**OCB AWARD NUMBER: 2089**

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| **SUBJECT:** | **ARB SUMMARY # 2089** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **35-04-20091224-0064-01-03** |
| **DEPARTMENT:** | Ohio Department of Youth Services |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | Susan Grody Ruben |
| **GRIEVANT NAME:** | Brian Chaney |
| **MANAGEMENT ADVOCATE:** | Rochelle Jones |
| **2ND CHAIR:** | Victor Dandridge |
| **UNION ADVOCATE:** | George Yerkes |
| **ARBITRATION DATE:** | June 4, 2010 |
| **DECISION DATE:** | August 20, 2010 |
| **DECISION:** | GRANTED |
| **CONTRACT SECTIONS:** | Article 2, Article 11, Article 12, and Article 24 |
| **OCB RESEARCH CODES:** | 118.311—Just Cause-Concept of; 118.6496—Excessive Use  of Force in DRC/DYS; 118.6515—Poor Judgment;  118.801—Reinstatement From Wrongful Discharge |
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**HOLDING: Grievance GRANTED. The Arbitrator rejected the excessive force argument, believing the Grievant did the best he could operating in a confined space with limited information and minimal direction while being concerned that the Youth in question was attempting to cause him harm by grabbing his genitals. The Arbitrator found fault with the actions of the Employer’s Operation Manager who made a “knee-jerk” decision to take down the Youth without planning the intervention.**

The Grievant was a Juvenile Correction Officer at the Indian River Correction Facility. The Employer hired the Grievant in 1992. The Employer removed the Grievant because the Employer believed that on September 11, 2009, the Grievant used excessive force on a youth. Specifically, the Employer charged the Grievant with violating Work Rules 4.09P, 5.01P, 5.12P, and 6.05P.

On September 11, 2009, the Grievant and two other officers attempted to remove a Youth who refused to come out of a restroom. The Youth resisted by kicking the Grievant and grabbing for the Grievant’s genitals. During the struggle, the Grievant allegedly cursed at the Youth and elbowed the youth in the head three (3) times causing the Youth’s head to hit a wall. After the officers handcuffed the Youth, the Youth kicked the Grievant in the genitals. The Grievant responded by either hitting the Youth in the forehead or grabbing the Youth’s shirt. At the time of the Grievant’s removal, the Grievant had the following entries on his active disciplinary record: (1) written reprimand for verbal abuse; and (2) written reprimand for improperly managing a resistant youth.

The Employer argued that it had just cause to remove the Grievant because the Grievant used excessive force while restraining a youth despite knowing that the situation did not meet the criteria for emergency defense. Additionally, the Employer argued that the Grievant used a prohibited physical response by hitting the Youth in the head with his elbow. Also, the Employer introduced evidence to establish that the Youth did not hit the Grievant in the genitals. The State’s Investigator testified that during the Grievant’s investigatory interview, the Grievant stated that the Youth did not hit the Grievant in the genitals; rather, the Youth grabbed at the Grievant’s pants. Further, the Employer argued that a video of the incident supports the Employer’s conclusion that the Grievant used excessive force.

The Union argued that the Employer did not have just cause to remove the Grievant because the Grievant’s actions were necessary to protect the Grievant from injury. The Union argued that the Grievant responded reasonably because the Grievant reasonably believed that the Youth was attempting to grab the Grievant’s genitals. The Union argued that the Youth put the Grievant into a dangerous position during the struggle and that no approved technique existed to effectively defend the Grievant during the September 11, 2009 struggle. Further, the Union urged the Arbitrator to judge the reasonableness of the Grievant’s actions from the perspective of an officer coping with a tense, fast-evolving situation.

The Arbitrator concluded that the Employer did not have just cause to remove the Grievant. The Arbitrator explained that she viewed the evidence in “context.” The Arbitrator reasoned that the Grievant reacted physically only after the youth wrapped himself around the Grievant in a confined space, ignored the Grievant’s command to get off, and reached for the Grievant’s genitals. The Arbitrator determined that the Grievant’s physical reaction did not harm the Youth. The Arbitrator found that the Grievant did the best that he could, given the challenging circumstances. As such, the Arbitrator granted the grievance.