate or modify the Arbitration Award. SEIU District 1199 argues that even if Plaintiff does have standing,

there is no sufficient justification to modify or vacate the award under the Ohio Revised Code. SEIU District 1199 argues that the arbitration award in this case was not procured by fraud or corruption, nor did the Arbitrator exceed her authority under the agreement, as the award drew its essence from the collective bargaining agreement. SEIU District 1199 argues that the arbitration award was not unlawful, arbitrary or capricious. Defendant SEIU District 1199 argues that the arbitration award is not void for want of jurisdiction despite the arbitrator's alleged failure to issue a decision within the discretionary timeline set forth in the collective bargaining agreement.

Defendant ODMH requests that the Court dismiss Plaintiff's Motion to Vacate or Modify the Arbitrator's Award. ODMH argues that Plaintiff's motion should fail because Plaintiff lacks standing to challenge the arbitration award because he was not a party to the arbitration. ODMH argues that the arbitrator correctly concluded that she held jurisdiction over Plaintiff's grievance when she commenced the arbitration hearing on June 15, 2011. ODMH argues that Plaintiff waived the right to challenge the jurisdiction of the Arbitrator because the arbitration hearing commenced after the required time because of the actions of Plaintiff's counsel. ODMH argues that the Arbitrator rendered a decision within the time allowed by the Contract according to the American Arbitration Association Labor Arbitration Rules. ODMH argues that Plaintiff incorrectly defines the conclusion of the hearing as the last day of the hearing. ODMH

argues that the Arbitrator properly found that there was just cause to terminate Plaintiff from his employment with ODMH. ODMH further argues that there was a rational nexus exists between the Arbitrator's finding that just cause existed to terminate Plaintiff and the collective bargaining agreement. ODMH argues that Plaintiff's motion should be denied because the arbitration award draws its essence from the collective bargaining agreement.

CONCLUSIONS OF LAW AND FINDINGS OF FACT

A worker whose employment is governed by a collective bargaining agreement, generally lacks standing to independently initiate grievance procedures, to sue under the collective bargaining agreement, or to attack the results of the grievance process in court. *Leon v. Boardman Twp.*, 100 Ohio St.3d 335, 2003-Ohio-6466, 800 N.E.2d 12, ¶16. "[W]hen an employee's discharge or grievance is arbitrated between an employer and a union under the terms of a collective bargaining agreement, the aggrieved employee does not have standing to petition a court to vacate the award pursuant to R.C. 2711.10, unless the collective bargaining agreement expressly gives the employee an independent right to submit disputes to arbitration." *Leon*, at ¶18.

However, R.C. 4117.03(A)(5) provides that "[p]ublic employees have the right to *** (5) Present grievances and have them adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms

of the collective bargaining agreement then in effect and as long as the bargaining representatives have the opportunity to be present at the adjustment." A public employee must assert his or her statutory right under R.C. 4117.03(A)(5) "before the employee invokes union representation." *Walters v. Lavelle*, 8th Dist. No. 95270, 2011-Ohio-116, ¶10.

"Once the employee chooses union representation, that employee lacks standing on all matters including an appeal." *Johnson v. Metro Health Medical Center*, 8th Dist. No. 79403, 2001-Ohio-4259, *2.

R.C. 2711.10 provides that:

"In any of the following cases, the court of common pleas shall make an order vacating the award upon the application of any party to the arbitration if:

(A) The award was procured by corruption, fraud, or undue means.

(B) There was evident partiality or corruption on the part of the arbitrators, or any of them.

(C) The arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(D) The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may direct a rehearing by the arbitrators."

R.C. 2711.11 provides that:

"In any of the following cases, the court of common pleas in the county wherein an award was made in an arbitration proceeding shall make an order modifying or correcting the award upon the application of any party to the arbitration if:

(A) There was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award;

(B) The arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matters submitted;

(C) The award is imperfect in matter of form not affecting the merits of the controversy.

The order shall modify and correct the award, so as to effect the intent thereof and promote justice between the parties."

R.C. 2711.13 provides, in relevant part, that "[a]fter an award in an arbitration proceeding is made, any party to the arbitration may file a motion in the court of common pleas for an order vacating, modifying, or correcting the award as prescribed in sections 2711.10 and 2711.11 of the Revised Code."

"[T]ime limits contained in a collective bargaining agreement are directory rather than mandatory unless the agreement states in unequivocal language that the parties

intend for the arbitrators to lose jurisdiction if their awards are not timely." *Martich v. Cleveland*, 76 Ohio App.3d 802, 804-805, 603 N.E.2d 381 (8th Dist. 1992), citing *Jones v. St. Louis-San Francisco Ry. Co.*, 728 F.2d 257 (6th Cir. 1984). "[I]n the absence of an unequivocal provision terminating an arbitrator's jurisdiction for rendering a tardy award, the arbitrator's authority continues for a reasonable time after the period originally established for release of the award. The determination of reasonableness must be made on a case-by-case basis with a view to the surrounding circumstances and to any aspects of prejudice or harm that either party suffers." *Martich*, at 805, citing *Jones*.

An arbitrator's authority is limited and is based upon the arbitration agreement. *Piqua v. Fraternal Order of Police*, 185 Ohio App.3d 496, 2009-Ohio-6591, 924 N.E.2d 876, ¶21. "[I]t is the language of the CBA and the arbitrator's own construction thereof, which determines the scope of the arbitrator's authority." *Eberhard Foods, Inc. v. Handy*, 868 F.2d 890, 892 (6th Cir. 1989). "Where the parties to a collective-bargaining agreement have clearly and unmistakably vested the arbitrator with the authority to decide the issue of arbitrability, the question of whether a matter is arbitrable is to be decided by the arbitrator." *Belmont Cty. Sheriff*, at ¶18.

When reviewing an arbitrator's determination that a dispute is subject to arbitration, the trial court should apply the same standard that it would apply to any

other matter that the parties agreed to arbitrate. *Stow Firefighters, IAFF Local 1662 v.*

Stow, 193 Ohio App.3d 148, 2011-Ohio-1559, 951 N.E.2d 152, ¶25, citing *Belmont Cty.*

Sheriff v. Fraternal Order of Police, Ohio Labor Council, Inc., 104 Ohio St.3d 568, 2004-Ohio-7106, 820 N.E.2d 918, at ¶11.

When reviewing the decision of an arbitrator, the court's role is limited. *United Paperworkers International Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 36, 108 S.Ct. 364 (1987). An arbitrator's award is presumed to be valid. *Cleveland v. Fraternal Order of Police, Lodge No. 8*, 76 Ohio App.3d 755, 758, 603 N.E.2d 351 (1991), citing *Findlay City School Dist. Bd. of Edn. v. Findlay Edn. Assn.*, 49 Ohio St.3d 129, 551 N.E.2d 186. "When parties agree to submit their dispute to binding arbitration, they agree to accept the result, regardless of its legal or factual accuracy." *Cleveland*, at 758, citing *Goodyear v. Local Union No. 200*, 42 Ohio St.2d 516, 330 N.E.2d 703 (1975).

A court may not vacate an arbitration award based upon a mere error in the interpretation or application of the law. *Massillon Firefighters IAFF Local 251 v. Massillon*, 5th Dist. Stark No. 2012CA00033, 2012-Ohio-4729, ¶22. "The arbitrator is *the final judge of both law and fact.*" *Massillon Firefighters IAFF Local 251*, at 22, citing *Goodyear*. "A court may not reject the factual findings of an arbitrator simply because it disagrees with them." *Stow Firefighters, IAFF Local 1662*, at ¶23.

The court is "limited to determining whether an arbitration award is unlawful, arbitrary, or capricious and whether the award draws its essence from the CBA." *Southwest Ohio Regional Transit Authority v. Amalgamated Transit Union, Local 627*, 91 Ohio St.3d 108, 110, 2001-Ohio-294, 742 N.E.2d 630, citing *Findlay City School Dist. Bd. of Edn.*, at paragraph two of the syllabus (1990); *Lancaster Educ. Ass'n v. Lancaster City School Dist. Bd. of Education*, 5th Dist. Fairfield No. 97 CA 82, 1998 WL 346841 (May 29, 1998). "As long as the arbitrator's award 'draws its essence from the collective bargaining agreement,' and is not merely 'his own brand of industrial justice,' the award is legitimate." *United Paperworkers Intern. Union, AFL-CIO*, at 36, quoting *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 596, 80 S.Ct. 1358, 1360 (1960).

"An arbitrator's award draws its essence from a collective bargaining agreement when there is a rational nexus between the agreement and the award, and where the award is not arbitrary, capricious or unlawful." *Mahoning Cty. Bd. of Mental Retardation and Developmental Disabilities v. Mahoning Cty. TMR Educ. Assn.*, 22 Ohio St.3d 80, 488 N.E.2d 872, paragraph one of the syllabus (1986).

"An arbitrator's award departs from the essence of a collective bargaining agreement when: (1) the award conflicts with the express terms of the agreement, and/or (2) the award is without rational support or cannot be rationally derived from the terms of the agreement." *Ohio Office of Collective Bargaining v. Ohio Civil Service*

Employees Association, Local 11, AFSCME, AFL-CIO, 59 Ohio St.3d 177, 572 N.E.2d 71, at

paragraph one of the syllabus.

Public policy is in favor of arbitration. *Southwest Ohio Regional Transit Authority*, at 109, citing *Brennan v. Brennan*, 164 Ohio St. 29, 128 N.E.2d 89, paragraph one of the syllabus (1955).

“Arbitrators have noted that the contractual right of the employer to discipline and discharge employees for ‘just cause’ requires the arbitrators to make two determinations in considering cases: (1) whether a cause for discipline exists and (2) whether the amount of discipline was proper under the circumstances.” *Bd. of Trustees of Miami Twp. v. Fraternal Order of Police*, 81 Ohio St.3d 269, 271-272, 1998-Ohio-629, 690 N.E.2d 1262, citing Schoonhoven, *Fairweather’s Practice and Procedure in Labor Arbitration* (3 Ed. 1991).

The Daugherty test is sometimes used to determine whether there was just cause for termination. See *Summit Cty. Children Servs. Bd. v. Communication Workers of America, Local 4546*, 113 Ohio St.3d 291, 2007-Ohio-1949, 865 N.E.2d 31, ¶9. “The seven tests, presented as questions, are as follows: ‘1. Did the company give to the employee forewarning or foreknowledge of the possible or probabl[e] disciplinary consequences of the employee's conduct?’ ‘2. Was the company's rule or managerial order reasonably related to (a) the orderly, efficient, and safe operation of the company's business and (b)

the performance that the company might properly expect of the employee?' '3. Did the company, before administering discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?' '4. Was the company's investigation conducted fairly and objectively?' '5. At the investigation did the 'judge' obtain substantial evidence or proof that the employee was guilty as charged?' '6. Has the company applied its rules, orders, and penalties evenhandedly and without discrimination to all employees?' '7. Was the degree of discipline administered by the company in a particular case reasonably related to (a) the seriousness of the employee's proven offense and (b) the record of the employee in his service with the company?'" *Summit Cty. Children Servs. Bd.*, at ¶9, fn. 1.

In order to find that two employees are similarly situated in a disciplinary context, a plaintiff and his or her proposed comparator must have both engaged in acts of "comparable seriousness." *Wright v. Murray Guard, Inc.*, 455 F.3d 702, 710 (6th Cir. 2006), citing *Clayton v. Meijer, Inc.*, 281 F.3d 605, 611 (6th Cir. 2002). "[T]o determine whether two individuals are similarly situated with regard to discipline we 'make an independent determination as to the relevancy of a particular aspect of the plaintiff's employment status and that of the [proposed comparable] employee.'" *Wright*, at 710.

Upon review of the relevant law, arguments of the parties and the record, the Court **FINDS** that Plaintiff does have standing to challenge the arbitration award.

The Court **FINDS** that at the time of the subject incident, the terms of Plaintiff's employment were governed by the 2009-2012 Contract between SEIU/District 1199 and the State of Ohio (hereafter, the "Contract").

The Court **FINDS** that Article 7 of the Contract provided the grievance procedure to be followed in this matter, including provisions regarding when arbitration is demanded.

The Court **FINDS** that Section 7.06 provides, in part, that "[t]he parties shall conduct an arbitration within sixty (60) days of the date of the arbitration request. The parties agree that there shall be no more than one (1) thirty (30) day continuance requested for arbitration. If a cancellation is initiated by an arbitrator, the arbitration shall be conducted within thirty (30) days of the cancellation. However, grievances involving criminal charges of on-duty actions of the employee, grievants unable to attend due to a disability, or grievances involving an unfair labor practice charge may exceed the time limits prescribed herein."

The Court **FINDS** that the Contract did not state that the arbitrator would lose jurisdiction if the hearing did not occur within the provided timeline.

The Court further **FINDS** that the Contract was silent on the issue of what, if any, consequence would result if the arbitrator failed to meet the timelines provided in Article 7.

The Court **FINDS** that Plaintiff submitted a Notice of Demand for Arbitration on February 24, 2011.

The Court **FINDS** that on April 18, 2011, Plaintiff was offered the date of May 17, 2011 for the arbitration. (Plaintiff Exhibit 73).

The Court **FINDS** that counsel for Plaintiff requested a 30-day extension and a date after May 17, 2011 for the arbitration. (Plaintiff Exhibit 76).

The Court **FINDS** that Plaintiff made a request to the Arbitrator for discovery and a hearing date that permitted time for that discovery, and Plaintiff suggested possible hearing dates of May 27 and 31 and June 1, 7, 8, 13, 14, 15, 21, 22, 27, 28, and 29. (Plaintiff's Exhibit 76).

The Court **FINDS** that Plaintiff contemplated the need for a potential date after his suggested dates if one of these dates was not promptly scheduled. (Plaintiff's Exhibit 76).

The Court **FINDS** that Plaintiff's counsel subsequently objected to the jurisdiction of the Arbitrator based upon the arbitration hearing taking place after the time permitted by the Contract.

The Court **FINDS** that the Arbitrator found that she did have jurisdiction to arbitrate the subject grievance and found that the grievant waived the jurisdictional challenge by suggesting June 15, 2011 for the first day of the hearing due to Plaintiff's

counsel's scheduling conflict with an earlier date suggested by the State.

The Court **FINDS** that Section 7.07(D) of the Contract further provides, in part, that "[t]he arbitrator shall render the decision as quickly as possible, but in any event, no later than forty-five (45) days after the conclusion of the hearing unless the parties agree otherwise."

The Court **FINDS** that American Arbitration Association Labor Arbitration Rule No. 31 provides, in part, that "[i]f briefs or other documents are to be filed, the hearings shall be declared closed as of the final date set by the arbitrator for filing with the AAA."

The Court **FINDS** that, at the close of the hearing, the Arbitrator gave the parties the opportunity to submit closing briefs on or before August 29, 2011. (Transcript at page 767).

The Court **FINDS** that the due date was chosen partially to accommodate a previously scheduled vacation by the employer's attorney and partially to provide Plaintiff's counsel with an additional weekend to complete the brief. (Transcript at page 766).

The Court **FINDS** that, at the close of the arbitration hearing, the Arbitrator informed Plaintiff's counsel that the date the decision was due was determined by the due date for the closing briefs. (Transcript at page 759).

The Court **FINDS** that the Arbitrator issued her decision on October 10, 2011.

The Court **FINDS** that Section 7.07(E)(1) provides that “[o]nly disputes involving the interpretation, application or alleged violation of a provision of this Agreement shall be subject to arbitration. The arbitrator shall have no power to add to, subtract from, or modify any of the terms of this Agreement, nor shall he/she impose on either party a limitation or obligation not specifically required by the express language of this Agreement. Questions of arbitrability shall be decided by the arbitrator. Once a determination is made that a matter is arbitrable, or if such preliminary determination cannot be reasonably made, the arbitrator shall then proceed to determine the merits of the dispute.”

Based upon the relevant law and the findings of fact above, the Court **FINDS** that the Arbitrator’s determination that she had the authority and jurisdiction to hear and determine the subject dispute was not unlawful, arbitrary or capricious.

The Court further **FINDS** that the delay in the commencement of the hearing was not unreasonable under the circumstances.

The Court likewise **FINDS** that the Arbitrator’s determination that the date the decision was due should be determined by the date of the closing was also not unlawful, arbitrary or capricious.

The Court further **FINDS** that the Arbitrator’s decision was **not** untimely based

upon the Arbitrator's reasonable finding that the due date was to be determined by the due date of the closing briefs.

The Court **FINDS**, therefore, that the Plaintiff's arguments regarding the Arbitrator's lack of jurisdiction are not well taken.

The Court **FINDS** that Section 8.01 of the Contract provides that "[d]isciplinary action may be imposed upon an employee only for just cause."

Likewise, the Court **FINDS** that Heartland Behavioral Healthcare Policy No. 3.14, effective February 11, 2010, (hereafter "HBH Policy No. 314") also provided that "[m]anagement will discipline employees only for just cause."

The Court **FINDS** that Section 8.02 of the Contract provides, in part, that "[t]he principles of progressive discipline shall be followed. These principles usually include: A. Verbal Reprimand; B. Written Reprimand; C. A fine in an amount not to exceed five (5) days pay; D. Suspension; E. Removal.

The Court **FINDS**, however, that Section 8.02 of the Contract further provides that "[t]he application of these steps is contingent upon the type and occurrence of various disciplinary offenses."

The Court **FINDS** that ODMH dedicated itself to a policy of corrective, progressive discipline. (ODMH No. AH-22, Section C(2)).

The Court **FINDS**, however, that their policy did not foreclose the possibility

that certain offenses would warrant severe discipline, including removal. (ODMH No. AH-22, Section C(2)).

The Court further **FINDS** that potential discipline for a Level 5 infraction, such as the infractions allegedly committed by Plaintiff, was discretionary and ranged from the possibility of a verbal sanction up to termination on a first time offense. (ODMH No. AH-22, Attachment B).

The Court **FINDS** that HBH Policy No. 3.14 also provided, in relevant part, as follows: "It is of equal importance that disciplinary actions shall be for just cause and shall be administered fairly and consistently throughout HBH within the guidelines set herein. The suggested discipline outlined shall also be commensurate with the offense taking into account the severity of the violation, mitigating circumstances, as well as previous discipline. HBH and the ODMH are dedicated to the policy of progressive discipline. Disciplinary action should be imposed with the intent of giving the employee the opportunity to correct his/her behavior so long as the discipline is commensurate with the offense. If the behavior is not corrected, discipline should become increasingly more severe, up to and including removal. Certain offenses warrant severe discipline to include removal on the first offense."

The Court **FINDS** that HBH Policy No. 3.14 Disciplinary Guidelines provide that a first offense pertaining to use of obscene, abusive, or insulting language are subject to

suggested discipline ranging from a reprimand to a five-day suspension.

The Court **FINDS** that HBH Policy No. 3.14 Disciplinary Guidelines provide that a first offense pertaining to acts of discrimination or insult on the basis of race, color, sex, age, religion, national origin, or disability are subject to suggested discipline ranging from a two-day suspension to removal.

Upon review of the record and the Daugherty test, the Court **FINDS** that the Arbitrator's determination that the State met the seven tests of just cause was not unreasonable.

The Court **FINDS**, based upon the above conclusions of law and findings of fact, that the Arbitrator's Award draws its essence from the Contract and is not unlawful, arbitrary or capricious.

The Court **FINDS** that there is no basis to modify or vacate the Arbitrator's Award under R.C. 2711.10 or R.C. 2711.11.

The Court **FINDS**, therefore, that the Arbitrator's Award dated October 10, 2011, should be **Affirmed**.

Decision

It is therefore **ORDERED** that the Arbitrator's Award dated October 10, 2011, shall be **Affirmed**.

It is further **ORDERED** that Count Three of Plaintiff's Complaint should be

dismissed with prejudice.

It is further **ORDERED** that Court costs shall be assessed to Plaintiff.

It is further **ORDERED** that the Clerk of Courts shall close the case file and remove it from the pending docket of the undersigned.

IT IS SO ORDERED.



Judge Elizabeth Lehigh Thomakos

Dated: July 14, 2014

cc: S. David Worhatch, Esq.
Jaclyn Tipton, Esq. & Cathrine J. Harshman, Esq.
Matthew J. Karam & Joseph Rosenthal, Assistant Attorneys General
Mediation Department
Court Administrator