#2054

IN THE MATTER OF ARBITRATION

BETWEEN

STATE OF OHIO – OHIO DEPARTMENT OF YOUTH SERVICES
OHIO RIVER VALLEY JUVENILE CORRECTION FACILITY

AND

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

Arbitration Date: September 23, 2009 and
October 8, 2009

Grievant Stephen Layne: #35-20-20090223-0014-01-03

BEFORE: Arbitrator Craig A. Allen

Advocate for the Employer:

Melinda Hepper
Ohio Department of Youth Services
51 N. High Street, Suite 101
Columbus, Ohio 43215

Advocate for the Union:

Dave Justice
OCSEA, AFSCME Local 11
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I. HEARING

The hearing was held at the Ohio River Valley Juvenile Correctional Facility. The hearing commenced at 9:05 A.M. on September 23, 2009.The hearing was interrupted by a fire alarm and was recessed at 3:30 P.M. The hearing was re-convened at 8:58 A.M. October 8, 2009 and concluded at 1:40 P.M.

The joint issue before the arbitrator is "Was the discipline for just cause? If not, what shall the remedy be?"

Testifying for the Ohio River Valley Juvenile Correctional Facility ("The Employer") were Mary Kathleen Bourke, Management Analyst Supervisor I, [redacted] David Haynes, Senior Investigator in Office of Chief Investigator, and Joan Olivieri, Bureau Chief, Labor Relations.

Testifying for the Ohio Civil Service Employees Association, Local 11 AFSCME ("The Union") were Jason Purcell, Unit Manager, JCO Jody Beals, JCO James Dubois, JCO Rickie Wynn and the Grievant, Stephen Layne..

II. STATEMENT OF THE CASE

The Grievant was removed because of charges concerning two separate incidents. The first incident occurred on May 29, 2007 with [redacted] The second incident occurred on July 6, 2008 with [redacted]

Grievant was removed for violations of DYS Work Rules 4.12 Inappropriate or unwarranted use of force and 5.12 Failure to follow polices and procedures. The Union timely filed a grievance and the case is properly before the Arbitrator.

III. THE UNION'S PROCEDURAL ARGUMENT

The Union raised a serious timeliness issue. The Union contends Article 24.02 (g) says the Employer must start the process as soon as reasonably possible. The removal here is based upon two incidents.

The first incident was May 29, 2007. This incident was investigated and the investigation concluded November 14, 2007. The Pre-Disciplinary Notice was not issued until December, 2008. This Notice is the start of process to the Union. The Employer took five hundred fifty-eight days (558) to begin the process.

The Union asserts that this delay hinders its ability to represent the Grievant. The Union points out that some of the people involved no longer work at this Facility and the two Youths involved are no longer at the Facility.

The Employer's response is that the Union never requested it to locate absent witnesses. The Employer also says that where there is an active criminal investigation that Article 24.05 says the Employer may delay this process until the criminal investigation is completed. The Employer said the Ohio State Highway Patrol took a long time to conclude its investigation.

The Union has a very valid argument. However, the Contract gives the Employer the right to delay in these circumstances and the Union objection was over-ruled.

Prior to the commencement of the Employer's case the parties and the Arbitrator viewed the Wright and Rickenbacher Units.

IV. THE EMPLOYER'S CASE

The Employer's first witness was Mary Kathleen Bourke. Ms. Bourke is a Management Analyst Supervisor I. Ms Bourke holds a Bachelor's Degree in Criminology from Ohio State University. Ms Bourke attended the Ohio State Patrol Academy and was employed as a Dispatcher for four years until she was injured. Ms Bourke then became employed by the Department of Youth Services and is now an investigator.

Ms Bourke testified she has conducted two hundred twenty-eight (228) investigations of which forty-eight (48) involved use of force. She conducted part of the investigation in this case.

Ms. Bourke was referred to Investigation Exhibit, Tab 1, Page 1 and said this is the report of the Investigation that she did concerning [redacted]. She said she conducted Youth interviews and then left the job.

Ms. Bourke looked at Investigation Exhibit, Tab 1, Page 8, which are photographs of [redacted] admission to the Facility and of [redacted] after the incident. She then read Investigation Exhibit, Tab 1, Page 13, which is [redacted] original incident statement. [redacted] says Grievant clothes lined him and punched him.

Ms. Bourke then read Investigation Exhibit, Tab 1, Pages 14 and 15. This is [redacted] letter to Central Office. [redacted] says he was beaten by Staff for writing a grievance and he asked for help. She then read Investigation Exhibit, Tab 1, Pages 18 and 19, which is

another letter from [redacted] to Central Office. Ms Bourke reviewed Investigation Exhibit, Tab 1, Page 17 where [redacted] says Grievant clotheslined him and hit him. [redacted] asked to speak to the Nurse in private. She also read Investigation Exhibit, Tab 1, Page 19 where [redacted] denies being close to [redacted]

Ms. Bourke next read Investigation Exhibit, Tab 1, Pages 22 and 23. This is [redacted] incident statement for May 28, 2007. [redacted] says Grievant trashed the Youth's rooms, and threw chairs and trash cans. She then reviewed Investigation Exhibit, Tab 1, Pages 72 to 74. This is [redacted] Grievance Form. [redacted] says staff beat him in the sally port. The Youth names Grievant and others.

Ms Bourke then read Investigation Exhibit, Tab 1, Pages 151 to 154. This is her Interview Report with [redacted] on June 18, 2007. [redacted] maintains his story. The Youth says he went into the sally port and Grievant beat him. [redacted] also denies being near [redacted]

Ms. Bourke then read Investigation Exhibit, Tab1, Pages 155 to 163. This is her Interview with [redacted], June 18, 2007. [redacted] says Grievant asked him to make it look like he and [redacted] were in a fight so he could restrain him. [redacted] also said Grievant put [redacted] in a headlock. [redacted] also said he saw Grievant punching [redacted] and banging [redacted] head on the ground.

Ms. Bourke then reviewed Investigation Exhibit, Tab 1, Page 161. This says when the Nurse arrived Grievant told the Nurse another Youth hit [redacted]. The Nurse looked at [redacted] hands and saw no evidence of a fight. She then read Investigation Exhibit, Tab1, Page 39 which is [redacted] ncident Statement.

[redacted] says [redacted] punched him in the back of the head and said Grievant told him to write this statement.

She next read Investigation Exhibit, Tab 1, Page 34 which is [redacted] Incident Report. [redacted] says he was holding the door and saw [redacted] hit [redacted] from behind. [redacted] said he then saw [redacted] swing twice. She then read Investigation Exhibit, Tab1, Pages 40 to 41. In this statement [redacted] says [redacted] hit [redacted] from behind. [redacted] said [redacted] swung on [redacted] but didn't think any of his swings connected. [redacted] says Grievant told him what to write in his statement.

Ms. Bourke read Investigation Exhibit, Tab 1, Pages 124 - 131 which is her interview with [redacted] says Grievant hit [redacted] in the face as he went into the sally port. [redacted] said it was so bad he turned his head.

She then read Investigation Exhibit, Tab 1, Page 6 which is her interview with [redacted] on July 9, 2007. [redacted] saw Grievant clothesline [redacted] and beat him.

Ms. Bourke reviewed Investigation Exhibit, Tab 1, Page 36 which is [redacted] Incident Statement, which she said is consistent with [redacted] statement that [redacted] hit him.

She then turned to Investigation Exhibit, Tab 1, Pages 20 and 21 which is the statement of Social Worker, Kelly McCorkle. Ms McCorkle says of June 18, 2007 at 2:45 P.M. she saw Grievant addressing the Youth in the T.V. room. Grievant told Youth Investigators are trying to get [redacted] to change his story by threatening him.

Ms. Bourke then looked at Investigation Exhibit, Tab 1, Pages 86 to 91 which are photographs of [redacted] taken by medical staff. She also looked at Investigation Exhibit, Tab 1, Page 85 which is the medical assessment on [redacted]

She also said she was involved in the criminal investigation. Ms. Bourke said she notified the Ohio State Patrol and that Grievant was the subject of the criminal investigation. She said when she left the job that the Investigation in this case was on hold pending the Ohio State Patrol Investigation.

On Cross-Examination Ms. Bourke was referred to Investigation Exhibit, Tab 1, Page 11. This Exhibit indicates it was signed by her November 14, 2008. She testified she had left the job prior to this and had placed an electronic signature on the report.

Ms. Bourke said she did write Youth summary of interviews up to August 27, 2007.

She also testified she interviewed Unit Manager Percell, JCO Reffitt, and JCO Wynn.

Ms. Bourke was referred to Investigation Exhibit, Tab 1, Page 6. She said she could not say specifically who questioned the extent of [redacted] injuries. She then read Investigation Exhibit, Tab 1, Page 85 which is [redacted] Medical Assessment. This assessment is part of the AMS reporting system. This report is filled out by the Nurse and shows First Aid Treatment.

She was then shown Investigation Exhibit, Tab 1, Pages 86 to 91 which are photographs of [redacted] She was asked if the photographs show possible abuse. She said "Yes". Ms. Bourke further said the amount of swelling on [redacted] face is not consistent with just "taking him to the ground". She was then asked, "Would injuries be consistent with a fight with another Youth"? She replied, "Could be if several punches were involved".

Ms. Bourke then read Investigation Exhibit, Tab 1, Page 85 which is [redacted] medical assessment and said it makes no mention of a neck injury. She was then asked if testimony from [redacted] said he was clotheslined and she said "Yes". She was then referred to Investigation Exhibit, Tab 1, Page 13. This is [redacted] initial statement May 29, 2007 and it makes no mention of clothesline.

Ms. Bourke then read Investigation Exhibit, Tab 1, Pages 14 and 15. This is [redacted] letter to Central Office but it is undated. [redacted] makes allegations against other staff prior to Grievant. She also looked at Investigation Exhibit, Tab 1, Page 16. This Exhibit shows the date of the incident as May 28, 2007, one day prior to the actual incident on May 29, 2007. In addition this Exhibit is undated.

She then read Investigation Exhibit, Tab 1, Page 17 where [redacted] says his eyes were swollen shut. Ms. Bourke was then asked "Do the pictures show the eyes swelled shut?" She answered, "Swollen maybe but not swelled shut".

Ms. Bourke then read Investigation Exhibit, Tab 1, Page 21. This is [redacted] statement where he says he is afraid of a dirty restraint.

She then read Investigation Exhibit, Tab 1, Pages 20 and 21. This is a statement of Kelly McCorkle written at the request of Investigator Whipple. On Page 21 Ms McCorkle says she saw Grievant addressing the Youth. Grievant tells the Youth that [redacted] is getting threats that he can't go home as he should if he doesn't change his statement.

Ms. Bourke then read Investigation Exhibit, Tab 1, Page 72 which is [redacted] Grievance Form signed June 14, 2007.

Ms. Bourke testified she interviewed almost all the Youth. She was referred to Investigation Exhibit, Tab 1, Page 151. This is her interview with [redacted]. [redacted] says he gave a statement to a teacher, Ms. McKee. She said she did not talk to Ms. McKee. The incident was investigated by others.

She then looked at Investigation Exhibit, Tab 1, Page 152 and said [redacted] was concerned on May 28, 2007, the day before the incident. Ms. Bourke then read Investigation Exhibit, Tab 1, Page 155 which was her interview with [redacted] Ms. Bourke then read Investigation Exhibit, Tab 1, Page 156 where the Youth were discussing the [redacted] incident.

Ms Bourke then read Investigation Exhibit, Tab 1, Page 159. She said the Youth say there is a group of Staff used as "enforcers" called the Dark Side. Ms. Bourke said when she left there was no substantiation of the Dark Side Group. She then read Investigation Exhibit, Tab 1, Page 30 which is [redacted] incident statement.

She then read Investigation Exhibit, Tab 1, Page 40. This is [redacted] Question and Answer Statement. [redacted] says [redacted] swung on [redacted]. [redacted] says he did not see Grievant hit or punch [redacted] However, in the Exhibit at Page 41 [redacted] says he saw Grievant knee [redacted] in the back and rib areas.

Ms. Bourke then referred to Investigation Exhibit, Tab 1, Page 11 and said she did not write the conclusion. The report says no evidence on JCO Reffit or JCO VanHoose.

She then read Investigation Exhibit, Tab 1, Page 6 which is her interview with Unit Administrator Jason Percell. He is on a different Unit. Mr. Percell said he was about one hundred

twenty (120) feet away and his view was restricted by the doorway. It appeared to Mr. Percell that the Youth were wrestling. Ms. Bourke then read Investigation Exhibit, Tab 1, Page 24 which is Mr. Percell's Youth Intervention Witness Report of May 29, 2007.

Ms. Bourke looked at Investigation Exhibit, Tab 1, Page 1 and says the Report showed no significant injuries reported and the matter was referred to the site. She then Investigation Exhibit, Tab 1, Page 75 which are a series of E-mails. Jeff is told to stop his investigation as the Chief Inspector's Office will now do it. She then read Investigation Exhibit, Tab 1, Page 76 which is her E-mail to Ray Blevins, Deputy Superintendent. She said [redacted] said [redacted] punched [redacted].

She then read Investigation Exhibit, Tab 1, Page 77 which is her E-mail to Ohio State Trooper Morehead. Ms. Bourke says Management was aware from the beginning of allegations of abuse. She said [redacted] did consent to a polygraph but it was never done.

Ms. Bourke then read Investigation Exhibit, Tab 1, Page 78 which is an E-mail between Trooper Morehead and her. The E-mail refers to [redacted] wearing a wire to catch Grievant. She then read Investigation Exhibit, Tab 1, Page 82. This is an E-mail to Chief Legal Counsel August 6, 2007 putting the Department on Notice the [redacted] is suing it.

Ms. Bourke said she had a problem trying to contact [redacted] She then read Investigation Exhibit, Tab 1, Page 1. There is an entry for June 18, 2007 where [redacted] says [redacted] has been acting up for weeks. She then read Investigation Exhibit, Tab 1, Page 3 which is a Chart of Youth summaries. [redacted] says [redacted] said [redacted] hit him.

[redacted] did not see Grievant or Staff hit or kick [redacted]. [redacted] says Grievant said to write statements but did not tell them what to say. Investigation Exhibit, Tab 1, Page5 says [redacted] released June 29, 2007.

On Re-Direct Examination, Ms. Bourke looked at Investigation Exhibit, Tab 1, Page 86, the photographs of [redacted] taken the day of the incident. She says [redacted] was credible and always consistent. She read Investigation Exhibit, Tab 1, Page 22 which is [redacted] statement. [redacted] says Grievant threw a trash can at the wall. Grievant said he would hunt [redacted] down in his home town. Ms. Bourke says she never threatened anyone.

She then read Investigation Exhibit, Tab 1, Page 21. Kelly McCorkle said at 2:45 P.M. Grievant was addressing the Youth. She also read Investigation Exhibit, Tab 1, Page 155. This is Ms. Bourke's interview with [redacted] This interview was prior to Grievant talking to the Youth. She says [redacted] is credible. [redacted] story is consistent.

On Re-Cross Examination Ms. Bourke says it is possible there was a discussion not recorded. The Interview started at 11:44 and ended at 11:50. The incident statement from Kelly McCorkle was after this Interview.

The next witness was [redacted] This witness testified out of order as his testimony concerns the incident on July 8, 2008. [redacted] now a Department of Youth Service Parolee.

[redacted] ays on July 8, 2008 he came to sit on line. Grievant was upset and trashed the Youths rooms. He said the Grievant assaulted [redacted]

[redacted] said Grievant talked to [redacted] and [redacted]. [redacted] said he has an anger problem. He said the Grievant threatened [redacted]. Grievant was right in [redacted] face. He said [redacted] came out of his room and Grievant was right behind him. [redacted] did not see [redacted] go after Grievant. He saw Grievant punch [redacted]. JCO Jenkins had [redacted] leg and Grievant had his arm.

On Cross-Examination [redacted] said Grievant had the Youth on line sitting in chairs. He said it was not unusual for Grievant to have you on line. The Grievant was upset because he knew the Youth could do better. [redacted] said he wasn't in the sally port but talked about it at Recreation.

[redacted] was referred to Investigation Exhibit, Tab 2, Page 25 which is his statement to Investigator Haynes. He was questioned on the log book. [redacted] and others listed in Log Book were doing the most stuff. [redacted] said he did not see the Log Book. He said Investigator Haynes talked to him before the tape recorder was turned on. He thinks Investigator Haynes showed him a video that had no sound to it. He said Grievant did not say nothing to [redacted]

[redacted] denies being in a gang and says [redacted] was not in a gang. He looked at Investigation Exhibit, Tab 2, Page 32 which showed his Pre-Release Date in February. He has been home for seven (7) months.

Mr. Goldman read Investigation Exhibit, Tab 2, Page 63 which is his Interview with Jeff Howard, August 27, 2008. He said Grievant trashed every room when all the Youth were on line.

He said he was in line behind [redacted] and Grievant hit [redacted] He also said he can hear the man down when activated.

The next witness was [redacted], formerly known as [redacted] says Grievant came in on second shift. The Unit was on line. [redacted] and [redacted] were talking. [redacted] was a cleaner for Grievant. Some Youth told Grievant some one was in their room.

[redacted] said Grievant came to him and asked why was he laughing. Grievant put his finger in [redacted] face. Grievant got mad and trashed all the rooms. [redacted] and [redacted] were behind him when Grievant rushed him in the sally port. JCO Jenkins restrained his legs.

[redacted] said he refused to see the Nurse. He said he wrote his statement an hour later. He said the Grievant was not upset until he saw [redacted] and [redacted] laughing. He said he was quiet in the sally port but Grievant punched him. He said he hurt his right eye and had scratches on his face.

On Cross-Examination [redacted] was asked if Grievant searched rooms. His answer was "Yes" but Grievant trashed the rooms. [redacted] told Grievant he had an anger problem. Grievant had his finger in his face. Grievant went to C Pod, then O Pod, and then A Pod. [redacted] was mad because Grievant shook down his room. He said Grievant was at the front of the sally port line right by the outside door. JCO Jenkins restrained his legs.

[redacted] was shown Investigation Exhibit, Tab 2, Page 53 which is his statement to Investigator Haynes. The Youth said JCOs here have a gang called the Dark Side. He said some Staff have signals and Staff are afraid of the Grievant.

[redacted] said he was part of a gang until June, 2008. He said he had the highest rank in his gang. He said there were no other members in the Wright Unit. Columbus and Cleveland don't Clique up. He said [redacted] and [redacted] were not in his gang.

[redacted] said he was cuffed after the sally port incident and taken to his room. The Nurse came but he refused her as Grievant was beside the Nurse. He was referred to Investigation Exhibit, Tab 2, Page 55 and said he thinks Grievant set the entire incident up on the phone. He thinks all of this is obvious. He said he thinks it was set up because five (5) other JCOs came to the sally port.

The Youth was referred to Investigation Exhibit, Tab 2, Page 56 where he tells Investigator Haynes that he didn't want to talk to the Nurse because Grievant was right there.

[redacted] was shown Exhibit Union - 2. This is the AMS Report where he denied injuries. He was then shown Investigation Exhibit, Tab 2, Page 57. He says at the time of the incident [redacted] and [redacted] were there.

[redacted] was referred to Investigation Exhibit, Tab 2, Page 58 which shows him in the middle of the line.

On Re-Direct Examination the Youth was asked "If Grievant normally put the Youth on line and if the Youth were afraid of Grievant". He answered "Yes".

Investigator David Haynes testified next. He is a Senior Investigator in the Office of the Chief Investigator. He supervises three (3) Investigators and does training. Mr. Haynes said he has conducted over five hundred (500) investigations of which three hundred (300) were use of force.

Mr. Haynes was referred to Investigation Exhibit, Tab 1, Page 1. He said Ms Bourke was assigned to the case until she left to go to another agency. The case was then given to Investigator Whipple, who died in January 2008. Mr. Haynes was then assigned to this case. He said he did the officers' interviews and the Investigation was concluded November 14, 2008.

Mr. Haynes next read Investigation Exhibit, Tab 1, Pages 25 to 27 which is Grievants Youth Intervention Report. The Grievant said [redacted] was fighting with [redacted].

Mr. Haynes then read Investigation Exhibit, Tab 1, Pages 106 to 116. Grievant said he didn't have a lot of recollection as it had been too much time since the incident. Grievant had no information as to the Youths' injuries. Grievant said injuries came from other Youth. Mr. Haynes says other evidence is no fight or one punch.

Mr. Haynes then read Investigation Exhibit, Tab 1, Pages 28 and 29. This is JCO Beals' statement. JCO Beals says [redacted] and [redacted] were fighting. He also read Investigation Exhibit, Tab 1, Pages 95 - 101 where JCO Jody Beals said the injuries came from a fall to the floor.

He then read Investigation Exhibit, Tab 1, Pages 31 and 32. This is JCO Wynn's report. JCO Wynn says he responded to a fight. He saw [redacted] on the floor and he restrained his legs.

Mr. Haynes was shown Investigation Exhibit Tab 1, Page 85 which is [redacted] Medical Assessment. He said he used the Report in his conclusion. He was then shown Investigation Exhibit, Tab 1, Pages 85 to 91, the photographs of [redacted]

Mr. Haynes said the Youth was assessed right after the incident. Looking at the medical report and staff statements there was nothing to show upper body restraint that would have caused these injuries. He says Grievant used inappropriate force on [redacted].

On Cross-Examination he was referred to Investigation Exhibit, Tab 1, Page 1. He said the Report was typed by Ms. Bourke and he was not involved. He said the Chief Investigator or Deputies would have decided the medical would require the Chief Investigator. He was then referred to Investigation Exhibit, Tab 2, Page 11 and said he finished Ms. Bourke's investigation. Mr. Haynes said he wrote this report. JCO VanHoose is disability separated so there was no interview with him.

Mr. Haynes then read Investigation Exhibit, Tab 1, Page 25 which is Grievant's Youth Intervention Report. Grievant was asked "What is a rear finger flex?". He said "A technique used on Youth on the ground to get the Youth into hand cuffs". The Grievant was then asked "Going from a C grip to rear finger flex, is that a procedure that is taught?". He said "Yes".

Mr. Haynes then read Investigation Exhibit, Tab 1, Pages 25, 26 and 27. This Exhibit shows the techniques used in Response to Resistance. Mr. Haynes said there was no question about Grievant hitting his man down alarm. Mr. Haynes was shown Exhibit Union 3 which is a log of use of man down alarms. All the information is as of May 29, 2007. The Grievant and JCO Beals' alarms were eleven seconds apart.

Mr. Haynes then read Investigation Exhibit, Tab 1, Page 102 which is his interview with Grievant on October 21, 2008. He said it was seventeen (17) months or so between the incident May 29, 2007 and the Interview October 21, 2008. The interview lasted twenty-six (26) minutes. He said Grievant used inappropriate force. Mr. Haynes said there was no evidence of a fight between [redacted] and [redacted].

Mr. Haynes then read Investigation Exhibit, Tab 1, Page 3. These are statements written by Investigator Bourke. [redacted] said he heard [redacted] say he bust on me. [redacted] said [redacted] swung on [redacted]. [redacted] turned to defend himself. [redacted] said he was not sure [redacted] hit [redacted] when he swung. He then read Investigation Exhibit, Tab 1, Page 28. This is JCO Beals' Youth Intervention Report. JCO Beals said [redacted] hit [redacted]. Mr. Haynes then read Investigation Exhibit, Tab 1, Page 95 which is an interview with JCO Jody Beals. JCO Beals said he can't remember a lot of details.

On Re-Direct Examination Mr. Haynes said that initially there was a criminal investigation going on and Grievant was a suspect.

On Re-Cross Examination. He was asked when the criminal investigation was concluded and he replied, "November, 2007". He said the Ohio State Patrol did not bring charges against the Grievant.

On Re- Direct Examination he was referred to Investigation Exhibit, Tab 2, Page 1 and said he did not write the report. Mr. Haynes then reviewed Investigation Exhibit, Tab 2, Pages 25 to 32 and said this is his interview with [redacted]. [redacted] was in line behind [redacted].. [redacted] said [redacted] didn't do anything and

Grievant attacked him. Grievant got in the Youths' faces and threatened [redacted] said Grievant punched [redacted].

Mr. Haynes then read Investigation Exhibit, Tab 2, Pages 42 to 52 which is his Interview with [redacted] was on the Unit July 6, 2008. Grievant was threatening [redacted]. Grievant hit [redacted] and put him on the ground. He referred to Investigation Exhibit, Tab 2, Page 46 where [redacted] says Grievant was punching [redacted].

Mr. Haynes then read Investigation Exhibit, Tab 2, Pages 53 - 58 which is his interview with [redacted].

[redacted] said Grievant was upset and threatened Youth. [redacted] said the Youth were going to recreation and Grievant swung at him and restrained him. [redacted] also said Grievant was punching him.

On Cross-Examination, Mr. Haynes read Investigation Exhibit, Tab 2, Page 56. [redacted] says his eyes were swollen and his nose was bleeding. Ms. Hilton was the Nurse.

Mr. Haynes then reviewed Exhibit Union 2. This is the Medical Assessment Form. This form identifies the Nurse. [redacted] denied any injuries. He was then referred to Investigation Exhibit, Tab 2, Page 3 which indicates the Nurse was Nurse Coburn. But she wasn't the actual Nurse, Nurse Hilton was.

Mr. Haynes said he did not interview any Staff. He said he interviewed [redacted] and [redacted]. When asked if he had inquired about any gangs he said that he did not.

He was then shown Exhibit Union 1, which shows three Youth in the Headbusters gang. This list includes [redacted]. He was asked "Did the Dark Side come up"? He replied "Yes". He said the Youth say the Dark Side is a gang of JCOs.

On Re-Direct Examination Mr. Haynes was asked "Do Youth switch gangs"? He said "all the time. Gang affiliation doesn't mean a Youth is untruthful".

On Re-Cross Examination he said he can't say whether gang members pass statements to each other. Mr. Haynes did say Youth will do things to stay in the gang.

When the hearing reconvened on October 8, 2009 at 8:58 A.M. Ms. Joan Oliveri was the Employer's next witness. Ms. Oliveri is the Bureau Chief for Labor Relations. She has held this position for three and a half years. Her duties include Labor Management Discipline. Ms. Oliveri reviewed the Discipline Packet, evidence, witness statements, medical, the video, and Prior Discipline. She then makes recommendations to the Director.

Ms Oliveri then reviewed the video of the July incident. The video shows at 2 o'clock the Grievant was present when the Youth came out on the Unit. JCO Jenkins, Grievant's partner was also present. The Grievant was in [redacted]. Grievant kicks a trash can and then gets in another Youth's face. The video shows Grievant making the rounds of all the Youth. Ms. Oliveri points out Grievant does not have his belt on.

Ms. Oliveri points out the Grievant goes back to [redacted] and gets in his face again. The Grievant then opens the doors to the Youths' rooms and throws toilet paper in the trash. The Youth are now sitting. Grievant walks around yelling at the Youths.

Ms Oliveri then looked at later in the video. This shows the Youths cleaning up and putting their rooms back together. The video then shows the Youths lining up to go to Recreation.

JCO Jenkins is at the back of the line. The video shows JCO Jenkins running towards the sally port where Grievant is restraining [redacted]

Ms. Oliveri then turned to Investigation Exhibit, Tab 2, Pages 1 - 20. This is the Investigation Report of Grievant restraining [redacted].

Ms. Oliveri then read Investigation Exhibit, Tab 2, Pages 99 - 107. This is the first interview with the Grievant. She said the Question and Answer Interview does not match the Video. The Youth were orderly. She then looked at Investigation Exhibit, Tab 2, Page 99. Grievant says the Youth comes in an aggressive manner. She then read Investigation Exhibit, Tab 2, Page 104 which says Grievant doesn't recall being in the Youth's face.

Ms. Oliveri then read Investigation Exhibit, Tab 2, Pages 79 - 98 which is the second Interview with Grievant. She said Grievant acts like this was a normal day but the video shows otherwise. She also read Investigation Exhibit, Tab 2, Page 90, Grievant says he was calm and drinking a pop. Ms. Oliveri says this is not on the video. She also said Grievant denied kicking the trash can until shown the video.

Ms. Oliveri then turned to Investigation Exhibit, Tab 2, Pages 113 to 130. This is the Interview with JCO Jenkins. JCO Jenkins said he was afraid of the Grievant. JCO Jenkins said the Grievant was cussing and agitated. He asked the Grievant to take a break and the Grievant said "NO".

Ms. Oliveri then read Investigation Exhibit, Tab 1, Pages 1 - 11. This is the Report of Investigation concerning Grievant and [redacted]. The incident occurred May 29, 2007. She then looked at Investigation Exhibit, Tab 1, Pages 85 - 91. This is the Medical Assessment of [redacted] after he was beaten. She also looked at the photographs. The Youth's eyes are swollen shut and there is bruising.

She then read Policy and Procedure Exhibit, Tab 4. This is Management of Resistant Behavior. She also read Policy and Procedure Exhibit, Tab 7 which is the Chart of Staff Response. Ms. Oliveri was asked about Charge 5.1. She said the Grievant did not use an appropriate response. She said neither Youth were doing anything and the Grievant used physical force.

Ms. Oliveri says she made a recommendation to the Director and the Director makes the decision. She said the Department of Youth Services is involved in litigation in three separate law suits. There is a stipulated agreement in the Federal Court that puts restrictions on use of force. This is important to the Department.

She then read Policy and Procedure Exhibit Tab 1, the General Work Rules. She also read Policy and Procedure Exhibit, Tab 2, Page 6 of nine which are the Charge Rules.

Ms Oliveri then read Policy and Procedure Exhibit, Tab 3 which is the Infraction Grid. She testified Rule 4.12 carries a penalty of five days to termination. Level 5 goes from verbal to termination. She said reviewing the seriousness of injury to [redacted] she saw no reason for it. She said the second incident in the sally port with [redacted] showed no reason for the assault. Ms. Oliveri also said there were huge discrepancies between the Grievant's statements

and the evidence.

On Cross-Examination, Ms. Oliveri said there is a pattern between the two incidents. She was asked "if it was uncommon to have incidents in the sally port". Her reply was "NO, as there is no video in the sally port".

She was then referred to the Discipline Trial Page 1. She said Charge 5.1 refers to Policy 301.05. Ms Oliveri then read Discipline Trial Page 2. This is the Pre-Disciplinary Notice for the May 29, 2007 incident. The Charges were for Rules 4.62 and 5.12. Grievant was removed for Rule 4.12 not 5.12. She then read Disciplinary Trial Page 23. This is the Pre-Disciplinary Notice for July 6, 2008 concerning [redacted]. This cites Rules 3.10, 4.12, 5.1 and 5.12. Ms. Oliveri said Grievant was not disciplined for kicking a trash can, talking to Youth, nor for room searches.

On Re-Direct Ms. Oliveri was asked what was the consideration for room search and Grievant being in the Youth's faces. She replied, "This showed the Grievant was agitated. These incidents triggered offenses for which Grievant was charged".

On Re-Cross Examination Ms. Oliveri was referred to Investigation Exhibit, Tab 2, Page 113. This is the first interview with JCO Jenkins. JCO Jenkins started the job April 28, 2008 and there was an incident on July 6, 2008. Ms. Oliveri said at least 4 weeks of this time was in training. So JCO Jenkins had been on the job a little over two months.

Ms. Oliveri then read Investigation Exhibit Tab 2, Page 116 . JCO Jenkins says "he never heard Grievant curse". She was asked, "Does DYS encourage JCO interaction with Youth?" Her answer was "Yes".

On Re-Direct Examination Ms. Oliveri read Investigation Exhibit, Tab 2, Page 125 where JCO Jenkins says Grievant cussed but not at the Youth. JCO Jenkins said [redacted] was quiet. Ms. Oliveri then read Investigation Exhibit, Tab 2, Page 115. JCO Jenkins says he was intimidated by Grievant. The Youth say they are intimidated by Grievant. Ms. Oliveri said JCO Jenkins would have gone to Pre-Service. She was asked if "JCOs were taught to intimidate". She said "NO". "Were JCOs taught to get in the Youths' faces?" She said "NO".

On Re-Cross Examination she was referred to Investigation Exhibit, Tab 2, Page 118. This indicates JCO Jenkins was learning from the Grievant.

V. THE UNION'S CASE

The Union's first witness was Jason Purcell, Unit Manager. Mr. Purcell said he had been a Unit Manager for thirteen years. He was referred to Investigation Exhibit, Tab 1, Page 24 which is his Youth Intervention Report dated May 29, 2007. He says the statement is accurate. On this date Mr. Purcell was on Unit Rickenbacher. He said he was watching the Youth while the JCOs went to chow. Mr. Purcell said he heard the signal and looked out where he saw Youth in a line movement. He said the signal gave the location announcement. Mr. Purcell said he had a clear view of the Wright Unit Door. He said he saw two Youth apparently fighting or horse playing. Mr. Purcell said he could tell they were Youth because of their clothes.

Mr. Purcell said he was not sure if he was interviewed but he does recall talking to the Ohio State Patrol. The Ohio State Patrol asked how far away he was and thought it was a longer

distance than seventy feet. Mr. Purcell read Investigation Exhibit, Tab 1, Page 6. This entry is August 2, 2007. He said the Ohio State Patrol entry was wrong in saying One hundred and twenty feet. It was seventy feet. He saw no inappropriate staff behavior.

On Cross-Examination Mr. Purcell said he was not sure about the sequence of events but he sticks by his statement. He said it had been too long since the incident.

Mr. Purcell was then referred back to Investigation Exhibit, Tab 1, Page 24. He said he heard the signal and saw Youth fighting or shadow boxing. He said he could not identify Staff or Youth. Mr. Purcell said he was also watching the Youth on his Unit.

On Re-Direct Examination he said his statement says fighting. Mr. Purcell said he saw nothing out of the ordinary.

The next witness for the Union was Jody Beals, JCO. He has been a JCO for four years. He was asked about the incident of May 29, 2007 with [redacted] and he said he has an Arbitration coming up. He was referred to Investigation Exhibit, Tab 1, Page 28. This is JCO Beals' Youth Intervention Report. He said he wrote the statement the same day. The incident took place in the Wright Unit sally port. JCO Beals said [redacted] hit [redacted] Grievant gave a verbal order to break it up. [redacted] was combative and resistant. Grievant used a rear finger flex and JCO Beals handcuffed [redacted]. JCO Beals said he was present the entire time and saw no inappropriate force. He also said JCO DuBois and JCO Wynn responded.

JCO Beals was then referred to Investigation Exhibit, Tab 1, Pages 95 to 101. This is his Interview with Investigator Haynes October 21, 2008 at 2:15 P.M. JCO Beals said he could hardly recall the incident as too much time had passed. He said he did not notice any injuries on

[redacted]. He was referred to Investigation Exhibit, Tab 1, Page 86 which is a photograph of [redacted]. He said nothing stands out. He said [redacted] was in a fight with another [redacted] and also fell to the floor. The injuries could have happened either time.

On Cross-Examination JCO Beals said he started with Grievant in January, 2006 and Grievant was his usual partner. He read Investigation Exhibit Tab 1, Page 28. [redacted] stopped and went to the wall. [redacted] put his hands up on the wall. JCO Beals hit his man down alarm when [redacted] went after [redacted]. [redacted] was on the wall. [redacted] still going after him.

JCO Beals then looks at Investigation Exhibit, Tab 1, Pages 95 to 101 and says he doesn't remember the details. JCO Beals is shown Investigation Exhibit, Tab 1, Page 86, the photograph of [redacted]. He says he recognizes [redacted]. He also says the swelling is not memorable.

JCO Beals said he was disciplined out of the incident. He said he was removed for the incident with [redacted] and then his case was settled for a one day fine.

JCO Beals looked at Exhibit Union 3. This is the Man Down Alarm Sheet. The Exhibit shows Grievant hit his alarm at 4:51 and JCO Beals hit his alarm eleven seconds later. The alarm causes Control to go on the Public Address System and give information about the incident and the location.

On Re-Cross Examination he was asked "Had alarm sounded on the PA before you hit man down?". His answer was "NO".

On Re-Direct JCO Beals said he hit his alarm after Grievant. He said he was not sure if there were more than two PA announcements. He was asked "Was [redacted] resisting on the

ground?" He replied, "Yes".

The next Union witness was JCO James DuBois. He became a JCO in October, 2003. When he was asked about the May, 2007 incident, he said he vaguely recalled it.

JCO DuBois was referred to Investigation Exhibit, Tab 1, Page 33 which is his Youth Intervention Report. It is dated May 29, 2007. JCO DuBois said he was on Unit Morgan and responded to the alarm. He said when he arrived [redacted] was resistant. JCO DuBois said Grievant, JCO Beals, and JCO Wynn were giving the Youth directions.

He was referred to Investigation Exhibit, Tab 1, Page 122 which is his Interview with Investigator Haynes. The Interview was October 22, 2008. This was his first interview of any kind. JCO DuBois said at the time of the interview he did not have much recollection. JCO DuBois said he had no other interviews. He looked at Investigation Exhibit, Tab 1, Page 123 and said the interview lasted less than three minutes. He said he escorted [redacted] to the clinic and doesn't recall any injuries.

On Cross-Examination JCO DuBois was referred to Investigation Exhibit, Tab 1, Pages 86 to 89. He said he is not sure if this is [redacted] as he was not familiar with the Youth.

The next witness was Rickie Wynn, JCO. He has been a JCO for five years. JCO Wynn said he was involved in the May, 2007 [redacted] incident.

JCO Wynn read Investigation Exhibit, Tab 1, Page 31 which is his Youth Intervention Report. He said he responded to the signal. When he arrived [redacted] was on the floor struggling and cussing. JCOs Layne and Beals were there. [redacted] was combative and continued to resist until he was hand cuffed. He said he took control of the Youth's feet. JCO

Wynn said the Youth was kicking trying to get loose. He saw no unnecessary force. He did not see anyone hitting [redacted] head on the ground.

JCO Wynn then read Investigation Exhibit, Tab 1, Pages 148 to 150 which is his Interview with Investigator Bourke. This was June 26, 2007. He said he came from Unit Armstrong to answer the alarm. He then read Investigation Exhibit, Tab 1, Page 149. This says Grievant was on the Youth's right. JCO Beals was on the Youth's left. The Youth was lying on his hands and Staff was giving verbals. [redacted] was still struggling. JCO Wynn says he saw no unnecessary force. He also said he had no contact with [redacted] after the incident. JCO Wynn says he doesn't remember any injuries. He said his interview lasted three minutes and he had no other interview.

On Cross-Examination he was shown Investigation Exhibit, Tab 1, Page 86 which is a photograph of [redacted] injuries. He said the first time he saw the photograph was on the day of the Arbitration.

The Union's last witness was the Grievant Stephen Layne. He has been a JCO for four years. The Grievant said on May 29, 2007 [redacted] was in a fight with [redacted] in the sally port. He said he gave a verbal command to stop fighting and [redacted] stopped. [redacted] went after him anyway. The two Youth were in a fist fight. The Youths were swinging wildly.

The Grievant said the sally port is the hottest spot in the Institution. Lots of fights in the sally port. He said the Youth were in a line movement back to the Unit.

The Grievant was referred to Investigation Exhibit, Tab 1, Pages 25 to 27. This is

Grievant's Youth Intervention Report. He said he wrote it the same day as the incident. The Grievant said he was at the back of the line. He usually stands at an angle to see the entire line. JCO Beals was the lead officer. Grievant said he saw the fight and hit his man down alarm. He had to intervene with [redacted]. [redacted] continued to be combative and pursued [redacted]

The Grievant said he is part of a group that is to respond to trouble. He says he has a good rapport with the Youth. He also does planned intervention. Grievant says he does things the usual Staff cannot handle. He said the Operations Manager gives the orders, and this is a specialty team.

Grievant then read Investigation Exhibit, Tab 1, Pages 102 to 121. This is his Interview with Investigator Haynes October 21, 2008. He says he is not sure if interviewed more than once. Grievant said JCOs DuBois and Wynn were there. Grievant tells Investigator Haynes he has a hard time remembering the details.

Grievant reads Investigation Exhibit, Tab 1, Page 108. Grievant says the Youths were fighting and fists were flying. He then read Investigation Exhibit, Tab 1, Page 109. Grievant said he hit his man down alarm and put a C-grip on [redacted] Grievant then explained the rear finger flex. He said the hand is turned behind the Youth's back. This is a technique taught to him. He also explained the C-grip. In this grip the Youth is held by his wrist and high up on his arm. Grievant said [redacted] was combative but he used the least force. Grievant denies holding [redacted] head on the concrete or slamming his head.

The Grievant said he did not know how [redacted] got his injuries and that he did not hit or kick him.

The Grievant said he was interviewed by the Ohio State Patrol and was advised there was no evidence against him. The Grievant said he was interviewed by Youth Services which he later corrected to Children's Services. He said no fault was found and he was never charged.

The Grievant then read Investigation Exhibit, Tab 2, Page 1 which is the Report of Investigation concerning the incident with [redacted] July 6, 2008. The Grievant came on shift and there was something missing from the Staff locker. He said he read the log book and [redacted] had acted up. He was upset and yelling at Youth. This Unit is a Chemical Dependency Unit.

The Grievant said it is part of his job to see that the Youth do things right. He says he puts Youth on line (in the chairs) all the time. He said he is an old school Marine and uses Military style techniques. The Grievant said kicking the trash can is his way of getting attention. He said he has been JCO of the month a few times.

The Grievant said he put the Youth in chairs and did full shake down room searches. He said he was looking for something but can't remember now what it was. JCO Jenkins was his partner in this incident.

The Grievant then read Investigation, Exhibit, Tab 2, Page 118. He said he didn't " " trash the Youth's rooms but he wasn't nice about it either. The Grievant said a lot of new guys were sent down to him to train.

The Grievant said he put the Youth back in their rooms and the Porters came out to clean.

About twenty-five minutes later the Youth were in line and Grievant had the front of the line. He said [redacted] came at him and he told him to stop. Grievant said he did not hit the Youth but put him in a C-grip. [redacted] did not resist after he was handcuffed. The Nurse came and so did the Operations Manager.

Grievant read Investigation Exhibit, Tab 2, Page 22 which is Operations Manager Jenkins' Report to Central Office. He said the Operations Manager has the key to the handcuffs and has to take them off.

The Grievant said the floor was semi-wet and he and [redacted] fell to the floor.

The Grievant looked at Exhibit Union 2 which is the Youth Injury and Assessment Form. Nurse Hilton was the Nurse. Grievant took the Nurse to [redacted] room and the Nurse says he said no injuries.

The Grievant was then shown Exhibit Union 4, which is the Alarm Log. On July 6, 2008 the log shows Grievant's alarm at 3:51:24. JCO Jenkins sounds his alarm at 3:51:34. Grievant then said the Youth complied when he was placed in a C-grip. Grievant does not recall if the Youth was put in isolation.

The Grievant was then shown the video at time 1600 on July 6. After the incident Operations Manager Jenkins takes the handcuffs off the Youth. The Youth was placed on restriction and the Grievant puts a log on the door of the Youth's room. Grievant says he has to have a statement from the Youth and he slides a statement form under the Youth's door. The Grievant says the Nurse comes on the Unit and the Youth tells the Nurse "I'm good". Grievant and the Nurse leave, then Grievant goes back to get the Youth's statement. These are things that

happened after the Intervention.

The video then switches to 5:00 P.M. JCO Jenkins checks on the Youth and the Youth comes back to the Unit and remains there.

The video is changed to 1800. All secured. [redacted] is off restriction and goes to the restroom. Grievant is calm.

The Grievant looks at Exhibit Union 1 which shows [redacted] high in a gang. [redacted] ran the gang known as the Headbusters.

The Grievant was asked "As head of a gang could he get statements?" He answered, "Yes, the other Youth would have to comply." Exhibit Union 2 shows two other gang members in the Unit.

Grievant then read Investigation Exhibit, Tab 2, Page 23. This is an interview of [redacted] by Investigator Howard. [redacted] is the same Youth listed on Exhibit Union 1. He then looked at Investigation Exhibit, Tab 2, Page 42. This is an interview of [redacted] by Investigator Haynes. [redacted] is also a Headbuster. Next he read Investigation Exhibit, Tab 2, Page 133. This is JCO Bergan's Youth Intervention Report. When JCO Bergan arives [redacted] is secure. JCO Bergan makes no mention of injuries.

The Grievant then read Investigation Exhibit, Tab 2, Pages 99 - 107. This is Investigator Howard's Interview with Grievant September 4, 2008, two months after the incident. Grievant says, "[redacted] came toward me". He restrained the Youth. Investigation Exhibit, Tab 2, Page 106. Grievant put [redacted] in a C-grip and then a rear finger flex. They slipped on a wet floor. Grievant denies hitting the Youth or using a clothes line move.

The Grievant then read Investigation Exhibit, Tab 2, Page 79. This is his second interview on the same day, within one half hour on September 4, 2008. He then read Investigation Exhibit, Tab 2, Page 101. Grievant says Unit on shakedown. Investigation Exhibit, Tab 2, Page 159 is Grievant's log book entry for the day. At 2:10 P.M. the Unit search starts. Grievant reads Investigation Exhibit, Tab 2, Page 197 which is the Institution Area Search Report. The report shows no findings for Room 338.

Grievant said he received no discipline for room searches. He denies using any unnecessary force. He says he followed all Policy and Procedure and the Continuum to a T.

On Cross-Examination the Grievant said the Youth Behavior Incident Report is to show what the Youth did. He said JCOs can impose discipline and can also make recommendations to the Unit Manager.

The Grievant then read Investigation Exhibit, Tab 1, Page 38. This is a Youth Behavior Incident Report concerning [redacted] for May 29, 2007. [redacted] received treatment. He said he thinks [redacted] fought in self-defense. The Grievant also said [redacted] responded to verbals.

The Grievant was asked "If you asked a Youth to write a statement in your favor would he do it?" He answered "I wouldn't ask".

He then read Investigation Exhibit, Tab 2, Page 99 which says [redacted] was screaming at him. He then turned to Investigation Exhibit, Tab 2, Page 125. This says the Youths were quiet and sitting on line.

The Grievant said he takes pride in the Unit. He was asked, "The video shows you in the

deciding a discipline case must consider the timeliness of the Employer's decision to begin the disciplinary process."

The Employer raises both Article 24.05 and 24.02 of the Contract in defense of this Argument.'

The Contract provides in Article 24.05 that, " at the discretion of the Employer, in cases where a criminal investigation may occur, the pre-disciplinary meeting may be delayed until after disposition of the Criminal Charges."

The Employer then argues in its' Closing Argument that in December, 2007, it was directed to begin its' investigation by the Ohio State Patrol. The Employer contends also that it had its' own problems. Senior Investigator Don Whipple passed away and another investigator left the agency. This left only Investigator David Haynes with the Employer. The Employer says at that time there were 60 open investigations and that in August 2008 numerous staff at ORV were placed on administrative leave due to a rise in Youth grievances and safety issues. The [redacted] case was assigned to Investigator Haynes in October, 2008 and he concluded his investigation November 14, 2008.

The Union contended at the hearing that the delay caused some witnesses to be unavailable to it. The Employer responded by saying the Union made no demand to have witnesses no longer on the Employer's payroll to be located and produced.

The real problem is that the delay hinders the presentation of the case. The Grievant told Investigator Haynes that he could not recall the incident or its' details. JCO Beals said he vaguely remembered the incident. Some other witnesses had similar problems.

These problems are why an Arbitrator must consider timeliness.

The Employer asserts that the Agency's problems made its' delay "reasonable" under the circumstances. The Arbitrator disagrees.

The Arbitrator is sympathetic with the Agency's problems. Certainly Investigator Haynes did a prompt investigation when the case was assigned to him. However, the Arbitrator is bound by the Contract. The delay was not the fault of the Grievant or the Union.

The Arbitrator finds the delay "unreasonable". Therefore all charges concerning the May 2007 incident with [redacted] are dismissed.

The other Charges against the Grievant stem from an incident July 6, 2008 with [redacted] [redacted] says he was assaulted by the Grievant in the sally port.

The Grievant denies the charge. The Grievant says [redacted] approached him in a threatening manner and that he had to restrain him.

The Employer offered testimony and video evidence of the Grievant yelling at the Youth, kicking trash cans and searching the Youths' rooms.

The Union aptly points out that none of this activity resulted in charges against the Grievant. What the video does show is that the Grievant was clearly in [redacted] face.

[redacted] says the Grievant was in [redacted] face and said he "was going to get his today". Youth Goldman also said he was close to [redacted] in line and that [redacted] was quiet and he never heard him scream, holler or approach the Grievant. He said he saw the Grievant turn around and punch [redacted] as he walked through the sally port.

The Union stressed that [redacted] and [redacted] were in the same gang. The Union wants their testimony determined to be untrue because of this. As the Employer points out however, there is testimony of other Youth, including [redacted] which corroborated [redacted] testimony as well as the video.

[redacted] said the Grievant said he was going to get [redacted] and he saw Grievant punch him.

[redacted] and [redacted] both said they heard Grievant threaten [redacted] says Grievant slapped [redacted] and slammed him for no reason.

The Union points out that when the Nurse was brought to see [redacted] that he said he wasn't injured. However, other Youth said he showed signs of facial injuries. [redacted] said he was afraid to report any injury as Grievant was there with the Nurse.

The direct evidence is that the Grievant used inappropriate or unwarranted force on [redacted]

The Grievance is denied in its' entirety.

Issued at Ironton, Ohio this 5th day of November 2009.

Craig A. Allen
Arbitrator