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REVIEWED BY
9/27/01
SEP 27 2001

GRIEVANCE COORDINATOR

IN THE MATTER OF ARBITRATION

BETWEEN

THE OHIO DEPARTMENT OF CORRECTIONS

AND

THE OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION/AFSCME-AFL-CIO

Before: Robert G. Stein

PANEL APPOINTMENT

CASE # 2714-12-18-00-1209-01-03
Veronica Massey, Grievant

Advocate(s) for the UNION:

James McElvain, Field Staff Representative
OCSEA Local 11, AFSCME, AFL-CIO
390 Worthington Rd.
Westerville OH 43082

Advocate for the EMPLOYER:

Janet Hill Arbogast Esq., Advocate
Jeff Wilson, 2nd Chair
Office of Collective Bargaining
107 N. High St., 7th Floor
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INTRODUCTION

A hearing on the above referenced matter was held on August 9, 2001 in Lorain, Ohio. The parties stipulated to the fact that the issue was properly before the Arbitrator. During the hearing the parties were given a full opportunity to present evidence and testimony on behalf of their positions. The parties made closing arguments in lieu of submitting briefs. The hearing was closed on August 9, 2001. The Arbitrator's decision is to be completed within forty-five (45) calendar days following the date of the hearing or no later than September 25, 2001.

ISSUE

The parties agreed upon the following definition of the issue:

Was the Grievant, Veronica Massey, terminated for just cause? If not, what should be the remedy?

RELEVANT CONTRACT LANGUAGE
(Listed for reference, see Agreement for language)

ARTICLE 24 DISCIPLINE

BACKGROUND

This case involves the removal of Veronica Massey, Corrections Officer, who had been employed at the Lorain Correctional Institution for approximately two and one-half years. She was terminated on December 14, 2000 for violation of Rule # 43, "*Physical abuse of any individual under the supervision of the Department*" of the DRC Standards of Employee Conduct.

The Employer terminated the Grievant for what it determined to be acts of physical abuse. She subsequently filed a grievance arguing she was terminated without just cause. On October 8, 2000 the Grievant was working third shift in Unit 8A. Just after midnight, Officer Massey discovered an inmate, McDaniel, masturbating in the restroom. The door to the restroom was partially closed. Officer Massey became incensed and ordered the inmate to kneel on the floor. She placed handcuffs on inmate McDaniel and the Yard Officer was called to escort inmate McDaniel to segregation.

While waiting for the yard officer to arrive, the Employer contends the Grievant continued to yell at him and called him names. When Yard

Officer Mary Allgood arrived, she proceeded to remove the Grievant's set of handcuffs from the inmate and replace them with Officer Allgood's handcuffs. This is a common procedure when one Officer takes custody of an inmate from another. During the exchange of handcuffs Officer Allgood, who initially was conducting the handcuff exchange on her own, experienced some difficulty with one of the cuffs. The Grievant, who was still in a highly agitated state, came to assist Officer Allgood and put the remaining handcuff on the inmate's left hand. According to the Employer, the Grievant tightened the handcuff so tight it caused pain to inmate McDaniel's left wrist. The Employer's investigation determined that Officer Massey again yelled at the Grievant and said, *"Yeah, motherfucker, I tightened it as good as I could"* and stated something to the effect that you (inmate) are going to hurt all the way to segregation (See Allgood's testimony).

Officer Allgood then took the inmate into the sallyport area in order to exit Unit 8A. The Grievant preceded Officer Allgood and inmate McDaniel into the sallyport and continued to yell at the inmate when he entered it. According to the Employer, the Grievant then punched the inmate twice in the chest area. Officer Allgood stepped in between the inmate and the Grievant and pushed the inmate outside, through the exterior door of the sallyport.

Officer Allgood was required to file a report over this incident after

an investigation. The nurse's report on the inmate indicated some redness on the left wrist, but no other evidence of injury to his body. However, based upon the statements of the witnesses and the inmate, the Employer determined the Grievant had physically abused inmate McDaniel. The Grievant was terminated based upon a violation of Rule # 43, and she grieved her termination claiming it was not for just cause.

EMPLOYER'S POSITION

The Employer argues the Grievant was terminated for just cause. It contends that the facts and testimony of Officer Allgood and the inmate clearly and unequivocally establish the fact that Officer Massey lost her temper and physically abused inmate Allgood. The Employer contends the evidence and testimony establish the fact that the Grievant verbally abused the inmate and physically abused him. She tightened his handcuffs too tight and punched him in the upper stomach or chest area without provocation, asserts the Employer. The Employer further states there are no mitigating factors in this case.

Based upon the evidence and testimony, the Employer contends that it proved that the Grievant physically abused the Grievant. The Employer points out that Article 25.01 of the Agreement limits the arbitrator's authority to modify an employer imposed penalty when there

is a finding that abuse of another in the care of custody of the State of Ohio has occurred.

UNION'S POSITION

The Union contends that the Grievant never abused inmate McDaniel. The Union contends that inmate McDaniel, a twice convicted felon who stated under cross-examination that he was not a "model inmate," was not credible. The Union argues inmate McDaniel stated he was hit in the stomach in contrast to the testimony of Officer Allgood, who said he was hit in the chest.

The Union points out that the Employer's own medical report shows that there was no injury to inmate McDaniel. Furthermore, if the inmate was struck by the Grievant why were there no ring marks from her wedding band on his chest? The Grievant concedes she may have been angry and may have used strong language with inmate McDaniel, but she denies ever striking him. The Union also points to the fact that Officer Allgood was jealous of the Grievant over a personal relationship she was having with another employee and this may have been a motivating factor in her testimony to discredit the Grievant.

Based upon the above, the Union requests the grievance be granted.

DISCUSSION

The evidence and testimony substantially undermine the arguments of the Grievant in this case. The testimony of inmates is often tainted by problems of character and reputation. However, it would be a mistake to dismiss such testimony when it is strongly supported by other testimony and other facts of the case. I found no obvious contradiction of what inmate McDaniel testified to in the hearing and what his previous statements described. It is certainly possible that he understated his reaction to the actions of the Grievant when she caught him masturbating in the restroom.

However, none of inmate McDaniel's actions justified the Grievant's reactions. The evidence and testimony clearly demonstrate the Grievant lost control of her temper and abused inmate McDaniel. She unleashed an excessive verbal tirade toward inmate McDaniel. She placed handcuffs on his left wrist in an overly tight manner in order to cause him pain, and she punched him twice in the chest area while he was under the supervision of Officer Allgood in the sallyport.

The testimony of Officer Allgood was very credible. She calmly and confidently provided testimony that unequivocally pointed to the fact that the Grievant was so angry with the inmate that she physically abused

him when she placed handcuffs on him and punched him in chest area while he was being transported through the sallyport. The credibility of a witness is often determined by several factors. Some of the factors that are used in attempting to determine credibility of a witness are:

1. The strength of the witness recollection
2. The position of the witness to observe what he/she testifies to
3. The experience of the witness
4. The consistency of testimony over time/with other statements
5. Any inconsistency, or self-contradiction
6. Evidence of bias or prejudice
7. Evidence of motivation(s) to misrepresent the known facts
8. The reasonableness and probability of the testimony with regard to all known evidence and testimony
9. Corroborating testimony
10. The demeanor of the witness
11. The character of the witness

Officer Allgood was physically in a position to substantiate what she claims to have witnessed. She is an experienced officer (some 4 and one-half years) and there is no evidence that her record as a corrections officer is anything but acceptable. There was no evidence to suggest that uncertainty or fear impaired Officer Allgood's perception; she was experienced in the supervision of inmates.

Her testimony was consistent with her prior statements and her recollection of the facts was underscored by the amount of detail she provided. Furthermore, I found no evidence of motivation for her to be untruthful in her testimony. Her testimony, with minor variations, essentially corroborated inmate McDaniel's recollecton of the events of October 8,

2000. All the Grievant asserted that Officer Allgood was jealous of her and was motivated to lie, no evidence was presented to support this allegation.

I found the Grievant's testimony to be implausible in light of the evidence and testimony. She was clearly angry with inmate McDaniel. Inmate McDaniel's actions on October 8, 2000 required a corrective response by Office Massey. However, as distasteful as she found his actions to be, as a professional correction officer who is responsible for maintaining discipline over a unit of inmates she had a responsibility to control her emotional response to them. There is far more to the work of a corrections officer than the exercise of control through physical restraint and confinement. More importantly to the performance of the job, and in particular to taking measured actions, is the combination of the IQ (intelligent quotient) and what is popularly referred to as EQ (emotional quotient) that one brings to the position of corrections officer. In order to be successful when facing a difficult or challenging situation, it is critical to be able to think clearly while not allowing your emotional responses to impair your judgment.

AWARD

The grievance is denied.

Respectfully submitted to the parties this 23rd day of September, 2001

Robert G. Stein, Arbitrator