ARBITRATION AWARD SUMMARY

OCB Award Number: 279

OCB Grievance Number: 27-25-880525 Walter White

Union: OCSEA/AFSCME

Department: R+C

Arbitrator: Hyman Cohen

Management Advocate: Nicholas Menedis

Union Advocate: Don Sargent

Arbitration Date: 1/13/89; 2/27/89

Decision Date: 5/15/89

Decision: Denied

On May 31, 1988 **WALTER G. WHITE** filed a grievance with the **STATE OF OHIO, DEPARTMENT OF REHABILITATION AND CORRECTION**, the "**State**" protesting his receipt of a notice of disciplinary action "in the form of a removal on May 25, 1988". The grievance was filed at Step 3, pursuant to the Agreement between the STATE and **OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, Local 11, AFSCME, AFL-CIO,** the "**Union**".

After a Step 3 hearing was held on June 17, 1988 the hearing officer concluded that the Grievant "received his procedural guarantees in the disciplinary process and that management had just cause to discipline and the discipline was reasonable and commensurate". As a result of these findings the grievance was denied.

At a "Step 4 Grievance Review", the Ohio Department of Administrative Services, Office of Collective Bargaining concurred with the Step 3 response. As a result, the grievance was carried to arbitration.

FACTUAL DISCUSSION

The events giving rise to the discharge of the Grievant occurred

at the Southern Ohio Correctional facility located in Lucasville, Ohio. On Saturday, March 19, 1988 Lieutenant L. W. Smith was informed that inmate John Ingram had "bombed out", Nurse J. Tudor and Officer H. Hutchinson with an unknown substance. The phrase "bombed out" was explained at the hearing as a "slang term" indicating that an inmate throws a liquid substance at the correction officers. The liquid substance may consist of "human feces, urine or anything else that an inmate can get his hands on in liquid form".

Smith informed Lieutenant J. Harty, who was head of the first shift on that day of the incident about Ingram "bombing out" Nurse Tudor and Hutchinson. Smith was instructed to escort Ingram to the J-2 cell block for "security control placement". Security control placement is an area of the facility where inmates are housed under maximum security. Sergeant McQuithy was then contacted and informed that Ingram was to be escorted to J-2 cell block for security control; and Smith instructed McQuithy to procure the necessary personnel and equipment that he might need to place Ingram in Security control. McQuithy and Sergeant R. McCallister, and Correction Officers T. Howard and the Grievant proceeded to D-2 cell block. They had been informed that Ingram had thrown a liquid substance on Nurse Tudor and Hutchinson while medication was being passed out on the block. Since there might be problems in escorting

Ingram, Smith was authorized by Harty to operate the video camera.

Upon arriving in front of cell D-2-16 which was occupied by Ingram, Sergeant McQuithy ordered him to place his hands out to be cuffed so he could be removed from the cell. Ingram refused to do so and he "refused two more direct orders from McQuithy to put his hands out in order to be cuffed. McQuithy then squirted Ingram with one blast of chemical mace after which Ingram put his hands out and was handcuffed and removed from the cell. With his cuffed hands behind his head and a "PR-24" (a special kind of "night stick", or billy club) through the cuffs. Ingram, with the Grievant on one side and Howard on the other, was escorted to the psychiatric floor of the hospital without incident. After arriving on the second floor, it was learned that he was supposed to be escorted to J-2 security control. Thus, with the Grievant and Howard escorting Ingram, along with Sergeants McQuithy, McCallister and Lieutenant Smith, they proceeded across the yard to J-2 cell block. Evidence at the hearing indicated that Ingram made several statements to the effect that he was going to "blow up" or "bust" while crossing the yard. However, the escort proceeded across the yard without incident.

I.

INITIAL VERSION--J-2 CELL BLOCK

Upon arriving in J-2 Ingram was processed into the block. He was then placed in a strip cell, J-2-2. The processing of the Grievant was uneventful. A strip cell was described as not having a commode or a sink. The cell contains a bunk with a mattress and a slot through which food can be given to the inmate. Nurse Tudor observed Ingram through the food hatch and saw him sitting on the bed. She noticed that his eyes were "red and watery". When she asked him if there were "any injuries or complaints" he said that "he was cool". She then asked him if she could irrigate his eyes and "he nodded yes". According to Nurse Tudor he "scooted down from the bunk" and held his face to the food hatch where she irrigated his eyes. Nurse Tudor testified that when she checked Ingram's eyes he had been maced. After irrigating Ingram's eyes, Nurse Tudor left the J-2 cell block.

The following day, on March 20, during the morning hours, Ingram was found dead in his cell in J-2-2. Documents produced at the hearing indicated that there was no incident involving the Grievant during the evening of March 19 and during the early morning of March 20, 1988.

The Certificate of Death of Ingram indicated that his death was caused by "cardio pulmonary arrest" which was listed as the

immediate cause; it also set forth "severe respiratory tract disease" as an underlying cause. The Franklin County Coroner's report which performed an autopsy on Ingram on March 21, 1988 indicated that along with "respiratory tract disease" which was "severe", there was also "gastric aspiration" and multiple superficial injuries of face and extremities".

b. USE OF FORCE REPORT

Pursuant to Administrative Rule 5120-9-02 of the Ohio Department of Rehabilitation and Correction, the Use of Force Report form is required to be filled out and filed when one or more staff members: (1) "discharges a firearm"; (2) "strikes an inmate with either a part of his body or with a weapon"; (3) "uses chemical mace on an inmate"; or (4) "struggles with an inmate, pushes an inmate or otherwise exerts physical restraint and control on an inmate".

Under Rule 5120-9-02 the report is required to "provide a detailed description of the manner in which force was used and the extent to which force was used throughout the entire incident". The facts provided so far were based upon not only the testimony of witnesses but also documents submitted to and prepared by the Use of Force Committee.

In this connection an interview was conducted of Inmate Kirkland "concerning the use of force" on Ingram on March 19, 1988. The written report of the interview which was signed by Kirkland on April 4, 1988, stated that when Ingram was brought through the door of J-2, Howard and the Grievant "who were on either side of Ingram rammed his head into the pipe chase door". Ingram's "hands were cuffed and his feet were shackled". He indicated that they then dragged Ingram to the holding cage beside his cage, "and threw him in". Kirkland stated Ingram "acted as if he were laboring for breath". According to Kirkland, the officers then "reached into the cage and removed the shackles" and told Ingram to "get up". He replied that he could not get up. The officers then "reached in, pulled him up, removed the cuffs and let him fall back to the floor". Kirkland states that the officers then put him in a cell. He "could not see any more other than hear some scuffling coming from the other side of the block, where he assumed that Ingram was being placed in his cell.

Lieutenant John Ison, Instructor of Institutional Services at the Southern Ohio Correctional Facility who was the chair of the Use of Force Committee, indicated on the statement submitted by Kirkland that he interviewed Kirkland "as to the possibility of milk being on the floor on J-2 causing the officers to slip running Ingram into the

wall". In his statement, Kirkland indicated that "without a doubt Ingram was thrown into the wall by [the Grievant] and Howard" and that "both officers kicked him while he was down and then dragged him into the #2 holding cage beside him".

Ison also interviewed Inmate Adams concerning the use of force on Ingram on March 19. The statement signed by Adams on April 4, 1988 indicates that he "works as a porter in the block". On March 19 he was sitting in a chair beside the door "when the corridor door opened" and the Grievant and Howard "threw Ingram across the room causing Ingram's head to strike the pipe chase door". Inmate Adams went on to state that Ingram then fell to the floor. He (Ingram) was told to get up but he stated, "I can't!" He went on to state that "at this time he was ordered to leave the block which he did going outside in the corridor and was sitting on a bench". During the interview Adams was asked if any other inmate was present at this time and he stated that Inmate Kirkland was being held in the holding cage awaiting processing. After it was learned that "possibly milk" on the floor of J-2 caused Ingram to fall into the wall, Inmate Adams responded "no way!". Adams' statement of April 4 concludes with the following: "He further stated that the floor was clean and that Howard and [the Grievant] did in fact throw Ingram into the wall".

Ison also interviewed Inmate Walls concerning the episode of March 19. In his statement dated April 4, 1988, Walls indicates that he was "celling in J-2 Cell #23 over cell #2 where Ingram was placed". According to Walls' statement "he heard Ingram receive 12 blows from an officer whom he refused to identify at this time". His statement goes on to provide that Inmate Walls heard a female nurse state "he is out", "possible concussion".

There was also a statement taken of Inmate Latham. In his statement he indicates that Ingram was brought through the door in J-2 cell block. He went on to state that the Grievant had Ingram by the top of his coveralls and Howard had Ingram by the back of the pants. Latham then stated "there was milk on the floor and when they entered the door all 3 slipped in the milk and ran into the wall. Ingram fell and was kicked several times in the chest and the ribs by the officers before they dragged him over to the security cage. He indicated that Ingram's head was swollen and red. His statement provides: "At this time Lock Officer Hanes asked Inmate Latham to step out into the hallway. Fifteen or twenty minutes later Latham went back into the block and he indicated that everyone was locked up. He then stated that the porters were allowed to leave. Latham signed his statement on April 6, 1988.

In the Use of Force Committee Report dated April 5, 1988 signed by Ison and the 2 other members, the Committee concluded its report by indicating the following:

> "All staff involved denied ever seeing Inmate Ingram struck, kicked or mistreated in any way. Several inmates informed (reports attached) reported seeing Inmate Ingram kicked, beat and mistreated in areas of the hospital and J-2 cell block. None of the allegations could be confirmed. Therefore, this committee finds the use of force used on Inmate Ingram * * on Saturday, March 19, 1988 was not in excess and is judged to be in accordance with 5120-9-01 Paragraph C-3".

REVISED VERSION- J-2 CELL BLOCK

On April 11, 1988 Ison sent a memorandum to Superintendent Terry Morris which stated as follows:

> "On Friday, April 8, 1988 new and

> relevant information was supplied to the Use of Force Committee concerning the use of force used on Inmate Ingram * * on Saturday, March 19, 1988."

The new information that was provided to the Committee was supplied by Correction Officer Michael Lehn. In his initial report given to the Use of Force Committee shortly after the March 19, 1988 episode, Lehn indicated that he unlocked the J-2 cell block door and let Howard, McQuithy, Ingram and the Grievant into the cell block. He went on to state that he then locked the J-2 cell block door and proceeded to sign the officers and supervisors on the J corridor register and (do) my other paper work". He concluded his statement by indicating that he "did not see any use of force on Inmate Ingram while escorting him into J-2 cell block".

In his second statement signed on April 11, 1989 he stated, in relevant part, the following:

> "AFTER OPENING J-2 CELLBLOCK DOOR W. WHITE WHICH WAS ON INGRAMS LEFT SIDE HIS RIGHT HAND WAS HOLDING HIS COVERALLS. T. HOWARD WAS ON INGRAM'S RIGHT SIDE. I MYSELF CAN'T SAY IF OFFICER T.

HOWARD WAS HOLDING INGRAM. I SEEN W. WHITE START WALKING FAST AND SLAM INGRAM'S HEAD ON LEFT SIDE INTO THE PIPE CHASE DOOR INTO J-2 CELLBLOCK. I COULD NOT TELL IF OFFICER HOWARD WAS HOLDING INGRAM OR NOT THERE WAS SOME FOOD TRAYS ON THE RIGHT SIDE AND ONE MILK CONTAINER AND MILK ON THE FLOOR IN FRONT OF THE PIPE CHASE DOOR IN J-2 CELLBLOCK. AFTER INGRAM HIT THE PIPE CHASE DOOR HE FELL TO THE FLOOR ON HIS LEFT SIDE FACING OUT INTO J-2 BLOCK CORRIDOR. HIS EYES WERE OPEN LOOKING AT MYSELF. AFTER INGRAM WAS LYING ON THE FLOOR I OFFICER LEHN LOCKED THE J-2 CELLBLOCK DOOR. I WENT TO J-BLOCK CORRIDOR DESK TO FILLOUT THE PAPER WORK. AT THAT TIME LT. SMITH AND MYSELF CHECKED TO SEE IF THE VIDEO CAMERA WAS WORKING, WHICH IT WAS NOT WORKING. AT THE TIME OF THE INCIDENT THERE WAS TWO INMATE PORTERS WORKING J-2 ADAMS & LATHAM AND ALSO INMATE KIRKLIN IN J-2 CAGE BEING LOCKED UP SEE PLACEMENT."

In the Grievant's initial interview a statement of which he signed on April 4, 1988, he indicated the following:

> "Interviewed C/O W. White. He states when he and C/O T. Howard entered J-2 with inmate Ingram #147-236, Ingram slipped in some milk which had been spilled on the floor. C/O White states they tried to hold Ingram up to keep him from falling, but he fell anyway. After revising orders to get up, officers T. Howard and White "scooted" Ingram into the #2 holding cage. Leg irons and hand cuffs were then removed by C/O W. White. Inmate Ingram was then ordered to undress he did very slowly. Sgt. D. McQuithy then gave Ingram a direct order to stand up, which he did. After shakedown, Ingram was cuffed and escorted to J-2-2 by C/O White and T. Howard with no problem. Ingram was placed in the cell and the hand cuffs were removed through the food tray slot. C/O W. White states at no time did any officer strike inmate Ingram."

On April 13 Ison interviewed the Grievant again concerning the episode on March 19, 1988 involving Ingram. As a result of the interview he signed the following statement:

"C/O WHITE #520 STATES WHEN THEY GOT INGRAM #147-236 TO J-2 OFFICER M. LEHN #606 OPENED THE DOOR. AS THEY ENTERED J-2 OFFICER WHITE STATES HE WAS ON THE RIGHT SIDE AND HE THINKS T. HOWARD HAD LET GO, INGRAM THEN SLIPPED IN SOME MILK WHICH HAD BEEN SPILLED ON THE FLOOR. OFFICER WHITE STATES HE PULLED HIS PR-24 FROM BETWEEN INGRAM'S CUFFS SO HIS ARMS (INGRAM) WOULD NOT BE HURT WHEN HE FELL. OFFICER WHITE STATES HE ORDERED INGRAM TO GET UP AND GO TO THE STIRP CAGE INGRAM DID NOT REPLY. WHITE STATES HE AND OFFICER HOWARD GOT AHOLD OF INGRAM'S SHOULDER AND MIDDLE AREA OF HIS COVERALLS AND SLIP HIM INTO THE STRIP CAGE. OFFICER WHITE THEN REMOVED INGRAM'S LEGIRONS TELLING HIM NOT TO KICK HIM. OFFICER WHITE THEN REMOVED THE HANDCUFFS. INGRAM WAS THEN PUT THROUGH SHAKE DOWN PROCEDURE AFTER SEVERAL ORDERS FROM SGT. D. L. McQUITHY TO REMOVE HIS COVERALLS. INGRAM FOLLOWED INSTRUCTIONS AND COMPLIED TO ALL INSTRUCTIONS WHILE GOING THROUGH SHAKE DOWN. INGRAM WAS THEN RE-CUFFED BY OFFICER W. WHITE. OFFICER T. HOWARD, SGT. D. L. Mc QUITHY AND OFFICER W. WHITE THEN ESCORTED INGRAM TO THE STRIP CELL. OFFICER

> WHITE STATES HE REACHED IN AND PUT INGRAM'S HANDS THROUGH THE FOOD SLOT, CUFFS WERE REMOVED AND THE DOOR WAS LOCKED. OFFICERS THEN LEFT. OFFICER WHITE STATES INMATE INGRAM'S HEAD WAS NOT RUN INTO THE PIPE CHASE DOOR PURPOSELY OR OTHERWISE. HE SAW NO BLOOD OR INJURIES ON INGRAM DURING THE INCIDENT. C/O W. WHITE STATES THAT DURING THE DESCRIBED SHAKE DOWN PROCEDURE IN J-2 OFFICERS PRESENT WERE. W. WHITE, T. HOWARD, SGT. D. L. McQUITHY NOT SURE BUT THINKS LT. SMITH WAS THEIR (sic) BRIEFLY. R. HANES AND R. WEBB. INMATES PRESENT WERE KIRKLAND IN THE HOLDING CAGE. J-2 PORTERS WERE ADAMS AND LATHAM. OFFICER W. WHITE STATES AT NO TIME DID HE SEE ANYONE KICK, HIT, OR MISTREAT INMATE INGRAM IN ANY WAY."

The other officers were interviewed again and on April 20 Ison submitted a memorandum to Superintendent Morris indicating that the Grievant "wilfully slammed Ingram's head into the pipe chase door in J-2 cell block". As a result the Committee indicated that the Grievant was in violation of Rules 22, 23 and 37 of the Ohio Department of Rehabilitation and Correction Standards of Employee Conduct. The Committee concluded that Hanes could not have avoided

being a witness to the excessive force on Ingram since "he was at the block desk within a couple of feet of where the incident took place". As a result the Use of Force Committee concluded that Hanes was in violation of Rules 22, and 23 of the Standard of Employee Conduct. The Committee concluded that Howard "fully witnessed the excessive force" and as a result he was also charged with being in violation of Rules 22 and 23. The Committee concluded that Sergeant McQuithy "should have had more control of the situation since he was the supervisor in charge". The Committee went on to state that McQuithy's statement contained several discrepancies. They therefore concluded that McQuithy violated Rules 22, 23 and 24 of Standards of Employee Conduct. Furthermore, the Committee concluded that Officer Webb was truthful when he told the Committee that "he was down the range when he heard the commotion". By the time he arrived in the front of the block he saw Ingram laying on the floor in front of the pipe chase door. Webb stated that he did not see how Ingram got on the floor and he did not see any force used while he was present. The Committee recommended that no charges were warranted against Webb.

In light of the Use of Force Committee's report and recommendations, the State issued the following discipline:

The Grievant was discharged for deliberately exercising excessive use of force on Ingram in violation of Rule 37. Moreover, since he "denied knowledge of any force used to subdue the Inmate", he violated Rule 22. McQuithy was suspended for 15 days without pay and was demoted to corrections officer. Both Hanes and Howard received 5 day suspensions without pay. Lehn received a written reprimand for failure to report excessive use of force in a timely fashion.

In the Hearing Officer's report concerning the predisciplinary conference which took place on May 16, 1988, the Hearing Officer set forth the following:

> "There is no evidence the actions of this officer in any way contributed to this Inmate's death (Inmate Ingram)."

The Scioto County Grand Jury heard testimony concerning the Grievant's involvement in the incident of March 19, 1988 concerning Ingram. At the hearing it was stipulated by the parties, that the Grievant was never indicted by the Scioto County Grand Jury for misdemeanor or criminal charges stemming from the incident of March 19, 1988.

There was an investigation of Ingram's death by the Federal Bureau of Investigation, the State Highway Patrol and the Ohio Legislature's Criminal Institutional Inspection Committee. These investigations did not cause any charges to be filed against the Grievant. Furthermore, the death of Ingram was publicized in several local newspapers and in the Plain Dealer.

In light of the aforementioned considerations, the grievance was carried to arbitration.

DISCUSSION

Article 24, Section 24.01 of the Agreement provides as follows:

> "* *ARTICLE 24-DISCIPLINE
>
> §24.01 - Standard
>
> Disciplinary action shall not be imposed upon an employee except for just cause. The Employee 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.* *"

Thus, the central query to be resolved is whether the Grievant was discharged for just cause; if not, what is the remedy to be awarded? The answer to this question depends on the events that occurred when Ingram reached J-2 Security Control on March 19, 1988. The testimony of Lehn on behalf of the State is sharply disputed by the testimony of the Grievant and Howard.

I.

INCIDENT IN J-2

a. Testimony of Lehn:

I turn to the testimony of Lehn who on March 19, 1988 was working the "front part of the J corridor". Among his duties were answering the telephone and "logging in persons "entering J-2. Shortly before the incident which Lehn said occurred in J-2 he received a call that Ingram and his escort were "coming from across the yard". Lehn said that "as soon as" he opened the door, the Grievant

walking fast, took Ingram's head and hit it on the pipe chase door". Lehn went on to state that Ingram "fell on his left side and his eyes were open facing me". He then shut the door and logged the people (the Grievant, Howard, McQuithy and Smith) in". Lehn added that Smith "was in the unit office checking in to see if the escorting of the inmate was on video camera".

Lehn then demonstrated how the incident occurred. In doing so he played the role of the Grievant and Nicholas G. Menedis, Chief of Labor Relations, Department of Rehabilitation and Corrections, was Inmate Ingram. The demonstration indicated that the Grievant was on the left side of Ingram and Howard was on his right side. Lehn went on to state that he was on the "left side of the door" when he opened it. The Grievant's right hand was holding Inmate Ingram's hands in cuffs behind his head, while "his left hand was holding Ingram's coveralls". The Grievant, according to Lehn, proceeded to walk fast and proceeded to direct his head into the pipe chase door--"the left side of the door". Lehn then said, "when Ingram fell, he looked back on the ground while facing me and the others".

Lehn testified that McQuithy was just coming around the corner, entering the J-2 block and could not see what happened. Lehn said that Smith was in the unit office with Sergeant McCallister

checking out the video camera. It should be noted that Smith discovered that there was no tape in the video camera.

Lehn said that he observed that "spilled milk was about three (3) feet away from the pipe chase door and seven (7) feet to the right". He indicated that Ingram "had leg irons on".

b. TESTIMONY OF THE GRIEVANT, HOWARD AND HANES

Turning to the Grievant's testimony, he indicated that on March 19, when they arrived at the "psych unit" of the hospital, Smith told them to go to J-2 Security Control. As a result, they placed the leg irons back on Ingram and put the "PR" ("billy club") through the cuffs on Ingram's hands which were raised in back of his head. The Grievant said that he held the "PR" on the right side which Howard held the left side of the PR. After getting on the elevator, they received "clearance across the yard". About half way across the yard, Ingram mumbled that he ws going to "blow up"--"he was just mumbling" as they "went across the yard". They proceeded to the door of J-2. As Lehn "opened the door" the Grievant testified that "we stepped through the door and turned to the right"--"I felt Inmate Ingram slip. I did not see the milk--There were food trays on the floor when Ingram went down. I pulled the PR and Ingram was on the

floor on to his side more or less". The Grievant testified that "Howard gave him (Ingram) a direct order but he did not respond." The Grievant went on to state that "[T]hen we slid him across the strip cage". The Grievant indicated that both he and Howard were in the strip cage with the Grievant. According to the Grievant, he said to Ingram "do not start kicking". They took his leg irons off after which they "backed up". The Grievant went on to state that Ingram pulled himself up by the screen and his coveralls became loose. He went through the shake-down procedure and he "responded very slow". According to the Grievant, cuffs were placed on him after which he was put in J-2-2. After the cuffs were removed, he and Howard left.

The Grievant denies that he shoved the Grievant's head into a door. He said that Ingram's head never hit the door. On cross-examination, the Grievant said that when he first entered J-2, he did not see any milk but after Ingram slipped in it, he saw the milk. The Grievant acknowledged that Inmate Kirkland was in the first holding cage and had a good view of the area where the Grievant fell.

Howard corroborated the testimony of the Grievant. He indicated that "it was impossible" for the Grievant "to turn Ingram into the door". Howard said that Smith "was behind us" when Ingram fell. According to the Grievant, the "last" he "could recall" of Smith

is that he was there--. He "thought" that he was "being video taped".

Ronald Hanes, a Correction Officer 2, worked the desk of J-2 on March 19, 1988. While "logging a man in at the time", Hanes said that he looked through the window and saw the Grievant and Ingram coming. Hanes then testified: "The door opened and the Grievant and Ingram walked in. I continued to log the other man in--next thing you know Ingram is on the floor. I did not see him hit the floor. I heard a thump. I heard a noise. I do not know whether the 'thump' was [from] hitting the floor or hitting the wall".

Hanes added that when he observed Ingram he did not notice any unreasoanble behavior. According to Hanes, the Grievant had Ingram "under control and I went back to logging".

After Hanes saw Ingram on the floor he was dragged by Howard. He stated that "as far as I know Inmate Ingram did not make an effort to get up". Hanes testified that Ingram was ordered to get up by Howard but he did not do so. He "did not know that Inmate Ingram was dazed". According to Hanes, Howard "dragged him [Ingram] by cuffs and hands and pulled him into the cage. Hanes said that he heard McQuithy give one (1) or two (2) orders to get his clothes off. He added that Howard "got into the cage and raised him

up". Howard also stated that Inmate Kirkland was in the other holding cage. He testified that milk was in front of the pipe chase door to the cage side--in order to walk into the cage, one would have to walk over the milk".

ANALYSIS

After evaluating the evidentiary record I am persuaded that Lehn provided a truthful account of the events which occurred in J-2 on March 19, 1988. Thus, I have concluded that with his right hand holding Ingram's hands which were raised behind his head, and cuffs were around his wrists, and with his left hand holding his coveralls the Grievant quickened his pace upon entering J-2 and directed Ingram's head into the pipe chase door while he was shackled with leg irons.

In reaching this conclusion I have not overlooked Lehn's initial statement to the Use of Force Committee, which was prepared a few days after March 19, 1988. He concluded his previous statement by indicating that he "did not see any use of force on Ingram while escorting him into J-2 cell block". In a subsequent statement, submitted to the Use of Force Committee on April 11, 1988, consistent with his testimony at the hearing, Lehn indicated that upon entering

J-2 he "saw [the Grievant] start walking fast and slam Ingram's head on left side into the pipe chase door * *."

Lehn's April 11, 1988 statement is in direct contradiction to his earlier statement. Obviously, a consistent story strengthens the credibility of a witness; an inconsistent one tends to weaken his credibility. However, there are several considerations which are present in this case which support Lehn's revised account of the events of March 19.

At the time of the incident in question, Lehn had been employed at the Southern Ohio Correctional Facility as a Correction Officer 2 for three (3) years. On January 13, 1989, the first day of the arbitration hearing, Lehn had "just finished basic training" as a member of the United States Marine Corps. He left his employment at the Correctional Facility to enlist in the Marine Corps because of a series of events which occurred after he submitted his revised statement of April 11, 1988. Before setting forth these events, Lehn wrote his initial statement on what occurred in J-2 when McCallister instructed him to do so. The Grievant indicated that McCallister said "write the report and state that there was no force used". After writing the initial report, he submitted it to McCallister but he "did not receive a copy of it".

In changing his story, Lehn realized that he was not advancing his interests while being employed at the Correctional Facility. This is especially true, given McCallister's order "to write the report and state there was no force used". In any event, Lehn indicated that he "could not sleep at night"--I never lied before * *." He "talked to [his] mother and step father who work at the facility and they told [him] to tell the truth".

I believe that Lehn's conscience and sensitivity to do what is right and just motivated him to revise his story. Lehn had nothing to gain but much to lose by revising his account of the events of March 19. Given McCallister's order to "write the report and state there was no force used", Lehn realized that his act of conscience would not advance his own interests at the Correctional Facility. Lehn's defiance of what could be called "the code" of silence among the officers at the Correctional Facility resulted in several forms of harrassment. He received disturbing calls from the "institutional phone". Since the calls must go through the Control Center of the Facility, Lehn requested Smith to trace the calls, but Smith was unable to do so. The tires on Lehn's automobile were cut. Lehn then related an incident which occurred on a Sunday when he left for work at 5:00 a.m. While travelling on Route 335, he was run off the side of

the road by a person who tried to pass him. He "busted a tire" and was unable to call in until 12:30 the next day. As a result, he was written up and received a suspension of one (1) day. Although it was dark at the time that he was run off the road, he identified both the car and the person driving the car. He indicated that "Paul Vanier", a Correction Officer was driving his "rust colored Monte Carlo".

The Union had an opportunity to present evidence to refute Lehn's testimony concerning Vanier driving the "rust colored Monte Carlo" during the second day of the arbitration hearing, but failed to do so. Thus, Lehn's testimony concerning this incident was not only credible; it was also undisputed.

In addition to the "harrassment" that he was subjected to, Lehn "did not want to cause problems for [his] family". He "just wanted to get away from it all". As a result, he joined the Marine Corps. Lehn's explanation for his untruthful earlier statement is both sensible and a reasonable explanation.

It should be noted that the Grievant's exercise of force against Ingram was brazen. It was not done in secret but was witnessed by several officers and inmates. The probable inference to be drawn

from the Grievant's act on March 19 is that he anticipated that "the code" of silence among the officers would not be breached. I have further inferred that the price paid by Lehn for eventually disclosing the truth was harrassment and the serious episode of being "run off the road", which jeopardized his physical safety. I am persuaded that Lehn's April 11, 1988 statement is an accurate version of the events that occurred in J-2 on March 19.

Reinforcing this conclusion is Inmate Kirkland's statement which resulted from being interviewed by Ison. In his statement, signed on April 4, 1988, he indicates that when Ingram was brought through the door of J-2, the Grievant and Howard "who were on either side of Ingram ran his head into the pipe chase door". Ingram's hands were cuffed and his feet were shackled. They then dragged Ingram to the holding cage beside Kirkland's and threw him in. Kirkland stated Ingram acted as if he were laboring for breath at this time. Another statement by Inmate Adams dated April 4, 1988 resulting from an interview by Ison, repeated essentially what Inmate Kirkland set forth to Ison. Inmate Adams was "a porter in the block and he was sitting in a chair beside the door when the corridor door opened and [Howard and the Grievant] threw Inmate Ingram across the room causing Ingram's head to strike the pipe chase door. Ingram then fell to the floor. He [Ingram] was told to get up, but he stated "I can't".

Adams indicated that Inmate Kirkland was present at the time since he "was being held in the holding cage awaiting processing".

Lehn's testimony is strikingly similar to the information disclosed by Inmate Kirkland and Adams. Lehn's statement was submitted to the Use of Force Committee on April 11, one (1) week after the interviews of Inmates Kirkland and Adams. It is more than a coincidence that Lehn's April 11, 1988 statement provides the same version of what transpired on March 19 in J-2 as the account of the events by Kirkland and Adams. The inherent probability is that the incident occurred as provided by the statements of Lehn, and Inmates Kirkland and Adams. Lehn's April 11, 1988 statement supports the credibility of the statements of Inmates Kirkland and Adams; and their statements support the credibility of Lehn's revised statement of April 11. It should be noted that the Grievant acknowledged that Kirkland was in the "first holding cage and had a good view of the area" where [Ingram] had been injured.

There is also Lehn's testimony which was convincing and supports his statement of April 11, 1988. Lehn had a close and unobstructed view of the incident in question. He opened the corridor door for Ingram and his escort of officers to enter J-2. Lehn's testimony disclosed that he was able to recall with precise detail

what occurred--the quickened pace of the Grievant, where his hands were placed on Ingram, Ingram falling on his left side and that his eyes were open facing [him]. Not only was his testimony graphic in detail, but he also demonstrated how the Grievant forced Ingram's head against the pipe chase door. The facts which he disclosed were shown to exist independent of his testimony; namely, by virtue of the interviews of Inmates Kirkland and Adams which resulted in signed statements by them on April 4, 1988. In short, I find Lehn's testimony highly credible and trustworthy. It had the ring of truth.

Before the March 19 episode, Lehn said that he knew the Grievant and that they had been "good friends". He had no grudge against the Grievant. The Grievant indicated that although he and Lehn were not personal friends, he knew of "no grudge" that Lehn had against him. Moreover he had no reason to doubt Lehn's veracity; the Grievant added that he did not know why Lehn said that he ran Ingram into the pipe chase door. Accordingly, there is no reason found in the evidentiary record why Lehn would fabricate the events of March 19.

In an affidavit signed by Lehn on October 14, 1988, in relevant part, he stated:

> "Based on my observations I would not say that this incident [March 19] was

> accidental. It appeared to be intentional."

The Union contends that his characterization that "[I]t appeared to be intentional" shows uncertainty on Lehn's part concerning the events in J-2 on March 19. Suffice it to state, that if there was any uncertainty in his affidavit, such uncertainty was not present in his testimony at the arbitration hearing.

Turning to Hanes' testimony, I find it to be of no assistance to the Grievant. While working at the desk of J-2 he indicated that on March 19, he was logging a man in. He went on to state that the Grievant and Ingram, walked in -- I continued to log the other man in--next thing you know, Ingram is on the floor--I did not see him hit the floor-- I heard a thump--I heard a noise--I did not know what the thump was, hitting the floor or hitting the wall". After seeing Ingram on the floor he was ordered by Howard to get up but he did not do so. Hanes then stated that Howard dragged Ingram into the holding cage. Thus, according to Howard, he did not know whether the "thump" he heard was Ingram hitting the floor or hitting the wall.

Given Hanes' location in J-2 it is astonishing that he did not see him "hit the floor" but he heard a "thump" or a "noise". It is significant that he did not know whether the thump was a result of Ingram "hitting the floor or hitting the wall".

I find the Grievant's testimony that Inmate Ingram slipped on milk which was on the floor of J-2, unconvincing. His interest in this factual issue in dispute is cause for suspicion and impairs his credibility. Howard's testimony which corroborates the Grievant's version of the incident also advances his own interest and is unconvincing.

Another troubling aspect of the testimony of the Grievant and Howard concerns their version of the events, after Ingram fell, due to the milk spilled on the floor of J-2. Both the Grievant and Howard testified that Ingram was given a direct order to get up. When he did not do so, the Grievant said that "we slid him across to the strip cage". Both the Grievant and Howard proceeded into the strip cage. Hanes heard McQuithy give one (1) or two (2) orders to Inmate Ingram to take his clothes off. The Grievant thought that Inmate Ingram might kick, so he told him "do not start kicking". They [he and Howard] took the leg irons off and we backed up". According to the Grievant, Ingram pulled himself up by the screen and the coveralls became loose".

At variance with this testimony is the statement of Webb signed on April 12 resulting from being interviewed by Ison. Webb

indicated that "apparently referring" to the Grievant, he heard Ingram state: "I'll see you when I get out of population". This statement, according to Webb, accompanied "scuffling" in the strip cell, along with "grunts and groans" which Webb attributed to Ingram. Evidence independent of Webb's statement confirming the "scuffling" in the "strip cell" or holding cell was also heard by Inmate Kirkland. I have inferred that the Grievant's version of what occurred in the strip cell is not truthful. I am inclined to believe that Ingram was motivated to threaten the Grievant with his remark about seeing him when he gets "back in population", because the Grievant forced his head against the pipe chase door and his continued exercise of excessive force against Ingram in the strip cell.

The Grievant would have the Arbitrator believe that Ingram was escorted through the yard to get to J-2, without incident. According to the Grievant Ingram then fell to the floor in J-2 because of milk that was on the floor. Thereafter Ingram's leg irons were removed without incident. If these events occurred, it does not explain Webb's statement concerning what he heard in the strip cell. There was no evidence in the record of any incident involving violence throughout the evening of March 19. Yet a photo taken of the Grievant after he died shows a severe bruise on the left side of his forehead along with swelling.

The Union had an opportunity to refute Webb's signed statement on the second day of the abitration hearing. It failed to do so as a result, I have concluded that Webb's statement is entitled to be given great weight in this case.

This brings me to Nurse Tudor's testimony, which I do not find credible. After being hit by the liquid substance thrown by Ingram in D-2 cell block, her response was "uh". She then said that she "was not angry" and did not say anything to Ingram. Nurse Tudor said that she then stepped back and Hutchinson talked to Ingram. She added that Hutchinson "talked softly and did not appear angry".

It must be underscored that the "bombing out" of Nurse Tudor and Hutchinson began the series of events which ultimately led to the episode in J-2. I find it unlkely that Nurse Tudor was not angry at Ingram for throwing the liquid substance on her. Ingram's act did was both deliberate and provocative. It was an affront to her sense of dignity. It was unexpected and a reasonable person would have initially been startled by being hit with this "liquid substance" and then, angry.

Nurse Tudor was subsequently called upon to check on Ingram in

J-2-2 because of the mace which was squirted at him by McQuithy. Looking at Ingram through the food hatch of the cell door, she could "not say" that there were "bumps, bruises or lacerations * * on his face and forehead". She asked him if he had "any injuries or complaints" and he said that he was "cool". Nurse Tudor then said that she "did not notice anything or see anything about the forehead". On cross-examination Nurse Tudor said that she observed the left side of Ingram's face and there were "no cuts or bruises". She added that Ingram "denied bumps, bruises and lacerations".

I find Nurse Tudor's testimony troubling concering her failure to observe any bruises or lacerations on Ingram's face and forehead. In any event, the focal point of the dispute between the parties concerns the events that occurred when the Grievant entered J-2 with Ingram. Nurse Tudor was not present at the time. Overall I do not find her testimony to be of any assistance to the Grievant.

DISPARATE TREATMENT

Ronald Carnein, Deputy Superintendent of Programs at the Ross Correctional Institution in Chillicothe, Ohio, was called by the Union as a witness. He referred to an incident which occurred at the Ross Correctional Institution on June 4, 1988 involving the use of

excessive force against an inmate and the failure to follow post orders, administrative regulations and/or written policies or procedures", by Lieutenant Roger Hall, in violation of Rules 6 C and 37 of the Employee Standards of Conduct. The Use of Force Committee interviewed the inmate who indicated that since he could not shave he would not return his food tray to the officers after the lunch meal. As a result, he was moved to isolation, where Hall "started choking him and beating his head on the wall", according to the inmate.

The Use of Force Committee concluded that the use of force exercised by Hall was not justified and that "it was not deadly force". Moreover, the Committee found that Hall "was attempting to raise his face and not to choke him". The Committee also concluded that Hall used "bad judgment in an attempt to gain [the inmate's] attention, but did not do it in a malicious way".

I cannot conclude that the episode involving Hall at the Ross Correctional facility is similar to the situation involving the Grievant. In the instant case, the Use of Force Committee concluded on the basis of the evidence presented that the Grievant "did wilfully slam * * Ingram's * * head into the pipe chase door in J-2 cell block". The deliberate and malicious use of force by the Grievant is a major factor which distinguishes the Hall incident from the instant case. In

order for there to be disparate treatment, the situations must involve similar circumstances. Since the circumstances were different, the State was warranted in treating Hall and the Grievant in a dissimilar manner.

Both Howard and Hanes received disciplinary suspensions of five (5) days and Lehn received a written reprimand. None of their actions on March 19 involved the use of "excessive force" and physical abuse against Ingram. Accordingly the different treatment of the Grievant is warranted.

III.

USE OF FORCE COMMITTEE

Administrative Rule 5120-9-02 Paragraphs (2) (4) and (5) of the Ohio Department of Rehabilitation and Correction provide as follows:

"Use of Force Report

* * * *

(2) The three person investigating committee shall interview all available staff members and inmates

directly involved in the incident, plus as many witnesses as are necessary or expedient. If any inmate involved has been transferred prior to such investigation, such inmate shall be interviewed by the inspector of institutional services at his current institution. All interviews shall be taken as soon as possible after the force report is made. The staff member or members shall be permitted to have present at his or her interview before the committee a representative of his or her choice. All staff members are under an affirmative duty to fully cooperate with any use of force investigation if called upon to do so.

* * * *

(4) The three-person investigating committee, in the course of their interviewing, shall make a written record of any testimony taken. This may be done in one of three ways: * * *"

(5) After all testimonies have been taken, the three-person investigating committee shall determine what actually happened and shall make a conclusion as to whether or not the staff member was justified in using force and whether or not excessive

> force was applied under the circumstances. The department's policy statement on use of force shall be the standard for determining whether or not force was justified. A brief statement of the facts is found by the committee, and its conclusion as to the necessity for using force, its conclusion as to whether or not excessive force was employed, along with the reasons supporting these conclusion, shall be written on the bottom half of the force report, together with their signatures. If one member dissents, he shall write down his findings and conclusions, together with his reasons for dissenting, on a separate paper and attached it to the force report. * *."

The Union contends that the State violated Rule 5120-9-02, especially Paragraphs (2), (4) and (5) because only Ison performed the task of interviewing the various officers and inmates. Elmer J. Justice, a Carpenter II at the facility is vice president and chief steward of the local chapter of the Union. He has sat on use of force committees that have been established in the past. He indicated that he "always sat in a three (3) member committee", in carrying out the task of interviewing and making a "written record of the testimony taken".

Carnein stated that it is a common practice for a "three-man committee to perform the interviewing * *." Carnein related an experience with a use of force committee, where one (1) of the members was replaced during an investigation. He indicated that the new member was given a copy of all the statements resulting from the interviews. Carnein went on to state that "the new member voted his assent like the other members".

* Elkouri and Elkouri, in their well recognized treatise on labor arbitration, *How Arbitration Works* Fourth Edition, (BNA, 1985) state that "in many * * cases compliance with the spirit of such procedural requirements was held to suffice where the employee had not been adversely affected by the failure of management to accomplish total compliance with the requirements". At pages 674-675. Thus, in *Central Telephone Co*, 76 LA 1137 (Mead, 1981), the company failed to notify the union that the grievant had been terminated. However, the union was aware throughout the grievance procedure that the grievant had been separated from the payroll. The Arbitrator stated that: "[W]hile the Company's handling of this matter is far from exemplary in that better communications with grievant and union representatives might reasonably be expected, its only violation of the agreement is technical in nature and has not deprived the grievant of due process". At page 1139.

*In *Marquette Inn*, 79 LA 1259 (Flagler, 1982), the Arbitrator indicated that certain procedural requirements were not complied with even in spirit. Nevertheless, the Arbitrator refused to disturb the discharge since the grievant was clearly guilty of a serious offense and had not been prejudiced by the procedural defects. At pages 1263-1964.

I have concluded that although the State did not comply with Administrative Rule 5120-9-02 in providing a "three-person-investigating committee" to interview the various officers and inmates, the Grievant was not prejudiced by this procedural defect. That Ison conducted the interviews without the presence of the other two (2) members of the Use of Force Committee did not prejudice the Grievant in this case. The Grievant's statements to Ison are consistent with his testimony at the hearing. Furthermore, the statements of Inmates Kirkland, Adams and Wall were confirmed by the testimony of Lehn. The Union had an opportunity to refute Webb's testimony but it failed to do so.

It should be underscored that it was the testimony of the witnesses at the hearing which has been of greatest weight in arriving at the conclusion that the Grievant violated Rules 37 and 22.

Ison indicated that he conducted the interviews by himself because "the other two (2) members were unable to meet". He said that he shared his results with the other two (2) members of the committee. Ison stated that it was important to conduct the interviews as soon as possible since Rule 5120-9-02, Paragraph (2) indicates "[A]ll interviews shall be taken as soon as possible after the force report is made". The other two (2) members, "Eichenlaub" and "Ferguson" along with Ison signed the statement that "Based on new evidence presented by * * Lehn, the committee believes [the Grievant] did slam * * Ingram's head into the wall therefore the Committee rules this unjust and excessive contrary to 512--9-01 * *. The three (3) members of the Committee also signed the memorandum dated April 20, 1988 to Superintendent Morris in which the set forth the "suggested disciplinary actions".

IV.

RULES 37 and 22 of the STANDARDS OF EMPLOYEE CONDUCT

Rule 37 provides under the category of "Inmate Relations Offenses" for a "written reprimand" or "removal" when an employee has committed:

"Use of excessive force or physical abuse towards an inmate * * *."

As Ison indicated, force by a correction officer is appropriate in self defense, defense of a third party, to prevent escape, to control an unruly inmate and prevent harm to oneself where the inmate seeks to harm himself. Ison added that it is important to establish authority. Thus, at times the use of force is necessary since the inmates outnumber the correction officers.

Carnein provided the definitions of "excessive force" and "physical abuse". He said that "excessive force" is "more force than necessary to control the situation". The terms "physical abuse" is the outright use of force which is unprovoked and for no apparent reason."

Carnein's definitions of "excessive force" and "physical abuse", which are referred to in Rule 37, are in accord with the commonly accepted meaning to be given to these phrases. Based on the evidentiary record, I have concluded that with Ingram shackled by leg irons and his hands manacled by hand cuffs that were positioned behind his head, the Grievant, upon entering J-2, quickened his pace and forced Ingram's head against the pipe chase door. He did this, while holding Ingram's hands with his right hand and his left hand was

holding on to his coveralls. In light of the evidence in the record, the Grievant exercised more force than necessary to control the situation and deliberately used force against Ingram for no apparent reason. He also failed "to cooperate in the "official inquiry or investigation" by the use of force committee by failing to disclose his actions against Ingram on March 19. Thus, he violated Rule 22.

In light of the Grievant's conduct on March 19, 1988 there is no reason to disturb the penalty of discharge. As the policy behind the Standards of Employee Conduct point out:

> "* * Ultimately, the proper application of this (sic) Standards of Employee Conduct policy will satisfy the goal for which it was intended, and that is to assess a discipline commensurate to the offense * *." At page 15

I have concluded that the penalty of discharge is commensurate to the offense. On March 19, 1988 corrective action was taken against Ingram because he threw a liquid substance at Nurse Tudor and Hutchinson while they were walking through D-2 cell block. He would be confined to security control in J-2 cell block. There is no evidence that he provoked the Grievant. Indeed, with leg irons around his ankles and cuffs around his wrists, Ingram could not have posed a

threat to the Grievant. The Grievant's use of "excessive force" and "physical abuse" against Ingram were nothing less than outrageous and cannot be condoned. The cover-up by the Grievant of the actual facts during the Use of Force Committee inquiry, leads me to conclude that the penalty of discharge should not be disturbed. Furthermore, under Article 24, Section 24.01 of the Agreement, the parties have prohibited the Arbitrator from exercising "authority to modify the termination of an employee committing" abuse of a person "in the care or custody of the State of Ohio".

The Union contends that the Department's Rules are too broad and that the Grievant did not know what penalty to be applied. There is no merit to this contention. I believe that under the circumstances which existed on March 19, the Grievant should have known that the use of "excessive force" and "physical abuse" of Ingram whose feet and hands were manacled would result in an extremely serious penalty. The penalty called for is either "written reprimand" or "removal". As Carnein stated "excessive force" and "physical abuse" are broad enough to include a "wide range of force and abuse". The force used by Hall at the Ross Correctional Facility was "slight". Thus, he received a disciplinary suspension of seven (7) days for the use of force against an inmate on June 4, 1988. The force used by the Grievant, in my judgment, was extreme. As I have already concluded,

consistent with the policy set forth in the Standards of Employee Conduct, the penalty of discharge was commensurate to the offense committed by the Grievant.

Evidence at the hearing indicated that Ingram was a potentially dangerous and unpredictable inmate. Superintendent Morris acknowledged that Ingram had been involved in many disciplinary actions at the facility. He was in prison for rape and aggravated murder. Ingram also had cut a lieutenant and correction officer with a razor blade. Despite Ingram's personal qualities, which to a greater or lesser extent are shared by most of the inmates in correctional facilities, the Grievant's actions on March 19, 1988 cannot be excused or justified.

V.

UNEMPLOYMENT COMPENSATION

In a decision rendered on December 12, 1988, the State of Ohio Unemployment Compensation Board of Review reversed an Administrator's decision on reconsideration, and concluded that the Grievant was discharged without just cause.* This decision is entitled to no weight. This decision was rendered by a state agency,

interpreting and applying a statute under a procedure mandated under state law. The process and substance concerning entitlement to unemployment compensation benefits are alien to arbitration. Arbitration is a voluntary dispute resolution mechanism which is based on the Agreement between the parties. The Arbitrator who is selected by the parties derives his authority from the Agreement. The procedure of arbitration is determined by the parties and the substantive law of arbitration is found in the Agreement. Clearly, the decision of the Ohio Unemployment Compensation Board of Review is of no weight in this case.

BURDEN OF PROOF

The Union contends that the State is required to satisfy the burden of proving beyond a reasonable doubt that the Grievant used excessive force against Ingram and denied the use of any force in violation of Rules 22 and 37, respectively.

* I disagree with the Union's argument that the State is required to meet the criminal law test of proof beyond a reaosnable doubt of the Grievant's guilt. As the Arbitrator eloquently stated in *Kroger Co*, 79 LA 468 (Beckman, 1982):

> "I am expressly not finding that the Grievants have any criminal guilt. It is not my function to make decisions under the criminal law. It is entirely possible, therefore, that if the facts in this case were subjected to the procedures and tests of the criminal law, a finding of not guilty could be rendered. My function is to determine whether an employment offense was committed and if so whether the nature of the offense is serious enough to terminate seniority". At page 472

In conclusion, the State has proved by clear and convincing evidence that the Grievant has "deliberately exercised "excessive force" against Ingram in violation of Rule 37"; and by denying "knowledge of any force used to subdue the inmate", the State has proved by clear and convincing evidence that the Grievant violated Rule 22.

CONCLUSION

The Scioto County Grand Jury looked into the death of Ingram and returned no indictments. His death also prompted an investigation by the FBI and the State Highway Patrol as well as the

Ohio Legislature's Correctional Institution Inspection Committee. None of the investigations resulted in criminal charges or any other actions against the Grievant. None of these investigations is similar to the process and substance of arbitration. As I have already established the State has proved by clear and convincing evidence that the Grievant has violated Rules 37 and 22. Furthermore, the Stae has satisfied its burden of proving by clear and convincing evidence that the Grievant was discharged for just cause, as required by Section 24.01 of the Agreement. It should be pointed out that the mitigating factor in favor of the Grievant, namely, six (6) years of satisfactory service as a Correction Officer is not outweighed by both the "excessive force" and "physical abuse" which he exercised against Ingram; along with his failure to cooperate in the Use of Force Committee's investigation, due to his failure to disclose the truth about the events of March 19, 1988.

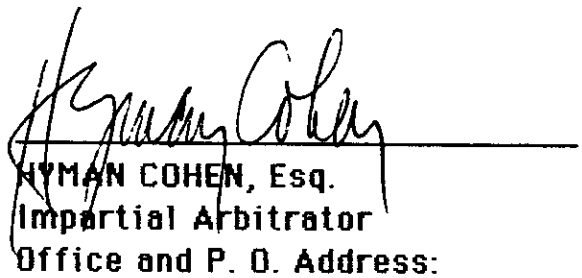
As a final matter, based on the evidentiary record, I cannot conclude that the Grievant was a "scapegoat" because of the adverse publicity given to the circumstances surrounding the death of Ingram and the death of another inmate in January, 1988.

AWARD

In light of the aforementioned considerations, and in accordance with Article 24, Section 24.01, the State satisfied its burden of proving by clear and convincing evidence that the Grievant was discharged for "just cause".

The grievance is denied.

Dated: May 15, 1989
Cuyahoga County
Cleveland, Ohio



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