

Thomas J. Nowel, NAA  
Arbitrator, Mediator, Fact Finder  
Lakewood, Ohio

IN ARBITRATION PROCEEDINGS PURSUANT TO  
AGREEMENT OF THE PARTIES

Arbitration Proceedings Between	)	
	)	DYS-2024-01353-03
State of Ohio, Ohio Department of Youth	)	
Services, Indian River Juvenile Correctional	)	ARBITRATION
Facility	)	OPINION AND AWARD
	)	
and	)	DATE:
	)	January 12, 2026
Ohio Civil Service Employees Association,	)	
AFSCME Local 11	)	

Re: Discharge Grievance, Davion Thomas

APPEARANCES:

Dr. Buffy Andrews, Chief of Staff, Ohio Civil Service Employees Association,  
AFSCME Local 11; and Bradley A. Nielsen, for the State of Ohio, Ohio Department  
of Youth Services.

## INTRODUCTION

This arbitration arises pursuant to the collective bargaining agreement between the State of Ohio and the Ohio Civil Service Employees Association, AFSCME Local 11. OCSEA is the sole and exclusive representative of employees assigned to a number of State of Ohio bargaining units and, in this matter, the Ohio Department of Youth Services.

The Grievant, Davion Thomas, was employed as a Juvenile Correction Officer at Indian River Juvenile Correctional Facility. Following a lockdown of youth at the facility by employees and a walkout by a number of the involved staff on October 24, 2023, the Grievant's employment was terminated, following an investigation and pre-disciplinary hearing, on May 6, 2024. The termination was grieved by the Union on May 7, 2024. The Employer denied the grievance, and the appeal was carried forward to arbitration on August 15, 2024.

Following a dispute regarding video evidence, Arbitrator Tobie Braverman ruled that "the Union's objection to the video evidence is overruled, and any video evidence which was both referenced in the Report of Investigation and has been previously provided to the Union may be used as evidence at arbitration."

The parties to the collective bargaining agreement have mutually agreed to a permanent panel of arbitrators. The arbitrator, in this case, was selected to hear the matter and render a binding award pursuant to Section 25.05 of the collective bargaining agreement. The arbitration hearing was held on November 20, 2025 at Indian River Juvenile Correctional Facility. The parties agreed that post hearing briefs would be submitted no later than December 12, 2025 with the award being rendered no later than January 26, 2026.

The parties stipulated to the issue before the arbitrator as follows. "Did the Ohio Department of Youth Services have just cause to remove the Grievant from employment? If not, what shall the remedy be?" The matter is properly before the arbitrator.

#### WITNESSES

##### TESTIFYING FOR THE EMPLOYER:

Philip Born, Investigator  
Chris White, Labor Relations Officer 2

##### TESTIFYING FOR THE UNION:

Carlos Cooper, Former Operations Manager  
Okey Walker, Current Operations Manager  
Charles Ford, Re-Entry Administrator  
Chris Freeman, Deputy Director  
Davion Thomas, Grievant

#### RELEVANT PROVISIONS OF THE AGREEMENT

##### 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 or 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 25.05. Employees of the Lottery

Commission shall be governed by ORC Section 3770.021.

#### 24.02 – Progressive Discipline

The Employer will follow the principles of progressive discipline. Disciplinary action shall be commensurate with the offense.

- a. One (1) or more written reprimand(s).
- b. One (1) or more working suspension(s). A minor working suspension is a one (1) day suspension, a medium working suspension is a two (2) to four (4) day suspension, and a major working suspension is a five (5) day suspension. No working suspension greater than five (5) days will be issued by the Employer.

If a working suspension is grieved, and the grievance is denied or partially granted and all appeals are exhausted, whatever portion of the working suspension is upheld will be converted to a fine. The employee may choose a reduction in leave balances in lieu of a fine levied against him/her.

- c. One (1) or more day(s) suspension(s). A minor suspension is a one (1) day suspension, a medium suspension is a two (2) to four (4) day suspension, and a major suspension is a five (5) day suspension. No suspension greater than five (5) days shall be issued by the Employer.
- d. Termination.

Disciplinary action shall be initiated as soon as reasonably possible, recognizing that time is of the essence, consistent with the requirements of the other provisions of this Article. An arbitrator deciding a discipline grievance must consider the timeliness of the Employer's decision to begin the disciplinary process.

The deduction of fines from an employee's wages shall not require the employee's authorization for withholding of fines.

If a bargaining unit employee receives discipline which includes lost wages, the Employer may offer the following forms of corrective action:

1. Actually having an employee serve the designated number of days suspended without pay.
2. Having the employee deplete his/her accrued personal leave, vacation, or compensatory leave banks of hours, or a combination of any of these banks under such terms as may be mutually agreed to between the Employer, employee and the Union.

#### 24.06 – Imposition of Discipline

The Agency Head or designated Deputy Director or equivalent shall make a final decision on the recommended disciplinary action as soon as reasonably possible after the conclusion of the pre-disciplinary meeting. The decision on the recommended disciplinary action shall be delivered to the employee, if available, and the Union in writing within sixty (60) days of the date of the pre-disciplinary meeting, which date shall be mandatory. It is the intent to deliver the decision to both the employee and the Union within the sixty (60) day timeframe; however, the showing of delivery to either the employee or the Union shall satisfy the Employer's procedural obligation. At the discretion of the Employer, the sixty (60) day requirement will not apply in cases where a criminal investigation may occur and the Employer decides not to make a decision on the discipline until after disposition of the criminal charges.

The employee and/or Union representative may submit a written presentation to the Agency

Head or Acting Agency Head.

If a final decision is made to impose discipline, including oral and written reprimands, the employee, if available, and Union shall be notified in writing. The OCSEA Chapter President shall notify the Agency Head in writing of the name and address of the Union representative to receive such notice. Once the employee has received written notification of the final decision to impose discipline, the disciplinary action shall not be increased.

Disciplinary measures imposed shall be reasonable and commensurate with the offense and shall not be used solely for punishment.

The Employer will not impose discipline in the presence of other employees, clients, residents, inmates or the public except in extraordinary situations which pose a serious, immediate threat to the safety, health or well-being of others.

An employee may be placed on administrative leave, without loss of pay (except in cases which fall within ORC Section 124.388(B)) or reassigned while an investigation is being conducted except that in cases of alleged abuse of patients or others in the care or custody of the State of Ohio, the employee may be reassigned only if he/she agrees to the reassignment or if the reassignment is to a position on the same shift and days off, without loss of pay and does not exceed thirty (30) days. For cases that fall within ORC Section 124.388(B) as referenced above, any payment due the employee under subsection (B) shall be based upon the employee's total rate plus any applicable roll call pay. For purposes of this paragraph, "without loss of pay" shall mean the employee's total rate plus any applicable roll call pay.

## Article 41, No strike/No Lockout

### 41.01 – Union Prohibition

The Union does hereby affirm and agree that during the term of this Agreement it will not either directly or indirectly, call, sanction, encourage, finance or assist in any way, nor shall any employee instigate, or participate, either directly or indirectly, an any strike, slowdown, walkout, work stoppage or the withholding of services from the Employer. Nothing herein is intended to restrict in any way the Union's right and ability to represent any member or members alleged to have violated the prohibitions set forth in this Section.

### 41.02 – Affirmative Duty

In addition, the Union shall cooperate at all times with the Employer in the continuation of its operations and services and shall actively discourage any violation of this Article. If any violation of this Article occurs, the Union shall immediately notify all employees that the strike, slowdown, work stoppage, or other concerted interference with or the withholding of services from the Employer is prohibited, and not sanctioned by the Union. The Union will inform all employees of their obligation to return to work immediately.

### 41.03 – Disciplinary Actions

It is further agreed that any violation of the above shall be automatic and sufficient grounds for immediate disciplinary action. Any such disciplinary action may be appealed pursuant to Article 25 herein contained.

### 41.04 – Employer Prohibition

The Employer agrees that it shall not lockout any employees.

## GRIEVANCE

Statement of Grievance: On 5/6/24 I was wrongly terminated after an egregious and retaliatory investigation where management accused me of taking part in a work stoppage that I was in no way a part of. Management refused to provide me with a fair hearing by: 1. Refusing to acknowledge my FMLA leave which violates a federal regulation and my rights, 2. During the Pre D hearing, investigators refused to provide requested copies of the BWC (body cam footage) used in their investigation and refused to review camera evidence absolving me of their accusations. I accepted a mandate to transport a youth to a medical appointment but Operations called me to the office and stated the trip was cancelled and asked me did I want to stay or go home. I informed them I wasn't feeling the best and I would go home and utilize my FMLA. The investigators refused to pull the ops camera to confirm this conversation and refused to ask the operations manager this information in his Q&A. 3. Administration has demonstrated nepotism and disparaging by refusing to discipline at least 5 of their "friends" who are documented in the report to have substantiated involvement in this alleged work stoppage and promoting them to management positions without recourse. 4. Administration, out of hostility and for purposes of targeting and retaliating, has attempted to connect me to this incident due to me being an outspoken delegate, who has repeatedly exposed various wrongdoing and safety concerns in the facility. This administration has repeatedly created and maintained a culture of hostility, favoritism, unprofessionalism as evidenced by threatening/intimidating staff prior to this investigation and taunting me and making snide comments as they escorted me out of the facility.

Resolution Requested: Remove discipline from file and make grievance whole including ALL missed wages including shift differentials, overtime, bonus (if applicable).

## BACKGROUND

The Ohio Department of Youth Services is a statutorily mandated agency which confines felony offenders who are ten to twenty-one years of age and who are committed to a juvenile correctional facility by a county operated juvenile court. The State of Ohio operates three juvenile correctional facilities. One of those facilities is the Indian River Juvenile Correctional Facility located in Massillon, Ohio. These facilities provide a number of services and treatment

for youth including an accredited high school. Indian River consists of eight housing units which hold a maximum of 23 youth at any given time.

Juvenile Correction Officers provide custodial care, surveillance, security and safety services in each of the facilities. They also provide escort and transport services. The Grievant, Davion Thomas, worked third shift, 10:00 pm to 6:00 am. He would also occasionally be mandated to work other shifts as the facility frequently experienced staff shortages. As a third shift Officer, the Grievant made security rounds and performed security counts at designated times.

Indian River has housed a number of youths convicted of violent felonies. Youth gangs may exist within the facility, and maintaining a safe environment for youth inmates and staff requires constant effort. Unfortunately, youth on youth assaults and youth on staff assaults are a regular occurrence. Prior to the arbitration hearing, Ms. Andrews, the Union advocate in this case, requested data regarding assaults committed by youth at the three Juvenile Correctional Facilities during the time the Grievant's employment was terminated. Dr. Jordan Argus provided the following information.<sup>1</sup>

Youth on Youth Assaults: 54 during August 2023, 37 during September 2023, 54 during October 2023.

Youth on Staff Assaults: 15 during August 2023, 13 during September 2023, 17 during October 2023.

On October 23, 2023, two Juvenile Correction Officers were violently attacked at Indian River by a youth. The attack continued for a period of time. Both Officers sustained significant injuries and were taken to an area medical facility. The following morning, October 24, 2023, a

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<sup>1</sup> Union Exhibit 2.

number of Juvenile Correction Officers expressed frustration regarding the assault which had occurred the previous day and the general concern regarding safety. Union Representative, Rusty Burkepile, was present at first shift roll call. A number of the Officers decided, based on their frustration regarding the previous day's assault, to leave the youth locked in their rooms with a demand to meet with administrators. This included 17 Juvenile Correction Officers. OCSEA leadership arrived from Columbus to provide guidance and to work on a solution. Officers suggested the inclusion of medical staff and teachers in the lockdown.

The Indian River Superintendent, Charles Ford, arrived at the facility and agreed to meet with a number of the Officers. An agreement was reached at approximately 9:15 am with the understanding that youth would be permitted to leave their rooms and engage in regular daily activity, and Officers would resume their regular duties. Most of the Juvenile Correction Officers resumed their duties. Nevertheless, seven Officers left the facility, a number claiming illness and/or FMLA. Evidence suggests that three Officers resigned following the incident.<sup>2</sup> The Employer terminated the employment of the seven Officers. The Grievant's employment was also terminated although, for purposes of this arbitration case, this matter is considered separate from the other cases. The Employer has considered the action of the Officers on October 24, 2023 as a work stoppage in violation of Article 41 of the collective bargaining agreement, No Strike/No Lockout, and Department policy.

The Grievant, Davion Thomas, worked his regular shift, third shift, 10:00 pm to 6:00 am, October 23 to October 24, 2023. He was then mandated to work the first shift on October 24, 2023 on an overtime basis. He was assigned to transportation on first shift and was scheduled

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<sup>2</sup> Unio Exhibit 9.

to transport a youth to a medical facility outside Indian River. The Grievant removed the youth from his room for the transport but was then notified that the trip had been cancelled. The Grievant returned the youth to his room.

The Grievant had previously been injured on the job due to an incident with a youth and was qualified FMLA. He had missed a significant amount of work time due to the injury. The previous day, prior to his regular shift on October 23, he had left early due to not feeling well. After the Grievant returned the youth to his room, he reported to his supervisors that he was planning to leave the facility based on not feeling well. His ankle was giving him pain, and he had worked approximately twelve continuous hours. He was not given an order to staff a unit following the cancellation of the transportation assignment. He also was not ordered to remain at the facility. Manager Walker stated to the Grievant, "take his hurt stomach ass home." The Grievant had worked 12 hours at this point due to the mandated overtime. The Grievant had not participated in the planning for the work stoppage although he spoke with Union Representative Burkepile regarding the activity and was supportive of the action taken by the Officers. The Grievant went to the parking lot and to his car to obtain the medical paperwork from the previous usage of FMLA leave. While in the parking lot, he spoke encouragingly to those Officers who had left the facility following the agreement between the Union and management to allow youth to leave their rooms and resume normal activity.

Following the October 24, 2023 incident, the Employer conducted a lengthy and coordinated investigation. The investigation concluded that "Youth Specialist Davion Thomas participated in a coordinated work stoppage, departed grounds without permission, and participated in a staff walk-out."

The Grievant received a notice of termination of employment on May 6, 2024. The Grievant was charged with violation of DYS General Work Rules Policy 131-SEM-05 as follows.

Rule 5.01P: Failure to follow policies and procedures: DYS Policy 131-SEM-05 General Work Rules.

Rule 5.28P: Failure to follow work assignment or the exercise of poor judgment in carrying out an assignment: Failure to perform assigned duties in a specified amount of time or failure to adequately perform the duties of the position or the exercise in poor judgement in carrying out an assignment.

Rule 5.29P: Unlawful participation in a work stoppage. Participation in or encouraging others to participate in an illegal strike, slow down, sick out, or other form of job action or work interruption, concerted or otherwise; or interfering with the activities of those employees who do not participate in the illegal work interruption.<sup>3</sup>

The Union grieved the termination of the Grievant on May 7, 2024. Following the denial of the grievance, the Union appealed the termination to arbitration. A dispute arose regarding the Employer's ability to utilize video with audio regarding the incident including the activity and role of the Grievant. As the video evidence had not been provided prior to or during the pre-disciplinary hearing as provided for in the collective bargaining agreement, the Union raised an objection regarding its admissibility at arbitration. The parties agreed to submit this limited procedural issue to arbitration, and the arbitrator determined that the Employer had the ability to submit the videos during the hearing on the merits.

At the time of the incident, the Grievant had active discipline in his file including a written reprimand dated February 7, 2022, a written reprimand dated April 22, 2022, and a one day working suspension dated June 2, 2022.

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<sup>3</sup> Joint Exhibit 2.

The arbitration hearing was conducted at the Indian River Juvenile Correctional Facility in Massillon, Ohio on November 20, 2025. The arbitrator indicated that, following the receipt of post hearing briefs from the parties, the award would be rendered no later than January 26, 2026.

#### POSITION OF THE EMPLOYER

The Employer states that the Grievant participated in a work stoppage on October 24, 2023. He was a short-term employee with a number of active disciplines in his record at the time of his termination. The Employer states that 17 Juvenile Correction Officers participated in an organized work stoppage, and youths were locked in their rooms. The Employer names a number of Officers who organized and participated in the action. Officer Person had stated that the action was discussed at roll call that morning. The Employer indicates that OCSEA Representative Burkepile stated to the Grievant that first shift Officers were refusing to unlock the doors at approximately 6:30 am. Certain Officers stated that the work stoppage should extend to the following day and second shift should be involved. Manager Walker testified, during the arbitration hearing, that he had never experienced an entire shift engaged in a work stoppage. It is clear that this was an unprecedented action on the part of Officers which prompted OCSEA President Mabe and the Union Chief of Staff Andrews to drive the two hours from Columbus to Indian River.

The Employer states that it attempted to assign the Grievant to a housing unit. Instead, he refused the assignment and left the facility. When Union Representative Burkepile told the Grievant about the work stoppage, he responded that he supported it. He stated that the work

stoppage brought tears to his eyes in support of the action. When the Grievant was leaving the facility, a number of employees stated that he was the eighth Officer to participate in the walkout. The Grievant stated, as he left the building, that he was out and leaving. He told another Officer to tell management that he should leave and state that he was not feeling well. The Employer states that evidence is clear that the Grievant encouraged, supported and participated in the work stoppage. The Grievant violated Article 41 of the collective bargaining agreement.

Union Representative Burkepile and other Union officials failed in their obligation to instruct employees to end the work stoppage and that not doing so would result in discipline as required by Section 41.02 of the CBA. This provision states, among other requirements of Union leadership, that the Union must notify employees of their obligation to return to work. There was no evidence produced, during the arbitration hearing, that Union leadership complied with this negotiated requirement.

During the investigation of the incident (see Joint Exhibit 4), both Manager Walker and Cooper stated that they did not give the Grievant permission to leave the facility. The Grievant failed to work his mandated overtime assignment. No one gave him permission to leave the facility. Although the Grievant claimed reliance on his FMLA status at a later time, he never stated this to managers or anyone when he left the facility. When on November 8, 2023, two weeks after the work stoppage, the Grievant completed an incident report indicating his use of FMLA on October 24, 2023, he did so in order to shield himself from his participation in the work stoppage.

The Employer states that the Union is arguing “on the fringes” by citing the seven tests of just cause. An exhaustive investigation was conducted. The investigative report contains 340 pages. DYS General Work Rules state that participation in a work stoppage is prohibited and is illegal. Further, equal discipline was implemented to all eight Officers who walked out of the facility including the Grievant. The Grievant encouraged others to participate in the work stoppage. He stated to Officer Paxos to tell management he didn’t feel good and to go home. Termination of employment is the appropriate penalty.

The Grievant was not credible. He was aware of the work stoppage at 6:38 am when Union Representative Burkepile informed him that Officers were not allowing youth to leave their rooms. The Grievant provided inaccurate responses during the investigation. On November 28, 2023, the Grievant was dishonest with his responses during the investigation. He also stated that management allowed him to leave the facility and go home which was not an accurate statement of what had transpired. There is no evidence that the Grievant informed Manager Cooper of his need to leave work based on FMLA. The Employer states that the Grievant provided false statements and falsified the incident report to conceal his participation in the work stoppage.

The Employer narrowed termination to the most egregious participants, the eight Officers who continued the work stoppage by leaving the facility. This included the Grievant. The Employer states in its post hearing brief that “any outcome other than denying this grievance shall embolden other such work stoppages across the State of Ohio, anytime and for any reason the Union feels warranted.”

## POSITION OF THE UNION

The Union states that the Employer charged the Grievant with participation in a work stoppage, that he left work without authorization. The record of hearing does not support the allegations and alleged policy violations. The Grievant was authorized to leave the facility. This is supported by evidence and testimony. No policy was violated. The termination of employment lacks just cause. The Grievant worked his shift and mandate. He remained on his assignment and then used protected leave. The Grievant left the facility with approval from two supervisors. Manager Walker told the Grievant to “take his hurt ass home.” The Union states that the seven tests of just cause sets the standard for management in cases of discipline. The investigation was incomplete. Management failed every one of the seven tests.

Video evidence illustrated that the Grievant did not violate any one of the three rules with which he was charged. The Union states that video evidence failed to provide evidence that the Grievant participated in a work stoppage. While the investigation determined that the Grievant participated in a work stoppage and left the facility without authorization, video evidence shows that the opposite actually occurred. The Grievant was never assigned a second mandate and never refused to work an assignment following the cancellation of the transportation of a youth. The Union states that Manager Cooper testified that he gave permission for the Grievant to leave after being told he was leaving on FMLA, and Manager Walker told him to take his sick ass home. Deputy Director Freeman watched the video during the arbitration hearing and then testified that the Grievant had permission to leave. Mr. Freeman testified that the Grievant should not have been terminated.

The alleged rule violations were not supported by Department policy. The Employer provided no rule which would prohibit an employee, who was ill and invoked FMLA, from leaving the facility. No rule which defines an alleged work stoppage was produced. Due process requires a rule and proof. None were present or met in the case of the Grievant.

The Union argues that the Employer violated its body-worn camera policy. The restroom is not a qualifying event, and conversations between employees and their Union representatives are protected. The Employer may not use video evidence in any location where an expectation of privacy exists. When management used the body camera footage to view and share in arbitration, the expectation of privacy and law were violated. Further, there was no reason to record and view personal conversations with co-workers in the parking lot when the Grievant exited the facility. It is a fact that none of the video recordings were saved from the day in question. The Union states that the Employer knew the video evidence would not support their case in the instant matter. Video evidence was "recalled" which is different than a recording from an employee who has their video-cam turned on. The Union argues that the Employer violated their own policies by predetermining discipline prior to conducting a fair and impartial investigation.

The Union states that this case at arbitration, the grievance, is not about other Officers who took their post but would not allow youth out of their rooms due to issues of safety. It is about one employee who worked his mandated assignment after working his regularly scheduled shift and who then left the facility due to an FMLA qualifying illness. He was willing to stay to work the mandated transportation of a youth although he could barely walk due to an ankle injury caused by a use of force with a youth.

The Union mentions the decision of an arbitrator which allowed the Employer to utilize video evidence which was withheld from the Union prior to the pre-disciplinary hearing in violation of the collective bargaining agreement. But the ruling of the arbitrator did not change what the record shows in this case. The pre-disciplinary hearing officer did not review video evidence before making the recommendation to discipline Grievant Thomas. Additionally, Investigator Borne admitted that he lacked training in video analysis. Deputy Director Freeman stated that footage was missing and admitted that the review was incomplete. The Grievant's incident report was not included in the investigative file and was submitted only at the arbitration hearing.

The Union cites the various levels of discipline received by a number of employees involved with the alleged work stoppage. Managers Cooper and Walker received written reprimands. Supervisor Foster was demoted and then promoted back to supervisor. Officer Fontes was reprimanded and later promoted to supervisor. Those employees with last chance agreements were issued additional last chance agreements as opposed to removal. And the list goes on while the Grievant's employment was terminated for leaving sick and invoking FMLA.

The Union argues that the Employer failed each of the seven tests of just cause. No specific policies were produced to support alleged rule violations. The Employer failed to complete a fair investigation. There is no proof that the Grievant participated in a work stoppage. He followed his mandate following completing his regular shift. He cited illness and invoked FMLA. Employees accused of similar or more serious conduct received written reprimands and then promotions. The penalty of termination was excessive and does not fit the Grievant's conduct.

The Employer's action lacks factual support, policy support and legal support. Evidence shows that the Grievant acted properly. Management never questioned his FMLA status. The Grievant never refused a mandated assignment. The Union requests that the Grievant be reinstated and made whole including back pay, all lost benefits, all leave accruals, all overtime and shift differentials, and any other financial loss. The Union requests that the arbitrator retain jurisdiction for sixty days.

#### ANALYSIS AND OPINION

The Union is correct when it states, in its post hearing brief, that this case, grievance and arbitration are focused on Grievant Davion Thomas, his actions on October 24, 2023 and the grievance filed by the Union regarding his termination of employment, Grievance Number DYS-2024-01353-03. The incidents of October 24, 2023 involved a number of Juvenile Correction Officers, Union officials and staff and others, and it is important to understand the full scope of the occurrences. Testimony and exhibits provide a general explanation regarding the decision to leave youth in their rooms on October 24 following the violent attack on two Juvenile Correction Officers the previous day, October 23, 2023. The post hearing briefs of the advocates provide a general description of the occurrences on October 24. Nevertheless, this opinion and decision is focused on the actions of the Grievant on October 24, the discipline imposed, disciplinary penalty and resolution requested.

The Grievant suffered an ankle injury while controlling an offending youth prior to the October 24, 2023 incident, and he spent time away from his duties while recuperating. He was FMLA qualified from the time of the injury and continued to be so at the time of the incident

which caused his removal by the Employer. The Employer was fully aware of his medical condition. The Grievant worked the third shift (night) from October 23 into the morning of October 24. A day or two prior to his regular October 23 shift assignment, the Grievant used sick leave based on his FMLA status and the condition of his ankle. He testified, during the arbitration hearing, that the medical documentation from the previous sick leave event was in his personal vehicle and that he went to the parking lot to bring it in to supervision. Due to the confusion resulting from the lockdown of the youth, he decided not to return and left the facility. It is important to note that supervision was fully aware of his medical condition. On November 17, 2023, the Grievant completed and submitted an incident report regarding his involvement in the events of October 24.<sup>4</sup> While the Employer has argued that the submission of the Report was self-serving as it was completed after the October 24 incidents, a number of reports were completed well after the October 24 including those of management employees. The Grievant was not interviewed until November 28, 2023 in any event. The report from the pre-disciplinary hearing was issued on April 30, 2024. Reports from the two Operations Managers, who were on duty at the time, were not submitted until a couple of weeks following the October 24 incident. The incident report of the Grievant is accepted as admissible evidence.

The Grievant completed his regular shift on October 24 and was overtime mandated to work the next shift, first shift on October 24. He was assigned to transport a youth to a medical location outside the facility. Apparently, due to the lockdown of youth in their rooms and the meetings between management, employees and Union officials, the transportation assignment

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<sup>4</sup> Employer Exhibit 8.

was cancelled. It is noted here that, while youth were confined to their rooms due to the lockdown, the Grievant allowed the youth, he was working with, to leave the room in order to be transported to the medical location outside Indian River. While the Employer has charged the Grievant with participation in the organized lockdown, there is no evidence that he did so. He made a number of statements in support of his fellow employees and his Union, but there is no evidence he participated in the development of the lockdown of youth contrary to the allegations of the Employer. The Grievant did not refuse his mandated assignment on October 24. He was never assigned to a unit following the cancellation of the transport. The Grievant testified that he served on the executive committee of his Union chapter.

The Report of Investigation, completed by Investigator Borne, stated that Operations Manager Cooper indicated that the Grievant was mandated to transport a youth on first shift, but the transportation assignment was cancelled. Manager Cooper stated, during the investigation, that he gave the Grievant an option to work a unit as a number of employees left the facility. Manager Cooper indicated that the Grievant chose to leave the facility due to illness. During the arbitration hearing, Operations Manager Cooper testified, under oath, that he asked the Grievant if he was leaving. The Grievant responded that he was due to not feeling well. Cooper basically allowed the Grievant to leave the facility. The Grievant was not ordered to remain at the facility in order to take a unit assignment by Mr. Cooper or anyone else.

Operations Manager Walker stated, during the investigation, that he did not give the Grievant permission to leave the facility. Nevertheless, video evidence clearly captures Manager Walker stating to the Grievant to “take your hurt ass home.” He testified, under oath during the arbitration hearing, that the Grievant had permission to leave the facility although

he did not recall if the Grievant made mention of his FMLA status. Mr. Walker's statement as contained in the investigation report, which was the basis for the Grievant's removal, was not true.

On cross examination, Labor Relations Officer Chris White testified that, if the Grievant was ill and based on FMLA status, it was acceptable for him to leave the facility. Investigator Borne testified during the arbitration hearing. He stated that the Grievant did not refuse his mandated transportation assignment. He testified further that Manager Cooper essentially allowed the Grievant to leave. His testimony supported the Employer's position in many respects, but he testified that he only viewed one video during the investigation. He also testified that he never saw the Notice of Termination which was served on the Grievant. Investigator Borne stated that the Grievant encouraged other employees to leave the facility. Nevertheless, the Union's criticism regarding the investigative process has merit, and Managers Cooper and Walker were not forthcoming in their responses during their interviews regarding permission granted the Grievant to leave the facility.

The testimony of Chris Freeman is particularly critical. Mr. Freeman has held a number of management positions with the Department of Youth Services during his 30 year career. He currently is Deputy Director of Indian River and oversees the facility, and, in the past, he has served as Superintendent. Mr. Freeman testified that he initially agreed with the termination of the Grievant's employment. When he became aware of Manager Walker's statement to take his ass home, Mr. Freeman believed that the Grievant did, in fact, have permission to leave the facility. He testified that the Grievant did not refuse the mandate, and he possessed approved FMLA. Deputy Director Freeman testified that most of the points in the Notice of Termination

are not accurate, and he suggested that the Grievant's employment should not have been terminated.

Let's analyze the charges listed on the Grievant's Notice of Termination dated May 6, 2024, over six months following the incidents. He was charged with "Failure to follow polices and procedures." It is unclear which polices and procedures the Grievant did not follow. He worked his night shift. He worked his mandated assignment to transport a youth to a location outside the facility. When the assignment was cancelled, the Grievant informed supervision that he was not feeling well, and he left the facility after receiving specific permission to do so from Operations Manager Walker. The charge is not supported by evidence.

The Grievant was charged with "Failure to follow work assignment or the exercise of poor judgement in carrying out an assignment: Failure to perform assigned duties in a specified amount of time or failure to adequately perform the duties of the position or the exercise in poor judgement in carrying out an assignment." This alleged violation of policy makes no sense. The Grievant completed his regular shift and then remained on duty for the mandated overtime assignment to transport a youth. Supervision never assigned him to a unit following the cancellation of the transport, and the Grievant left the facility with permission. This charge is not sustained.

The Grievant was charged with "Unlawful participation in a work stoppage." There is no evidence that the Grievant was involved in the organizing of the lockdown of youth on October 24. He did not participate in the meeting with management and Union officials. He was not assigned to a unit when the lockdown occurred. He, in fact, allowed the youth he was to transport out of his room in order to leave the facility. He did not interfere with the activities of

employees who did not participate in the lockdown. He did express support of those employees involved along with Union Representative Burkepile, and he expressed encouragement of those employees who had left the facility when he went to his vehicle in the parking lot. Although the Grievant was very concerned for the safety of his co-workers and was sympathetic regarding their actions on October 24, he was a member of the Union Chapter Executive Committee and was required, based on Section 41.02 of the collective bargaining agreement, to discourage participation in the lockdown and the exit of the Officers who left the facility following the resolution of the lockdown.

In summation. On October 23, 2023, two Juvenile Correction Officers were attacked by a youth and injured. They were transported to a medical facility. Attacks of youths on youths and youths on employees are common as documented by the Department. On October 24, 2023, Juvenile Correction Officers assigned to the first shift left youth locked in their rooms until a meeting with the administration could occur to discuss safety concerns. The Grievant had worked the night shift beginning on October 23 and was mandated to work the first shift on October 24. He was assigned to transport a youth to a medical location outside the facility. That assignment was cancelled. The Grievant was granted permission by Operations Managers to then leave the facility based on reported sick leave. The Grievant possessed FMLA status from an on-the-job injury involving the physical control of a youth. While the Grievant was in the facility on October 24, he expressed support for the lockdown which was initiated by his co-workers. He also expressed support of the action in discussion with the Union Staff Representative. He further expressed support and encouragement in the parking lot with employees who had left the facility. As a member of Union leadership, member of the Chapter

Executive Committee, the Grievant violated Section 41.02 of the collective bargaining agreement when he expressed support for said actions including the walkout by seven employees.

Grievance DYS-2024-01353-03 is sustained in part and denied in part. There clearly is no just cause for the termination of the Grievant's employment and is in violation of Article 24, Section 24.01 of the collective bargaining agreement. Grievant Thomas is reinstated as a Juvenile Correction Officer at Indian River Juvenile Correctional Facility and made whole including back pay, lost benefits, leave accruals, shift differentials, and any other financial loss. He is issued a written reprimand for violation of Rule 5.29P and Section 41.02 of the collective bargaining agreement for expressing encouragement to his co-workers regarding the shutdown and to those who left the facility in the parking lot. A written reprimand is consistent with discipline administered to certain employees involved with the shutdown (see Union Exhibit 9).

#### AWARD

Grievance DYS-2024-01353-03 is sustained in part and denied in part. There is no just cause for the termination of the Grievant's employment and is in violation of Article 24, Section 24.01, of the collective bargaining agreement. The discipline is reduced to a written reprimand for reasons as noted in the above paragraph. Grievant Thomas is reinstated as a Juvenile Correction Officer at Indian River Juvenile Correctional Facility. He is made whole including back pay, lost benefits, leave accruals, shift differentials, and any other financial loss. The make

whole remedy is less outside interim earnings and/or unemployment compensation, if applicable, earned following the termination of employment from Indian River.

The arbitrator will retain jurisdiction for 60 days from the date of this award for purposes for remedy only.

Signed and dated this 12<sup>th</sup> day of January 2026 at Lakewood, Ohio.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a light-colored background.

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Thomas J. Nowel, NAA  
Arbitrator

CERTIFICATE OF SERVICE

I hereby certify that, on this 12<sup>th</sup> day of January 2026, a copy of the foregoing Award was served, by way of electronic mail, upon Dr. Buffy Andrews, Chief of Staff for OCSEA , AFSCME Local 11; Bradley A. Nielsen for the State of Ohio, Ohio Department of Youth Services; and Thomas Dunn for the State of Ohio Office of Collective Bargaining.

A handwritten signature in cursive script that reads "Thomas J. Nowel". The signature is written in black ink on a light-colored background.

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Thomas J. Nowel, NAA  
Arbitrator