

ARBITRATION SUMMARY AND AWARD LOG

OCB AWARD NUMBER: 604 EX

OCB GRIEVANCE NUMBER: 1) 27-19-900525-0159-01-03;  
2) 27-19-900620-0162-01-03; 3) 27-16-901019-0462-01-06

GRIEVANT NAME: 1) AMES, DIEDREE; 2) MURPHY, ERMA  
3) GREEN, KEVIN

UNION: OCSEA/AFSCME

DEPARTMENT: REHABILITATION & CORRECTIONS

ARBITRATOR: IMUNDO, LOUIS

MANAGEMENT ADVOCATE: 1) ANDREWS, JOE 2) LEE, PEG 3) DUCO,  
MIKE

2ND CHAIR: DUCO, MICHAEL P.

UNION ADVOCATE: WYLIE, BUTCH

ARBITRATION DATE: MAY 19, 1991

DECISION DATE: MAY 19, 1991

DECISION: 1) MODIFIED 2) GRANTED 3) DENIED

CONTRACT SECTIONS

AND/OR ISSUES: 1) 3 DAY SUSPENSION 2) 3 DAY SUSPENSION  
3) 1 DAY SUSPENSION

HOLDING: 1) DISPARATE TREATMENT; REDUCE FROM 3 TO 1 DAY.  
2) INCONSISTENT ENFORCEMENT OF PROCEDURE; NO JUST CAUSE.  
3) JUST CAUSE EXISTED FOR VIOLATION OF WORK RULES

ARB COST: \$440.00 (\$146.67 EA)



ARBITRATION  
BENCH DECISION AND AWARD

Arbitrator: LOUIE V. JIMUNDO

State of Ohio

Grievance No. 27-19(5-25-90)-159-01-00

Department REHABILITATION + CORRECTION

Grievant DIEDREE AMES

Union OCSEA

Date of Hearing 5-21-91

Issue(s): WAS THE 3 DAY SUSPENSION OF THE GRIEVANT FOR JUST  
CAUSE AND PROGRESSIVE? IF NOT, WHAT SHALL THE REMEDY BE?

Appearances:

For the Employer: (Advocate) MR JOSEPH L. ANDREWS

For the Union: (Advocate) MR BUTCH WYLLIE

AWARD: MANAGEMENT HAD JUST CAUSE TO DISCIPLINE  
THE GRIEVANT. IN LIGHT OF NOW MANAGEMENT HAS  
TREATED OTHER EMPLOYEES FOR SIMILAR MISCONDUCT  
3 DAY SUSPENSION WAS DISPARATE. 3 DAY SUSPENSION IS  
REDUCED TO 1 DAY. GRIEVANT SHOULD BE PAID  
FOR 2 DAYS.

Issued at MARION OHIO

May 21, 1991  
Date

Loiue V. Jimundo  
Arbitrator's Signature

ARBITRATION  
BENCH DECISION AND AWARD

Arbitrator: LOUIS V. IMUNDO

State of Ohio

Department REHABILITATION + CORRECTION

Union OCSEA

Grievance No. 27-19-(06-20-90)-162-01-

Grievant ERMA MURPHY

Date of Hearing MAY 21, 1991

Issue(s): DID THE STATE OF OHIO FOR WOMEN AND ITS MANAGEMENT  
OFFICIALS MEET ITS BURDEN OF PROOF REGARDING JUST CAUSE  
FOR DISCIPLINE THE GRIEVANT FOR 3 DAYS FOR A VIOLATION  
OF THE EMPLOYEE CODE OF CONDUCT? IF NOT, WHAT IS THE  
APPROPRIATE REMEDY?

Appearances:

For the Employer: (Advocate) MARGARET S LEE

For the Union: (Advocate) BUTCH WYLLIS

AWARD: MANAGEMENT HAS INCONSISTENTLY ENFORCED PROCEDURE  
AT ISSUE. BECAUSE OF SUCH NO JUST CAUSE EXISTED  
UNDER RULE NO 6C. RULE NO 23 HAS NO  
BEARING WHATSOEVER. GRIEVANT DID NOT BELIEVE SHE WAS  
VIOLATING RULE AND IF SHE DID CERTAINLY WOULD NOT  
REPORT HERSELF AS DOING SUCH. THERE WAS NO JUST  
CAUSE UNDER RULE 23. GRIEVANT IS TO BE PAID  
FOR 3 DAY SUSPENSION AND ANY DISCIPLINE IS TO BE  
REMOVED FROM GRIEVANT'S FILE

Issued at MARION OHIO

M. 21 1991

Louis V. Imundo  
Arbitrator's Signature

Before Louis V. Imundo, Jr., Impartial Arbitrator  
Expedited Arbitration

In the matter of arbitration between

DEPARTMENT OF REHABILITATION AND CORRECTION

and the

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, LOCAL  
NO. 11 AFSCME

Grievance of Kevin Green 27-16-(10-19-90)-462-1-6

OPINION

ISSUE NO. 1

DID MANAGEMENT HAVE JUST CAUSE TO SUSPEND THE GRIEVANT  
FOR ONE DAY FOR VIOLATING RULES NOS. 13 AND 20?

RULE NO. 13

•Making false, abusive, or obscene statements toward or concerning another  
employee, a supervisor or a member of the general public.

RULE NO. 20

Threatening, intimidating or coercing another employee.

On August 24, 1990 the Grievant and Mr. Gary Tobin, who are both  
classified as Correctional Farm Coordinator I's were escorting inmates in  
the vicinity of the Sallyport at the MCI Honor Camp. The incident at issue  
occurred when the Grievant and Mr. Tobin were passing by each other,.  
There is no disputing that an altercation occurred. The salient question is  
who was the initiator? Management would have the Arbitrator believe it was  
the Grievant. The Union would have the Arbitrator believe otherwise.  
Management's case in chief rests on the testimony of Mr. Harris and Mr.  
Wing. The Union's case rests on Mr. Green's testimony, and the belief that  
Management's case was insufficient to prove just cause.

The record clearly establishes that many employees and inmates witnessed the confrontation and resultant altercation. However, as the record further shows a mind set of "I don't want to get involved, and therefore didn't see or hear anything" has pervaded and prevailed. The record further indicates that some of the witnesses who did come forth, for a variety of possible reasons, may have suffered from flawed recall or perjured themselves.

The matter at issue is serious because of the fact that MCI is a prison and confrontations are potentially very dangerous. Any form of physical contact between employees when an air of hostility exists is most serious and can lead to the dire consequences. The seriousness of such acts of misconduct is clearly recognized by Management and reflected in the severity of discipline which can be imposed for a first infraction. Employees at MCI, and in particular those who interface and interact with inmates must control their behavior and be positive role models for inmates. Failure to exercise self control and behave in a professional manner will cause inmates to lose respect for Management and compromise the institution's security. It will also reinforce socially unacceptable behavior and undermine efforts to rehabilitate inmates.

The record establishes that Mr. Harris was patting down inmates in the Sallyport when the altercation occurred. According to the diagram submitted into the record he was standing forty (40) feet from where the incident occurred and a number of inmates who were not lined up single file were in front of him. (*Union No. 1*) Mr. Harris is of average height and in the Arbitrator's opinion it is likely that a number of the inmates who were in front of him were about the same height or taller. Mr. Harris testified that he clearly saw the Grievant "chicken elbow" Mr. Tobin and thus precipitate the altercation. He testified to such despite the fact that he was forty feet away and a number of inmates were standing in front of him. While the specific number of inmates standing in front of him was not clearly established, it was certainly more than two or three and could have been more than a dozen.

Mr. Harris testified that Mr. Green has a history of threatening, coercing, and intimidating fellow employees and inmates. According to Mr. Harris, the Grievant sees himself as a "tough guy" and has repeatedly told others he could "kick their ass." Mr. Harris further testified that prior and subsequent to the incident at issue Mr. Green threatened him with physical harm. The Arbitrator notes that Mr. Harris has never formally complained to higher authority about the Grievant's allegedly threatening him.

Furthermore, the record is devoid of anything to indicate that when he was interviewed about the incident, or at anytime prior to the Hearing did Mr. Harris ever make any mention whatsoever of being threatened. In the Arbitrator's opinion Mr. Harris gives the physical appearance of a man who can adequately defend himself against someone like the Grievant. At the Hearing, Mr. Harris clearly demonstrated that he is not a passive, reserved person. The Arbitrator further notes that in one breath Mr. Harris said the Grievant's threats concerned him and in another said he saw no need to take any action. Mr. Harris further testified that Mr. Green's repeatedly threatening him in no way whatsoever affected his feelings toward him. In the Arbitrator's opinion Mr. Harris' testimony was entirely self serving. Much of what he said was incredible and unworthy of belief. The Arbitrator does not believe he had an unobstructed view of the incident at issue when it started. The Arbitrator does not believe that Mr. Green ever threatened him prior to the incident at issue.

The record shows that Mr. Wing did not first hand witness the altercation. His testimony was based entirely on what he learned from interviewing others. Mr. Wing testified that the Grievant has a history of going directly to higher-level authority when he has a complaint. In Mr. Wing's opinion if Mr. Tobin had initiated the altercation, Mr. Green would have come forth first. However, as Mr. Wing pointed out, it was Mr. Tobin who came forth first despite the fact that during the altercation he responded by physically assaulting Mr. Green. Mr. Tobin received more severe discipline because even though in Management's mind Mr. Green was the provoker, it was Mr. Tobin who physically assaulted the Grievant. In Mr. Wing's view, Mr. Tobin, who risked possible discharge for initiating a physical assault did not start the incident because he came forth first.

The Arbitrator believes Mr. Wing was a credible witness. However, given Mr. Harris' incredible testimony, and the failure of any other witnesses who saw what happened to appear at the Hearing, the Arbitrator is not prepared to concur with Mr. Wing's conclusion. In the Arbitrator's opinion, it is conceivable that Mr. Tobin came forth first in an attempt to show aggravating circumstances existed. In effect, Mr. Tobin could argue that he was compelled to defend himself from what he viewed as a first strike move by the Grievant. If Mr. Tobin were to admit that he started the entire incident and physically assaulted Mr. Green, he would have been a very viable candidate for discharge. Mr. Tobin's coming forth first could have been a clever defensive move to reduce the likelihood of being discharged. On the other hand, it is entirely possible that Mr. Tobin came forth first because Mr. Green provoked the incident. It is important to point out that

irrespective of who initiated the altercation, the record establishes that both men became embroiled in a heated confrontation in the presence of many inmates. Mr. Tobin and Mr. Green were both abusive and threatening. Mr. Green was not charged with violating Rule No. 21 - Fighting. He was charged with violating Rules Nos. 8 and 20.

The Grievant testified that Mr. Tobin has a temper and they had been feuding for some time. Mr. Vaughn Tobin's characterization of Mr. Gary Tobin's temperament corroborates the Grievant's portrayal. Mr. Gene Frank's testimony on August 24, 1990 corroborates that the two had an on-going feud and were hostile towards one another. (*Joint No. 8*)

The Grievant testified that he is not well accepted by his peers and is treated as somewhat of an outcast. The Grievant testified that he is not well accepted because of his youth and the fact he has only worked at the "farm" for about a year. He has been employed at MCI for nearly five (5) years. The Grievant rejected the characterization of being a "tough guy" who goes around threatening, intimidating, and bullying other employees and inmates. The record shows that the Grievant has no history of prior discipline. The record is devoid of anything to indicate that prior to the incident at issue other employees have formally complained about being intimidated, threatened, or coerced by the Grievant.

The Grievant attempted to portray himself as an innocent victim who was, without provocation, attacked by Mr. Tobin. The Grievant did not dispute that animosity existed between Mr. Tobin and himself. The Arbitrator, asked Mr. Green why the animosity existed? In the Arbitrator's opinion Mr. Green's explanation that it stemmed from his working Mr. Tobin's inmates too hard was self serving and unworthy of belief.

Given the Grievant's unpopularity with some, and perhaps many of his co-workers, the Arbitrator believes that such rejection has affected his behavior and relationship with said co-workers. Considering what Mr. Frank, Mr. V. Tobin, Mr. Cowell, and Mr. Harris told Mr. Wing on August 24, 1990 the Arbitrator is led to conclude that Mr. Green is not a passive person. (*Joint No. 8*) There is also the undisputed fact that both men exchanged heated words during the course of their August 24th confrontation. At the Hearing, the Grievant attempted to portray himself as an innocent victim who is more like a choir boy than a pugilist. In the Arbitrator's opinion there is some credence to Mr. Green's apparent reputation. This does not mean that he provoked the incident at issue. A feud had been going on for some time, Mr. Gary Tobin, according to Mr. Vaughn Tobin has a temper, and Mr.



Green has a reputation of being intimidative or worse. In the Arbitrator's opinion because Mr. Harris and the Grievant were not fully credible witnesses, he cannot say with certainty who provoked the incident.

In the Arbitrator's opinion the record does establish that once the incident started neither Mr. Tobin or the Grievant walked away. While Mr. Tobin physically assaulted Mr. Green he did not pursue the attack. The Grievant could, and should have walked away. While it is praiseworthy that Mr. Green did not physically retaliate, he did so verbally in the presence of inmates. Even if Mr. Tobin provoked the incident as Mr. Green contended, he should not have retaliated. When he did so, he violated Rules Nos. 8 and 20. In conclusion, it is the Arbitrator's opinion that Management had just cause to discipline the Grievant. Given the serious nature of what occurred and the range of discipline for such misconduct the one day suspension was appropriate.

### AWARD

For all the aforementioned reasons the instant grievance is denied.

May 23, 1991  
Date

Louis V. Imundo, Jr.  
Louis V. Imundo, Jr.  
Arbitrator