#1445

ARBITRATION DECISION

July 7, 2000

In the Matter of:

State of Ohio, Department of Rehabilitation and Correction	)	
and	)	Case Nos. 27-01-000728-0141-01-14 27-01-000323-0148-01-14
Ohio Civil Service Employees Association, AFSCME Local 11	)	

APPEARANCES

For the Union:

Mark E. Linder, Assoc. General Counsel
Herman S. Whitter, Dir. of Dispute Res.
Ronald Alexander, President
Bruce Wyngaard, Operations Director
Lynn Belcher, Staff Representative
Jamie Greene Parsons, Staff Representative
Maudie G. Williams, President, Ch. 2597
David Simpson, Res. and Classification Spec.
Tim Roberts, Project Staff
Mike Hill, Staff Representative
Paul Newkirk, Transportation Officer
Charles Pritchard, Training Officer
Dorothy J. Berry, Training Officer
Kathy King, Help Desk Coord.
Frank Skinner, Network Administrator
David Spinner, Correction Officer
Linda Biskup, Former Correction Officer
Pamela Mathews, Training Officer
Vera J. Socrates, Special Education Teacher
Stephanie Anderson, GED Teacher
Christopher Mabe, Records Officer
Terrence McCormack, Training Officer
Valerie Rittenhouse, Test Monitor
Steve Mannon, Training Officer
Daniel Sablack, Correction Officer

For the Department:

Gregory C. Trout, Chief Counsel, DRC
Michael Duco, Mgr., Dispute Res.
N. Eugene Brundige, Former Dir., OCB
Tina Krueger, Legal Counsel, DRC
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Gabriel J. Jiran, Office of Attorney General
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Gary Mohr, Dep. Dir., Office of Admin.
Mark A. Painter, Computer Prog. Spec. 1
Ron Kaliski, Mgr., Computer Operations
MT Schwartz, Training Supv.
Paul Warye, Corrections Mgt. Analyst Supv.

Arbitrator:

Nels E. Nelson

BACKGROUND

The events giving rise to the instant grievances began in the mid-1990's. At that time the Department of Rehabilitation and Correction decided to build a new facility in Grafton. In 1998 the design for the new facility was changed in response to legislation requiring an intensive program prison for drug offenders. On March 17, 1998, Amended Substitute House Bill 293, amending Sec. 9.06 of the Ohio Revised Code, was passed. It required the department to privatize an intensive program prison.

Subsequently, the department issued a Request for Proposals (RFP) to operate the North Coast Correctional Treatment Facility (NCCTF) in Grafton and the Lake Erie Correctional Institution (LECI) in Lake County. The RFP required the contractors to comply with department policies in operating the facilities. In May 1999 a contract was awarded to Management and Training Corporation to operate LECI. On September 7, 1999, a contract was awarded to CiviGenics to run NCCTF. The first inmates were transferred to NCCTF on February 29, 2000. LECI opened on April 20, 2000.

The contract with CiviGenics imposes many obligations on it. They include developing lesson plans, providing pre-employment training through Mahoning-Trumbull-Columbiana Training Center, securing pre-employment drug tests and background checks for all employees, and certifying that all pre-employment testing requirements have been met. The contract with CiviGenics indicates that any change in the contract must be in writing and that if either party fails to perform any term of the contract, a breach occurs and the contract is subject to termination.

The record indicates that CiviGenics failed to meet a number of its contractual obligations. First, when the department was not satisfied with the unarmed self-defense training provided by the Mahoning-Trumbull-Columbiana Training Center, it used four Training Officers from its Corrections Training Academy and 16 guest instructors from various correctional

institutions to furnish the instruction. Second, the record indicates that it did not complete alcohol and drug tests or background checks prior to employees beginning work

In addition to CiviGenics's failure to comply with its contract, the union maintained that many safety problems existed at NCCTF. It complained that debris remaining on the grounds constituted a hazard; that security lapses had occurred; that personnel had inadequate training; that there was no perimeter road around the entire facility; and that CiviGenics management showed poor judgment.

As a result of its dissatisfaction, the union filed two grievances. Grievance No. 27-01-000728-0141-01-14 was filed on February 28, 2000, on behalf of the Corrections Training Academy Training Officers.[1] It charges that bargaining unit members were forced to do the contractor's work and alleges a violation of Articles 32, 34, 39, 42, and 44 of the collective bargaining agreement. The grievance requests that the department stop having bargaining unit members do the contractor's work. David Burrus, the Labor Relations Manager, who served as the step three hearing officer, denied the grievance on March 20, 2000.

Grievance No. 27-01-000323-0148-01-14 was filed on March 23, 2000, on behalf of employees in the Office of Management Information Systems in the Division of Information Services. It charges that the department was forcing bargaining unit members to work in private prisons in unsafe conditions because the contractor had not conducted proper background checks and inmates were not properly supervised. The grievance cites Articles 11 and 44 of the collective bargaining agreement. It was denied by Burrus at step three on May 8, 2000.

On April 25, 2000, the union filed a complaint in Court of Common Pleas in Lorain County requesting injunctive relief, a temporary restraining order, and a preliminary injunction. The union complained that the use of bargaining unit employees at NCCTF was contrary to the

[1] The grievance was amended at step three of the grievance procedure to include guest instructors and all Training Officers.

collective bargaining agreement and placed its members' lives in jeopardy. It asked the court to prohibit the department from using bargaining unit employees at NCCTF and to cancel the department's contract with CiviGenics.

The case was assigned to Judge Edward Zaleski. He denied the union's request for a temporary restraining order and preliminary injunction. Instead, Judge Zaleski ordered the expedited arbitration of the grievances attached to the complaint.[2] He indicated that the arbitration hearing should be completed by June 12, 2000, and scheduled a hearing on June 26, 2000, to consider the union's request for an injunction.

The arbitration hearing was held on May 18, 2000, and May 22, 2000. The parties agreed that post-hearing briefs would be filed by email on June 2, 2000, and that reply briefs would be filed on June 9, 2000. When the parties opted not to file reply briefs, the record was closed. By agreement of the parties and with the concurrence of the court, the Arbitrator's decision was due on July 7, 2000.

ISSUES

The issues as agreed to by the parties are:

1) Pursuant to Grievance #141, did bargaining unit members provide training at the North Coast Correctional Training Facility or Lake Erie Correctional Institution on the subject of unarmed self-defense in violation of the collective bargaining agreement?

2) Were bargaining unit members in the Office of Management Information Systems, Division of Information Services, exposed to life threatening or hazardous conditions as alleged in Grievance #148, in violation of the collective bargaining agreement?

[2] Three grievances were attached to the complaint but the union indicated that one of the grievances was included by mistake and that only Grievance Nos. 27-01-000728-0141-01-14 and 27-01-000323-0148-01-14 are before the Arbitrator.

RELEVANT CONTRACT PROVISIONS

ARTICLE 1 - RECOGNITION

1.01 - Exclusive Representation

The Employer recognizes the Union as the sole and exclusive bargaining representative in all matters establishing and pertaining to wages, hours, and other terms and conditions of employment for all full and part-time employees (excluding temporary, interim, intermittent and seasonal employees, except bargaining unit employees serving in an interim position) in the classifications of the State Employment Relations Board (SERB).

These classifications include those listed in Appendices A-H (bargaining units 3, 4, 5, 6, 7, 9, 13 and 14). Any classifications added to the units shall be added to the appendices as though originally included.

The Employer will not negotiate with any other union or employee organization on matters pertaining to wages, hours and other terms or conditions of employment. Nor shall the Employer permit dues deduction for another organization purporting to represent employees on these matters or negotiate with employees over wages, hours and other terms and conditions of employment.

* * *

1.05 - Bargaining Unit Work

* * *

The Employer recognizes the integrity of the bargaining units and will not take action for the purpose of eroding the bargaining units.

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ARTICLE 11 - HEALTH AND SAFETY

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11.03 - Unsafe Conditions

All employees shall report promptly unsafe conditions related to physical plant, tools and equipment to their supervisor. Additionally, matters related to patients, residents, clients, youths and inmates which are abnormal to the employees' workplace shall be reported to their supervisor. If the supervisor does not abate the problem, the matter should then be reported to an Agency/Facility safety designee. In such event, the employee shall not be disciplined for reporting these matters to these persons. An Agency/Facility safety designee shall abate the problem or will report to the employee or his/her representative in five (5) days or less reasons why the problem cannot be

abated in an expeditious manner. The appropriate Health and Safety Committee(s) will be provided the name(s) of the Agency/Facility safety designee.

No employee shall be required to operate equipment that any reasonable operator in the exercise of ordinary care would know might cause injury to the employee or anyone else. An employee shall not be subject to disciplinary action by reason of his/her failure or refusal to operate or handle any such unsafe piece of equipment. In the event that a disagreement arises between the employee and his/her supervisor concerning the question of whether or not a particular piece of equipment is unsafe, the Agency/Facility safety designee shall be notified and the employee shall not be required to operate the equipment until the Agency/Facility safety designee has inspected said equipment and deemed it safe for operation.

An employee shall not be disciplined for a good faith refusal to engage in an alleged unsafe or dangerous act or practice which is abnormal to the place of employment and/or position description of the employee. Such a refusal shall be immediately reported to an Agency/Facility safety designee for evaluation. An employee confronted with an alleged unsafe situation must assure the health and safety of a person entrusted to his/her care or for whom he/she is responsible and the general public by performing his/her duties according to Agency policies and procedures before refusing to perform an alleged unsafe or dangerous act or practice pursuant to this Section.

Nothing in this Section shall be construed as preventing an employee from grieving the safety designee's decision.

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ARTICLE 19 - WORKING OUT OF CLASS

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19.02 - Grievance Steps

Step One (1) - Filing the Grievance With the Agency Director or Designee

If an employee or the Union believes that he/she has been assigned duties not within his/her current classification, the employee or the Union may file a grievance with the Agency Director or designee. The Agency Director or designee shall investigate and issue a decision after review and approval by the Office of Collective Bargaining, within thirty-five (35) calendar days. A copy of the Director's or designee's decision and a legible copy of the grievance form shall be provided to the grievant and OCSEA Central Office. If the parties mutually agree, a meeting to attempt to resolve the grievance may be held at the grievant's work site prior to the issuance of the decision of the Director or designee. A request by the Office of Collective Bargaining to discuss the resolution of the grievance shall not extend the twenty (20) day period within which the Union has a right to appeal the matter to arbitration under Step Two (2). If the Director or designee determines that the employee is performing duties which meet the classification concept and which constitute a substantial portion of the

duties (i.e., 20% or more of the employee's time) specified in another classification specification, the Director shall order the immediate discontinuance of the inappropriate duties being performed by the employee, unless the parties agree to the reclassification of the person and position pursuant to the provisions of this Article. If the duties are determined to be those contained in a classification with a lower pay range than the employee's current classification, no monetary award will be issued.

If the duties are determined to be those contained in a classification with a higher pay range than that of the employee's current classification, the Director or designee shall issue an award of monetary relief, provided that the employee has performed the duties as previously specified for a period of four (4) or more working days. The amount of the monetary award shall be the difference between the employee's regular hourly rate of pay, and the hourly rate of pay at the applicable step of the higher pay range for the new classification. The applicable step shall be the step in the higher pay range which is approximately four percent (4%) higher than the current step rate of the employee. If a step does not exist in the higher pay range that guarantees the employee approximately a four percent (4%) increase, the employee will be placed in the last step of the higher pay range. The placement into the last step does not necessarily guarantee a four percent (4%) increase. If the higher level duties are of a permanent nature as agreed to by the Union and the Employer, the employee shall be reclassified to the higher classification.

In no event shall the monetary award be retroactive to a date earlier than four (4) working days prior to the date of the filing of the original grievance. The date of the filing of the grievance shall be determined by the postmark or other evidence of delivery, whichever is earlier, to the agency.

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ARTICLE 37 - WORK FORCE DEVEOLPMENT

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37.03 - Orientation Training

Every new employee will receive orientation that provides an overview of the role and function of the Agency. Such orientation may also include, but is not limited to, current procedures, forms, methods, techniques, materials and equipment. This may be done on a group basis and shall be given as needed.

Employees who work in Corrections, Youth Services, MH and MR/DD facilities will be provided training in crisis intervention techniques to appropriately respond to client behavior that could result in injury to self or others.

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ARTICLE 39 - SUB-CONTRACTING

39.01 - Contracting Out

* * *

... Bargaining unit employees will not be responsible for training contract workers, except bargaining unit employees may be required to provide orientation and training related to agency policies, procedures and operations.

* * *

ARTICLE 44 - MISCELLANEOUS

44.01 - Agreement

To the extent that this Agreement addresses matters covered by conflicting State statutes, administrative rules, regulations or directives in effect at the time of the signing of this Agreement, except for ORC Chapter 4117, this Agreement shall take precedence and supercede all conflicting State laws.

44.02 - Operations of Rules and Law

* * *

The Employer will satisfy its collective bargaining obligation before changing a matter which is a mandatory subject of bargaining.

Grievance No. 27-01-000728-0141-01-14

UNION POSITION - The union argues that the department violated Article 39 of the collective bargaining agreement by requiring bargaining unit members to train CiviGenics employees in unarmed self-defense. It contends that the intent of Article 39 is that bargaining unit members should not be responsible for training contract workers to the level of being replaced by them. The union maintains that the contract language is clear and unambiguous. It indicates that where such is the case there is no need to resort to technical rules of interpretation.

The union claims that the collective bargaining agreement as a whole references the true intent and meaning of Article 39. It points out that Article 37, Section 37.03 states:

> Every new employee will receive orientation that provides an overview of the role and function of the Agency. Such orientation may also include, but is not limited to,

current procedures, forms, methods, techniques, materials and equipment. This may be done on a group basis and shall be given as needed.

The union states that an "overview" is simply an overview of the role and function of the agency to which the employees are assigned. It indicates that the phrase "but is not limited to" restricts the effect or execution of orientation to "current procedures, forms, methods, techniques, materials and equipment." The union asserts that bargaining unit employees cannot be required to train contract workers except for orientation and training related to agency policies, procedures, and operations. The union indicates that this makes the meaning of the words "policies," "procedures," and "operations" critical.

The union maintains that the use of a reliable dictionary establishes the meaning of the words at issue. It states that "policy" is defined as "any plan or course of action, guiding principle, or procedure considered to be prudent" and "procedure" as "a particular way of accomplishing something or of acting." (Union Brief, page 9). The union indicates that in Policy No. 402-13 the department uses "policy" to describe the overall goal related to training programs and that it does not require any overt action by an employee to achieve that goal. It adds that "procedure" describes the kind of training the department will provide to accomplish its policy but it too does not require any overt action.

The union argues that the limited exception contained in Article 39, Section 39.01 does not apply to actual training sessions of specific acts such as unarmed self-defense training. It claims that the dictionary definitions of "policies," "procedures," and "operations" are not applicable to unarmed self-defense training for contract workers. The union further states that the definitions of "policies" and "procedures" are not germane because a three-week unarmed self-defense training session does not involve a "policy" or "procedure."

The union contends that the meaning of "operations" is similar to "procedures." It states that the dictionary defines "operations" as "the act, process, or way of operating." (Union Brief,

page 10). The union maintains that "operations" encompasses both "policy" and "procedure" and does not imply or require any overt action by a bargaining unit employee. It asserts that if the parties had intended for "operation" to have a different meaning from "policy" or "procedure," they would have said so in the contract.

The union claims that the exception in Article 39, Section 39.01 that allows bargaining unit employees to provide orientation and training related to policies, procedures, and operations must be narrowly construed. It observes that this view is consistent with the principles of contract interpretation. The union adds that if the parties intended to allow bargaining unit employees to train contract workers, they would have included such language in the agreement.

The union maintains Policy No. 402-13 supports its position. It points out that the policy defines "contract training" as:

> a training session prior to job assignment to acquaint employees to their work environment and the overall operation of the Institution/Agency.

The union observes that the policy calls for "a training session" which denotes a single session as opposed to the three-week unarmed self-defense course.

The union contends that the fact that contractors are required to comply with all federal and Ohio laws and department policies also supports its position. It maintains that this means that under Policy No. 402-13 CiviGenics employees can receive no more than "a training session prior to job assignment to acquaint [them with] their work environment and the overall operation of the institution." The union stresses that the department violated its own policy when it used bargaining unit employees to provide a three-week unarmed self-defense training course.

The union claims that Policy No. 402-13 was the department's means of complying with the intent of Article 39. It points out that the policy was effective February 1, 1997, while Article 39 was negotiated in 1986. The union maintains that since Policy No. 402-13 must be

read in conjunction with Article 39, it is clear that the parties never intended to use bargaining unit employees to provide a three-week training course to contract employees.

The union argues that the department's response to CiviGenics's refusal to fulfill its contractual duty is causing a violation of Article 39 of the collective bargaining agreement. It points out that the contract with CiviGenics requires it to subcontract with Mahoning-Trumbull-Columbiana Training Center for pre-service training including unarmed self-defense training. The union notes that Paul Warye, a Corrections Management Analyst Supervisor 2, who is the state's monitor to insure that CiviGenics is complying with the contract, testified that the unarmed self-defense training that the first group of CiviGenics's employees received from Mahoning-Trumbull-Columbiana Training Center was not satisfactory so it did no further training. It observes that the department acknowledges that it never received any document from CiviGenics requesting that it be released from its obligation to teach unarmed self-defense.

The union complains that CiviGenics also failed to meet its contractual requirements regarding lesson plans. It observes that the contract specifies that Mahoning-Trumbull-Columbiana Training Center is to develop lesson plans and that CiviGenics is obligated to incorporate them into its Policies and Procedures Manual. The union states that despite the mandatory language of the contract, the department did not see that this requirement was met.

The union charges that the department's intentional failure to enforce the contract with CiviGenics created a violation of Article 39 of the collective bargaining agreement. It points out that under Article 39 bargaining unit employees are not responsible for training contract workers except for orientation and training related to policies, procedures, and operations of agencies and bureaus of the State of Ohio. The union maintains that if the department enforced the contractual requirement that CiviGenics develop lesson plans and incorporate them in a policy and procedures manual, bargaining unit employees could not have provided orientation and training

under Article 39 because the policies, procedures, and operations would be those of CiviGenics rather than a state agency.

The union argues that the department also violated Article 44, Sections 44.01 and 44.02 of the collective bargaining agreement. It observes these provisions state that the agreement takes precedence over state law and require the department to bargain before changing a matter that is a mandatory subject of bargaining. The union contends that the department's failure to enforce the requirements regarding unarmed self-defense training, lesson plans, and a policy manual caused a violation of Article 39 that resulted in a violation of Article 44, Sections 44.01 and 44.02.

The union claims that the parties intended Article 39 to prohibit workers from training contract workers to the point of replacing them. It points out that Ronald Alexander, the president of the union for 16 years, testified that the phrase "policies, procedures and operations" meant that bargaining unit members were only responsible for providing an overview of their job duties, similar to the orientation training in Article 37, Section 37.03, which states that "every new employee will receive orientation of the role and function of the Agency." The union notes that Alexander and Gene Brundige, the former Director of the Office of Collective Bargaining and the state's chief spokesperson, both stated that the phrase was the result of the state's need to contract out work related to highway construction. It observes that Brundige acknowledged that a pilot program where contract employees shadowed bargaining unit members was discontinued because of the union's objection. The union claims that this is consistent with Brundidge's testimony that the training contained in Article 39, Section 39.01 was not intended to require state employees to train a contractor's workers to do their job from "ground zero."

The union asserts that the best evidence of the intent of Article 39 comes from a website maintained by Stacey Stein, the department's NCCTF project representative. It indicates that she informed prospective bidders that it would not be possible for graduates of a contractor's pre-

service academy to participate in an orientation at a department-operated facility and that department trainers could only provide on-site training at the contractor's site with the approval of union officials and that employees might refuse to participate. (Union Exhibit 10). The union maintains that her comments are consistent with the testimony of Alexander and Brundige and department Policy No. 402-13.

The union cites the testimony of Bruce Wyngaard, its former Director of Arbitration. It points out that he testified that "policies, procedures and operations" in Article 39 deals with the development of a skills set and not the actual training of a contract worker and that a skills set can be described as orientation training methods and techniques that provide an overview of employees' duties and functions. The union notes that Wyngaard "defined the use of a skills set and techniques to the meaning found in Article 37.03 under orientation training which states in relevant part that 'every new employee will receive orientation that provides an overview of the role and function of the Agency.' " (Union Brief, page 22).

The union argues that the neither the Aramark contract for food service nor the subcontracting of nursing is analogous to the instant case. It observes that Alexander and Wyngaard testified that they were unaware that employees of those contractors went through any kind of training or that they were trained at the Corrections Training Academy. The union further states that the department failed to produce any evidence that the contract workers were trained or by whom and to what extent.

The union charges that the department's actions eroded the bargaining unit in violation of Article 1, Section 1.05. It acknowledged that no bargaining unit employees were laid off as a result of contracting out the operation of the two correctional facilities but indicates that there is a long line of arbitration decisions holding that there does not have to be a layoff for an employer to compromise the integrity of a bargaining unit. The union cites the decision of Arbitrator

Harry Graham in OCSEA/AFSCME and State of Ohio, Department of Transportation, Case No. 31-08-(88-08-12)-0073-06-01 in support of this point.

The union charges that the department's action also abrogated Article 1, Section 1.01 which gives it the sole and exclusive jurisdiction to bargain over the terms and conditions of employment of members of the bargaining unit. It claims that the use of bargaining unit members to provide services to a private contractor presents new and unique obstacles and needs that require negotiations. The union complains that the department's failure to bargain regarding the use of bargaining unit members to provide a three-week training session in unarmed self-defense to employees of a private contractor violates its right to represent its members.

The union contends that classification specifications prohibit bargaining unit members from training non-state employees. It points out that the classification specification for Trainer states "the purpose of the trainer occupation is to develop and present training programs for state employees" and contains no reference of performing any job duties for a private contractor. It claims that under Article 19, Section 19.02 "if a bargaining unit member is performing duties not contained in their classification specification, he/she shall immediately discontinue the inappropriate duties being performed." (Union Brief, page 25).

The union concludes that the department violated the collective bargaining agreement by requiring bargaining unit members to train CiviGenics employees in unarmed self-defense. It asks the Arbitrator to prohibit the department from using bargaining unit members to train contract workers in unarmed self-defense.

Department Position - The department argues that it did not violate the collective bargaining agreement by using bargaining unit members to provide unarmed self-defense training for CiviGenics employees. It states that it did so because it wanted NCCTF to be "predictably safe and operationally consistent" with other Ohio prisons. The department

indicates that this is required by Section 9.06(B)(3) of the Ohio Revised Code and is reflected in its contract with CiviGenics.

The department contends that use-of-force procedures are important in a correctional facility. It points out that the training plans developed by the Corrections Training Academy address techniques, applications, and overall strategies for controlling inmates. The department notes that MT Schwartz, the Training Supervisor for the Corrections Training Academy, testified that the Academy's training is superior to the training offered by the Ohio Police Officers Training Academy, which CiviGenics wanted to use, because the Ohio Police Officers Training Academy's program is designed for community law enforcement rather than for prisons.

The department reports that the union did not dispute these points. It states that the union acknowledged that the department has a unique training procedure that is specific to prisons. The department observes that the union understands that NCCTF must comply with its policy and that consistency reduces stress for employees and inmates. It asserts that its choice to use its own training was a "responsible and necessary decision."

The department maintains that the use of bargaining unit members to provide unarmed self-defense training is not prohibited by the collective bargaining agreement and is expressly allowed in Article 39, Section 39.01. It points out that this section states:

> Bargaining unit employees will not be responsible for training contract workers, except bargaining unit employees may be required to provide orientation and training related to agency policies, procedures, and operations.

The department claims that unarmed self-defense training clearly falls within "agency policies, procedures and operations."

The department argues that Article 39, Section 39.01 is clear and unequivocal. It contends that it does not prohibit using bargaining unit members to train contractors' workers. The department maintains that if the purpose of the provision were to bar such training, the phrase "not be responsible" would have been replaced by phrases such as "be prohibited" or "not

train." It asserts that it is "responsible for determining and setting up the training (first sentence) and once this is decided, bargaining unit members are required to carry out [its] determinations and deliver the training (last sentence)." (State Brief, page 6).

The department states that Training Officers are not being required to train their replacements. It claims that the unarmed self-defense training is initial training for employees whether they are contractors' employees, bargaining unit members, or exempt employees. The department insists that training for new employees is orientation to its "policies, provisions and operations."

The department contends that the negotiators did not intend to bar the initial training of contractors' employees. It points out that Brundige testified that the intent of Article 39, Section 39.01 was to prevent bargaining unit members from having to train their own replacements. The department indicates that in the instant case Training Officers are teaching one section of pre-service training because they have unique and specific expertise.

The department argues that the interpretation and enforcement of the CiviGenics contract is not an issue in the arbitration. It acknowledges that the union made numerous references to language in the contract related to training and lesson plans. The department stresses, however, that the union is not a party to the contract and has no enforcement rights under it. It states that in any event, the contract clearly refers to the use of its curricula as the source of training materials.

The department rejects the union's suggestion that when bargaining unit members provide training services, it erodes the bargaining unit. It observes that in Amended Substitute House Bill 293 the legislature made a public policy decision to privatize NCCTF. The department claims that any positions created at NCCTF never belonged to the bargaining unit. It stresses that there can be no erosion of what never existed.

The department charges that the union should not be allowed to expand the grievance to include a violation of Article 1 of the collective bargaining agreement. It observes that the grievance form does not mention this provision. The department adds that Burrus testified that Article 1 was not included in any amendments to the grievance. It asserts that the Arbitrator should not consider any argument relating to Article 1.

The department contends that if the Arbitrator chooses to consider the alleged violation of Article 1, the union must be held to the correct standard. It points out that Article 1, Section 1.05 states that "the Employer ... will not take action for the purpose of eroding bargaining units." The department states that this means that the union must prove that it intended its action to erode the bargaining unit.

The department claims that under the "objective reasonable man" standard it is clear that it took no action for the purpose of eroding the bargaining unit. It reports that it used bargaining unit MIS employees to install the information systems at NCCTF. The department adds that it has stationed six bargaining unit members at the facility since the facility opened. It emphasizes that if it intended to erode the bargaining unit, no bargaining unit employees would be involved with NCCTF.

The department questions the union's objection to six bargaining unit members working at NCCTF. It indicates that they are used in areas it directly operates. The department further contends that if it subcontracted the work, the union would grieve claiming that it was done for the purpose of eroding the bargaining unit. It complains that the union wants "to have its cake and eat it too."

The department rejects the union's charge that it violated Article 44, Section 44.02, by not bargaining over the use of bargaining unit members and the privatization of NCCTF. It maintains that for a violation of this provision to have occurred there must have been a duty to bargain but it claims that in the instant case there was no such duty. The department asserts that

every mandatory subject of bargaining, including subcontracting, is covered by the collective bargaining agreement. It cites SERB v. Ohio Youth Service Department, 1997 SERB 4-15 (10th Dist. Ct. App., Franklin, 8-7-97), in support of its contention that it has already satisfied its duty to bargain.

The department argues that even if it had a duty to bargain, the union waived its right to bargain. It states that in SERB v. Youngstown City School Dist. Bd. of Ed., SERB 95-010, (6-30-95), the State Employment Relations Board held that when the exclusive representative does not request bargaining within a reasonable period of time, it waives its right to bargain. The department observes that the legislation requiring the privatization was passed in 1998 so that for almost two years the union failed to demand bargaining. It claims that if the union felt that the department failed to bargain, it should have filed an unfair practice charge within the 90-day statutory time limit under Section 4117.12(B) of the Ohio Revised Code rather than waiting until April 2000 to attempt to invalidate the contract with CiviGenics in the Court of Common Pleas.

The department maintains that it has a long-standing past practice of providing training to private employees. It point out that the union's witnesses acknowledged that bargaining unit trainers have provided instruction to contractors' employees. The department notes that training has been offered in locations such as the Belmont and Noble Corrections Institutions. It states that the fact that the union never grieved supports its interpretation of Article 39, Section 39.01.

The department concludes that it did not violate the collective bargaining by using bargaining unit members to train CiviGenics employees in unarmed self-defense. It asks the Arbitrator to deny the grievance.

Analysis - The facts giving rise to the grievance are clear. In May 1999 the department contracted with Management and Training Corporation to operate Lake Erie Correctional Institution and in September reached a similar agreement with CiviGenics to run North Coast Correctional Treatment Facility. The department's contract with LECI required it to conduct

pre-service training while its contract with CiviGenics required it to contract with Mahoning-Trumbull-Columbiana Training Center to do the pre-service training. The record indicates that the department felt that the unarmed self-defense training provided to the first class of new hires at NCCTF by Mahoning-Trumbull-Columbiana Training Center was unsatisfactory so the department used Training Officers from the Corrections Training Academy and from other institutions around the state to do the training for the next three classes of new employees.

The union objected to the department's decision to use bargaining unit employees to do the training. On February 28, 2000, it filed Grievance No. 27-01-000728-0141-01-14 charging that the department's action violated several articles of the collective bargaining agreement. The union asked the department to stop using bargaining unit employees to train contractors' employees.

The union presented a number of arguments in support of its position. First, it charged that the department failed to bargain with it regarding the use of bargaining unit members to provide unarmed self-defense training. It cited Article 1, Section 1.01 that makes the union the exclusive bargaining agent with respect to wages, hours, and other terms and conditions of employment. It also relied on Article 44, Sections 44.01 and 44.02. Section 44.01 indicates the collective bargaining agreement takes precedence over conflicting state laws. Section 44.02 requires the department to bargain before changing mandatory subjects for bargaining.

The Arbitrator does not believe that the department violated its duty to bargain. Article 39, Section 39.01 covers the use of bargaining unit members to train contractors' employees. The union claims that it prohibits the department from using bargaining unit members and the department insists that it permits such action. Thus, it is not a matter of a change in a mandatory subject that requires bargaining but a determination of the meaning of Section 39.01. Furthermore, if the union felt that the department was required to bargain, it failed to follow the proper procedure. It should have requested the department to bargain and if the department

refused to bargain, it needed to file an unfair labor practice charge with the State Employment Relations Board within the statutory time limits.

Second, the union argued that the department's use of its Training Officers to train contractors' employees violated the collective bargaining agreement because it eroded the bargaining unit. It relied on Article 1, Section 1.05 of the agreement that states that the department "will not take action for the purpose of eroding the bargaining units." The union contended that there does not have to be a displacement of bargaining unit members but that the contract provision also covers a "passive reduction."

The Arbitrator cannot respond to this contention. The grievance charges that the department violated the collective bargaining agreement by requiring bargaining unit employees to train contractors' employees rather than protesting an erosion of the bargaining unit. While the union can cite additional contract provisions and arguments in support of the charge contained in the grievance, it cannot raise a new issue. The erosion of the bargaining unit is a distinct issue from that raised in the grievance.

Third, the union charged that CiviGenics failed to fulfill the terms of its contract with the department. It claimed that, among other things, CiviGenics failed to provide unarmed self-defense training through a subcontracting arrangement with Mahoning-Trumbull-Columbiana Training Center, did not complete or perhaps even begin drug and alcohol testing and background checks prior to employees beginning work, and never certified that employees had completed all of their pre-employment testing. The union also questioned whether CiviGenics would provide cost saving of at least five percent as required by its contract with the department.

While the facts appear to support the union's charges, they cannot serve as the basis for sustaining the grievance. The requirements that CiviGenics failed to meet are contained in a contract between CiviGenics and the Department of Rehabilitation and Correction. The union is not a party to the contract and has no standing to enforce it. Furthermore, the department's

attempt to work with CiviGenics to ensure compliance with the contract rather than canceling it is an entirely reasonable strategy.

Fourth, the union argued that the department's action violated Article 39, Section 39.01 of the collective bargaining agreement. This section governs the contracting out of work. The union relies on the last sentence that deals with the training of contractors' employees by bargaining unit employees. It states:

> Bargaining unit employees will not be responsible for training contract workers, except bargaining unit employees may be required to provide orientation and training related to agency policies, procedures and operations.

The Arbitrator believes that the meaning of the first phrase is clear. It bans the use of bargaining unit employees in training contractors' employees. The department's argument that it does not prohibit them from the actual training but only from being "responsible" for the training must be rejected. It is obvious that the department always retains responsibility for training regardless of who delivers it.

The second phrase requires close attention. It constitutes an exception to the ban on bargaining unit employees training contractors' employees. The exception applies only to orientation and training dealing with "agency policies, procedures and operations." The issue is the reach of this exception.

The meaning of the words "policies," "procedures," and "operations" is critical. The Merriam Webster, Third New International Dictionary defines "policy" as "a definite course or method of action selected (as by a government, institution, group, or individual) from among alternatives and in the light of given conditions to guide and usually determine present and future decisions;" "procedure" as "a particular way of doing or of going about the accomplishment of something;" and "operation" as "a method or manner of functioning." Thus, the training in "agency policies, procedures and operations" relates to general guidelines or general methods for accomplishing agency goals.

The Arbitrator is convinced that the unarmed self-defense training at issue goes well beyond "policies, procedures and operations." It consists of 32 hours of instruction. The course starts with a brief discussion of the purpose and philosophy of the unarmed self-defense techniques taught by the department. It then offers instruction in numerous specific techniques, such as the armbar takedown, and provides the opportunity for the enrollees to practice them. At the conclusion of the course students are required to demonstrate proficiency in each of the techniques.

The union's argument that exceptions to a general principle ought to be narrowly construed merits consideration. If 32 hours of unarmed self-defense training for correction officers is considered merely "orientation and training related to agency policies, procedures and operations," it is not clear what training would not fall under the exception. The department's interpretation would make the first phrase banning bargaining unit members from training contractors' employees meaningless.

The Arbitrator's conclusion regarding unarmed self-defense training is consistent with the testimony of Alexander and Brundige regarding the intent of Article 39, Section 39.01. They indicated that the intent of the negotiators was to prohibit a bargaining unit employee from having to train contractors' employees who would then take their jobs. In the instant case bargaining unit Training Officers were required to provide prospective correction officers hired by contractors 32 hours of training in unarmed self-defense. While the Training Officers themselves would not be replaced, they were required to train individuals to fill jobs that would otherwise be filled by bargaining unit members. This appears to be exactly what the negotiators intended to prevent.

The decision in the instant case is also in accord with past practice. The record reveals that Aramark employees and nurses on individual service contracts were given unarmed self-defense training by bargaining unit Training Officers. However, the training they received was

incidental to their jobs, i.e., preparing food or providing medical services. Nothing suggests that the training the Aramark employees and the nurses received prepared them to replace bargaining unit employees. The unarmed self-defense training given to the prospective correction officers hired by CiviGenics and Management and Training Corporation was related to an essential part of their jobs and did prepare them to replace what otherwise would have been bargaining unit members..

The Arbitrator believes that the evidence suggests that the department recognized that bargaining unit employees could not be used to provide unarmed self-defense training for the contractors' new hires. The department's contract with CiviGenics requires CiviGenics to subcontract with Mahoning-Trumbull-Columbiana Training Center for unarmed self-defense training. The contract with Management and Training Corporation states that it will provide the necessary pre-service training. It is undisputed that the department decided to provide the unarmed self-defense training for the contractors' employees only when it concluded that the training that was provided by the Mahoning-Trumbull-Columbiana Training Center was not satisfactory.

Based on the above analysis, the Arbitrator must conclude that the department violated Article 39, Section 39.01 when it required bargaining unit employees to provide 32 hours of unarmed self-defense training to CiviGenics and Management and Training Corporation employees.

Grievance No. 27-01-000323-0148-01-14

Union Position - The union argues that bargaining unit members in the Office of Management Information Systems in the Division of Information Services were exposed to hazardous or life-threatening conditions in violation of the collective bargaining agreement. It

points out that CiviGenics was required to comply with all federal and Ohio laws and department policies and to provide services of similar quality to those offered by the department at the facilities that it operates. The union indicates that this meant that CiviGenics had to complete background checks, drug tests, and criminal background checks prior to hiring employees. It stresses that these requirements are very important because the employees of correctional institutions are "safety sensitive" employees.

The union charges that the department committed nine per se health and safety violations. It states:

> DRC has admitted to committing per se health and safety violations as follows:
>
> > First, Mr. Paul Warye testified that none of the four groups of prospective employees passed a drug test prior to beginning work at the NCCTF.
> >
> > Second, Mr. Warye testified that none of the four groups of prospective employees received a background check prior to beginning work at the NCCTF.
> >
> > Third, Mr. Warye, as monitor of the contract between CiviGenics and DR&C, testified that he was aware that none of the four groups of prospective employees passed a drug test or received a background check prior to beginning work at the NCCTF and knowingly approved their assignment at NCCTF.
> >
> > Fourth, Mr. Warye testified that he informed Norm Hills, the North Regional Director, who is responsible for contractual oversight and monitoring all matters relating to the contract, that none of the four groups of prospective employees passed a drug test or received a background check prior to beginning work at the NCCTF. Nevertheless, Mr. Hills did not prevent nor object to their assignment at NCCTF.
> >
> > Fifth, Mr. Warye testified that he believes that all prospective employees have now received background checks. However, Mr. Warye testified that he has not taken the necessary time to perform his job duties by actually verifying his beliefs and as such, admits that he does not have actual personal knowledge if all prospective employees have received background checks.
> >
> > Sixth, Mr. Warye testified that he believes that all prospective employees have been tested for drugs. However, again, Mr. Warye testified that he has not taken the time to verify his beliefs and as such, admits that he does not have actual personal knowledge if all prospective employees have been tested for drugs.

> Seventh, Mr. David Spinner, a current employee of CiviGenics, testified that he was part of the second class or group of prospective employees of CiviGenics. Mr. Spinner testified that he was tested for drugs on May 19, 2000, though his start date was the second week of January 2000. Further, Mr. Spinner testified that an employee of DR&C or CiviGenics provided answers to prospective employees during their final exam. As a result, those employees who cheated on their final exam are not qualified and have not properly completed or fulfilled the training program outlined by DR&C, though they are still employed as a correction officer. Mr. Spinner also testified that he was aware of other groups of prospective employees, other than his, that were also similarly not tested for drugs and were given assistance in passing tests or exams.
>
> Eighth, Ms. Biskup, a prior employee of CiviGenics, testified that she was part of the first class of prospective employees of CiviGenics. Ms. Biskup testified that she was never tested for drugs, though her start date was the first week of January 2000. Ms. Biskup also testified that an employee of DR&C or CiviGenics provided answers to prospective employees during her final exam as well. As a result, those employees who cheated on their final are not qualified and have not properly completed or fulfilled the training program outlined by DR&C, though they are still employed as a correction officer.
>
> Ninth, Mr. Spinner and Ms. Biskup both testified that in their respective entering classes a DR&C employee actually re-shot for those prospective employees who had failed their firearm testing, so that they would pass. As a result, those employees who cheated on their firearm testing are also not qualified and have not properly completed or fulfilled the training program outlined by DR&C, though they are still employed as a correction officer. (Union Brief, pages 28-30).

The union charges that the department has not followed its own requirements in the case of the prospective employees of CiviGenics. It claims that its failure to meet health and safety standards is "incomprehensible and unfathomable" and "intentional and knowing." The union contends that the department's "failure to insure that the staff at NCCTF is properly trained for a life-threatening situation, [means] if one did occur, it would ultimately end in disaster, such as loss of life." (Union Brief, page 30).

The union contends that in addition to the per se violations, the department has placed the lives of MIS employees in jeopardy because of the lack of security and non-compliance with minimum standards. It points out that Frank Spinner, a Correction Officer at NCCTF;

Christopher Mabe, a Records Officer at NCCTF; and Daniel Sablack, a Correction Officer at Lorain Correctional Institution, testified that NCCTF remains replete with debris including rocks, bolts, screws, trash, and piping. The union indicates that several wheelbarrows full of large rocks and pieces of metal and wood were removed from the institution two months after it opened. It notes that a bulldozer and bobcat were used on April 27 and 28, 2000, in an attempt to remove debris. The union claims that despite the department's efforts to resolve ongoing hazards, it has been unsuccessful and can no longer use the excuse that NCCTF is a new facility.

The union charges that the lack of security-mindedness led to inmate uprisings on April 24, 2000; May 4, 2000; and May 5, 2000. It states that on two of the occasions approximately 50 inmates defied and disobeyed the staff of the department and CiviGenics. The union indicates that in the incident report regarding May 4, 2000, Warye states:

> [the inmates] ignored the staff, disobeyed direct orders, were grossly disrespectful, and were confrontational. They refused to comply with orders and began to verbalize threats to the staff. They incited numerous other inmates to join their defiance and actively taunt and challenge the staff with disobedience and threat of violence. (Union Brief, page 31).

It claims that Captain Parker stated that in the May 5, 2000, incident "there was a serious threat of injury and possible rioting." (Union Brief, page 32). The union asserts that a videotape of one of the May incidents shows "inappropriate and foolhardy actions" by Major Jackson that jeopardized lives of personnel at NCCTF including MIS bargaining unit members, if they were present.

The union complains that despite these incidents the department continues to demonstrate a complete lack of security-mindedness. It points out that NCCTF is the only minimum-security facility in the state without a completed perimeter road and that there are no plans to complete it. The union notes that there is no special unit to handle emergency situations such as a riot or hostage situation. It adds that security violations have occurred including a correction officer passing through a metal detector with two loaded weapons, housing segregation inmates in a

medical unit, using a sally port improperly, and denying inmates the opportunity to obtain earned credits for early release.

The union concludes that the department and CiviGenics have demonstrated a complete and total lack of security that results in the lives of MIS bargaining unit members being placed in jeopardy when they are required to perform computer services at NCCTF. It asks the Arbitrator to issue a cease and desist order allowing any MIS bargaining unit member to refuse to enter NCCTF until the life-threatening conditions have been abated.

Department Position - The department rejects the union's charge that bargaining unit members in the Office of Management Information Systems in the Division of Information Services were exposed to life-threatening or hazardous conditions when they installed computers and software at NCCTF. It points out that NCCTF is a minimum-security prison and is analogous to a "camp" in the Ohio prison system. The department notes that consequently inmate restrictions are not as stringent as at other prisons in the state.

The department contends that the activation of a new prison is a difficult time. It indicates that the staff is new to the facility and frequently to corrections. The department states that daily routines for programs and activities have not been established and deficiencies in equipment and supplies are being discovered. It observes that inmates are often disgruntled because they were moved from a prison where their routines were predictable and comfortable.

The department maintains that nothing in the activation phase of NCCTF is inconsistent with its past experience in activating new prisons. It reports that it and CiviGenics continue to address and correct deficiencies as they become known. The department complains that many of the deficiencies were alleged or made known for the first time at the arbitration hearing. It stresses that none of the alleged problems resulted in serious operational disruptions.

The employer acknowledges that Transportation Officer Paul Newkirk testified regarding what he perceived as a deficiency in the search of a van. It observes that he conceded that no

problems resulted from the alleged deficiencies. The department complains that Newkirk did not report his concerns to a supervisor or the health and safety officer as required by Article 11, Section 11.03

The department rejects the union's claim that a videotape of inmates gathered around Major Jackson and Deputy Warden Bates shows a "disturbance" or critical incident. It states that the inmates appear calm and that everyone is speaking in a conversational tone and that the tape reveals no pushing or shoving. The department reports that the inmates were concerned about the lack of recreational opportunities and that the problem was addressed by CiviGenics.

The department argues that it is a matter of professional judgment whether a senior employee should talk to a group of inmates about their concerns. It indicates that there are no textbooks to describe the proper response to every situation. The department asserts that it is possible that the inmates' concerns and frustrations could have escalated to a more serious level if senior staff had refused to talk to them.

The department recognizes that Mabe testified that there should be more fences at NCCTF and that inmates' movements should be more restricted. It points out, however, that for ten years he worked at the Mansfield Correctional Institution, which houses long-term and life and death sentence prisoners, and has a higher security level than NCCTF. The department maintains that the short-term drug and alcohol prisoners at NCCTF have a different outlook and temperament. It states that Mabe and other employees may initially be uncomfortable with the environment at NCCTF because there is no comparable facility in Ohio.

The department emphasizes that the union produced no MIS employee to testify that he or she felt threatened or endangered at NCCTF. It points out that Warye testified that he instructed department employees to tell him if they encountered a condition that they considered to be unsafe. The department indicates that no bargaining unit member complained to him and

that only one state employee verbally expressed concern to him. It charges that the union filed the instant grievance based on "rumors and exaggerations."

The department dismisses the union's complaint regarding the gap in the perimeter fence. It points out that the area in question is well lit and that the wooded area is not close to the prison. The department indicates that the area where there is no road is level enough for a vehicle to cross if it were necessary. It reports that it owns the land and facility and it, not CiviGenics, will determine whether to expand the perimeter road.

The department rejects the union's claim that the contract with CiviGenics should be terminated. It claims that the union failed to prove that CiviGenics breached its contract with the department. The department contends that even if the contract was violated, it would be self-defeating and irrational to attempt to terminate the contract for the first deficiency. It indicates that its philosophy and practice is to work with a contractor to address deficiencies and to improve performance.

The department states that it is working with CiviGenics in addressing safety risks at NCCTF. It reports that cuff ports have been put on cell doors; criminal background checks have been completed; drug screening is underway; recreational equipment has been ordered; a drug and alcohol program has been approved for sentence reduction credit; and debris in the yard has been collected and removed.

The department challenges the union's request for the Arbitrator to retain jurisdiction until the hazardous conditions at NCCTF are resolved. It complains that this would mean that the Arbitrator would continue to review conditions at the facility until they reached some unspecified level. The department asserts that this would require the Arbitrator to supervise NCCTF in security matters and to substitute his judgment for its judgment.

The department concludes that the union did not meet its burden of proving that MIS employees who were required to work at NCCTF were exposed to life-threatening or hazardous

conditions. It asks the Arbitrator to deny the union's request to remove bargaining unit employees from NCCTF.

Analysis - In Grievance No. 27-01-000323-0148-01-14 the union brings a very serious charge. It alleges that the department and CiviGenics have demonstrated "a complete and total lack of security mindedness" that exposes bargaining unit employees in the Office of Management Information Systems to "hazardous or life-threatening conditions." On the basis of this charge, the union asks that until the hazardous conditions are abated or removed, MIS employees be allowed to refuse to enter NCCTF.

The union presented considerable testimony and evidence in support of its charge. First, a number of witnesses testified that pre-employment alcohol and drug tests and background checks were not completed or even started prior to employees being hired. Second, several union witnesses stated that after the construction of NCCTF considerable debris remained on the property. They testified that the bolts, piping, rocks, and screws found in the area could have served as weapons. Third, the union charged that there were a number of security lapses. Newkirk testified that when he brought a van of inmates to NCCTF, it was not properly searched either entering or leaving the facility. Sablack stated that a van driver was allowed into NCCTF with a weapon. Fourth, the union claimed that CiviGenics employees did not receive adequate training. Spinner testified that the training he got for handcuffing lasted only three minutes and did not include any instructions about how to use a belly chain. He and Linda Biskup, a former Correction Officer at NCCTF, stated that in firearms training the instructor shot for some of the students and gave students the answers to some of the questions on the written exam. Fifth, the union charged that there were problems with the design of the facility. Several witnesses complained about having to house segregation inmates in the infirmary and the lack of cuff ports on the cell doors. Vera Socrates, a teacher and member of the Ohio Education Association bargaining unit, expressed concern about the locks on the library doors and the location of the

restroom. Sixth, the union noted that NCCTF does not have a complete perimeter road. Its witnesses claimed that it is the only facility in the state without such a road and that the lack of a road around the facility creates a security problem. Seventh, the union charged that there were three "uprisings" which presented serious threats of injuries and possible rioting. Eighth, it maintained that a videotape of one of the incidents showed that the situation was not properly handled by NCCTF officials. The union's witnesses claimed that Major Jackson and Deputy Warden Bates should not have allowed themselves to be surrounded by a group of inmates and put themselves at risk of being taken hostage. Steve Mannon, a Correction Officer at North Central Correctional Institution, added that the videotape showed evidence of gang activity but no action was taken regarding it.

While the Arbitrator is concerned about the safety and security problems revealed by the testimony presented at the hearing, he does not believe that the union established that "hazardous or life-threatening conditions" currently exist at NCCTF. First, a number of the problems either have been eliminated or are in the process of being eliminated. Drug and alcohol tests and background checks were nearly complete at the time of the arbitration hearing; extensive efforts had been undertaken to remove debris from the facility; and cell doors with cuff ports were being installed in the infirmary.

Second, while there were a number of significant lapses in security, the testimony of the department's witnesses established that problems frequently occur at new facilities. At NCCTF the problems appear to have been more numerous than with the opening of a new state-run facility where the department is able to fill many of the Correction Officer and management positions with experienced personnel from other institutions. However, as the problems surfaced at NCCTF, they have been ameliorated.

Third, while the Arbitrator is not an expert in corrections, he does not believe that the lack of a completed perimeter road at NCCTF creates a hazard. It is the lowest security level in

the state system and houses prisoners convicted of alcohol and drug offenses. Furthermore, Warye testified that should an emergency arise, the areas where there is not perimeter road are still accessible.

Fourth, the union appears to have exaggerated the three incidents that it characterized as "uprisings." The incident reports indicate that in all three cases the staff at NCCTF dealt with the situations. There were no injuries or violence and disciplinary action was taken against at least some of the inmates involved.

Fifth, the Arbitrator cannot reach any conclusion about the incident on the videotape that was submitted by the union. As indicated above, the union's witnesses were critical of the way it was handled by Major Jackson and Deputy Warden Bates. However, Warye and the department's other witnesses refused to criticize them. They testified that there is no set way to handle specific situations but that individual judgment comes into play.

The Arbitrator's denial of the grievance does not mean that bargaining unit employees who are expected to work at NCCTF are without protection. Article 11, Section 11.03 provides a mechanism for employees to address safety concerns. It directs employees to report unsafe conditions to their supervisor who is responsible for abating the problem. If the supervisor fails to do so, employees are to report the problem to the agency/facility safety designee who must abate the problem or report within five days why the problem cannot be abated in an expeditious manner. Employees are free to grieve the designee's decision.

Based on the above analysis, the Arbitrator must deny the grievance. The union did not establish that there are "hazardous or life-threatening conditions" that would warrant an order allowing bargaining unit employees to refuse to work at NCCTF. Safety concerns that may arise can be addressed through Article 11, Section 11.03.

Award

Grievance No. 27-01-000323-0148-01-14 - The department is to cease and desist using bargaining unit employees to provide unarmed self-defense training to employees of CiviGenics and Management and Training Corporation.

Grievance No. 27-01-000728-0141-01-14 - The grievance is denied.

Nels E. Nelson
Arbitrator

July 7, 2000
Russell Township
Geauga County, Ohio