**OCB AWARD NUMBER 2720**

SUBJECT: Arb Summary # 2720

TO: All Advocates

FROM: Victor Dandridge

OCB GRIEVANCE NUMBER: DYS-2022-06282-03

DEPARTMENT: Department of Youth Services

UNION: OCSEA

ARBITRATOR: Meeta Bass

GRIEVANT NAME: Marcus Jones

MANAGEMENT ADVOCATE: Brad Nielsen

UNION ADVOCATE: Rusty Burkepile

OCB REPRESENTATIVE: Victor Dandridge

ARBITRATION DATE: April 4, 2023

DECISION DATE: June 5, 2023

CONTRACT SECTION: Article 24

**HOLDING: Grievance Granted.** The Employer removed grievant without “Just Cause.”

**Facts:** The Grievant was removed on September 30, 2022, for violating: Rule 5.01 P: Failure to follow policies and procedures; DYS Policy 131-SEM-05 General Work Rules; DYS Policy 163-UOF-02 Managing Youth Resistance-Use of Force; Rule 5.30 P Use of Excessive Force; and Rule 6.05 P Use of Prohibited Physical Response. The Instant Grievance was filed on October 2, 2022.

**The Employer argued** that JCO Marcus Jones failed to provide time and distance during an encounter with a youth. His failure to follow policy and procedures led to a physical altercation. During the altercation JCO Marcus Jones utilized un-approved techniques and excessive physical force. The employer charged that JCO Jones struck the youth with his fist several times.

**The Union argued** that all parties agree that the youth hit the grievant first. The Union also argued that the grievant was bitten and that the punches that he may have thrown were in attempt to get away from being bitten by the youth. The Union presented proof that the investigator was aware of the grievant’s claim that he had been bitten by the youth and that the investigator did not investigate this fact. That by ignoring evidence the Employer failed to establish an important element of Just Cause.

**The Arbitrator found** that the employer failed to conduct a thorough and fair investigation. The employer ignored relevant witnesses and the report of the grievant’s claim of being bitten. The arbitrator stated “Absent evidence to the contrary, the Arbitrator finds that the Grievant acted within the parameters of acceptable emergency defenses as outlined in DYS Policies.”