

#1984

IN THE MATTER OF ARBITRATION

BETWEEN

STATE OF OHIO – DEPARTMENT OF YOUTH SERVICES

AND

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

Grievant: Colby Glaze

Case No. 35-07-20071101-0061-01-03

Date of Hearing: April 23, 2008

Place of Hearing: DYS Scioto – Delaware, Ohio

APPEARANCES:

For the Union:

Advocate: Jennie Lewis, OCSEA Staff Representative

2nd Chair: Karl Wilkins, Chief Steward

Witnesses:

Colby Glaze – Grievant

Vincent Spurlock – HR Administrator

For the Employer:

Advocate: Mark Tackett, Labor Relations Officer

2nd Chair: Victor Dandridge, Office of Collective Bargaining

Witnesses:

Angela Gilbert - Investigator

Joan Olivieri – Labor Relations Officer

Troy Adamini - Youth

OPINION AND AWARD

ARBITRATOR: Dwight A. Washington, Esq.

Date of Award: June 23, 2008

INTRODUCTION

This grievance is before the Arbitrator pursuant to the Collective Bargaining Agreement (“CBA”) in effect March 1, 2006 through February 28, 2009, between the State of Ohio Department of Youth Services (“DYS”) and the Ohio Civil Service Employees Association AFSCME Local 11, AFL-CIO (“Union”).

The issue before the Arbitrator is whether just cause exists to support the removal of the Grievant, Colby Glaze (“Glaze”), for violating the Ohio Department of Youth Services Policy 103.17, General Work Rules, Sections 4.12 – Inappropriate or unwarranted force and 5.1 – Failure to follow policies and procedures, specifically 403.32: Suicide prevention and response.

The Grievant was disciplined on October 31, 2007, and he appealed the discipline in accordance with Article 24 of the CBA. This Arbitrator heard the grievance on April 23, 2008, and both parties had the opportunity to present evidence through witnesses and exhibits at the hearing. Post-hearing briefs were agreed to be submitted by both parties and were received on or about May 15, 2008. The matter is properly before the Arbitrator for determination.

BACKGROUND

Glaze was employed as a Juvenile Correction Officer (“JCO”) with DYS and worked at the Scioto Juvenile Correctional Facility (“Scioto”). Glaze was hired in 2000 and had a disciplinary record at the time of his removal.

Scioto is one of eight institutions under the direction of DYS and serves as the intake/assessment center for all males and females under DYS supervision. Additionally, Scioto houses all of the females under DYS supervision.

On June 18, 2007, the Grievant was involved in an incident with a youth that led to his removal. The Grievant was working in Sycamore cottage, which is a housing unit for the youths.

The JCOs' work area includes a podium that, among other features, controls the locking mechanisms on the doors within the unit. At approximately 7:30 p.m., the Grievant -- in the presence of social worker Michael Keels ("Keels") -- had a conversation with Adamini ("Youth") at the podium. According to Keels and the Grievant, the conversation was about the poor attitude of the youth.

The youth returned to his room, whereupon the Grievant entered the room and started to remove the youth's belongings. The Grievant entered the room because he believed that the youth was a danger to himself. The Grievant indicated that he heard the youth state that he was going to harm himself. Upon entering the room, the Grievant gave verbal prompts to the youth, who became more agitated with the Grievant upon seeing his belongings removed from his room. According to the Grievant, the youth clenched and raised his fists in an offensive manner. (Joint Exhibit (JX) Discipline Trail, pp. 34-35). The Grievant restrained the youth with assistance from co-worker, JCO Laura Oboczky ("Oboczky"). A video of the events at the podium and outside the youth's door was offered into evidence.

The process in place for suicide threats required that the Operations staff and/or the psychology departments be notified. The Grievant indicated that he attempted to use his radio to alert his supervisors but it was inoperable. Therefore, no one was contacted until after the restraint.

The Employer's investigation indicated that neither social worker Keels or JCO Oboczky heard the youth state that he was suicidal. Furthermore, the youth indicated that he never stated that he was going to harm himself. The youth admits that he and the Grievant had a heated verbal exchange prior to the youth's restraint.

The Employer submits that the Grievant had a prior 10 day suspension for the same rule violations and removal was the only option that existed. The Grievant used unwarranted force and failed to contact Operations and/or Psychology until after the use of force in violation of Rules 4.12 and 5.1.

ISSUE

Was the Grievant removed from his position as a Juvenile Correction Officer with the Scioto Juvenile Correctional Facility for just cause? If not, what shall the remedy be?

RELEVANT PROVISIONS OF THE CBA AND DYS WORK RULES

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. Employees of the Lottery Commission shall be governed by O.R.C. Section 377.02(1).

POLICY NUMBER 103.17

LEVEL FOUR:

Rule 4.12

Inappropriate or unwarranted use of force

Use of inappropriate or unwarranted force toward any individual under the supervision of the Department or a member of the general public.

LEVEL FIVE:

Rule 5.1 Failure to follow policies and procedures

Included but not limited to the Response to Resistance policy, post orders, timekeeping policies, verbal strategies, etc.

**POLICY NUMBER 403.32
SUICIDE PREVENTION AND RESPONSE
(INSTITUTIONS) (IN PART)**

IV. Procedures

B. Communication

Any sign of suicidal ideation or intent shall immediately be reported to a psychology staff member or, if psychology is not available, to the Operations Office for referral to psychology. If psychology is not available, the Operations Office shall ensure that a Risk Assessment is completed by a person identified per the risk assessment definition. If psychology are contacted directly, the staff member referring the youth shall notify the Operations Office that the youth has been referred for a Risk Assessment.

POSITION OF THE PARTIES

EMPLOYER'S POSITION

While the youth and the Grievant were at the podium, social worker Keels and JCO Oboczky were close enough to the youth and the Grievant to hear their conversation. Neither Keels nor Oboczky heard the youth make any statements that could be considered suicidal. The youth was not on suicide watch prior to June 18, 2007 and was only placed on "watch" or observation due to the Grievant's stating to others that the youth was going to harm himself.

Investigator Gilbert interviewed the youth who indicated that the Grievant, upon entering his room, asked that he get on the wall or he'd have to be restrained. (JX Discipline Trail, p. 56). The youth indicated that the Grievant grabbed him and that they struggled until he was restrained. As a result of the restraint, the youth's wrist and shoulder were injured. The youth

denied stating that he was going to harm himself, but the Grievant at some point asked whether the youth said that he wanted to kill himself. The Employer concluded that the youth was not suicidal and did not state that he wanted to harm himself.

The Grievant is well-trained that if suicidal ideation is manifested by any sign, procedures require an immediate reporting to the psychology area or the operations office. The suicide prevention policy has remained unchanged during the Grievant's tenure with the Employer. The Grievant failed to contact either a member of the psychology staff or operations until after the youth's restraint. The Grievant's own behavior, by acting alone and removing items from the room escalated the situation which ended in a physical intervention. After the restraint, Operations was notified by the Grievant of the youth's suicidal ideation. The Grievant failed to comply with Policy 403.32 which states, in part, ". . . Any sign of suicidal ideation or intent shall immediately be reported to a psychology staff member or . . . to the Operations Office."

Moreover, if the Grievant did not have a legitimate reason to enter the room, any force utilized was unwarranted in violation of Rule 4.12. The Grievant's changing versions of what occurred on June 18th is illustrative of this point. When first interviewed, the Grievant claimed that the youth lunged at him very aggressively. (JX Discipline Trail, p. 4). In the Youth Behavior Incident Report ("YBIR"), the Grievant stated that the youth ". . . attempted to raise his clenched fists in an offensive manner." (JX Discipline Trail, p. 14). Finally, at the hearing, the Grievant testified that the youth was closer to social worker Keels and JCO Oboczky when he stated on at least one occasion that he was going to harm himself. However, Keels and Oboczky heard no words to support the Grievant's allegation against the youth. The use of force in this

case was inappropriate and unwarranted and egregious. The discipline was progressive, and the Grievant already had a 10 day suspension on his record for this exact rule violation.

UNION'S POSITION

The Grievant was employed for over seven (7) years and received good performance evaluations. The youth had a known history of making suicidal threats, and on June 18, 2007, the Grievant was required to take his comment(s) seriously. The Grievant attempted to contact other management by pressing his "man-down" button on his radio prior to the physical intervention but was informed afterwards that his button and radio were not operating properly.

The video indicates that the Grievant acted appropriately and did not use unwarranted force at any time. In fact, the youth was transferred after this incident from Sycamore cottage to Windsor cottage, which is the housing unit for youths who have indicated an intent to commit suicide.

The Grievant acted responsibly in taking action to prevent the youth from harming himself by removing items from the room that were potentially dangerous to the youth. Physical intervention occurred only when the youth acted out and failed to follow the verbal prompts of the Grievant.

Additionally, the Union points out that the Grievant had not received the suicide prevention refresher course which is supposed to be taught annually. The Grievant had not received training for the past two years.

The Grievant acted responsibly by placing the youth in a rear-finger flex after the youth refused to comply with the Grievant's verbal prompts. The Grievant testified that he told the youth to "stand down" and only when the youth charged the door with clenched fists did he invoke a physical restraint.

The Union contends that just cause to discipline is absent and seeks reinstatement as well as all other economic hardships the Grievant suffered due to his removal.

DISCUSSION AND CONCLUSIONS

Based upon the sworn testimony at the arbitration hearing, the exhibits, and the post hearing statements, the grievance is denied. My reasons are as follows:

Central to the facts and resolution of this case is credibility. The Grievant has consistently stated that the youth threatened to harm himself on June 18th. The youth has consistently denied making any statement of intent regarding suicide ideation. The Grievant testified that the youth, while at the podium, as well as on his way back to the room, stated his intent to harm himself. In other words, the Grievant testified that on two (2) occasions he heard the youth make suicidal comments. However, the evidence is contradictory to the Grievant's testimony.

Social worker Keels' statement places him at the podium during the time the Grievant and the youth were talking about his bad attitude. JCO Oboczky and Keels were in the pathway of the youth as he returned to his room. Neither Keels nor Oboczky heard the youth state anything related to suicidal utterances. A close review of the video confirms that if the youth had stated that he was going to harm himself on two occasions on June 18th, either Keels or Oboczky would have heard the youth's statement. Both deny hearing the youth make any suicidal statement in their presence. Therefore, reliable evidence exists to conclude that the youth was not suicidal on June 18th and did not state that he was going to harm himself at any time on the 18th.

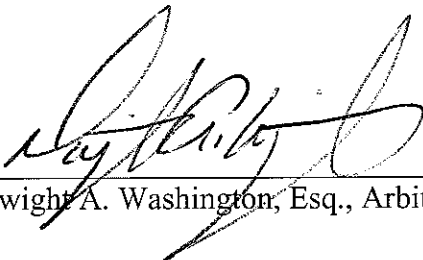
The Grievant proceeded to enter the youth's room even though the youth was secure and at best was demonstrating a continual "bad attitude." The facts in this matter as suggested by the

Grievant would have required the Grievant to implement a planned use of physical response per DYS policy 301.05. A planned use of force requires, at a minimum, the following: (1) contact a supervisor to assess the situation and decide if this intervention is appropriate; (2) if a physical response is required, the event is documented; and (3) a supervisor is present to monitor and plan the appropriate response. Even though it is the Grievant's position that the youth was going to harm himself, none of the foregoing was implemented. Instead, the Grievant applied the rear-finger flex technique when the youth allegedly became combative. The physical response utilized by the Grievant was simply unwarranted under these facts, and it constituted a violation of Rule 4.12. The facts do not indicate that the youth's conduct either at the podium or in his room placed himself or others at risk. The Grievant escalated the situation by removing items from the room that were not required under these facts. The Grievant could have utilized other options under these facts such as: observing the youth in his room until a supervisor arrived; calling the psychology staff and/or operations staff while observing the youth; asking JCO Oboczky to press her "man-down" button; and talking to social worker Keels and JCO Oboczky to ascertain whether or not they also heard the youth's alleged suicide remark.

After physically restraining the youth, the Grievant contacted operations managers Gilbert Rawls ("Rawls") and William Carter ("Carter") regarding this incident. (JX Discipline Trail, pp. 20-21). If the Grievant was able to contact both Rawls and Carter after the restraint, what was the imminent intervention that precluded his contacting them prior to the altercation? DYS had just cause to discipline the Grievant, and given the Grievant's prior discipline of record, the employer's actions were not arbitrary, unreasonable or capricious.

The grievance is denied in its entirety.

Respectfully submitted this 23rd day of June, 2008.



Dwight A. Washington, Esq., Arbitrator