

OPINION AND AWARD

\*\*\*\*\*

In the Matter of Arbitration

Between

STATE OF OHIO

Department of Youth Services

And

THE STATE COUNCIL OF PROFESSIONAL  
EDUCATORS, OEA, NEA

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*

OCB Griev. #G86-0931

Michael Moreland

Riverview/Scioto Village

Hearing: June 24, 1987

Award: September 8, 1987

Paul F. Gerhart, Arbitrator

\*\*\*\*\*

Appearances

For State of Ohio:

John E. Patterson, Labor Relations Administrator,  
Department of Youth Services

Deneen E. Donough, Labor Relations Specialist, Department  
of Youth Services

Granville Potter, Superintendent, Buckeye Youth Center

Kendal Ball, Superintendent, Scioto Village/Riverview

For The State Council of Professional Educators:

Henry L. Stevens, UniServ Consultant

Steven K. Sunker, Guidance Counselor, President,  
SCOPE/OEA

Michael Moreland, Teacher, grievant

Wayne McDowell, Teacher

## Background

The State Council of Professional Educators, Ohio Education Association, National Education Association (hereinafter, the Association) is the bargaining representative for certain employees of the State of Ohio, Department of Youth Services (hereinafter, the Employer) at the Employer's Scioto Village/ Riverview Complex near Columbus, Ohio. During the term of their labor agreement dated July 1, 1986 to June 30, 1989, the parties were unable to resolve a grievance involving work assignment. Under the provisions of Article 6, Arbitration, the undersigned was selected by the parties to issue a final and binding determination in the matter.

Upon the mutual agreement of the parties, a hearing in the matter was held at the offices of the Ohio Education Association, 5026 Pine Creek Drive, Westerville, OH on June 24, 1987. The parties stipulated the matter was properly before the arbitrator at that time. During the course of the hearing, each party was accorded the opportunity to examine witnesses, present other evidence, and make argument. At the close of the hearing, the parties agreed to submit post-hearing briefs, to be exchanged through the Arbitrator, no later than July 27, 1987. Both briefs were postmarked by that date and cross-mailed by the arbitrator on August 19 following his return to Cleveland following an extended absence. At that point, the record in the matter was closed.

## Grievance (Joint exhibit 2)

The grievance was filed by Michael A. Moreland on October 9, 1986.

NATURE OF GRIEVANCE: Forced to perform duties unrelated to the task of education.

The actions of Kendall Petry, William Odronic, Kendall Ball violates, misinterprets, or misapplies the Agreement between SCOPE/OEA and the State of Ohio.

EXPLANATION: On the dates of October 2nd and October 6th incidents occurred in which educational staff was called from their assigned work areas in order to physically restrain youth. In (sic) additional incident of concern occurred on October 9th.

On October 2nd, a youth was subdued in the art room in the Riverview Education area by Bob Sprague, Steve Sunker, Mark Powell and Kendall Petry (Principal). These educational staff were called to report to the art room. When the student refused to leave, Mr. Petry took the initiative to subdue the

student. He asked Mr. Sunker to go to the supervisor's office and pick up hand-cuffs. Mr. Sunker was met in the hallway by Mrs. Goodson, Youth Leader Supervisor, who then said she would get the hand-cuffs. Five minutes elapsed while educational staff continued to subdue the youth. Once hand-cuffed, Mr. Sunker and Mr. Sprague followed the youth to group.

On October 6th, another incident occurred in the art room with a youth refusing to leave. Steve Sunker, Eugene Strobe, and Mr. Petry were again summoned. Mr. Petry decided force was appropriate and the teachers were then involved again in transporting the youth to his quarters. Mr. Sunker was involved in the transportation of the youth to group.

On October 9th, at 9:10 A.M. two students were threatening to fight in room 5. No supervisors were in the area and the only available staff to deal with the situation was Mr. Googins, the classroom teacher, Mr. Sunker, and the secretaries in the office. As Mr. Sunker escorted the students to the groups, two other students were sent from classrooms to groups for disciplinary reasons. No help was available to deal with a potentially dangerous situation.

The responsibility of physical restraint and transportation of hostile youth from the school area to the cottage area is an on-going problem. Teachers and guidance counselor are expected to leave their assigned areas to assist in handling of any behavioral problems. In the case of the principal leaving the school area no individual remains within the area to assume any responsibility for decisions. Thus, teachers must make decisions for which no training has been offered (i.e., supervisory control of the situation). Furthermore, there is no plan in place to deal with crisis situations within the area.

In any case, duties of security and primary responsibilities for physical restraint which belong to youth leaders are thrust upon educational staff. As these are duties of another classification, proper staff to deal with these problems should be assigned to the educational area to assume the responsibilities which are rightfully theirs. In doing so a safe atmosphere may exist in order for the educational staff to properly conduct business.

SPECIFIC VIOLATION OF ARTICLE: 1.02, 1.03, 7.01, 9.01, 13.04 and any other pertinent article in the agreement as well as any other pertinent state law.

REMEDY SOUGHT: Education staff will be relieved of all security functions (i.e., Physical Restraint, Escorting Students for Discipline, etc.)

Issue

The parties agreed to the following stipulation of the issue:

Did Management violate the 1986-89 Agreement between the State Council of Professional Educators/OEA/NEA and the State of Ohio when members of Unit 10 were directed to restrain youths in the school area and escort youths from the school area? If so, what shall be the appropriate remedy?

Relevant contractual provisions,  
side letters, and work rules

ARTICLE 7 - HEALTH AND SAFETY

7.01 - Health and Safety and Personal Safety  
Subcommittees

The Employer and the Association agree that the health and safety of employees is a matter of great importance.

A joint subcommittee of the Labor/Management Committee may be established . . . .

ARTICLE 9 - CLASSROOM CLIMATE

9.01 - Classroom Climate

The Employer recognizes the responsibility to provide reasonable support and assistance to teachers and teaching coordinators with respect to the maintenance of control and discipline in the educational setting. The Employer, the Association, and employees also recognize the special needs exhibited by the varied populations served at the work facilities.

Side letter dated May 19, 1986, page 86 of Agreement, in relevant part:

The Employer guarantees that assignment of student contact time for employees in the Teacher and Teacher Coordinator classification titles shall be no more than six (6) hours per day. Student contact time is defined as time spent in classroom instructional activity. The Employer reserves the right during remaining portions of the work day to assign employees to perform related duties such as but not limited to conferences, curriculum development, testing and treatment team assignment.

From Employer work rules concerning Physical Restraints, Directive Number E-18, July, 1986, in relevant part:

### III. IMPLEMENTATION

#### C. Procedures

##### 1. Use of Restraints:

- a. An employee encountering a situation with a youth described in the policy section of this Directive shall contact his/her supervisor and/or available staff for assistance. Employees shall avoid using physical force alone whenever possible.
- b. Employees shall contact the Group Life Supervisor/Security Office expressing the need for physical restraints.
- c. The Group Life Supervisor/Security Officer shall bring the restraints to the scene and if the supervisor concurs with the need, shall be primarily responsible for the application of the restraints.
- d. Available employees shall assist in applying the restraints.
- e. The Group Life Supervisor/Security Officer shall immediately, upon securing the youth, notify the Medical Department.

#### Evidence

Michael Moreland, an eight year employee and presently a Physical Education Teacher at the Riverview School for Boys, testified that the class size is typically 14 boys; for physical education it is up to 30. The students at the school are typically felony 1 and 2 offenders as juveniles. Offenses in these classes include armed robbery, sex offenses, and homicide. Age range is from 12 to 18 years. The students range from child to fully developed adult.

Mr. Moreland testified that in his opinion he had been asked to work out of his job classification by supplying security functions. He has been asked to remove students to the cottage area because the students had exhibited threatening behavior, hostility, and volatile behavior. He stated he had not received proper training to perform these functions.

Mr. Moreland stated he belonged to Bargaining Unit Number 10, the State Council of Professional Educators comprised of professional educators such as teachers and librarians. He estimated that teachers are asked to perform security functions about a dozen times per year. He stated the situations in which he was asked to perform these functions were not emergencies. He also stated he received no compensation for it. Mr. Moreland testified he has not been given training in how to restrain youths nor is he permitted to put handcuffs or leg restraints on the youths.

Mr. Moreland described the most recent occurrence on June 12, 1987. A student had been asked to leave the classroom and go to isolation by a teacher. The student refused. Moreland was in his office at the time and was called over the intercom system to come and assist. In addition to Moreland, Messrs. Heffner, social worker; Sacone and Riddle, teachers, were also present. They tried to talk to the student, but he was unreasonable and had to be removed from the room.

Mr. Moreland stated that when teachers are called out, secretaries are occasionally put into classrooms to "hold them" and since they are not adequately trained to deal with the youth, this practice creates a security problem. An alternative sometimes employed is to pull an extra class into a classroom designed for 14 so they can all be supervised by the remaining teacher.

Mr. Moreland stated that occasionally individuals have been injured during the incidents he was describing. In the instance described above, Mr. Riddle received bruised legs and skinned knees. He also experienced high blood pressure which is recorded in the health clinic where he reported after the incident.

Mr. Moreland testified concerning Association exhibit 2, his job description for Teacher 1-4. The function is stated to be:

Under general direction from principal or assistant principal, instructs students in physical education and health at state institution; performs related duties as required.

The job duties are listed as follows:

Supervises and instructs students in physical education and health, provides individual assistance to students, administers examinations and proficiency indicators, disciplines students and refers more difficult cases to proper superior and counsels students regarding behavioral, personal and academic problems.

Develops individual performance objectives; grades tests; requisitions necessary supplies; maintains equipment; develops and maintains curriculum; prepares daily lesson plans.

Prepares and submits required records and reports (e.g., attendance records, student evaluations, student progress, student profiles).

Mr. Moreland stated he had no objection to controlling discipline within his classroom and does that to the best of his ability. He stated that Group Leaders are assigned in his building, but they do not assist when the types of incidents described earlier occur. Mr. Moreland stated that principals also occasionally assist.

Mr. Moreland testified that he and his colleagues did not like to perform the security duties that are not included on their job description because the teachers fear for their safety and for the students' safety, and because there is a security problem created by teacher involvement in these activities.

Association exhibit 3 is the job description for Youth Leader 2. Mr. Moreland testified that Youth Leaders 2 and 3 are assigned in his building. The function is:

Under general supervision from youth leader supervisor, maintains surveillance of resident living units in county youth residential facility to ensure security, safety and discipline of residents in assigned social, recreational, school and work activities; performs related duties as required.

Job duties include:

Maintains safety, security, care, discipline and surveillance of residents of county youth residential facility, enforces rules and regulations of residential living unit pertaining to security, discipline and housekeeping tasks and ensures safety and security of living units . . . .

Monitors youth in social, recreational, volunteer sponsored and related activities; escorts youths to and from various destinations; maintains security during visits of parents and other relatives.

Ensures maintenance and cleanliness . . . .

Prepares routine reports . . . .

Mr. Moreland testified that teachers were being asked to perform the duties described in Association exhibit 3, which belong to Youth Leader 2, who are represented by a different union in another bargaining unit.

Mr. Moreland stated that not all teachers are asked to perform the security duties. Those who are not physically strong enough including women are excluded.

On cross-examination, Mr. Moreland testified that it was not uncommon for him to be asked to restrain youth or escort youth outside the school area. He also testified it was not something that had developed recently, but that over his eight years of service as a teacher it was something that has occurred on a regular basis. He agreed he had not been happy with these duties for eight years. He stated that the population of students had not included homicide convictions until the last few years.

Mr. Moreland stated he was familiar with the term, "crisis intervention." He disagreed that it included the use of physical restraint, but did include talking to youth under crisis circumstances. He testified that he had helped initiate a training program in crisis intervention along with other teachers. The administration had not initiated the program. The purpose was to help teachers avoid situations that might lead to physical injury. The program was held during the school day while participants were on pay status. The program was approved by the administration.

On re-direct examination, Mr. Moreland stated he had complained to the administration informally throughout his eight years of service concerning the performance of the restraint and escort duties, but filed no formal complaint before the negotiation of the contract because there was no avenue for formal complaint that was sufficient. On cross-examination, he stated he was aware of the process for complaint resolution prior to the last contract negotiations when he was represented by the OCSEA. Mr. Moreland stated the procedure under OCSEA as ineffective because it did not contain arbitration.

Further during cross-examination, the Employer introduced Management exhibit 1, "Crisis Intervention Inservice," which was identified by the grievant as the program which he helped prepare, and in which he and other staff, including teachers, at Riverview had participated. Mr. Moreland agreed that at the twelfth (unnumbered) sheet labeled "Intervention Team Process" that physical intervention technique is covered in the final paragraph. To the best of his recollection, Mr. Moreland testified the program was prepared and presented either just before, or during, the negotiations for the current Agreement.



On re-direct, Mr. Moreland testified that he and his colleagues had put the crisis intervention program together for their own safety since they were being asked to perform tasks outside their job descriptions. It was presented only once and newer staff have not had exposure to it. Mr. Moreland and two other teachers presented the program.

Mr. Wayne McDowell, a twenty-year teacher at the Ohio State Reformatory at Mansfield and the Association's site representative there, testified he had been affiliated with, and held leadership positions in, AFSCME/OCSEA previously. His responsibility as a teacher at the Ohio State Reformatory is to provide instruction to the inmates who are incarcerated there. Class sizes range from 12 to 25. The age range of the individuals is from 18-30 although some are younger and some older.

Mr. McDowell testified that teachers at OSR are asked to perform duties outside their classification by working in the recreation area, mail room, dining room, by sitting on the rules infraction board, and by providing security on the bus that transports individuals from the housing to the job area and "shaking down" cell blocks. [The Employer objected to this line of questions on grounds of relevance to the specific issue before the arbitrator in this case. Although the arbitrator permitted the questioning to proceed, he now finds, after a careful consideration of the testimony by Mr. McDowell and its relationship to the issue, that it was largely irrelevant in this particular hearing.]

On cross-examination, Mr. McDowell stated he had filed grievances concerning his allegation that many of the above-noted tasks were not part of his job description. He also stated the individuals incarcerated at the OSR were referred to as residents or inmates.

Steve Sunker, President of the State Council of Professional Educators for two years and Guidance Counselor at the Riverview School for Boys for four years, testified that his Counselor duties included counseling the boys, placing them in special education programs, and discussing student concerns. He also presided at the ratification of the current Agreement.

Mr. Sunker testified he was familiar with his job classification description. He also testified that he had been assigned duties outside his classification on a number of occasions. In particular he had been asked to assist in restraining students and to escort them to the cottage area. He stated that these assignments created problems for him in his role as guidance counselor since the students tended to associate him with discipline after such assignments. Thus, they were less willing to discuss openly certain concerns they might ordinarily discuss with a guidance counselor.

Mr. Sunker testified he was injured during one incident in February, 1987. As Sunker was escorting a student from the school area back to the cottage area, the student suddenly turned to run back toward the area where an altercation had occurred. Mr. Sunker attempted to restrain him but was thrown back against the wall causing a strain to his back and neck. No security person was available at the time nor were there any administrators. The teachers at the scene had requested security, but none ever came. The entire episode lasted 10-15 minutes. A class change was in progress and students were pulled into the first available room to be supervised by any available teacher, not those normally assigned.

Mr. Sunker testified that he and other teachers had complained to the administration about the policy to assign teachers to security duties and the lack of training to handle security. The only action has been to allow the above-mentioned inservice training program that was organized by the teachers, themselves.

Mr. Sunker stated he was aware of other teachers who had been injured in minor ways, such as minor cuts to the face. No one had missed a lot of days due to such injuries.

Through his discussions with other Association members at other locations, Mr. Sunker testified that he had determined that others had concerns about working outside their job descriptions. The issue had been raised across the bargaining unit, but was particularly acute in the Department of Youth Services and Department of Corrections where security duties were the issue.

The Association then introduced Exhibit 6, a portion of the Agreement between OCSEA/AFSCME and the State. The job title, Youth Leader, appears in the Appendix to that agreement and is listed under Bargaining Unit 3 which is represented by AFSCME/OCSEA.

Association exhibit 7, a letter acknowledging Mr. Sunker's claim for injury expenses related to the incident recounted above in which he injured his back and neck, was also entered into the record.

Mr. Moreland was recalled briefly and testified that a security officer (Youth Leader) had been stationed in the hall of the school area in the past, but that no such person was assigned there now. On-cross examination he described the individual as a female about 50 years of age.

Henry Stevens, Association Representative, was called as the Employer's first witness without objection. Mr. Stevens testified he had been involved in the negotiations for the

current Agreement except for the first one or two meetings at which initial proposals were exchanged. The Employer introduced Management exhibit 2, a series of proposals and counter proposals by the Association and Management during the most recent negotiations. The document contains an item labeled 18.04, union proposal 12/6/85, Corporal Punishment. The second sentence of the proposal states,

Such person may also within the scope of his/her employment use and apply such an amount of force as is reasonable and necessary to quell a disturbance threatening physical injury to others, to obtain possession of weapons or other dangerous objects upon the person or within the control of the pupil for the purpose of self-defense, or for the protection of persons or property.

Mr. Stevens testified he could not be certain that the cited language was part of an Association proposal, but in any event, he noted that it was not part of the clause on Classroom Atmosphere that was eventually tentatively agreed upon.

Granville Potter, a 19-year employee with the Department of Youth Services and currently a Youth Center Superintendent, testified that throughout his tenure with the department, teachers had been required to restrain youth and escort them back to their cottages.

Mr. Potter testified that he had reviewed the crisis intervention program that had been developed by several of the teachers. He characterized it as a good program and approved its use. It was presented during the time the parties were in negotiations.

Mr. Potter testified that he had attended all but one of the negotiation sessions for the current Agreement. He further testified that the proposal cited above concerning Corporal Punishment (MX 2) was a Union initiated proposal. He also identified Management exhibit 3, Health and Safety proposals that were offered during negotiations. In particular, Mr. Potter testified that the following proposal,

#### 5.02 Bargaining Unit Work

Bargaining unit members shall not be required to perform any duties normally performed by correction officers or youth leaders during riots, escapes, hostage situations, lockdowns, etc. or similar emergencies,

had been rejected by the Employer and did not become part of the Agreement.

Mr. Potter stated the Union had also proposed specific language concerning personal protection training which appears in MX 3 on the third page, but that this had been withdrawn following the parties' agreement to the specific language contained in the Agreement under Article 9 - Classroom Climate. Mr. Potter testified that the issue of restraints as well as the question of insurance to cover injuries sustained by teachers was specifically discussed during negotiations. The nature of the clients was also discussed and taken into account when the pay rate for teachers was negotiated.

On cross-examination, Mr. Potter gave assurance that the corporal punishment clause was not proposed by management because the Employer never proposed any language regarding corporal punishment.

Mr. Potter stated that the responsibility for discipline lies with each and every employee in the institution. He stated that training for employees was available from the Training Center on the Scioto grounds. Mr. Potter also stated there were no security officers inside the grounds of the facilities. They are at the gates. Youth Leaders are also posted within the grounds and may, when necessary, be assigned to monitor inside the school area. He said it was not a usual practice, however.

Ken Ball, a 19-year employee and presently Superintendent of the Scioto Village/Riverview Complex, testified that as a teacher he had participated in restraining youth and escorting them back to their cottages when necessary. [The Association Representative objected to the relevance of this last point inasmuch as Mr. Ball's teaching activities predated the current Agreement.] Mr. Ball testified that the principal duties of the four security officers and their supervisor is to transport youth to hearings, doctor's appointments, and to other places. They have perimeter security responsibility, monitor youth movement in the open campus area, and patrol the parking lot. They are also available if needed in AWOL cases and crisis situations. Mr. Ball stated the Youth Leader is also known as a "cottage parent." They supervise and work with youth in the cottages, counsel them, and generally make sure the cottages are kept clean and other rules are followed. The Social Worker is a team coordinator among the Youth Leaders, Teachers, and others involved with the youth. Mr. Ball stated that the Teacher is a team member participating in the total treatment program for a youth as well as teaching a specific academic subject.

Mr. Ball testified that the escorting function involved taking the student from the school area eighty to ninety feet to the group life area. In the Riverview area both areas are under one roof. Once in the group life area, the group life supervisor will take charge of the situation and the teacher

may return to his normal duties. Occasionally, if the child is out of control, the teacher may assist in returning the child to his room and securing him there.

Mr. Ball testified that behavioral intervention training is offered at the Training Academy for all staff.

On cross-examination, Mr. Ball stated that two security officers were on duty most of the time. There are a total of forty to fifty Youth Leaders at Sciota Village. Both Youth Leaders and Security officers are in Bargaining Unit 3. Mr. Ball agreed that in situations similar to those described by Mr. Moreland and Mr. Sunker earlier that individuals could be injured. He agreed that individuals had been injured and property destroyed during these incidents. He also agreed that crisis intervention training for such incidents was a matter of great concern. Mr. Ball stated that the Training Academy had enlarged upon the crisis intervention program developed earlier by the teachers and had offered it on several occasions for all staff members.

Mr. Ball stated that the policy is that handcuffs and other physical restraints will be applied only on the direction of a supervisor.

Mr. Potter was recalled by the Association for rebuttal and he testified that he had drafted the second paragraph of the side letter that appears in the contract book (JX 1) on page 86. [The paragraph is reproduced above under contractual provisions.]

#### Position of the Union

The following is a summary of the argument contained in the Union's post-hearing brief.

Institution Directive (E-18) dated July, 1986, entitled Physical Restraints, sets forth policy and established a uniform procedure for the use of restraints. Section III, C, 1, Use of Restraints, paragraphs a-e, and 2, Use of Restraints in Transportation places the primary responsibility for the application of the restraints on the Group Life Supervisor/Security Officer. [The Directive is quoted in relevant part, above.]

Unit 10 members have never been trained to correctly place restraints on students. When trying to help others apply restraints, many Unit 10 members have sustained injuries or damage to personal property. In his response to the grievance (JX 2), Mr. Ball concurs that health and safety is a matter of great importance, however he offers no solution to the problem.

After several injuries and loss of personal property to educators, and because certain teachers' classes were often interrupted, Messrs. Moreland, Powell, and Sanders, in December, 1985, initiated a Crisis Intervention Inservice [training program] (MX 1). They are all veteran teachers with no particular expertise in the area of physical restraints. The Inservice's main objective was to act a guide for new teachers and other teachers having discipline problems in the classroom. The Inservice was designed for prevention of disciplinary problems for younger teachers and those small in stature with lessor physical attributes. The Inservice also had as an objective to provide for effective communication, consistency, and confidence in dealing with varying and delicate situations. Demonstrations concerning the assisting of supervisors with handcuffs and leg irons were shown.

Elkouri and Elkouri note that where a company's safety rules provided that an employee should go to his supervisor if special conditions arise which make the employee think it is necessary to violate a safety rule in order to do the assigned work, it was held that after the employee raised a question as to the safety of an assignment, it then becomes the supervisor's responsibility to initiate any discussion and to give such advice and explanation as might be required.

Management alleged that the Association withdrew the opportunity for training by withdrawing Section 5.06 (Personal Protection Training) from the original proposal. After careful review of the negotiation notes, Section 5.06 was withdrawn after Management stated that all departments, with the exception of Youth Services, hold their own training programs for employees on the subject of physical restraints and that employees of Youth Services could be allowed to attend the training academy to receive such training. Management would not spend the money for additional training. Further, the Association felt that Management retained the right to provide proper training if they desired to do so under Article 3, Section 3.03, the management rights clause.

Management also introduced the Association's demand regarding corporal punishment. The Agreement contains language in Article 9, Section 9.01 and 9.02 [quoted in relevant part, above] relating to discipline policy. The Association recognizes Directive E-18, Physical Restraints, as such a facility policy regarding pupil personnel discipline.

Superintendent Ball acknowledged that Security Officers have other duties such as transportation. There have been times when neither management staff or security staff are on the campus, leaving the guidance counselors and teachers to make decisions concerning discipline and other areas that are not within the realm of their duties and responsibilities. [The Classification Specification for Teachers is quoted in

relevant part, above.]

Conclusion. Management's work rule, E-18, establishes procedure for the application of restraints. That responsibility is that of the Group Life Supervisor/Security Officer. The language is clear and unambiguous and should be upheld. Teachers will continue to assist with discipline, especially in emergency situations.

For the above reason, we ask that the arbitrator uphold the grievance and give the following remedy: (1) Teachers under normal situations only assist the Group Life Supervisor/Security Officer with applying restraints; (2) Training be made available to teachers with time to attend.

### Position of the Employer

The following is a summary of the argument contained in the Employer's post-hearing brief.

The Department of Youth Services (DYS) is a state agency responsible for the care, custody and education of youths found to be delinquent by a juvenile court in the State of Ohio. DYS attempts to provide a setting for rehabilitation of these youths which includes providing education in a high school environment. To fulfill this function, DYS employs teachers whose positions are included in Bargaining Unit 10 represented by SCOPE/OEA (the Association).

As in other high school settings, teachers at DYS are required, within the scope of their employment, to discipline youths who act inappropriately in the classroom. Because teachers are not permitted to use corporal punishment, methods of discipline to be used by teachers include restraining youths when necessary and escorting youths from the school area.

Evidence presented at the hearing shows that the expectation for teachers to restrain youths and escort them from the school area is not new. It existed prior to negotiations for the current Agreement. Further, Mr. Potter's testimony shows that prospective teachers for DYS are given notice when interviewed that they may have to, and would be expected to, perform such duties.

The requirement that teachers restrain youth in the school area and escort youth out of the school area was not bargained away at negotiations and has continued since the effective date of the Agreement. In negotiations, the Association proposed a section that stated, "Bargaining Unit members shall not be required to perform any duties normally performed by corrections officers or youth leaders during riots, escapes, hostage situations, lockdowns, etc., or similar emergencies." That

proposal was rejected by Management; however, it would appear in the matter at hand that the Association is now trying to get through arbitration that which they could not get through negotiations. As in negotiations, the Association is now proposing that the duties of restraining youth in the school area and escorting youth from the school area are duties which should be performed solely by youth leaders and security officers.

The Association now bases its argument that teachers should not be required to perform the restraining and escorting duties on the fact that such duties are not included in the classification for teachers and are included in the classification for youth leaders and security officers. Admittedly, the classification for youth leaders states that they "maintain safety, security, care, discipline and surveillance" of youth within the facility. However, the Teacher classification includes "disciplines youth" and is intended specifically for the employees of DYS.

Absent the ability to use corporal punishment, it is not unreasonable to include in the requirement to discipline youth the restraint of youth and the escorting of youth from the school area. Consistent with this interpretation of the classification specification language, Mr. Potter, who participated in the negotiation of the Agreement, testified that Article 9 was included as recognition by all parties of the special needs of the populations; specifically that at DYS the youth have behavioral problems and thus tend to act out. In light of this recognition it follows that teachers may be required to deal with such youth by restraining them or escorting them from the school area.

Another argument presented by the Association is that the teachers are not properly trained to perform such duties and that some teachers have sustained injuries doing so. Messrs. Ball and Potter testified that both Crisis Intervention and Behavioral Intervention training are available for teachers at the DYS Training Academy. Both Employer and Association witnesses testified that during negotiations several teachers at Riverview developed a crisis intervention program of their own and presented it to teachers at the complex. The program was given administrative approval and all who attended were given paid released time. This not only shows that teachers had crisis intervention training, but it shows that the teachers knew, during negotiations, that they were expected to engage in escorting and restraining activities. Furthermore, with respect to injuries, Mr. Potter testified that it was recognized that injuries may be sustained by teachers while performing their duties, thus injury pay was granted to the Association in negotiations.



Conclusion. Based on the foregoing, the DYS respectfully requests that the grievance be denied.

### Discussion

The testimony of the Association's witnesses built a compelling argument that teachers in the state's youth incarceration facilities should not be assigned what are essentially security or guard duties--physically restraining unruly youth and escorting them from the educational areas to their quarters. This is so because it is not part of what are normally considered "professional educational activities" for which teachers are trained, because it is arguably not part of the central task for which teachers are hired, because it interferes with the pupil-teacher relationship, and because it can be unsafe for those who are untrained in the function or who do not have the physical strength or stamina to perform the functions, given the characteristics of the students involved.

It matters little whether the arbitrator has been persuaded by this argument, however, because the question before the arbitrator is not whether teachers should be assigned these duties. The question is whether the Agreement permits the Employer to make such assignments. As the parties well know, an arbitrator's award ". . . is legitimate only so long as it draws its essence from the collective bargaining agreement." (United Steelworkers of America v. Enterprise Wheel & Car Corporation, 80 S.Ct. 1358). The arbitrator's duty is to find the mutual intent of the parties at the time they negotiated the Agreement; it is not to redraft the Agreement using his own standard of what is appropriate.

The arbitrator is compelled to look to the Agreement to determine intent. Moreover, it is customary that where, as here, the issue is one of contractual interpretation, if there is ambiguity in the Agreement, the burden is on the Association to prove by a preponderance of the evidence what the mutual intent of the parties was. Here, therefore, it is necessary to show that it was, in fact, the parties' intent to restrict the Employer's right to assign to the grievant and his fellow teachers the particular duties of restraining unruly students or escorting them from the school area to their quarters.

With respect to health and safety, the Union argued that it was unsafe to assign teachers the duty of restraining unruly youth without providing training for such activity. The Employer, however, established through the unrefuted testimony of Mr. Ball that training in crisis or behavioral intervention was available for teachers. The arbitrator has closely examined the safety issue inasmuch as it is incumbent upon any employer to provide the safest practicable working environment for its employees. The Employer can be faulted for its

apparent laxity in assuring that all employees receive crisis intervention training, but not because no training is available. Moreover, the testimony of Mr. Potter, that new employees are advised about the students' characteristics and that discipline is part of the job, indicates that new employees are made aware, at least implicitly, of the safety element. Undoubtedly, teacher involvement in restraint and escort duties increases their exposure to potential injury, but this fact alone does not lead to an interpretation that the Agreement forbids the Employer's assigning such duties. It is a well recognized principle in arbitration that danger is inherent in some occupations. That may be the case here. So long as the Employer continues to provide crisis or behavioral intervention training on a regular basis to all employees, the arbitrator cannot find that the assignment to teachers of restraint and escort duties imposes an extraordinary or avoidable unsafe condition upon the teachers. It must be noted that a failure to provide training would not ordinarily relieve teachers of restraint and escort duties, but would be grounds for a grievance demanding a remedy under the health and safety clause.

Turning to the Employer's obligation to provide reasonable support and assistance to maintain control and discipline, the Association faults the Employer for a failure to provide an adequate number of group leaders or other security personnel. The Union implicitly argues that if more security people were available, teachers would not have to be assigned to the security duties. The question of whether there are adequate security personnel is a judgmental matter over which the arbitrator has inadequate information to form an opinion. In any event, even if there were larger numbers of security personnel, there might be occasions on which teachers would still be called upon to assist in the restraint and escort of unruly students. The number or adequacy of security personnel is not dispositive of the question concerning what duties may be assigned teachers. It may help to explain why teachers are called upon to perform restraint or escort duties more often and it may be grounds for teacher concern. But, as above, even if the Employer were found to have violated the Agreement with respect to its obligation concerning support and assistance, that would not preclude the Employer from assigning restraint and escort duties to teachers.

The most compelling argument asserted by the Association relates to the side letter dated May 19, 1987. In part, that letter reserves to the Employer the right to assign "related duties such as but not limited to conferences, curriculum development, testing and treatment team assignment." (Emphasis added.) The Employer view is that "related duties" involve discipline because discipline is part of the job description. By extension, restraint and escort, which are part of the discipline process, are part of the teachers' job description.

On the other hand, the arbitrator cannot dismiss lightly the words "such as." The examples given are clearly meant to convey the nature or type of related duties the employer may assign. Physically restraining and escorting students is not of the same nature as attending conferences, developing curriculum, testing and working with a treatment team. On this ground, during the ordinary course of a work day, it is arguable that the Employer should not be able to assign duties such as restraining and escorting students.

It is clear to the arbitrator, however, that the letter relates to routine duty assignment. The restriction is clearly intended to govern time during the regular work day when the teacher is not scheduled to be in the classroom. The situations with which the arbitrator is here concerned are not normal or routine. Although they may occur with greater regularity than one would hope, they are not planned into the regular schedule, nor are teachers frequently or regularly assigned restraint or escort duties. Rather these assignments arise out of extraordinary unruly behavior by students. For these reasons, the arbitrator finds that the side letter of May 19, 1986 is not relevant to the case.

Two further points may be considered. First, the work rules contained in Directive E-18 clearly require that "Available employees shall assist in applying restraints." (Cited above, emphasis added.) The Association has given no indication that it opposes the application of this directive. In fact, it was the Association who introduced it, apparently to show that Group Life Supervisors/Security Officers shall ordinarily be in charge of restraint application. So long as such directive is not challenged, the remedy sought by the grievance (see the grievance, above), that "Education staff be relieved of all security functions (i.e. Physical Restraint, Escorting Students for Discipline, etc.)" is inappropriate.

Finally, the arbitrator was impressed by the evidence and argument of the Employer concerning the fact that the Association had, during negotiations for the most recent Agreement, sought a ban on the assignment to teachers of duties that are normally performed by correction officers or youth leaders. Although the precise circumstances discussed in the proposed contract language are not present in this case, the intent of the Association to prevent the substitution of teachers for security personnel is clear. The fact that that language was withdrawn, according to the unrefuted testimony of Mr. Potter, is compelling evidence that the interpretation urged by the Association and the remedy sought in the grievance were not the intent of the parties at the time the Agreement was negotiated.

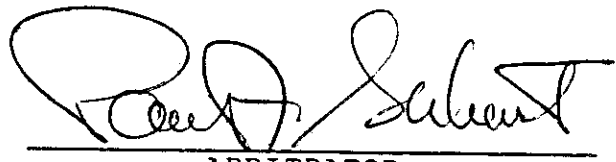
As to the remedy sought in the post-hearing brief, it is clear to the arbitrator that under normal circumstances (i.e.,

except on rare occasions) teachers are limited to assisting with the application of restraints; and that training in behavioral or crisis intervention is available to teachers. Therefore, the arbitrator need issue no order with respect to them.

For all of the reasons set forth above, the arbitrator concludes that the Employer did not violate the Agreement when it assigned teachers in Bargaining Unit 10 to physically restrain unruly youth and to escort them from the school area.

**AWARD**

The grievance is denied.

  
\_\_\_\_\_  
ARBITRATOR

Cleveland,  
Cuyahoga County, OH  
September 8, 1987