

#1632

**IN THE MATTER OF ARBITRATION**

**BETWEEN**

**OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, LOCAL 11  
AFSCME AFL-CIO**

**AND**

**OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS**

**Before: Robert G. Stein, Arbitrator**

**Grievant(s): Ronnie Walker  
Case # 27-14-20011221-1493-01-03  
Termination**

**Advocate(s) for the UNION:**

**James McElvain, Staff Representative  
OCSEA LOCAL 11, AFSCME AFL-CIO  
Westerville OH 43215**

**Advocate for the EMPLOYER:**

**Shirley A. Turrell, LRS  
OFFICE OF COLLECTIVE BARGAINING  
Ohio Department of Administrative Services  
100 E. Broad Street  
Columbus OH 43215**

## **INTRODUCTION**

A hearing on the above referenced matter was held on September 23, 2002 and October 4, 2002, in Lorain, Ohio. The parties agreed that the issue is properly before the Arbitrator. During the hearing the parties were given a full opportunity to present evidence and testimony on behalf of their positions on the merits. The parties submitted briefs in lieu of closing arguments. As a follow-up to their briefs, the parties kept the case open by exchanging reply letters to their briefs. The case was finally closed on December 12, 2002 with the receipt of the Employer's reply to the Union's letter of November 27, 2002.

## **ISSUE**

The parties agreed to the following definition of the issue:

Did the Grievant physically abuse an inmate on October 14, 2001?

If abuse is not found, do the charges support just cause for termination? If not, what shall the remedy be?

## **RELEVANT CONTRACT LANGUAGE**

(As cited by the parties, listed for reference see Agreement for language)

### **ARTICLES 24**

## **BACKGROUND**

The Grievant in this matter is Ronnie Walker ("Grievant" or "Walker"), a Correction Officer with the Ohio Department of Rehabilitation and Corrections ("Employer" or "Department"). Walker was employed by the Department from September 11, 1995 to December 13, 2001. He was last assigned to the drug offender unit at the Lorain Correctional Facility, which houses medium security inmates. Walker had no prior discipline on his record at the time of his termination. According to the Employer Walker was terminated ("removed") for violating:

- Rule # 37    Actions that could harm or potentially harm the Employee, fellow employee(s) or a member of the general public;*
- Rule # 28    Loss of control of any instrument that could result in a breach of security or jeopardize the safety of others*
- Rule # 43    Physical abuse of any individual under the supervision of the Department*
- Rule # 22    Falsifying, altering or removing any official document*

The incident that led to these charges and the eventual removal of the Grievant from employment took place on October 14, 2001. Two simultaneous investigations were conducted, one involving the

Department and one involving the Ohio Highway Patrol. The Grievant admitted to striking the inmate, but stated Inmate Thomas spit on him, which evoked his physical response. There were key coworker witnesses who provided eyewitness statements contradicting the Grievant's version of the events of October 14, 2001. The findings of the investigation led to the Employer's termination action. Use of Force Committee findings were not invoked prior to the Grievant's termination and were not used by the Employer in making the decision to terminate the Grievant's employment.

Mr. Walker filed a grievance, claiming the Employer did not have just cause to terminate him.

#### **SUMMARY OF EMPLOYER'S POSITION**

The Employer argues that for well over ten (10) minutes, the Grievant was out of control and volatile on October 14, 2001. Several Correction Officers witnessed the Grievant's angry rage and a number of them attempted to prevent the Grievant from inflicting harm on inmate Thomas. The Employer asserts that the Grievant's actions stirred up the inmate population to such an extent that it placed his co-workers in jeopardy and compromised their safety when they were required to secure the situation. The Employer labels the Grievant's conduct as dangerous, unprofessional, and in a stark departure from the training received by Correction Officers to quell and not create unrest.

The Employer contends that the Grievant admitted to delivering three punches to inmate Thomas and that he had a motive to initiate this confrontation. It was based upon suspected complicity with Correction Officer Lori Robinson, Walker's coworker of two years in the Drug Offender Unit at Lorain Correctional Institution. The Employer emphasizes the importance of having its Correction Officers be in control of their behavior, and it points to the Department's past vulnerability to successful lawsuits filed by inmates who proved they were injured by employees.

In conclusion, the Employer asserts that Mr. Walker is unwilling to accept responsibility for his actions and for his total loss of self-control on October 14, 2001. The Employer contends that given the Grievant's actions and attitude, correction action short of termination would not have been effective.

Based upon the above, the Employer requests the grievance be denied.

#### **SUMMARY OF UNION'S POSITION**

The Union asserts multiple defenses in this case. In general, the Union argues that the investigation by the Employer was unfair and was not impartial. The Union points out that there was no Use of Force Committee hearing prior to the Pre-disciplinary Conference or the

decision to terminate the Grievant. The Union contends this is required by Administrative Code 5120-9-02 §56056(2) (E 7). The Union also argues that the Employer did not use certain documents and pictures before the Pre-disciplinary hearing, but later used them in the arbitration hearing (E 1, 2, 3). The Union also argues that the Employer violated the Collective Bargaining Agreement ("CBA") when it failed to provide Union requested documents prior to the arbitration hearing. The Union contends these documents were necessary in order to adequately prepare the defense of the Grievant. The Union contends that such acts of non-cooperation should modify the Employer's decision in this case.

The Union argues that the Employer failed to provide evidence and testimony to support all the charges against the Grievant. It accuses the Employer of "stacking" charges against Walker in order to bolster its case against him. For example, the Union contends that the Employer did not prove a violation of Rule 28. It argues there was no proof the Grievant lost control of any instrument, including his mandown alarm that could jeopardize security.

The Union argues that inmate Thomas spit in the Grievant's face, which is a felony under ORC 2921.38. The Union asserts that Walker was not only justified in using force and could have justifiably used deadly force against Inmate Thomas. The Union further contends that the

Employer refused to have inmate Thomas attend the hearing which was an indication of its fear of what Inmate Thomas would say.

The Union contends that the Employer is equating excessive force with abuse in this matter. The Union contends there is no understood standard regarding abuse in the Department of Corrections. It argues the Employer used the charge of abuse to prosecute the Grievant, after it botched its use of force investigation. The Employer should have relied upon the Use of Force Committee findings, argues the Union.

Based upon the above, the Union urges the Arbitrator to sustain the Grievance.

## **DISCUSSION**

The centerpiece of the Employer's case in this matter is the charge of abuse. The charge of abuse of an inmate carries a first time penalty of removal under the Department's Disciplinary Grid (Rule # 42, Jx 4). If this charge is proven, the other charges against the Grievant while significant, take "second place" because of what the parties have agreed upon in Article 24.01. It states in pertinent part:

*"In cases involving termination, if the arbitrator finds there has been 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."*

In this matter the Employer's case is firmly supported by the statements and testimony of the Grievant's fellow Correction Officers, Bud

Anderson and R. Jackson, and the testimony and statements provided by Lt. Roger Wright. I found the investigation conducted by Investigator Monyak to be professional and procedurally sound. The fact that the investigation was conducted in tandem with the Highway Patrol investigation did not appear to have any effect upon its accuracy, and there was no indication that the Grievant was harmed by this approach. The Employer's decision did not rely upon the Use of Force investigation. It was concluded after the decision to terminate was made by the Employer. Given the sequence of events, I find that in this case a Use of Force Committee Report was not essential in determining the impropriety of CO Walker's conduct. The Grievant first physically abused inmate Thomas, prior to the need to subdue inmates Thomas and Ambler. There was no evidence of a legitimate need for the Grievant to hit inmate Thomas three separate times.

The evidence and testimony support the Employer's decision to consider the Grievant's actions to be apart from the subsequent use of force situation that was triggered by the Grievant's physical abuse of inmate Thomas. The facts simply do not support a use of force context. The Grievant's actions were a pretext to the use of force. Officer Bud Anderson, who was only two to three feet away from inmate Thomas and Walker, stated he never saw inmate Thomas spit in the Grievant's face. Anderson's testimony states that inmate Thomas did not appear to be



upset and "...sat quietly looking ahead..." when Anderson entered the Jaycee's office (Jx 10B). According to Anderson, the Grievant struck inmate Thomas while he was sitting and again struck Thomas in the face after CO Anderson had placed his hand on Walker's chest and told him to "...back off..." (Jx 10B). CO Jackson witnessed the second blow struck by Walker against inmate Thomas (Jx 10G). When inmate Thomas and inmate Ambler were handcuffed and escorted out of the Unit 10A, the Grievant once again struck inmate Thomas in the back of the head and taunted him (Jx 10E). Lt. Wright, who was in charge of the situation, witnessed the blow struck by Walker, as did CO Anderson, who was escorting the inmates. Lt. Wright had to order the Grievant to back off (Jx 10E). The Grievant also testified at the arbitration hearing that he struck the Grievant thirty to forty (30-40) seconds after the fight.

The statements and testimony of Walker and the statements of CO Lori Lanier-Robinson, were not credible. I found them to be self-serving and inconsistent with totality of the other statements and evidence of this incident. For example, the Grievant stated he and CO Robinson found contraband in the cell of inmate Thomas, yet they did not record it in the contraband log, and there is no record of a cell search. Why was CO Robinson suspiciously walking back and forth to check whether the yard officers (Anderson and Jackson) were coming to Unit 10A? Why did the Grievant have his uniform shift off? Why did Walker take off his man down

alarm? Why were there no physical gestures or verbal reactions by the Grievant to indicate inmate Thomas had spit in his face? Walker said he wiped the spit from his face, yet Anderson and Jackson saw no such gesture.

In assessing credibility of witness statements and their testimony, internal consistency over time, the consistency of the statements with other facts established in the case, the consistency of the testimony with the way common sense suggests things happened, the person's reputation for honesty, and the individual's interest in the outcome of the case are all important factors. Using these criteria, I found no discernible reason to consider the testimony of Correction Officers Anderson, Jackson, or Lt. Wright to be anything but truthful. Their statements were substantially consistent with one another and with the other evidence in this case. Their testimony appeared to be unrehearsed and not tainted by inappropriate collaboration. In contrast the testimony of Walker and Lanier-Robinson was remarkably similar.

I find the Employer met its burden of providing clear and convincing evidence that Mr. Walker abused inmate Thomas on October 14, 2001. The Employer clearly established that Walker struck inmate Thomas three separate times, and there was no evidence or credible testimony to justify his actions. He lost control and attacked inmate Thomas, who by the account of other employee, was not hostile or a physical threat to

anyone at the time. According to Cos Anderson and Jackson, inmate Thomas was not in physical contact with the Grievant and was not shouting when he was punched by the Grievant (See hearing testimony of Anderson and Jackson). The Grievant's own testimony and statements establish the fact he struck inmate Thomas multiple times (Jx 10C). In spite of his statement regarding being spit upon, there was no substantial evidence that this ever occurred. Even if it had occurred, how does such an act justify the repeated blows inflicted by the Grievant on inmate Thomas over an extended period of time?

The Grievant physically abused an inmate under the care and custody of the Department. His conduct is not only inexplicable; it is reprehensible in light of these responsibilities as a Corrections Officer. This is not to say that inmates often act in a manner that will try the patience of "saints." A Correction Officer has an extremely difficult job that often requires the judicial use of force. However, this is not a case where there was a need to apply the use of force. It is also not a case where a blow is struck in the heat of a physical confrontation, when an adrenaline rush might be affecting one's judgment.

When a Corrections Officer uses his position of power and authority to physically abuse inmates he has stepped well over the line of professional conduct that separates those who need to be controlled from those responsible for maintaining control. The Grievant's actions

placed himself, coworkers, and other inmates at considerable risk. The security of the institution could have been compromised and the situation could have escalated into a much more troublesome circumstance. It also could have created a legal liability for the Department and for the involved employees.

In this case there was accusation and counter accusation by the advocates for both parties. The straightforward nature of the facts and the prima facie case of abuse established by the Employer render the secondary charges to be of minor importance. The same can be said for the procedural violations alleged by the Union. The Union argued that the Department ignored the Arbitrator's subpoena to have inmate Thomas appear. A party in a grievance process should be afforded every reasonable opportunity to organize its case as it sees fit. Any denial of the right of the Union to mount a reasonable defense is a foolish strategy on the part of any employer. The Union could have had the opportunity to keep the hearing open in order that inmate Thomas could appear. This opportunity was not requested by the Union. However, it must be stated that it was the testimony of credible eyewitness coworkers that made the Employer's case and not that of a convicted criminal.

The Employer did not use the Use of Force Committee's report because it considered the Grievant's actions to be abuse, not a use of force situation. As stated above, this judgment proved to be correct. This

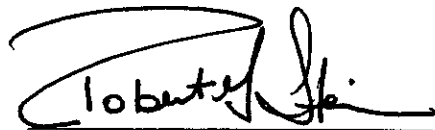
was a case of abuse and not of force. The Committee's report was of no importance in a matter because the infliction of abuse was distinguished from the use of force.

Finally, it must be noted that I found absolutely no evidence of impropriety in the defense of the Grievant. The Employer's advocate did a thorough job of establishing a prima facie case of abuse, and the Union's advocate, who by far had the greatest amount of "heavy lifting," mounted every conceivable defense possible in an attempt to overcome the irrefutable fact that the Grievant struck inmate Thomas three separate times without discernible provocation.

**AWARD**

The grievance is denied.

Respectfully submitted to the parties this 14<sup>th</sup> day of January, 2003.

A handwritten signature in black ink, appearing to read "Robert G. Stein", written over a horizontal line.

Robert G. Stein, Arbitrator