

In the Matter of Arbitration Between the : Grievance Number: DRC-2021-01924-03
: :
STATE OF OHIO, DEPARTMENT OF :
REHABILITATION AND CORRECTION, :
ALLEN/OAKWOOD CORRECTIONAL : Grievant: Taylor Triplett
INSTITUTION, :
Employer :
and the :
: Date of Record Hearing: April 26, 2022
: :
OHIO CIVIL SERVICE EMPLOYEES :
ASSOCIATION, AMERICAN FEDERATION :
OF STATE, COUNTY AND MUNICIPAL :
EMPLOYEES, LOCAL 11, AFL-CIO, : Howard D. Silver, Esquire
Union : Arbitrator

DECISION AND AWARD OF THE ARBITRATOR

APPEARANCES

For: State of Ohio, Department of Rehabilitation and Correction,
Allen/Oakwood Correctional Institution, Employer

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PROCEDURAL BACKGROUND

This matter came on for a remote arbitration hearing via the teleconferencing platform ZOOM at 9:00 a. m. on April 26, 2022. At the hearing both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions. The arbitration hearing concluded at 1:50 p. m. on April 26, 2022 and the evidentiary portion of the hearing record was closed at that time.

Post-hearing briefs from the parties were received by the arbitrator by June 15, 2022 and exchanged between the parties on June 15, 2022.

This matter proceeds under the authority of a collective bargaining agreement in effect between the parties from April 21, 2021 to February 28, 2024.

No challenge to the arbitrability of the grievance has been raised. The arbitrator finds the grievance arbitrable under the language of the parties' collective bargaining agreement and properly before the arbitrator for review and resolution.

JOINT ISSUE

Was the Grievant, Taylor Triplett removed for just cause? If not, what shall the remedy be?

JOINT STIPULATIONS

1. The grievance is properly before the Arbitrator.
2. The grievant was hired on April 30, 2018.
3. The grievant received the Standards of Employee Conduct.
4. The grievant was issued a Removal on June 14, 2021.
5. The Removal was issued for a violation of the following work rule:

Rule 40: Use of excessive force toward any individual under the supervision of the Department or a member of the general public.

Rule 43: Using force on any individual under the supervision of the Department when force was not authorized to be used.

6. Alleged violation of Article 24 of the Collective Bargaining Agreement between the State of Ohio and The Ohio Civil Service Association.

STATEMENT OF THE CASE

The parties to this arbitration proceeding, the State of Ohio, Department of Rehabilitation and Correction, Allen/Oakwood Correctional Institution, hereinafter referred to as the Employer, and the Ohio Civil Service Employees Association, American Federation of State, County and Municipal Employees, Local 11, AFL-CIO, hereinafter referred to as the Union, are parties to a collective bargaining agreement in effect from April 21, 2021 to February 28, 2024. Within the parties' collective bargaining agreement, in Article 5, the Employer is reserved the management right to suspend, discharge, and discipline employees, except as that management right is specifically abridged, deleted, granted or modified by an express and specific written provision of the parties' Agreement.

Article 24, section 24.01, an express and specific written provision of the parties' Agreement, begins with the following language: "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..."

The grievant in this proceeding, Taylor Triplett, was hired by the Employer on April 30, 2018 to fill the position of Correction Officer. The grievant was employed as a Correction Officer at the Allen Oakwood Correctional Institution.

On December 31, 2020, at around 3:59 p. m., on living unit E within the Oakwood part of the

institution, the grievant used force against an inmate while escorting the inmate to the inmate's cell from a common area. During this use of force incident the inmate's hands had been handcuffed in front of the inmate. As the inmate and the grievant entered the inmate's cell both men went to the floor and the inmate was struck in the eye by Correction Officer Triplett using his fist. A second correction officer had been present during this inmate's escort and called in a security alert for assistance. Assistance arrived within twenty (20) seconds of the transmission of the security alert and the situation was stabilized.

Following an investigation by the Employer of the events of December 30, 2020, Correction Officer Triplett was removed from his employment effective June 14, 2021. The Notice of Removal issued to Correction Officer Triplett alleged a use of excessive force by Officer Triplett against an individual who was under the supervision of the Department, a violation of Work Rule 40, and alleged a use of force by Officer Triplett upon an individual under the supervision of the Department when force was not authorized to be used, a violation Work Rule 43.

On June 17, 2021, the Union filed with the Employer a written grievance challenging the discharge of Correction Officer Triplett that had occurred effective June 14, 2021. The Union's June 17, 2021 grievance claimed that the grievant had been unjustly and wrongfully removed from his employment by the Employer, that there were many inconsistencies in statements taken during the Employer's investigation of this matter, that the use of force had been examined by experts and determined to have been justified and necessary, and the grievant had been physically harmed in the interaction with the inmate. The Union alleged in its grievance on behalf of Mr. Triplett that documents gathered during the investigation had been withheld from the Union, and inmates' stories had been changed. The grievance also notes the lack of any prior discipline on the employment record of the grievant.

The grievance concerning the grievant's June 14, 2021 discharge was reviewed through the implementation of the parties' grievance procedure but the grievance remained unresolved between the parties. The unresolved grievance was directed on to final and binding arbitration by the Union pursuant to Article 25, section 25.02, Step Two.

The arbitration hearing occurred on April 26, 2022. Post-hearing briefs were received and exchanged between the parties on June 15, 2022.

SUMMARY OF TESTIMONY

Cori Smith

Cori Smith is the Deputy Warden of Special Services at Allen Oakwood Correctional Institution and has served in this capacity since 2015. Ms. Smith has provided twenty-eight (28) years of service within the Ohio Department of Rehabilitation and Correction. Ms. Smith's career progression went from Secretary to Account Clerk to Business Administrator 2 to Warden's Assistant, to Deputy Warden for Special Services beginning in 2015.

Deputy Warden Smith explained that the Allen part of the institution houses general population inmates while the Oakwood part of the institution houses a specialized unit focused on mental health issues, such as dementia, Alzheimer's disease, and other cognitive and intellectual disabilities. Deputy Warden Smith noted that the provision of these mental health services is authorized by statute, Ohio Revised Code section 5120.51. Deputy Warden Smith noted that special mental health training is required of staff members working in the Oakwood part of the institution, training completed by Correction Officer Triplett on May 22, 2018. See Tab 4, pages 21-22, the training record of the grievant. This training record also notes the completion of training by Correction Officer Triplett on October 25, 2019 in Use of Force and in Active Aggressor. On August 21, 2019 Correction Officer

Triplett is reported to have completed training in immobilizing restraints.

Under questioning by the Union's representative, Deputy Warden Smith confirmed she was familiar with the inmate involved in the December 31, 2020 use of force incident, noting that this inmate was assigned a security level of 3 or 4, lower levels of trust with fewer privileges.

Deputy Warden Smith identified Tab 5, page 126 as the Use of Force policy of the Department of Rehabilitation and Correction, policy number 63-UOF-01, a policy that took effect on November 2, 2020.

Brooke Featheringham

Brooke Featheringham serves as a Mental Health Administrator 4 within the Department of Rehabilitation and Correction and has provided twenty-six (26) years of service to the Department. Past positions filled by Ms. Featheringham include Social Worker, Mental Health Administrator 2, Unit Manager, and Mental Health Administrator 4.

Ms. Featheringham identified Tab 4, page 1 as the first page of the Investigation Summary Report about the December 31, 2020 use of force incident involving the grievant. The date of this report is March 19, 2021 and is directed to the Warden. This investigation reports includes statements from the inmate involved in the use of force, another inmate in the area, the grievant, and other Correction Officers who had responded to the security alert on unit E2. The inmate claims he was grabbed by the grievant when they were in the inmate's cell's doorway, slammed to the floor, and punched repeatedly in the eye and the ribs by the grievant.

The statement from Correction Officer Triplett, as presented in the Investigation Summary, recalls the inmate as having been irritated by being directed to conclude his telephone call so others could use the telephone. The grievant recalled the inmate had been acting oddly and had been

handcuffed by a coworker, Correction Officer Best, with the inmate's hands in front of him, rather than with handcuffed hands behind, the accepted procedure. When the inmate began moving his arms in an aggressive manner and exhibited a reluctance to walk, Correction Officers Best and Triplett, each holding an arm of the inmate, walked the inmate to his cell and attempted to position the inmate in his cell so as to remove the handcuffs from the inmate in the prescribed manner, through a portal in the cell door. The grievant recalled the inmate refused to cooperate in this procedure. The grievant recalls the inmate losing his balance, stumbling, grabbing the grievant's hand and pulling down Correction Officer Triplett in an attempt to take him to the floor. The grievant claimed that the inmate repeatedly used the handcuffs to punch the grievant in the grievant's right side. The grievant stated in his statement as presented in the Investigation Summary: "... I closed fist striked (sic) with my right hand to his right eye which was the area of opportunity while giving him verbal commands to stop resisting..."

Ms. Featheringham testified that at the conclusion of the investigation of the December 31, 2020 use of force incident she had concluded that there had been no reason for Correction Officer Triplett to enter the inmate's cell.

Ms. Featheringham explained that there are two video recordings of the events in question – one that begins with the inmate on the telephone and continuing through the use of force incident, and a second video recording of what occurred after the use of force incident.

Ms. Featheringham noted that the first video recording shows the inmate on the telephone located in a cage in a common area. The inmate in this telephone call is discussing a cousin's funeral with the inmate's mother, and Correction Officer Best can be seen waiting for the call to conclude. Correction Officer Triplett is observed entering the area.

The inmate at the beginning of the first video recording can be seen pacing back and forth. The inmate hangs up the telephone and is handcuffed with his hands in front of him by Correction Officer

Best. When the inmate exits the cage containing the telephone, the inmate raises both handcuffed arms and then lowers them. With Officer Best holding one arm of the inmate and Officer Triplett holding the other arm of the inmate, the inmate is escorted to the inmate's cell, to just inside the cell's doorway. Ms. Featheringham testified that the inmate has denied pulling anyone into his cell as he entered his cell.

The second video recording shows the inmate being escorted into a security cage, from which his handcuffs are removed. This video was recorded after the use of force incident and shows the inmate's right eye to have been swollen and discolored. The inmate says in this video recording that he had been pushed onto his bed and punched. The inmate states that he is unable to use his right eye to see.

Ms. Featheringham referred to Tab 4, page 6, the sixth page of the Investigation Summary Report, wherein it is noted, under the subtitle "Inconsistencies", that: "No video footage of the incident inside the cell but there is video from E2C hay hall showing the recreation cage to the inmate's cell. Officer Triplett reported that [Inmate] 521-518 bumped him while opening his cell door, but Officer Triplett does not mention that during his interview..." This note concludes with: "RIB found inmate [***] not guilty of a rule 4."

Ms. Featheringham identified Tab 4, page 20 as the Use of Force Report prepared and signed by Correction Officer Triplett on December 31, 2020. The report states the incident took place at about 3:57 p. m. on December 31, 2020, identified the inmate involved in the use of force, and described the use of force as reactive rather than planned. The description of the incident by Officer Triplett in his report was that the inmate had been agitated about the length of his telephone call, and had been pacing in an odd manner. When the inmate stepped out of the cage containing the telephone he raised his handcuffed arms and pulled away from Correction Officer Best, whereupon Officer Best resecured the inmate's left arm and Officer Triplett secured the inmate's right arm while directing the inmate to

walk to his cell, to which the inmate was resistant. Officer Triplett says in his use of force report that when he got the inmate to the doorway of the inmate's cell, the inmate bumped into Officer Triplett, grabbed Officer Triplett's right hand, and pulled Officer Triplett toward the interior of the cell. Upon being pulled into the cell by the inmate, reports Officer Triplett, both men fell to the floor of the cell, whereupon Officer Triplett ordered the inmate to stop fighting. The inmate continued using the handcuffs in delivering repeated blows to Officer Triplett's ribs. Officer Triplett reacted by delivering a closed fist strike to the inmate's face. Assistance arrived and the situation was stabilized. No further incident of force occurred.

Ms. Featheringham noted that she looked at both video recordings and neither recording showed Officer Triplett being bumped by the inmate or being pulled to the cell floor by the inmate.

Ms. Featheringham testified that the training provided at the institution always called for handcuffing an inmate's hands behind the inmate.

Ms. Featheringham expressed the opinion that the inmate in question had a mental age of 12 - 13 years.

Under questioning by the Union's representative, Ms. Featheringham confirmed that at Tab 4, page 17, in answer to question 21, about whether the Union wanted to add something, Correction Officer Triplett added: "MH should not investigate a Use of Force on a MH inmate. "

Ms. Featheringham was referred to Tab 5, page 162, Ohio Administrative Code section 5120-9-01, a rule titled "Use of force" that took effect on October 19, 2019. Section (B)(1)(b) of this rule provides that: "The use of one's hands with minimal force such as may be necessary or incidental to the application of restraints, or to restrain, guide, support, or direct, etc., an inmate during procedures such as the transport, escort or movement of an inmate shall not in itself be considered a reportable use of force."

Derek Szabados

Derek Szabados is a Correction Lieutenant who has been employed by the Department of Rehabilitation and Correction for twenty-two (22) years. Lieutenant Szabados was hired as a Correction Officer, has worked as a Training Officer, and is now serving as a Correction Lieutenant.

Lieutenant Szabados referred to Tab 4, page 39, the first page of an interview of Correction Lieutenant Szabados on February 2, 2021 by Ms. Featheringham. Lieutenant Szabados noted at Tab 4, page 40 that on December 31, 2020 he had responded to a security alert on living unit E2. At Tab 4, page 40, question three asks about how the inmate had been handcuffed, in front or in back. Lieutenant Szabados recalled in his answer to this question that the hands of the inmate had been handcuffed in front of the inmate. Lieutenant Szabados stated that all staff are trained to handcuff the hands of an inmate behind the inmate, and stated that to handcuff an inmate in front of the inmate is a breach of a standard operating procedure that is known to all.

At Tab 4, page 41, question 13 asked Lieutenant Szabados to identify the proper technique in moving an inmate from the recreation cage to the inmate's cell. Lieutenant Szabados's response to this question was: "Nothing actually in writing. Nothing in policy. Taught to stand couple steps behind and to the side. Place hands on inside of bicep and walk with inmate to make sure they are safe, not to guide them. E2 not mandatory to cuff from behind. He was not on a security plan."

At Tab 4, page 40 Lieutenant Szabados is asked what injuries he observed on the inmate. Lieutenant Szabados stated that the inmate's "... right eye was swollen with bump and bruise on face..."

Lieutenant Szabados identified Tab 4, page 43 as the first page of an interview of Correction Officer Walters by Ms. Featheringham conducted on January 21, 2021. When asked by question 11 on page 44 whether any injuries had been observed on the inmate, Correction Officer Walters responded: "He had a mark above his eye."

Lieutenant Szabados identified Tab 4, page 61 as the first page of an interview of Justin Lemasters, a Correction Officer, on January 29, 2021 by Ms. Featheringham. At Tab 4, page 62, the answer to question five from Correction Officer Lemasters about any injury observed on the inmate is: "Above his right eye was a little bruised."

Lieutenant Szabados identified Tab 4, page 74 as the first page of an interview of Melissa Brewer, a Psychiatric Attendant, on January 14, 2021 by Ms. Featheringham. At Tab 4, page 75 question six asked Ms. Brewer if she observed Officer Best or Officer Triplett hit/strike/knee/ punch/sit on inmate [***] 521-518, to which Ms. Brewer responded: "No." When asked by question eight what injuries on the inmate she had observed, Ms. Brewer answered: "After they brought him out of his cell, I observed a scar above his eye by the brow."

Lieutenant Szabados referred to Tab 4, page 13, part of the interview of Officer Triplett on January 22, 2021 conducted by Ms. Featheringham. Question thirteen asked Officer Triplett if he had observed injuries to the inmate, to which Officer Triplett had responded: "No."

Lieutenant Szabados noted that at Tab 4, page 40, part of Lieutenant Szabados's interview on February 2, 2021 by Ms. Featheringham, question nine asked Lieutenant Szabados what the inmate had told Lieutenant Szabados about what had happened in the inmate's cell, to which Lieutenant Szabados responded: "Officers punched him in the face and that is what caused him to fall to the ground then they started punching him in the ribs. RN did not notice trauma to ribs."

Lieutenant Szabados recalled that the inmate had requested that a "white shirt" be summoned. Lieutenant Szabados testified that based on that request, the shift supervisor should have been summoned, with the inmate secured in his cell.

Lieutenant Szabados recalled that he examined the video recordings of the events in question. Lieutenant Szabados stated he did not observe in these videos the inmate pulling Correction Officer

Triplett into the inmate's cell. Lieutenant Szabados noted that there is no video recording of what occurred inside the inmate's cell.

Lieutenant Szabados identified Tab 4, page 17, part of Officer Triplett's March 15, 2021 interview by Ms. Featheringham, asking about the reason for Officers Best and Triplett entering the inmate's cell, to which Officer Triplett had responded: "Officer Best was outside the cell and called the security alert prior to me being able to get out of the cell doorway inmate [***] took off into the cell."

Under questioning by the Union's representative, Lieutenant Szabados was referred to Tab 4, page 41, his answer to question thirteen about the proper technique for escorting an inmate from the recreation cage to the inmate's cell, which reads: "Nothing actually in writing. Nothing in policy. Taught to stand couple steps behind and to the side. Place hands on inside of bicep and walk with inmate to make sure they are safe, not to guide them. E2 is not mandatory to cuff from behind. He was not on a security plan."

Shawn Briley

Shawn Briley is a Correction Lieutenant and has sixteen years of correctional experience.

Lieutenant Briley identified Tab 6, page 166 as the first page of the Ohio Department of Rehabilitation and Correction's Corrections Training Academy Lesson Plan on Defensive Tactics Subject Control End-User (Eff. 20210701). At Tab 6, page 172, subsection (A)(9)(b) includes the following language on threat assessment: "... The employee must demonstrate that they used or considered calling for assistance, communication, or deescalation to reduce the likelihood of using force before the force was applied. Employees must never hesitate to protect themselves or others when facing an immediate threat incident."

At Tab 6, page 172, subsection (A)(9)(c) begins: "Jeopardy – The employee must demonstrate

that the subject clearly indicated that he was going to carry out an attack.”

Lieutenant Briley stated that the Department's Defensive Tactics Subject Control training directs that handcuffs be secured behind the handcuffed inmate, and that to handcuff an inmate in front of the inmate is not a correct procedure.

Lieutenant Briley noted that at Tab 6, page 174, in section (C) describing the Tap-in theory, the following is provided at subsection (C)(5): “It is appropriate to intervene when a co-worker is witnessed unnecessarily intensifying a situation.” In Lieutenant Briley's words: “If a co-worker is doing it wrong, correct it.”

Lieutenant Briley referred to Tab 6, page 190, the Defensive Tactics Subject Control policy which directs that when handcuffing a subject the subject is to be turned around and have the subject's hands handcuffed behind the subject's back.

At Tab 6, page 191 the Defensive Tactics Subject Control policy addresses non-compliant handcuffing. Lieutenant Briley testified that the inmate should have been guided into the inmate's cell and the cell door closed. A supervisor's assistance should have been requested in getting back the handcuffs from the inmate.

Under questioning by the Union's representative, Lieutenant Briley stated that it had been five to six years since he had served as a Defensive Tactics instructor.

Lieutenant Briley testified that security levels at the institution range from minimum to maximum. The institution's security plan offers security levels from bronze, with the fewest privileges, to gold, with the most privileges. The inmate involved in the December 31, 2020 use of force incident was a bronze-level inmate.

Michael Ledesma

Michael Ledesma is a Correction Lieutenant and serves as the Chairman of the Rules Infraction Board at the Allen/Oakwood Institution. Lieutenant Ledesma has provided twenty-one and one-half (21½) years of service to the Department. Lieutenant Ledesma explained that a rules infraction board listens to an offender or a witness, renders decisions on rules infractions, and orders what is to occur as a result of a decision.

Lieutenant Ledesma identified Tab 4, page 95 as the first page of an interview of Michael Ledesma, a Correction Lieutenant, on March 11, 2021 by Ms. Featheringham. At Tab 4, page 96 Lieutenant Ledesma states that a rule infraction report was filed by Officer Best against the inmate, accusing the inmate of causing or attempting to cause physical harm, physical resistance, and disobedience of a direct order. This matter was heard by the rules infraction board on January 4, 2021. The inmate was found not guilty of causing or attempting to cause physical harm; the inmate was found guilty of physical resistance and disobedience of a direct order.

Lieutenant Ledesma referred to Tab 4, page 2 which presents a statement from an inmate housed in the cell across from the cell in which the use of force occurred. The inmate housed across from the cell of the inmate involved in the use of force stated that Officer Best pushed the inmate into the inmate's cell and stated that Officer Triplett hit the inmate's eye and stomach with his fist. The inmate housed across from the cell in which the use of force occurred said that Officer Best had hit the inmate in the side.

Lieutenant Ledesma stated that the inmate involved in the use of force said that he was pushed into his cell by Officer Triplett, which served to create the jeopardy faced by Officer Triplett.

Landon Kohls

Landon Kohls serves as a Health Care Administrator and has worked for the Department of Rehabilitation and Correction for nine (9) years. Mr. Kohls is a Registered Nurse.

Mr. Kohls referred to Tab 4, page 2 which presents the statement of Brooke Shaw, a Registered Nurse, to the effect that Nurse Shaw observed the inmate to be hemorrhaging in his right eye, and swelling and bruising to the right eye. Abrasions were observed to the lower lip of the inmate. The inmate was ordered transported to a local emergency room.

Mr. Kohls identified Tab 4, page 105 as a memorandum he prepared, dated May 13, 2021, listing the medical appointments of the inmate who had been injured by the use of force on December 31, 2020, from December 31, 2020 through May 11, 2021. Within these dates are eighteen (18) separate medical appointments and services for the injured inmate.

Mr. Kohls testified that by November 2021 the inmate was still complaining of blurred vision and was seen by an optometrist in December 2021.

Under questioning by the Union's representative, Mr. Kohls was referred to Tab 4, page 85, questions and answers from an interview of Samantha Alderman, a Registered Nurse, on March 10, 2021 by Ms. Featheringham. Ms. Alderman was a four-year employee of the Department, serving as a Registered Nurse at the Oakwood Correctional Facility. Ms. Alderman, in answer to question 2 on page 85, confirmed that she had responded to a security alert on December 31, 2020 at 4:00 p. m. on unit E2. Ms. Alderman was the first nurse to interact with the inmate following the use of force, and stated that the inmate told her he had been beaten while handcuffed. The inmate complained that his telephone call had been cut short, leaving the inmate upset. The inmate also complained of pain in his left shoulder. As to injuries observed on the inmate, Ms. Alderman reported right side swelling by the zygomatic bone (prominent part of the cheek and outer ridge of eye socket) but no injuries were noted to the left

shoulder area.

Danny Greene

Danny Greene has worked within the Department of Rehabilitation and Correction as a Correction Officer for twenty-four (24) years, with six (6) to eight (8) of those years served in the E unit at the Oakwood part of the Allen/Oakwood institution. Correction Officer Greene had been on duty on December 31, 2020 and had been conducting a count at 4:00 p. m. Officer Greene recalled that he came to a cell wherein two (2) Correction Officers were attempting to restrain an inmate. Officer Greene recalled that the inmate had been kicking his legs and had not been compliant. Officer Greene recalled that later, a supervisor questioned the inmate while they were located in a doorway to the day room.

Correction Officer Greene confirmed that he had directed an email, Union Exhibit E, to the Union that day, noting that as the inmate was being questioned in the doorway to the common area, another inmate, while located in his assigned cell, could hear what was being said by the inmate during the questioning.

Officer Greene stated that during the six (6) to eight (8) years he worked on Oakwood's E unit he handcuffed inmates in front if they were calm, unless an inmate were to be on a security plan. Officer Greene stated that there are no guidelines about handcuffing inmates in front or in back.

Under questioning by the Employer's representative, Officer Greene confirmed that if an inmate were laid back, the inmate would be handcuffed in front. If an inmate were to be aggressive, the inmate would be handcuffed in back.

Robert Jones

Robert Jones works as a Correction Officer and has been employed by the Department of

Rehabilitation and Correction for twenty-five (25) years. For twenty-three (23) of those years Officer Jones served as a Defensive Tactics Subject Control (DTSC) instructor.

Officer Jones testified that he watched the video of Officer Best handcuffing the inmate and saw Correction Officer Best engaged in a dialogue with the inmate, with no resistance on the part of the inmate. Officer Jones then observed the inmate raise his handcuffed arms, a gesture that Officer Jones interpreted to be an aggressive movement that justified at that moment a use of force. Officer Jones observed Officer Triplett giving directions to the inmate to walk to the inmate's cell. Officer Jones observed Officer Triplett to be in control of the situation and engaged in an attempt to deescalate the temper of the inmate.

Officer Jones said that in walking to his cell the inmate appears compliant and the escort technique employed by Officers Best and Triplett had been appropriate. As the officers rotated the inmate to get his handcuffs off, the inmate appears to Officer Jones to become resistant and assume a posture of "dead weight." Officer Jones stated that Officer Triplett's arm had become trapped by the inmate's arms and the inmate pulled Officer Triplett into the cell and down to the floor.

Officer Jones testified that Officer Triplett reacted immediately from being pulled down with a closed fist hammer strike to the right eye of the inmate, a target of opportunity in resisting the force of the inmate. Such a striking under these circumstances, explained DTSC Instructor Jones, is taught in the curriculum of the DTSC training.

At Tab 4, page 13 is a statement from Officer Jones taken by Ms. Featheringham that asserts that under the circumstances presented by the videos of the events in question, Officer Jones determined that Officer Triplett "... did not violate any of Inmate [***'s] rights, he did not act with malicious intent, but acted and reacted to the resistance level of the threat after all 4 elements of force were established in accordance with the departments use of force policy 63-UOF-01 and court setting

precedent 'Graham Vs. Conner' established on the objectable (sic) reasonable standard.”

At Tab 4, page 26, Use of Force Instructor Shane Gallmeier is reported by Ms. Featheringham to have said that the escort of the inmate had been appropriate. Instructor Gallmeier is reported to have said that the inmate acted while in his cell's door frame by grabbing Officer Triplett, and Officer Triplett's use of force had been reactive, not a planned use of force.

At Tab 4, page 30, a statement from Use of Force Instructor S. Wright is presented by Ms. Featheringham. This statement is to the effect that the force used on the inmate had been necessary and appropriate. Use of Force Instructor S. Wright had said that: “... The inmate's actions created the force that was necessary.”

Taylor Triplett

Taylor Triplett, the grievant in this case, by December 31, 2020 had been employed by the Department of Rehabilitation and Correction for three (3) years. Correction Officer Triplett worked mental health units and on December 31, 2020 had been assigned to the E unit in the Oakwood part of the Allen/Oakwood institution.

Mr. Triplett recalled that on December 31, 2020 during the events in question, Correction Officer Best had placed the handcuffs on the inmate, handcuffing the inmate in front. Mr. Triplett recalled that the inmate had exited the telephone cage into the day area without resistance but upon exiting the telephone cage raised his arms above his head. Mr. Triplett testified that at this point in time Officer Triplett had been attempting to calm the inmate while escorting the inmate to the inmate's cell.

Mr. Triplett recalled that as he and the inmate entered the doorway to the inmate's cell the inmate clamped down on Officer Triplett's left forearm and pulled Officer Triplett into the cell and down to the floor. Mr. Triplett recalled that only his right arm was not restrained. Mr. Triplett recalled

that he had ended up on top of the inmate, with the inmate punching Officer Triplett's ribs using the handcuffs at the points of contact. Mr. Triplett recalled that he had had one option available to him in defending himself from serious physical harm and acted on it, using his right hand in a fist to hammer strike the outer right eye socket of the inmate. Assistance arrived within twenty (20) seconds of the man-down alarm, at a time when the inmate was still resisting. Mr. Triplett recalled that control of the inmate was restored.

Under questioning by the representative of the Employer, Mr. Triplett said that when he and the inmate entered the doorway to the inmate's cell, the inmate clamped down on Officer Triplett's left arm and then assumed "dead weight," dragging Officer Triplett into the cell and to the floor. Mr. Triplett recalled the inmate twisting under Officer Triplett and hitting Officer Triplett in the ribs. Mr. Triplett recalled repeatedly ordering the inmate to stop resisting.

Under redirect examination by the Union's representative, Mr. Triplett confirmed that a security plan assigned to an inmate determines the level of privileges available to that inmate.

POSITIONS OF THE PARTIES

Position of the Employer

It is the position of the Employer that the Employer had just cause to discharge the grievant effective June 14, 2021 due to the use of excessive force by the grievant upon an individual under the supervision of the Department, in violation of Rule 40 of the Standards of Employee Conduct, and for using force on an individual under the supervision of the Department when force was not authorized to be used, in violation of Rule 43 of the Standards of Employee Conduct.

The Employer refers to the claim made by the Union that the grievant had utilized deescalation techniques and had remained in emotional and mental control in an attempt to deescalate the temper of

the inmate. The Employer argues that this assertion is not supported by the evidence in the hearing record. The Employer contends that a shift supervisor or a mental health professional should have been summoned to either effect a planned use of force or deescalate the situation with the assistance of a crisis intervention team.

The Employer refers to the claim made by the Union that the grievant was forced by the inmate's aggressive and assaulting actions to use force, and the use of force by the grievant was justified in response to the threat of harm posed by the inmate. The Employer contends that the Union has failed to present any evidence to support these assertions.

The Employer notes that the grievant has related on three separate occasions his participation in the events in question, and each description provided by the grievant is significantly different in its details. The Employer contends that in any of the scenarios put forward by the grievant about what had occurred leading to the use of force the use of force had been totally avoidable. The Employer reminds the arbitrator that the inmate had been located in a cage while on the telephone call with his mother. The inmate was informed that his allotted time for the telephone call had run out and the telephone call must be concluded. The Employer points out that the telephone call had been about the funeral of a cousin of the inmate which darkened the inmate's mood, only to be further aggravated by the order to end the fifteen-minute telephone call. This circumstance, argues the Employer, caused the inmate to pace back and forth, exhibiting his increasing agitation.

The Employer points out that the inmate had been compliant with the officers until arriving at his cell where he informed the officers that he, the inmate, was not giving the handcuffs back until a "white shirt" (supervisor) was summoned to the inmate's cell. The Employer argues that at this point in the chronology of events leading to the use of force, a supervisor or mental health professional should have been called to the cell and a determination made about any planned use of force, with or without

the crisis intervention team. The Employer claims that any force imposed after this point in time was not authorized, totally avoidable, and excessive.

Because the grievant was fully cognizant of the inmate being handcuffed by Officer Beat with the inmate's hands in front of the inmate, and because the grievant had been well aware that this was not an accepted practice at the institution yet did nothing to correct it, the grievant became equally culpable for this violation of what was expected and required on the unit. The Employer points out that this breach of a standard operating procedure served to create the very threat claimed to have been suffered by the grievant at the hands of the handcuffed inmate. At page 21 of the Employer's post-hearing brief the following is presented:

... In reality, once an offender is handcuffed, that offender is restrained. Once an offender is restrained a whole new use of force continuum comes into play. If two adult men cannot restrain a developmentally delayed and restrained offender, then there is a problem with them not the offender. The grievant was not threatened, he was angry. He was angry that Offender [Inmate] mouthed off to him, insulting him and his girlfriend.

The Employer confirms that the inmate, after leaving the telephone cage and being handcuffed lifted his arms. The Employer contends that this arm-raising had not been an act of aggression or violence. The Employer points out that the inmate made no attempt to strike either officer. The Employer notes that nothing untoward happened until the cell door was reached by the inmate, whereupon, argues the Employer, the inmate was shoved into his cell by the grievant. The Employer contends that this use of force and the ensuing use of force against the inmate were neither authorized nor necessary nor justified, and the force inflicted by the grievant on the inmate had been excessive.

The Employer claims that the grievant was not truthful in his statements about what had occurred and such dishonesty placed the grievant's employment in jeopardy.

The Employer argues that the hearing record contains more than sufficient evidence to prove

that the Employer possessed just cause to discharge the grievant for the grievant's use of force against an inmate that was inflicted without the authority to do so, and in a manner that was excessive. These violations by the grievant, argues the Employer, establish the just cause required by the parties' Agreement to remove the grievant from his employment effective June 14, 2021.

The arbitrator is urged to find that the Employer possessed the just cause needed to discharge the grievant and deny the grievance in its entirety.

Position of the Union

The Union understands the issue presented to the arbitrator in this case to be whether the grievant violated ODRC Rules #40 and #43 of the Standards of Employee Conduct. If not, did the Employer have just cause to remove the grievant? If not, what shall the remedy be? The Union contends that it has shown through the facts of the grievance and testimony from witnesses that the Employer has not shown the Employer possessed the just cause required for the grievant's removal. The Union claims that a preponderance of evidence in the hearing record shows the grievant followed ODRC rules, regulations, and procedures; utilized deescalation techniques and IPC skills, and remained in a state of emotional and mental control. See Tab 6, pages 173 and 174, lesson plan for Defensive Tactics Subject Control.

The Union claims that the grievant had attempted to deescalate the aggressive actions of the inmate in an attempt to control the situation. The Union points to the substantial difference in size between the inmate and Officer Triplett, with the inmate being substantially physically larger than the grievant. The Union reminds the arbitrator that Officer Triplett had been involved in a situation that included an angry, frustrated inmate who was much bigger than Officer Triplett, requiring that decisions be made by Officer Triplett in a matter of split seconds. The Union questions the value of

judgments made with the benefit of hindsight, from a safe distance, about the threat of harm that had confronted the grievant, conclusions that contradicted the opinions of subject matter experts who testified in this proceeding or provided a statement during the Employer's investigation to the effect that the grievant's actions were reactive rather than planned, justified by the aggression of the inmate, and necessary to the grievant's self defense.

The Union points out that the video recordings presented in this proceeding do not extend to what occurred inside the inmate's cell. The only evidence in support of the charges lodged against the grievant come from the inmate involved in the use of force, and another inmate housed in a cell across from the inmate who had been involved in the use of force. The Union notes that the hearing record contains records substantiating threats of bodily harm made by the inmate in the past, as well as lying to staff, assaultive behavior, and to have generally disregarded institutional rules. The Union claims that it has shown that the inmate housed in a cell across from the cell in which the use of force occurred had been in a position to listen to the answers of the inmate involved in the use of force as the inmate was questioned in a doorway to the unit's common area. The Union claims that the statements from these inmates have been shown to have changed multiple times, as supported by Tab 4, pages 1, 2, 4, and 40. The Union asserts that these discredited statements were nonetheless relied upon in ordering the removal of the grievant.

The Union points out that a lack of evidence was put forward by the Employer as the reason for the rules infraction board's finding that the inmate had not been attempting to cause physical harm, and at the same time used that lack of evidence as a basis upon which to remove the grievant, a three-year employee with no prior discipline. The Union argues that the Employer has failed to prove that it possessed the just cause necessary to order the discharge of the grievant effective June 14, 2021. The Union urges that the grievance be sustained in its entirety, that references to the grievant's removal be

expunged from the grievant's work record, that the grievant be reinstated to his prior employment effective June 14, 2021, with full back pay, roll call, missed overtime, seniority credits, benefits, and union dues, and the grievant made whole by placing him in the position he would have been in had the discharge of the grievant not occurred.

DISCUSSION

Article 24, section 24.01 of the parties' collective bargaining agreement provides that discipline shall not be imposed except for just cause, and this provision makes clear that the burden of establishing just cause for discipline imposed is upon the Employer.

In the case herein the Employer claims to have possessed the just cause required to remove the grievant from his employment effective June 14, 2021 due to the grievant's violation of two rules promulgated in the Standards of Employee Conduct - Rule 40 that prohibits excessive force against a person under the supervision of the Department, and Rule 43 that prohibits the use of force against a person under the supervision of the Department when use of force is not authorized.

The question of whether the hearing record contains sufficient evidence to establish that the grievant engaged in rule-breaking behavior mirrors the parties' agreed issue statement in this proceeding that defines the ultimate issue raised by this case to be whether the Employer possessed just cause to effect the removal of the grievant. Shouldering the burden of proof on the issue of whether the grievant violated the rules as charged requires the Employer to present a preponderance of evidence proving that such rule-breaking misconduct occurred, if the Employer is to prevail in this matter. Without such proof the discipline cannot withstand an arbitrator's scrutiny because the just cause for the discipline has not been established by the Employer as required by Article 24, section 24.01. The issue presented to the arbitrator may be distilled to the question of whether the Employer has presented a

preponderance of evidence to the hearing record proving that on December 31, 2020 at around 4:00 p. m. the grievant engaged in an excessive and/or unauthorized use of force against an inmate of the Allen/Oakwood Correctional Institution. If a preponderance of evidence is found in the hearing record establishing the grievant's rule-breaking, such violations serve as the just cause required to discharge the grievant from his employment. If a preponderance of evidence is not found within the hearing record proving that the grievant engaged in rule-breaking, the just cause requirement would not be met and the grievance would be sustained.

The events in question occurred over a roughly three (3) minute time span on December 31, 2020, from 3:57 p. m. with the conclusion of the inmate's telephone call with his mother about a cousin's funeral that day, to 4:00 p. m. and the transmittal of a security alert by Officer Best seeking assistance to reestablish order on the unit. This three (3) minute time span is the subject of two video recordings and a variety of recollections collected through the Employer's investigation of the use of force, from individuals who were present at the time of the use of force and from those who arrived after the use of force. These recollections about what had occurred came from the inmate involved in the use of force, an inmate housed in a cell across from the cell of the inmate involved in the use of force, the grievant, Officer Best, other correction personnel, medical staff, and correction supervisors. Also included in the Employer's investigation are opinions expressed by experts in the training of Defensive Tactics Subject Control on the appropriateness of what occurred under the policies of the Department.

The first video recording presented to the hearing record shows the inmate in a telephone cage finishing a telephone call, pacing, and looking annoyed and slightly agitated. What is immediately noticeable is how much bigger the inmate is in comparison to Officer Best and Officer Triplett. Officer Best is observed placing handcuffs on the inmate with the inmate's hands in front of the inmate. The

inmate exhibits no resistance to being handcuffed and steps out of the telephone cage into a common area. Upon stepping out of the telephone cage into the unit's common area the inmate raises both handcuffed arms and then lowers his arms. With the raising and lowering of the inmate's arms, Officer Triplett joins Officer Best in escorting the inmate to the inmate's cell, with Officer Triplett's left hand on the right arm of the inmate, and Officer Best's right hand on the left arm of the inmate.

The question of the appropriateness of handcuffing the inmate in front of the inmate rather than in back of the inmate has been addressed by a number of witnesses in this proceeding, with the witnesses split on this issue. Some witnesses noted that in the absence of an indication of aggression on the part of an inmate, and if the inmate is not under a security plan, it had been common practice on the unit to handcuff inmates in front rather than in back. Other witnesses claimed that handcuffing an inmate behind the inmate was the only acceptable practice at the institution. Some witnesses stated that there was no applicable written policy on the question of how to handcuff inmates on the E unit. Other witnesses pointed to the DTSC training manual that calls for handcuffing inmates behind the inmate.

In the case herein, the handcuffs were attached to the inmate by Officer Best, not the grievant. While the grievant may have been under an obligation to correct an erroneous procedure carried out on the living unit by a co-worker, the fact that no one commented on the handcuffs as applied by Officer Best tends to indicate an acceptance of the practice, especially when the inmate gave no forewarning of an intention to resist instructions and was not under a security plan. Whatever culpability the grievant has for failing to demand that the inmate be re-handcuffed behind his back, this error, if it be error, does not bear on whether an excessive or unauthorized use of force occurred as alleged. The handcuffing of the inmate in front of the inmate by Officer Best is not viewed by the arbitrator as a ground for the discharge of the grievant, nor is it viewed as an indication of violating Rule 40 or Rule 43 of the Standards of Employee Conduct.

What is obvious from the first video recording of the events in question is that from the exit of the telephone cage to the arrival at the inmate's cell, the inmate exhibited no resistance or aggression with the exception of the arm raising and lowering by the inmate upon entering the common area. One witness, a DTSC training expert, described the arm raising and lowering by the inmate as an aggressive action. It certainly was unexpected considering what the interaction between Officer Best and the inmate had been immediately prior to the arm raising and lowering.

What is striking about the video recording of the escort of the inmate to the inmate's cell from the telephone cage is how thoroughly mundane and routine it appears. Other than the arm raising and lowering by the inmate there is nothing to indicate any frustration or impatience or anger on the part of any of the participants in this escort duty. The video shows the inmate and Officer Triplett entering the door frame of the inmate's cell with no resistance or coercion or unexpected movement.

The arbitrator understands that with hindsight it appears the better practice among these events would have been to handcuff the inmate behind his back and to have had the inmate enter the inmate's cell without being accompanied by Officer Triplett. Officer Triplett obviously did not enjoy the luxury of the time and hindsight we have available to us today, and it is not fair to adjudge the grievant's actions as if he had had the time and hindsight to see what we today see. The video shows what was an uneventful duty assignment that was concluding, with no reason to anticipate resistance by the inmate. The inmate did announce that he was not giving the handcuffs back until a white shirt were to be summoned, but until that utterance there is no indication that this duty assignment would end in violence.

The boundary of the video recordings is the doorway to the inmate's cell. We can observe the inmate and Officer Triplett arrive at the inmate's cell and step inside the cell, at which time Officer Triplett appears to fall. The tumble by Officer Triplett marks the end of what can be gleaned from the

video recordings. The second video recording was recorded after the use of force incident in the inmate's cell, and served to record the injuries suffered by the inmate from the use of force.

There is much in the facts of this case that is not disputed. The grievant has never denied striking the face of the inmate with the grievant's fist and has never denied the injuries that resulted from that striking.¹

What very much remains disputed between the parties is who caused the struggle between Officer Triplett and the inmate.

The inmate has claimed that upon entering his cell he was attacked by Officer Triplett, having been thrown on the inmate's bed and having been kicked and punched by Officer Triplett while Officer Best joined Officer Triplett in kicking and beating the inmate.

The grievant recalls arriving at the inmate's cell without incident, and upon stepping inside the cell's doorway found his left arm clasped tightly by the inmate while the inmate assumed a posture of "dead weight," thereby pulling Officer Triplett to the cell's floor. The grievant recalled in his testimony that following his take down by the inmate, the grievant had been pummeled in his ribs, with the inmate using the handcuffs in affecting this striking. The grievant recalled his immediate, reactive punch to the head of the inmate as a self defense measure.

What the arbitrator finds most significant in adjudging the likelihood of either scenario, the inmate's recollection or the grievant's recollection, is the absence of any indication immediately before the tumble to the cell's floor of any anger or ill will or malice directed at the inmate by the escorting officer. The video that can be seen immediately prior to the fall in the cell shows both participants, the inmate and Officer Triplett, acting in exactly the manner one would expect if the escort duty were to be

¹ The grievant did report on the day of the incident that he did not observe any physical injury to the inmate but has not denied that his striking caused injury to the inmate.

completed without resistance or a use of force. The inmate exhibited no resistance in his walk to his cell, giving no reason to elicit antagonism from the escorting officer. The escorting officer appears to be a staff member confident in the rightness of his conduct and believing that the participants were approaching the conclusion of the duty assignment. All that remained was to retrieve the handcuffs from the inmate as the inmate was secured in his cell, and there is nothing to indicate that further complications were to be encountered in completing this assignment.

There is simply nothing in what can be observed on the video recordings that shows the escorting officer intended to attack or harm the inmate prior to stepping into the inmate's cell. There is nothing in the hearing record, other than the inmate's claim, that for no reason and out of the blue Officer Triplett and Officer Best decided to physically attack the inmate. There had been observed no reason to act in that manner and there is nothing in the video recordings that establishes such wrongful behavior. It bears reiterating at this point that the grievant was a three-year Correction Officer who had received no prior discipline.

On the other hand the inmate was already in an agitated emotional state due to the funeral of his cousin that day, a circumstance aggravated by what the inmate had felt was an unfair and wrongful limitation on the length of the inmate's telephone privilege. This resentment was expressed just before the tumble in the inmate's cell when the inmate announced he would not relinquish the handcuffs until a supervisor was summoned so the inmate's complaint about the telephone call could be registered.

The arbitrator finds either scenario within the realm of possibility. It is possible that Officer Triplett became enraged at the inmate's recalcitrance about returning the handcuffs and retaliated with a beating. It is also possible that the inmate was acting on a building resentment and expressed his anger and frustration through pulling the officer to the floor and hitting him in the ribs. The issue is not which scenario the arbitrator finds more plausible; the issue is whether the Employer has presented a

preponderance of evidence to the hearing record proving that one scenario is more likely to have occurred than the other. This burden of proving the scenario that occurred is required by Article 24, section 24.01 of the parties' collective bargaining agreement. This provision demands that in the case of discipline imposed by the Employer that is challenged by the Union, the Employer present a preponderance of evidence proving that what has been alleged as the grounds for the discipline can be established through proof.

The arbitrator does not find that the Employer has presented a preponderance of evidence proving that the grievant used excessive or unauthorized force in the use of force that occurred on December 31, 2020. The evidence in the hearing record shows that it is just as likely as not that the grievant acted in self defense in the face of a physical attack, a course of reactive conduct permitted by the rules of the Department of Rehabilitation and Correction.

The failure of the Employer to carry its burden of proof in this case requires the arbitrator to sustain the grievance and fashion a remedy to heal the breach in the parties' Agreement caused by the removal of the grievant without just cause to do so.

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AWARD

1. The grievance underlying this proceeding is arbitrable under the language of the parties' collective bargaining agreement, and properly before the arbitrator for review and resolution.
2. The Employer has not proven by a preponderance of the evidence in the hearing record that the grievant violated Rule 40 or Rule 43 of the Standards of Employee Conduct.
3. The Employer has not proven by a preponderance of the evidence in the hearing record that the Employer possessed just cause to remove the grievant from the grievant's employment effective June 14, 2021.
4. The grievance is sustained.
5. The grievant shall be reinstated to his former employment retroactive to June 14, 2021; shall receive full back pay, reduced by earned income since June 14, 2021; shall receive all seniority credits and other benefits so as to be placed in the position the grievant would have been in had the June 14, 2021 discipline not been imposed; and any and all references to the June 14, 2021 discipline shall be expunged from the employment record of the grievant.

Howard D. Silver

Howard D. Silver, Esquire
Arbitrator
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Columbus, Ohio 43214
hsilver@columbus.rr.com

Columbus, Ohio
July 11, 2022

CERTIFICATE OF SERVICE

I hereby certify that signed, duplicate originals of the foregoing Decision and Award of the Arbitrator in the Matter of Arbitration Between the Ohio Department of Rehabilitation and Correction, Allen/Oakwood Correctional Institution, and the Ohio Civil Service Employees Association, American Federation of State, County and Municipal Employees, Local 11, AFL-CIO, grievance number DRC-2021-01924-03, Grievant: Taylor Triplett, in electronic form, were directed to the following this 11th day of July, 2022:

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Columbus, Ohio
July 11, 2022