

#967

RECEIVED / REVIEWED

MAY 30 2007

OCSEA-OFFICE OF  
GENERAL COUNSEL

VOLUNTARY RIGHTS ARBITRATION

IN THE MATTER OF THE ARBITRATION BETWEEN:

THE STATE OF OHIO, OHIO DEPARTMENT OF REHABILITATION AND  
CORRECTION

-AND-

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, LOCAL 11, AFSCME

GRIEVANCE NO: 27-24-(06-03-10)-1124-01-03

ARBITRATION OPINION AND AWARD

ARBITRATOR: DAVID M. PINCUS

DATE: May 30, 2007

For The Employer

David Burris

Advocate and Chief Bureau of  
Labor Relations

Buffy Andrews

Labor Relations Specialist

Walt Dillard

Labor Relations

Thomas J. Ratcliffe

Investigator

Steven P. Carlisle

Training Officer

Sadartha M. Joseph

Registered Nurse

For the Union

David C. Redd

Grievant

T.S. Martin

Chief Steward

Jeff Addington

Local Resident

Darrel A. Wiley

Corrections Officer

Lynn Belcher

Second Chair

Jamie Kuhner

Advocate

### INTRODUCTION

This is a proceeding pursuant to a grievance procedure in the negotiated Agreement (Joint Exhibit 1) between the State of Ohio, Ohio Department of Rehabilitation and Correction, Southeastern Correctional Institution (hereinafter referred to as the Employer) and Ohio Civil Service Employees Association, Local 11, AFSCME (hereinafter referred to as the Union.) The parties agreed to provide briefs in accordance with guidelines established at the arbitration hearing. Neither side raised procedural nor substantive arbitrability arguments. As such, the grievance is properly before the Arbitrator

### STIPULATED ISSUE

Did the Grievant's actions against inmate Adamski, on December 12, 2005, constitute physical abuse? If not, was the Grievant's removal for just cause? If not, what shall the remedy be?

### PERTINENT CONTRACT PROVISIONS

#### Article 24- Discipline

##### 24.01- Standard

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. In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care of custody of the State of Ohio, the arbitrator does not have authority to modify the termination of an employee committing such abuse. Abuse cases which are processed through the Arbitration step of Article 25 shall be heard by an arbitrator selected from the separate panel of abuse case arbitrators established pursuant to Section 25.04...

(Joint Exhibit 1, pgs. 81-82)

#### CASE HISTORY

David Redd, the Grievant, served as a Correction Officer at Southeastern Correctional Institute (SCI) since April 21, 1997. On the date of the disputed incident, December 12, 2005, the Grievant worked as a second shift officer at his post, H-1 segregation

Upon his arrival, the Grievant was advised by Rick Chuvlas, the Administrative Assistant who was holding Rule Infraction Board (RIB) hearings, to escort inmate Adamski to his cell. The Grievant completed the escort, and secured the cell door. Adamski put his hands through the open cuff port to have the cuffs removed. They were removed by the Grievant who then reviewed the segregation clipboard. He returned to the front of the cell to unlock the master lock in preparation of securing the cuff port.

Prior to finalizing the process, the Grievant advised the inmate he would not be leaving the Security Central Range. Inmate Adamski became a bit agitated, stuck his arm through the port, and remarked that he wanted to discuss his appeal with Chuvlas. The Grievant told Adamski to remove his arm from the port. This direct order was allegedly voiced a number of times, but Adamski refused to remove his arm.

A video (Joint Exhibit 9) of the incident disclosed the critical circumstances surrounding the disputed incident. The Grievant looked both ways before grabbing hold of Adamski's right wrist and placing it in a wristlock. The Grievant torqued the wrist and leveraged Adamski's arm against the frame of the cuff port until Adamski pulled loose and removed his arm from the port. The Grievant subsequently secured the cuff port and left the range.

In February 22, 2006, the employer removed the Grievant. A Notice of Disciplinary Action (Joint Exhibit pg.53) contained the following relevant particulars:

XXX

Your are to Removal (sic) for the following infractions: Rule #42 Physical Abuse of any Individual under the supervision of the Department

On December 12, 2005 David Redd took Inmate Adamski 468-762 right arm and torque the arm using what appeared to be an outside wristlock. This maneuver was unprovoked by the inmate, and appeared to be an effort to

physically hurt the inmate. Medical documentation is conclusive that there were abrasion on the right forearm and the left forearm. As well as swelling in the right elbow and right forearm from this use of force.

XXX

(Joint Exhibit 2, pg 33)

On March 10, 2006, the Grievant formally protested the administrative decision. The grievance contained the following relevant particulars:

Management did not show (sic) burden of proof for just cause. This: Dave Redd: is one of the best correction officer's (sic). His record is impeccable and speak's (sic) for it's self.

XXX

(Joint Exhibit 2, Pg. 33)

### THE MERITS OF THE CASE

#### The Employer's Position:

The Employer opined that the Grievant's actions against inmate Adamski were physically abusive.

The record fails to support the Grievant's view of the disputed incident. The force used by the Grievant was totally unnecessary. Adamski never posed a "threat" to the Grievant. He, in fact, admitted that he could have walked away from the cell, walked to the crash gate and solicited assistance.

The submitted video (Joint Exhibit 9) totally contradicts the Grievant's allegations. Sufficient space existed between Adamski's arm and the Grievant prior to the torquing of Adamski's arm. Also, the "space" supports the Employer's view that Adamski did not grab the Grievant during the altercation.

The force used was not only totally unnecessary, but physically abusive. Seaworthy Joseph, a Registered Nurse, testified about Adamski's condition once he was examined and the Medical Exam Report (Joint Exhibit 2, pg 31) she authored. She reported the inmate experienced swelling and abrasions on his arms (Joint Exhibit 2, pgs. 35-36) In fact, his injuries were severely extensive resulting in a transport to Fairfield Medical Center's Emergency Room for evaluation.

The Union was unable to establish its unequal treatment claim. None of the comparable examples indicated that the inmates were injured by Correction Officers.

#### The Union's Position

The Union argued the Grievant did not engage in physical abuse. He used a technique approved and taught by the Department as testified to by Union witnesses. Here, the Grievant did not engage in a planned use of force. He used reactionary force as defined in the Department's Use of Force Policy (Joint Exhibit 2, Pgs. 95-96) as "a use of force employed to an immediate response to a specific act."

Adamski received 28 days in Disciplinary Control as a result of "physical resistance to a direct order." Thus, the Employer's own disciplinary action evidenced a direct order and resistance on Adamski's part. It, therefore, appeared that the injuries realized by Adamski were precipitated by his own actions, or resistance, rather than the hold thrown by the Grievant.

The force used by the Grievant was justified when Inmate Adamski escalated the situation by grabbing the Grievant's shirt. The Grievant, therefore, complied with the Use of Force policy where it states force against an inmate may be legally used where: Self-defense from an assault by an inmate and/or controlling or subduing an inmate who refuses to obey prison rules and regulations. (Joint Exhibit 2, pg 97)

The Employer's lack of specific action after the disputed incident raises serious suspicion about the physical abuse charge. The Grievant continued to work up to his removal on March 7, 2006. He was never placed on administrative leave even though his actions were viewed as physically abusive.

#### THE ARBITRATOR'S OPINION AND AWARD

From the evidence and testimony adduced at the hearing, a complete review of the record including pertinent contract provisions and the parties' written closings, it is the Arbitrator's opinion that the Grievant physically abused inmate Adamski. In accordance with Section 24.01, the Arbitrator finds that there has been an abuse of another in the care or custody of the State of Ohio.

As such, this Arbitrator does not have the authority to modify the termination. This provision, therefore, precludes the Arbitrator from reviewing the reasonableness of the imposed penalty by applying mitigating factors such as: years of service, prior performance evaluations and discipline record. Any other application of Section 24.01 would cause this arbitrator to "Modify any of the terms of this Agreement"; a direct violation of Section 25.03.

The force used by the Grievant was excessive and unjustified under the circumstances. Even if the post orders require that the cuff ports be closed, the Grievant actions exceeded any standard of reasonable conduct. Inmate Adamski did not pose an immediate threat to the Grievant. Not complying with a direct order to place his arms back through the cuff port does not justify the force used by the Grievant. The video (Joint Exhibit 9) and other evidence and testimony indicate the situation did not escalate prior to the Grievant applying a technique three. Adamski was secured in his cell and did not appear to be violent or aggressive. The record moreover, fails to indicate any action by Adamski that could be viewed as threatening or physical toward the Grievant.

The Arbitrator's view of the scene revealed a sufficient safe distance between the cell door and the opposite wall. In fact, the Grievant admitted under cross-examination that the entire situation could have been avoided if he had walked toward the crash gate and asked for assistance.



The video (Joint Exhibit 9) surfaced additional problems with the Grievant's version. The Arbitrator considered the Grievant's actions as impulsive rather than reactionary. He should have given Inmate Adamski several orders to comply and advised him of the consequences associated with non-compliance. None of these intervening steps took place. The Grievant's actions during the episode raise certain other suspicions. He knew what he was about to do was wrong, so he looked both ways down the range before he engaged in his abusive conduct. The timing of this observation negates the Grievant's justification for looking up and down the range. His survey of his surroundings had nothing to do with his state of "alertness." If he was so security conscious he would never have had Adamski walking behind him during his escort.

The video (Joint Exhibit 9) moreover, never showed Adamski grabbing the Grievant's shirt. The Grievant escalated the incident into a use of force situation which resulted in physical abuse. Nurse Joseph examined Adamski and documented her evaluation in a Medical Examination Report (Joint Exhibit 2, pg 31). She reviewed her conclusions at the hearing which indicated swelling and abrasions to his arms. These conclusions were further documented in photographs (Joint Exhibit 2, pgs. 35-36) that confirmed Adamski's condition. Adamski was subsequently transported to Fairfield Medical Center for further evaluation.

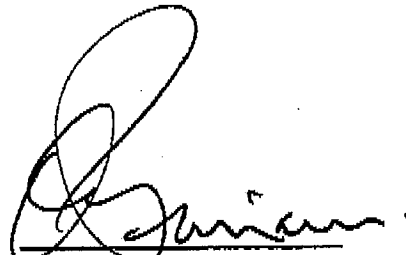
The record clearly supports the notion that the Grievant's actions were excessive and constituted physical abuse. Adamski's documented injuries were a direct result of the Grievant's actions.

AWARD

The Grievance is denied. The Employer properly removed the Grievant for physical abuse in violation of Article 24.01.

5/30/07

May 30, 2007  
Beachwood, Ohio



Dr. David M. Pincus  
Arbitrator