**OCB AWARD NUMBER: 2181**

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| **SUBJECT:** | **ARB SUMMARY # 2181** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **35-04-20120416-0011-01-03** |
| **DEPARTMENT:** | **Youth Services** |
| **UNION:** | **OCSEA** |
| **ARBITRATOR:** | **Thomas J. Nowel** |
| **GRIEVANT NAME:** | **Brian Chaney** |
| **MANAGEMENT ADVOCATE:** | **Larry L. Blake** |
| **UNION ADVOCATE:** | **Rusty Burkepile** |
| **ARBITRATION DATE:** | **09/20/2012** |
| **DECISION DATE:** | **11/12/2012** |
| **DECISION:** | **Denied** |
| **CONTRACT SECTIONS:** | **Article 2 – Non-Discrimination; Article 24 - Discipline** |
| **OCB RESEARCH CODES:** | **118.6896 – Excessive Force-DRC/DYS; 118.301 – Progressive Discipline** |

**HOLDING: Grievance denied. The Arbitrator found that the Grievant violated proper procedure when he hit a disruptive youth in the head with an open hand. Rather than requesting backup or using verbal techniques to deescalate the situation, Grievant provoked the youth and did not follow proper procedure, despite 20 years of service and time working as a trainer. The grievance was denied.**

Brian Chaney, Grievant, was a 20 year employee with DYS at the time of the incident. He was a Youth Specialist at the Indian River Juvenile Correctional Facility with a prior 1-day suspension for violating a number of policies relating to use of force and verbal abuse.

The incident occurred on January 30, 2012. Grievant removed a disruptive youth from a classroom and escorted him to a different classroom to complete some paperwork. When the youth refused, the Grievant tossed the paperwork toward the youth and the file landed on the floor. The youth picked up the folder and threw it at Grievant (and missed); he next balled up a piece of paper and hit Grievant with it. In response, Grievant hit the youth in the head (with an open hand) and took the youth to the floor. Shortly thereafter, Grievant received backup and the youth was restrained. However, Grievant “made a move toward the youth” and was redirected away from the youth by backup. Following an administrative hearing, Grievant was terminated.

Management argued that Grievant inappropriately responded to the youth and escalated the situation instead of using advanced verbal strategies to deal with the youth. As Grievant was a 20-year veteran who taught “Managing Youth Resistance” and was over 100 pounds heavier, the use of physical force as “justifiable self-defense” was not appropriate. Rather Grievant used an inappropriate technique and overreacted to the situation. Management refuted any application of *Graham v. Conner*, stating that the CBA controls and police offers face very different issues than Youth Specialists. Further, DYS has a zero-tolerance policy for prohibited physical responses.

The Union argued that the Grievant was terminated without just cause as he was acting in self-defense. Focusing on the fact the youth was not injured and the Grievant was well-trained, the appropriate level of physical response was used. Moreover, termination was excessive as the Employer had other options available. The Union also argued that *Graham v. Conner*, a Supreme Court decision, mandates that the appropriate level of force must be judged from the prospective of a reasonable officer on the scene. Finally, the Grievant was a good employee who was well-liked and respected by co-workers and who could be counted on during critical situations.

The Arbitrator found that the Grievant acted inappropriately by tossing the paper at the already agitated youth’s feet and then physically responding upon being hit by a balled up piece of paper. Rather than deescalating the situation, the Grievant failed to follow procedure and instead hit the youth and took him to the floor using an inappropriate technique. Although the situation occurred quickly, the Grievant was significantly bigger and well-trained on how to properly respond. Moreover, the Grievant was “out of control” and intended to reengage the youth despite backup having the situation under control. Next, the CBA controls in this situation and *Graham* has little influence in evaluating this situation. Finally, the Employer did not act unreasonably by terminating the YS Chaney. Although the Employer had a range of discipline available, the Grievant had just been suspended six months previously for similar actions and DYS has a very strict policy on excessive use of force. For these reasons the grievance was denied.