

**ARBITRATION DECISION NO.:**

352

**UNION:**

OCSEA, Local 11, AFSCME, AFL-CIO

**EMPLOYER:**

Department of Health

**DATE OF ARBITRATION:**

January 10, 1991

**DATE OF DECISION:**

June 4, 1991

**GRIEVANT:**

Lawrence Shackelford

**OCB GRIEVANCE NO.:**

14-00-(90-07-05)-0054-01-07

**ARBITRATOR:**

Rhonda R. Rivera

**FOR THE UNION:**

John Porter, Esq.

Dane Brady, Esq.

**FOR THE EMPLOYER:**

David White, ODH

Tim Wagner, OCB

**KEY WORDS:**

Removal

Last Chance Agreement

Constructive Discharge

**ARTICLES:**

Article 24-Discipline

§24.01-Standard

**FACTS**

On January 10, 1991, the Arbitrator heard the grievance of an employee of the Ohio Department of Health. At the close of the evidence, the Arbitrator indicated that she would find just cause for the grievant's dismissal. However, she asked both the employer and union to consider a settlement. She suggested a settlement because testimony had indicated that unusual family problems may have indirectly provoked the dangerous conduct of the grievant.

With the mediation efforts of the Arbitrator, the employer and union agreed to the reinstatement of the grievant under a Last Chance Agreement. The Agreement provided that the employee agreed to seek assistance to deal with the problem of uncontrollable temper, making verbal threats or threats of physical

harm and using abusive language. It was to have been in effect for a period of two years from the date of signing. It was explained to the employee that further occurrences of insubordination or failure of good behavior would result in his termination from employment without appeal. The agreement was approved by the Arbitrator.

However, the grievant, by letter to his union dated February 11, 1991, has refused to sign and abide by the Last Chance Agreement. He states that the agreement is so restrictive that it amounts to a constructive discharge. Consequently, the union and the employer returned the matter to the Arbitrator.

**AWARD:**

The Arbitrator, on January 10, 1991, found just cause for the grievant's removal. The grievance is denied.

**TEXT OF THE OPINION:**

In the Matter of the  
Arbitration Between

**OCSEA, Local 11  
AFSCME, AFL-CIO**  
Union

and

**State of Ohio  
Ohio Department of Health**  
Employer.

**Grievance No.:**  
14-00-900705-0054-01-07

**Grievant:**  
Lawrence Shackleford

**Hearing Date:**  
January 10, 1991

**Award Date:**  
June 4, 1991

**For the Union:**  
John Porter, Esq.  
Dane Brady, Esq.

**For the Employer:**  
David White, ODH  
Tim Wagner, OCB

**AWARD**

On January 10, 1991, the Arbitrator heard the Grievance of Lawrence Shackleford. At the close of the evidence, the Arbitrator indicated that she would find just cause for the Grievant's dismissal. However, she asked both the Employer and Union to consider a settlement. She suggested a settlement because

testimony had indicated that unusual family problems may have indirectly provoked the dangerous conduct of the Grievant.

With the mediation efforts of the Arbitrator, the Employer and Union agreed to the reinstatement of the Grievant under a last chance agreement. The agreement was approved by the Arbitrator. (See attachment.)

The Grievant, by letter to his Union dated February 11, 1991, has refused to sign and abide by the Last Chance Agreement. (See attachment.) Consequently, the Union and the Employer have returned the matter to the Arbitrator.

The Arbitrator, on January 10, 1991, found just cause for the Grievant's discipline.

### **Award**

Grievance is denied.

Date: June 4, 1991

RHONDA R. RIVERA, Arbitrator

### **LAWRENCE SHACKELFORD LAST CHANCE AGREEMENT**

The Ohio Department of Health (ODH), Ohio Civil Service Employees Association (OCSEA) and Lawrence Shackelford (Employee) agree to enter into this last-chance contract pursuant to the bench decision by Arbitrator Rivera in grievance #14-00-900705-054-01-07 wherein the employee agrees to seek assistance to deal with the problem of uncontrollable temper, making verbal threats or threats of physical harm and using abusive language.

The employee understands this last-chance agreement will be in effect for a period of 2 (two) years from the date of signing. The employee will strictly follow any treatment plans developed by a treatment provider designated by Arbitrator Rhonda Rivera. The employee also agrees that the Ohio Employee Assistance Program (E.A.P.) will monitor the employee's compliance in keeping appointments and complying with any treatment requirements. Such verification will be made by an E.A.P. Case Monitor. Initially, the employee is required to seek counsel from his Pastor (name) at least once each week for the first three months of this agreement.

If ODH is unable to secure needed information from the Case Monitor, the employee shall provide the ODH representative with such information within five (5) days of request.

The employee agrees to participate in any follow-up care as recommended or required by the provider and/or Arbitrator Rivera, and agrees that verification of compliance is to be provided to the ODH designee by the Case Monitor.

The ODH agrees that, so long as this agreement is complied with in good faith, the discipline of termination shall be held in abeyance. Effective June 25, 1990, Mr. Shackelford will be listed as on suspension without pay until \_\_\_\_\_ 1991.

The employee understands and agrees that further occurrences of insubordination or failure of good behavior shall result in his termination from employment without appeal. The employee understands that refusal to follow direct orders is insubordination. Any verbal altercation with supervisors, co-workers, contractors, law enforcement officers or the general public during work hours or in activities related to work shall be considered failure of good behavior. Verbal altercations include, but are not limited to, use of abusive or vulgar language; threatening to inflict harm, name calling, etc. The employee shall not possess a weapon of any kind while on state time or in a state vehicle including anything described as a knife.

Possession of such a weapon shall constitute grounds for termination. Any attempt to threaten physical harm by use of his person, a weapon, or any object that could inflict harm will be grounds for immediate termination without appeal.

Any violation of this agreement by the employee will result in the termination of Mr. Shackelford from employment with ODH. The employee and the union may grieve only whether the incident which prompted the termination took place.

Employee and OCSEA/AFSCME individually and collectively agree to waive any and all rights that they may currently or subsequently possess to receive any reparation, restitution or redress for the events which formed the basis of this agreement including the right to have the issue resolved through arbitration, or through resort to administrative appeal or through the institution of legal action in Federal or State court.

OCSEA/AFSCME agree to waive any and all rights it may currently or subsequently possess to obtain any reparation, restitution or redress for its members as a result of the events which formed the basis of this agreement, including the right to have the issue resolved through arbitration, or through resort to administrative appeal or through the institution of legal action in Federal or State court.

The employee acknowledges receiving a copy of this agreement and that he has been fully informed of its terms and consequences, and hereby enters this contract after having been so advised by his union representative.

The employee will return to active pay status effective \_\_\_\_\_, 1991 as ordered by Arbitrator Rhonda Rivera. The Arbitrator retains jurisdiction over this matter until this last chance agreement expires.

\_\_\_\_\_  
Employee      Date

\_\_\_\_\_  
OCSEA        Date

\_\_\_\_\_  
ODH            Date

\_\_\_\_\_  
Arbitrator    Date

**UNDER PROTEST**, I resign from my position as Plumbing Inspector with The Ohio Dept. of Health. I cannot accept the unfair rules and conditions given to me in order to return to my job (Sign them or be terminated) such as:

- 1) Refusing use of State Vehicle
- 2) Waiving rights to legal action

EFFECTIVE Feb. 11, 1991

I feel I am being accused, discriminated against, and employment under these conditions would be unbearable and an end of employment would be a matter of time as seen to by authoritative figures.

These conditions were not imposed on me during my employment for nine years and I protest them being so now.

Lawrence Shackelford

Date: 2-11-91