

#1944

VOLUNTARY LABOR ARBITRATION PROCEEDING

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IN THE MATTER OF THE ARBITRATION BETWEEN:

THE STATE OF OHIO, OHIO DEPARTMENT OF REHABILITATION  
AND CORRECTION (CHILlicothe CORRECTIONAL INSTITUTION)

- AND -

OHIO CIVIL SERVICE EMPLOYEES ASSOCIATION, LOCAL 11, AFSCME

GRIEVANTS: Chad Rawlings and Gary Watkins

GRIEVANCE NOS.: 27-03-(20060609)-1608-01-03 (Rawlings)  
27-03-(20060609)-1607-01-03 (Watkins)

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ARBITRATOR'S OPINION AND AWARD

ARBITRATOR: DAVID M. PINCUS

DATE: JULY 28, 2007

APPEARANCES

For The Employer

Arville Duty  
Lachona McKee  
Joe Trejo  
Bobby L. Johnson

Investigator  
Management Representative  
Second Chair  
Advocate

For The Union

Chad Rawlings  
Gary Watkins  
Andy Bower  
Craig Branham  
John S. Nash  
Marc A. Young  
Dave Justice

Grievant  
Grievant  
Chapter President  
Lieutenant  
Correction Officer  
Activity Therapy Specialist II  
Advocate

This is a proceeding pursuant to a grievance procedure in the negotiated Agreement (Joint Exhibit 1) between the State of Ohio, Ohio Department of Rehabilitation and Correction, Chillicothe Correctional Institution (hereinafter referred to as the Employer) and Ohio Civil Service Employees Association, Local 11, AFSCME (hereinafter referred to as the Union). At the Arbitration hearing, the parties were given the opportunity to present their respective positions on the grievances, to offer evidence, to present witnesses, and to cross-examine witnesses.

At the conclusion of the hearing, the parties were asked by the Arbitrator if they planned to submit post-hearing briefs. The parties have submitted post-hearing briefs in accordance with the guidelines agreed to at the hearing.

### **STIPULATED ISSUE**

Did the actions of grievant Chad Rawlings and grievant Gary Watkins on April 16, 2006, involving inmates Kramer 314-090 and Dean 288-395 constitute abuse? If not, did Management have just cause to remove grievant? If not, what shall the remedy be?

### **JOINT STIPULATIONS**

1. Gary Watkins was hired by the Department of Rehabilitation and Correction on August 11, 1997 as an Interim Corrections Officer, and then hired full time on February 01, 1998 as a Correction Officer.

Chad Rawlings was hired by the Department of Rehabilitation and Correction on November 13, 2000 as a Correction Officer.

2. Neither grievant had active performance-related discipline on record at the time of the incident.
3. Both grievant were removed on June 7, 2006 from their current classification of Correction Officer. Grievants were charged with violating Rule 43 - Abuse of any inmate/patient under the supervision of the Department and Rule 39 - Any act that would bring discredit to the Employer.
4. The Union filed two grievances 27-03-(2006-06-09)-1607-01-03 (Gary Watkins) and 27-03-20060609-1608-01-03 (Chad Rawlings) on June 6, 2006. The grievances are properly before the Arbitrator.
5. Both grievant signed for the Standards of Employee Conduct on October 14, 2004.

### **PERTINENT CONTRACT PROVISIONS**

#### Article 24 - Discipline

##### 24.01 - Standard

Disciplinary action shall not be imposed upon an employee except for just cause. The Employer has the burden of proof to establish just cause for any disciplinary action. In cases involving termination, if the arbitrator finds that there has been an abuse of a patient or another in the care or custody of the State of Ohio, the arbitrator does not have authority to modify the termination of an employee committing such abuse. Abuse cases which are processed through the Arbitration step of Article 25 shall be heard by an arbitrator selected from the separate panel of abuse case arbitrators established pursuant to Section 25.04....

(Joint Exhibit 1, pgs. 81-82)

## **CASE HISTORY**

The Grievants, Chad Rawlings and Gary Watkins, were employed at the Chillicothe Correctional Institution when they were removed from their positions as Correction Officers on June 7, 2006. Watkins was hired on February 1, 1998, while Rawlings was hired on November 13, 2000.

The facts for the most part are not in dispute. Whether they constitute abuse is for the Arbitrator to determine in light of Section 24.01 requirements.

On April 26, 2006, Easter Sunday, both Grievants were assigned to B-2. It should be noted B-2 is part of the Residential Treatment Union (RTU) which houses mentally ill inmates. The B-2 and B-4 units are also connected.

On the day in question, Inmate Kramer, a mentally ill inmate, approached the Grievant's desk stating "they were after him." This sequence of events took place a number of times. On another occasion, Inmate Kramer dumped some trash on the floor near the Grievants' post. Grievant Watkins ordered Inmate Kramer to pickup the trash, but he refused to comply with the direct order. Grievant Watkins admitted during the arbitration hearing and various stages of the investigation, that he swept up the trash and threw it into Inmate Kramer's cell.

Grievant Watkins sensed that Inmate Kramer was starting to "act out." Watkins decided to cuff Inmate Kramer. He placed a cuff on one wrist but was unable to get the other hand cuffed. Inmate Dean, an inmate from the general

population, and a known homosexual, was in the B-2 area. Grievant Watkins then placed the other cuff on Inmate Dean causing both inmates to be cuffed by the same device.

Inmate Dean started making sexually explicit comments directed toward Inmate Kramer. Both Grievants admitted they laughed at Inmate Dean's comments.

Inmate Kramer was not amused by the comments nor his general situation. He became upset and yelled for help. At one point he grabbed the officers' phone and yelled "call the President." Grievant Rawlings testified that once Inmate Kramer got a bit more agitated he uncuffed the inmates. Grievant Watkins directed Inmate Kramer back to his cell.

On June 6, 2006, both Grievants were removed effective June 7, 2006. Grievant Rawlings' Notice of Disciplinary action includes the following infractions:

XXX

As a result of an investigation it has been determined that you participated /facilitated in an incident where by an inmate from the Residential Treatment Unit who was in distress was handcuffed to an inmate from another unit. There was no legitimate reason for this to have occurred and you allowed it to take place. By your own admission you thought the incident was humorous. This incident has been publicized in various media outlets.

Your actions constitute a violation of rule #39 and 43 of the Employees Standards of Conduct. Accordingly, I am REMOVING you.

XXX

(Joint Exhibit 4, Pg.1)

Grievant Watkins' Notice of Disciplinary Action specifies the following related infractions:

XXX

As a result of an investigation it has been determined that you handcuffed an inmate from the Residential Treatment Unit who was in distress to an inmate from another unit. You did this without any legitimate reason. Your actions were completely outside the scope of your authority. This incident has been publicized in various media outlets.

Your actions constitute a violation of rule #39 and 43 of the Employees Standards of Conduct. Accordingly, I am REMOVING you.

XXX

(Joint Exhibit 4, Pg. 9)

These disciplinary actions were contested by the Union by filing two grievances. The grievances contained the following identical statement of facts:

XXX

We the Union feel that management didn't follow progressive discipline when they removed officer Watkins (Rawlings) for Rule 39 and 43. By managements own admission there wasn't any abuse by the officers.

XXX

(Joint Exhibit 2, Pg. 1 and Joint Exhibit 3, Pg. 1)

The disputed matters were not resolved during various stages of the grievance procedure. Neither party raised procedural nor substantive arbitrability concerns. As such, the grievances are properly before the Arbitrator.

## **THE MERITS OF THE CASE**

### **The Employer's Position**

The Employer argued the removals in question complied with specific abuse related language negotiated by the parties as specified in Section 24.01. Both Grievants engaged in severely abusive conduct justifying removal without any option for mitigation.

The admitted misconduct is sufficient to justify removal but the Grievants' actions are more egregious for other reasons. They were fully aware of Inmate Kramer's mental health issues. Both Grievant's acknowledged that Inmate Kramer was a mental health inmate. They had worked the Resident Treatment Unit on prior occasions and were aware of his condition.

The mental health training argument raised by the Union appeared to be superfluous. Lack of specialized mental health training does not justify the behavior engaged in by the Grievants. The Union's own witnesses, Craig Bronham and John Nash, were never was trained to cuff two inmates together.

The Grievants' actions were intentional. Grievant Watkins never had a problem cuffing Inmate Kramer. He merely called Inmate Dean and cuffed both inmates together. Grievant Watkins was never at the use of force state or Grievant Rawlings could have assisted him.

Grievant Rawlings was equally at fault for the abusive behavior experienced by Inmate Kramer. He initially facilitated the entire episode. He had the only key to the connecting door between B-2 and B-4. By opening this door, he provided Inmate Dean with access to the area. Grievant Rawlings, moreover, testified that he was the only staff person with a cuff key. Yet he participated in the event by doing nothing to stop it or asking someone for help. He participated by laughing at Inmate Kramer; a severely mentally ill inmate.

Inmate Kramer and Inmate Dean were not friends. As such, the Union's attempt to mitigate the Grievants' conduct on this basis lacks credibility. The record indicated Inmate Kramer did not like other inmates, and was afraid of them. He spent his time socializing with officers because he sought their protection. Inmate Kramer's response to being cuffed to Inmate Dean clearly negates the Union's argument.



### **The Union's Position**

The Union opined the Grievants did not engage in abusive conduct on April 26, 2006. Also, the Employer failed to establish just cause for removal. If anything, something other than abuse should be deemed to have occurred by the Arbitrator.

Grievant Rawlings engaged in stupid horseplay but should not have been charged with abuse. He merely laughed along with others at the location in question. If anything, he should have been charged with Rule 20 - Involvement in horseplay. This charge carries a penalty ranging from written reprimand to a one day suspension.

Grievant Watkins also alleged he had not abused Inmate Kramer. He attempted to cuff Kramer after Kramer failed to follow a direct order. Placing the handcuffs on Inmate Kramer would not have been viewed as abuse. Placing the cuff on incorrectly caused the sequence of events in dispute. Grievant Watkins emphasized the horseplay might have gotten out of control, but did not reach the critical mass necessary to constitute abuse.

The Rule 39 charge was equally misplaced. The media releases were triggered by a member of management. Leta Pritchard, Special Assistant to the Warden, confirmed the accusations. She noted, however, that "no sexual or physical abuse was involved."

A litany of mitigating circumstances were raised by the Union. Some of the allegations offered by the Union include: failing to conduct a complete and thorough investigation; incorrectly specifying charges and/or applying identical charges to all individuals involved in the incident; the Grievants' clean prior disciplinary record; lack of specialized training in the Residential Treatment Unit; and the medical exam report failed to evidence any sign of physical abuse.

### **THE ARBITRATOR'S OPINION AND AWARD**

From the evidence and testimony adduced at the hearing, a complete review of the record including pertinent contract provisions and the parties' written closings, it is this Arbitrator's opinion that the Grievants emotionally abused Inmate Kramer. In accordance with section 24.01, there has been abuse of another in the care and custody of the State of Ohio. As such, the various attempts to fashion mitigating arguments are totally inapplicable to the present circumstances.

The Arbitrator does not characterize the misconduct in question as mere horseplay, but egregious misconduct characterized as abuse. The location and duration of the incident, the types of inmates involved and the actions and/or inactions engaged in by the Grievants regrettably lead to this conclusion.

The incident, itself, took place in a Residential Treatment Unit. A unit of mentally ill inmates with special needs requiring certain sensitivities reflective of these inmates' problems. What might be considered horseplay when dealing with general population inmates might be misperceived by mentally ill inmates and escalate into abusive conduct. Here, this very hypothetical turned into a realistic outcome.

All witnesses stated the incident took 2-3 minutes. Grievant Rawlings was First Officer with the cuff key and key to the door separating B-2 from B-4. He precipitated the entire event by opening the door and allowing Inmate Dean into the area. He further complicated the situation by failing to intervene when Grievant Watkins cuffed Inmate Kramer to Inmate Dean. Inmate Kramer had to experience the homosexual taunts uttered by Inmate Dean, the laughter and humiliation perpetrated by the Grievants; and was only uncuffed after he became extremely upset, yelled for help, and yelled "call the President."

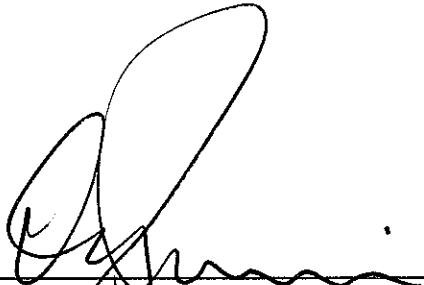
The Grievant had worked the B-2 unit before, and were familiar with Inmate Kramer's profile. Virtually all of the witnesses, including the Grievants, were aware that Inmate Kramer attached himself to the staff because he was terrified of other inmates and had no "friends" as a consequence. Everyone, as well, knew that Inmate Dean was a known homosexual who flaunted this predisposition. Thus, the cuffing of these two inmates led to a result easily predicted by the Grievants. Their actions, within this context, are viewed as highly abusive.

When Grievant Watkins cuffed Inmate Kramer to Inmate Dean he terrorized Inmate Kramer. The situation escalated when Grievant Rawlings failed to intervene in a timely fashion. Both Grievants laughed at Inmate Kramer in an insensitive and humiliating fashion. Again, this conduct is deemed emotionally abusive when viewed and analyzed by any reasonable non-participant.

**AWARD**

Both grievances are denied. The Grievants' conduct was clearly abusive in violation of section 24.01.

7/28/07  
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Beachwood, Ohio

  
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Dr. David M. Pincus  
Arbitrator