
ARBITRATION IN THE MATTER	*	Grievant: Jeff Adams
	*	
Between	*	Issues: 10-day Suspension
	*	
County of Ventor	*	
	*	
and	*	
	*	
The Employees Association	*	Judy A. Gust, Arbitrator

PRELIMINARY STATEMENT

The hearing in this matter was held on September 10 and 21, 2000, at the County of Ventor, 2637 Civic Drive North, Anytown, California. During the course of the hearing the parties presented evidence through exhibits and the testimony of witnesses who were subject to cross-examination and stipulated that the matter was properly before the arbitrator for a final and binding decision. The record of this case was closed on November 14, 2000 following receipt by the arbitrator of the parties post-hearing briefs.

APPEARANCES & WITNESSES

For the Association

Debby Drake Business Representative, The Employees Association
Jeff Adams Grievant

For the County

Bill Leno Spokesperson and Counsel
Lisa Vicent Supervising Probation Officer
Timothy Westin Director of Juvenile Hall
Mary Gifford Assistant Director, Juvenile Hall
Stephan Lane Chief Deputy Probation Officer
Kevin Pierson Probation Counselor, ISU
Dick Crown Probation Counselor, ISU
Wesley Albright Probation Counselor, ISU
Jeremy Captan Probation Counselor, ISU
Jenny Franck Probation Counselor, Unit I

BACKGROUND AND FACTS

The Grievant in this matter, Jeff Adams, has been employed by the Ventor County Probation Department since January, 1977. Mr. Adams has been a Supervising Probation Counselor assigned to Juvenile Hall since 1986. He received a ten-day suspension that was imposed on March 18, 1999 through March 31, 1999 for his involvement in two incidents that occurred on October 20 and 21, 1998. The basis for this suspension was the Grievant's violation of the following policies, procedures and performance standards:

1. Ventor County Probation Department Code of Ethics
2. Policy Manual Item #A-1, Policy, Procedure and the Law
3. Policy Manual Item #A-2, Departmental and Personal Philosophies
4. Policy Manual Item #A-5, Communication Within the Probation Department
5. Policy Manual Item #A-21, Liability
6. Policy Manual Item #C-16, Employee Conduct On Duty
7. Policy Manual Item #D-1, Threats, Harm, Danger to Employees and Others
8. Policy Manual Item #D-2, Use of Physical Restraint; Corporal Punishment
9. Procedure Manual Item #3-2-031, Restraints-Physical, Mechanical and Chemical
10. Procedure Manual Item #3-2-F, Juvenile Hall Supervising Probation Counselor (SPC) Role and Responsibilities
11. Management Performance Standards #3 and #28, under Productivity
12. Management Performance Standards #2, #3, #4, #5, and #7, under Delegation/ Decision-Making
13. Management Performance Standards #1, #2, #4, #9, #10, and #11, under Leadership/Loyalty
14. Management Performance Standards #1 and #2, under Supervisory Control
15. Management Performance Standards #1, #3, and #6, under Job Knowledge

The first incident occurred on October 27, 1998, and involved minor Paul R. The minor had been returned to his unit and, after entering his room, covered the window in his door with a magazine page. Because staff must be able to view minors in their rooms at all times, Adams determined that Paul's property should be removed from his room. Adams and two other staff "keyed back" the minor's door. When the minor refused to place his property outside the room and continued displaying a "threatening posture", Adams directed DPC Crown to restrain the minor so that other staff could remove his property. Crown put the minor's right arm in an accordion squeeze and directed him to move the left side of his body up against the wall. The minor refused to do so, continued directing violent threats at Adams and resisting Crown's restraint. Adams noted that the minor's left arm was free and became concerned that the minor may strike Crown with his free left arm. Adams then secured the minor's left arm in an accordion squeeze. Within a few moments, ISU staff member PC Kevin Pierson arrived and relieved Adams by restraining the minor's left arm.

The second incident occurred on October 21, 1998 and involved minor Ken K. Ken had been directed repeatedly to return to his room. Due to the minor's continued refusal, a Code 1 was called requesting assistance. Two ISU staff, Wesley Albright and Jeremy Captan, responded. They counseled the minor to comply. The minor continued to refuse and directed profanity at staff. Adams came out of his office, stood just outside the minor's room and

counseled him. The minor continued to refuse and Adams placed his left hand on the minor's right shoulder and his right hand on the minor's chest and pushed the minor into his room after which the door to the minor's room was closed.

Special Incident Reports (SIRs) were completed by all staff involved in the two incidents as required by Probation Department policy. An administrative investigation was started on October 23, 1998 wherein witnesses to each of the events were interviewed. Mr. Adams was also interviewed on November 24, 1998 with regard to the October 20 and 21, 1998 incidents.

The Grievant was presented a Notice of Intent to Suspend on February 2, 1999. The Notice outlined the Probation Department's intent to suspend the Grievant for thirty (30) working days. Because of information the Grievant provided during his due process period, the suspension was reduced to ten (10) working days and, as noted above, was served from March 18 through March 31, 1999.

ISSUE

The parties stipulated that the issue in this matter is:

Was Jeff Adams suspended for reasonable cause? If not, to what remedy is the Appellant entitled under Article X, Section 7 of the MOU?

RELEVANT CONTRACT PROVISIONS

"Article V, Section 3. Suspension

- A. *No regular, limited-term or probationary employee shall be suspended except for reasonable cause.*

POSITION OF THE COUNTY

The Venter County Probation Department makes five arguments in support of its decision to impose a ten-day suspension on SPC James Adams.

The Department's first argument is that there was reasonable cause for the suspension because Adams failed to meet the standards of conduct and judgment to which he is held as a Supervising Probation Counselor (SPC). It points to the critical role of an SPC at Juvenile Hall to ensure that minors are treated with respect and dignity and for the SPC to serve as a role model to subordinate staff and to further departmental philosophies (Co. Br. pp. 4).

The Department points out that Adams admitted he had received the May 1996 policy that was developed in response to a 1980's lawsuit that was resolved in 1994. That policy addresses the Court's recommendation to have a neutral observer present any time a restraint

occurs. The policy also limits the situations in which minors may be restrained to self-defense, defense of another, to prevent an escape, to protect a minor from self-inflicted injuries or suicide, or to maintain necessary control of a minor. The policy directs Supervisory/Management staff to “Assess the situation and determine the level of control required. . . Do not become physically involved with the minor.” Because Adams received this policy, it follows that he was aware of the directive under Section 11.E.1, Supervisory/Management, to “not become physically involved with the minor.” (Co. Br. pp. 4-5).

A second policy dated March 9, 1998 was also developed as a result of the lawsuit and relates to a SPC’s Roles and Responsibilities. That policy also states in Section 3.J. that the SPC will “Not become physically involved with the minor”. Although the Grievant testified that he did not receive a copy of this policy until several months after the incidents at issue, he did testify that the policy had been discussed in supervisory meetings prior to the two incidents in question (Co. Br. pp. 5).

The policies that prohibit a SPC’s physical involvement with minors does provide exceptions for self-defense, in defense of another, to prevent an escape, to protect a minor from self-inflicted injuries or suicide; however, the County argues that Grievant’s actions did not fall under any of those exceptions (Co. Br. pp. 5).

In the first incident with Paul R., the Department relies on the Special Incident Reports (SIRs) of three witnesses to support its conclusion. Those SIRs failed to state that the Grievant needed to go “hands on” or that the witnesses felt they were in danger. Further, the Department points out that during cross-examination the Grievant failed to describe behavioral cues that would lead him to believe Crown was in danger. Given the amount of staff present, the Department argues that any reasonable person would not interpret this situation to be one where danger was imminent (Co. Br. pp. 6).

Testimony from the three PCs involved in the second incident with minor Ken K. indicates that they did not perceive any imminent danger from the minor and the number of PC’s present was sufficient to handle the restraint situation. The County points out that PC Alban, one of the PCs involved, testified that he discussed the matter with the Grievant after it was over and told him that “he didn’t need to go hands on and to let them do their job”. Again the County concludes that the Grievant did not testify to any information that would lead a reasonable person to believe that his actions met any of the exceptions to the policy (Co. Br. pp. 6-7).

The County next asserts that Adams was aware of the potential consequences for violating the policy as he had received a Letter of Reprimand two months prior to the incidents in question. The reprimand was given for, among other things, poor judgment, inappropriate physical contact and failure to comply with policies, procedures and standards. The reprimand warned that any incidents of this nature will result in further disciplinary action up to and including discharge.

The County’s next argument is that the Grievant has received progressive discipline in that he received a Counseling Memo on January 24, 1997 and a Letter of Reprimand on August 21, 1998 for similar issues involving poor judgment. The Counseling Memo, acknowledged by

the Grievant, was for unprofessional and inappropriate conduct with two female staff members consisting of remarks of a sexual nature and sexual innuendo. There were also allegations of inappropriate touching by Grievant.

The Letter of Reprimand also had poor judgment at its foundation. The reprimand resulted after the Grievant demonstrated one of the restraint techniques used with minors on a visitor. As a result the female visitor from the Public Defender's Office filed a workers' compensation claim thereby creating liability to the County. Grievant's poor judgment in going "hands on" with this woman and failure to report the incident after observing the female rubbing her shoulder was the basis for this discipline.

Because Adams had been disciplined for similar lapses in judgment and because he created the potential of liability to the County, the ten-day suspension meets the guidelines of progressive discipline.

The third argument presented by the County is that the ten-day suspension was the appropriate discipline in this case because the requisite factors were considered in making the decision to suspend. Those factors included the seriousness of the infraction and its potential liability to the employer due to the conduct, thoroughness and fairness of the investigation, the employee's overall service record and the consistency of the discipline in relation to comparable situations (Co. Br. pp. 8).

The seriousness of the infraction is underscored by the fact that a court rather than the Probation Department staff directed the development of a policy to ensure that a neutral observer be present in restraint situations. The reason for that policy is to make sure that there is someone directing staff's action that is not caught up in the emotions of the situation. According to the County, it is clear that this was a very serious action that the Grievant took on both occasions. The County goes on to point out that Adams actions created potential liability to the County. Grievant's extensive experience should have told him that there is a high probability that an injury to or a grievance from the minor could occur in any restraint situation (Co. Br. pp. 9-10).

The investigation conducted by AD Gifford and SPO Vincent was fair, unbiased and did not involve any recommendation as to the issue of discipline. Although the Grievant objected to SPO Vincent being involved because of her role in a prior investigation of the Grievant, Vincent had no input into the decision about the discipline ultimately imposed. Further, the Grievant testified that he felt that AD Gifford was unbiased. Based on this information and AD Gifford's experience with investigations, the County argues that the investigation was fair, unbiased and thorough.

With regard to the Grievant's overall service record, testimony from CDPO Westin and Lane evidenced their consideration of the Grievant's long and distinguished record with the Probation Department in recommending the thirty-day and ten-day suspensions respectively (Co. Br. pp. 11).

The next factor considered in determining the appropriate level of discipline for Mr. Adams was its consistency with similar infractions by other employees. The County rebuts the

testimony of the Grievant and SPC Ulster that other supervisory staff have committed similar infractions without discipline being imposed. The limited details provided indicated that the other supervisors' actions were appropriate because those situations met one of the exceptions to the policy, i.e., preventing injury to staff or a minor, preventing an escape or some similar circumstance. Further, the Grievant indicated that he had restrained a minor previously but was not disciplined because the situation met the criteria for an exception to the policy. Therefore, the Grievant was not singled out unfairly and given discipline that was not consistent with past practice.

Based on all of the factors that were considered when making the disciplinary decision, the ten-day suspension was a very appropriate action for the violations that occurred.

The County's next argument opposes the Association's Motion to Dismiss the case on the basis of failed due process. That motion arose when the Association became aware that the County's witnesses were provided with the first nine pages of the disciplinary document to refresh their memories.

The County argues that there is no legal precedent to support the Motion to Dismiss and that it is a routine procedure to have witnesses refresh their memory prior to testifying particularly when the events in question occurred some two years prior to the testimony. The information provided pertained to the events where they were personally involved and did not include any of the conclusions made about the facts. Further, the witnesses testified truthfully under oath.

As to the question of whether Mr. Adam's due process rights were violated, the County argues that the Grievant was given the opportunity to provide management with information related to the case, was provided the right to question documents or witnesses used to support management's conclusions and to question management's disciplinary decision. Based on the benefits of due process provided to the Grievant in this case, the Motion to Dismiss lacks any merit.

Finally, where there is reasonable cause to impose a suspension, an arbitrator should not substitute his or her judgment for the judgment of management made in good faith. The County cites several references supporting its assertion that the penalty imposed by County management should stand as its decision was fair, reasoned and taken after the Grievant was given clear and unequivocal notice of what was expected of him.

In summary, the County's position is that the Grievant's ten-day suspension was justified based upon the Grievant's recent instances of poor judgment that created potential liability to the County. The Grievant had been reprimanded just two months prior to the instant violation of department policies, procedures and performance standards for his poor judgment and policy violations. The Grievant's actions did not meet any of the exceptions to the policies. Therefore, the County asks that this grievance be denied.

POSITION OF THE ASSOCIATION

The Association takes the position that Mr. Adams exercised his best judgment at the time of the two incidents in question and acknowledges that a Department policy has evolved over the past few years regarding hands-on engagements by supervisors. He is committed to observing that policy. Due to Adams illustrious career, the questions raised by the Association about the propriety of the Department's sharing with County witnesses nine pages of the Notice of Intent to suspend Adams, and the argument that progressive discipline was not followed, the Association asks that the ten-day suspension be set aside and that Mr. Adams be made whole for all losses including full back pay and benefits (Assoc. Br. pp. 15-16).

The first argument relates to the Association's Motion to Dismiss that was made at the hearing. The basis for that Motion at the time was a violation of Adams' due process rights and the allegation that the County's action polluted the testimony of the County's witnesses. In its brief, the Association alleges that Adams' Right to Privacy as a Peace Officer was abridged because portions of his confidential personnel records were shared with the witnesses. Under Penal Code Section 832.7, personnel records are defined as any file maintained under that individual's name by his or her employing agency and containing records pertaining to any of the following: . . . (e) Complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties, and (f) Any other information the disclosure of which would constitute an unwarranted invasion of privacy. The Association argues that the nine pages given to each County witness included, not only the complete factual allegations in support of the discipline developed solely by the Department, but also contained the opinions and conclusions of the various witnesses as to the events that had transpired during both incidents. This action by the County raises the issue of the credibility of the testimony of the witnesses as it disclosed facts regarding the incident they did not witness. This violation is particularly egregious in this instance because it involved Departmental allegations that had not yet been subject to the scrutiny of the process developed to review such allegations (Assoc. Br. pp. 6-8).

The Association's next argument is that the Department failed to provide Adams the full benefit of progressive discipline and, as such, has failed to meet its burden of just cause. The Probation Department's exaltation of the principles of sound judgment and trustworthiness of peace officers, especially those with supervisory responsibilities, is inappropriately exaggerated and misapplied under the facts of this case. The Association argues that Mr. Adams is not untrustworthy and does not lack the ability to exercise good judgment as he has done so consistently for going on two decades. Mr. Adams is more knowledgeable now about what the Department's expectations of him are with respect to going hands on, but at the time of the incidents he made what he felt were appropriate decisions based on both Department policy and his experience to minimize the physical risks to other staff, to the minors involved, and to himself (Assoc. Br. pp. 9-10).

According to the Association, the Department also failed to adequately consider Adams prior superior work record before deciding to suspend him. It points to almost 25 years of formal performance evaluations to demonstrate Adams' superior work record (Assoc. Br. pp. 11, Assoc. Ex. 1).

The Probation Department failed to provide Mr. Adams with appropriate direction or any current training regarding hands-on incidents. The Department also failed to provide Mr. Adams with the primary policy it claims he violated. The document outlining Supervising Probation Officer Roles and Responsibilities was completed in April 1998; however, Adams' uncontradicted testimony was that the document had not yet been distributed at the time of the incidents. Further, AD Mary Gifford, Adams' supervisor, admitted that she had no discussions with Adams regarding the revised roles and responsibilities of Supervising Probation Counselors (Assoc. Br. pp. 12-13).

Adams was aware of an assortment of inconsistent Department policies, written and otherwise, at the time of the incidents. He had knowledge of a general, unwritten practice that SPCS normally tried to avoid going hands-on. But he was also aware that on several occasions not only SPCs but Department management had gone hands-on with minors. He was aware of Policy D-1 which directed that, "[i]n Probation Department institutions, employees must take a pro-active role, consistent with their job description and departmental procedures, to halt an offense and to ensure safety to themselves and others." He was also aware of Policy D-2 which provided that, "[a]n employee may use physical force or restraint for self protection or to protect others when under attack." Finally, he was aware of the Restraints Policy that provided, in part:

The basic policy of Juvenile Hall is to provide for the physical safety and security of minors, staff, and visitors within the facility. Within that basic policy, when dealing with aggressive minors, staff will use only the level of physical intervention/restraint needed to immediately stop the aggressive behavior and ensure the safety of minors and others. A physically aggressive minor should first be directed to stop the behavior before physical intervention/restraint is used.

Towards the end of the Restraint Policy there is a sentence that applies to Supervisory/Management staff that reads, "[d]o not become physically involved with the minor." Adams testified that he was aware of the general rule but also knew there were exceptions. He knew he had an obligation to other staff, to minors, and to himself, to exercise his best judgment to ensure the safety of minors and others. Adams' decision was supported by DPC Roy Ulster who testified that hands-on decisions are often made in a split second based on the experience and best judgment of the person involved. By its very nature, Adams' job requires him to make instantaneous good judgments (Assoc. Br. pp. 13-15).

In summary, the Association argues that in the two incidents upon which the County bases this discipline, Mr. Adams exercised his best judgment at the time. In these instances, his judgment was at least to some extent correct because no one was injured and the incidents were resolved (Assoc. Br. pp. 15). The Association asks that the ten-day suspension be set aside (Assoc. Br. pp. 16).

DISCUSSION

The first matter that must be addressed is the Association's Motion to Dismiss. During the cross-examination of County's fifth witness, the Association became aware that the first nine

pages of the County's Intent to Suspend notice dated February 9, 1999, had been given to all of the County's witnesses in preparation for their testimony. At that time, the Association moved to dismiss the matter on the basis of a violation of the Grievant's due process and argued that the County's action polluted the testimony of the County's witnesses. In its post-hearing brief, the Association argues its original position and adds that Mr. Adams' right to privacy was violated. Further, the Association points out that the document provided to the County's witnesses went beyond refreshing the witnesses' recollection of facts in that the document contained the opinions and conclusions of various witnesses as to the events that transpired during both incidents. Because there were two incidents that occurred on two separate days, the witnesses were provided facts and information about an incident that they did not witness. The County's position is that it is a usual and customary practice to provide witnesses with documents prior to their testimony to refresh their recollections, particularly when the events being testified to occurred some time ago, in this case approximately two years prior.

It is clear that there were two separate incidents that occurred on two separate days and that the participants and witnesses to those incidents differed. Further the Notice of Intent to Suspend, part of which was given to the witnesses to review, was written by the Department and went beyond mere factual reporting of the incidents by including private information that revealed the disciplinary action that was intended, the charges that formed the basis for the intended discipline, and some conclusions such as those noted in the lines three and four of page two of the document. Throughout those first nine pages are characterizations of information reported during the investigation that contained a number of opinions, apparently those expressed by the witnesses. The Association argues that such a comprehensive summary of both of the incidents may have tainted the testimony of the County's witnesses so as to bring doubt upon their credibility. In fact, this arbitrator finds that at least one witness was influenced by the report as in his testimony he used the term "tweaked" in reference to the incident involving minor Paul R. That term, as reported by the minor, was used on page two of the Intent to Suspend notice but was not found in any of the SIRs written at the time of the incident. Accordingly, it is found that the County did err in permitting witnesses to review Adams' Notice of Intent to Suspend, a private personnel record containing information that went beyond each individual's written report of the incident that each witnessed. However, there is no evidence that the County intentionally attempted to influence or otherwise taint the testimony of its witnesses. Further, the weight given each witness's testimony was adjusted accordingly.

The next question becomes what effect the County's mistake should have on this proceeding. The error was not deliberate nor was there evidence that such reading by the witnesses unduly influenced their testimony about any material facts that they witnessed. While inappropriate on the County's part, the effect of the error is not of sufficient weight to sustain the Association's Motion to Dismiss. Rather, the County is encouraged in similar matters to provide to witnesses only those records that the witnesses themselves have prepared or been a party to, i.e., an investigatory statement of their own, to refresh their recollection and to omit any information from others that might influence a potential witness's recollection of the circumstances at issue.

The case must now be reviewed on its merits. The burden of proof rests with the County to prove that it had reasonable cause to impose a ten-day suspension on Mr. Adams. Although

the County alleges violation by Mr. Adams of some fifteen policies, procedures and performance standards, it essentially reduces its basis for the ten-day suspension to Adams' alleged poor judgment that created potential liability for the County in the two incidents involving minors Paul and Ken. Chief Deputy Probation Officer Stephan Lane, who was responsible for reducing the disciplinary suspension from thirty (30) days to ten (10) days following the Skelly review, testified that the appropriateness of Adams' judgment to go hands-on in these incidents was his primary concern, particularly in light of Adams' prior discipline for judgment issues. Further, because the County fails to specifically identify which parts of the many policies, procedures and performance standards were allegedly violated and how those were violated by Mr. Adams, the focus of this discussion will rest on the issue of the Grievant's judgment in these two incidents.

There was considerable testimony from Mr. Westin, the Director of Juvenile Hall, from Ms. Gifford, an Assistant Director and Mr. Adams' immediate supervisor, and Mr. Lane, Chief Deputy Probation Officer, about the significance of the policy prohibiting supervisors from going hands-on with minors. As was emphasized in their testimony as well as the County's brief, the Court, following a lengthy and serious lawsuit, directed that the County establish a procedure to ensure a neutral observer role in situations involving the restraint or physical interactions with minors under its supervision. As explained by the witnesses, the Probation Department developed and subsequently revised policies and procedures as a result of that lawsuit and the Department vested that neutral observer role with supervisors. The gravity of the Court's effect on the establishment of an observer position was arguably better understood and articulated by the senior levels of management in the Probation Department. Witnesses Westin, Gifford and Lane, implied that the Court origin of such a policy made the policy a sort of "super" policy and throughout their testimony each emphasized the *potential liability* the County might incur from minor restraint situations. The testimony of others as they went down in rank was less articulate and evidenced a more general and practical understanding of the neutral observer role. As pointed out by the Association, most employment situations have some potential for liability. Customarily, in labor arbitration, the mere threat or potential of an act occurring is not compelling in finding cause for discipline. Adams testified that he was aware of the lawsuit and the Administration's desire to have neutral parties available. He admitted that the neutral observer role was discussed in meetings and understood the neutral observer to be the first supervisor on site. However, Adams also testified that each restraint situation is different. Further, he had received no specific training on the responsibilities of the neutral observer.

AD Gifford also testified that the neutral observer role of supervisors had been discussed in staff meetings and Mr. Adams testified that he was aware of such a rule generally. Testimony from several of the other witnesses supported the belief that supervisors usually did not go hands-on with minors and that that role, to physically restrain minors, was the role of the ISU staff. The ISU staff members were understandably protective of their specific role to handle all restraint situations unless an exceptional situation arose. Mr. Adams testified that he was aware of exceptions to the policy and of other supervisors and managers becoming physically involved with minors. Mr. Albright, who witnessed the second incident with minor Ken, testified that he had seen supervisors go hands on with minors before the new policy and once since the policy was implemented. Additionally, although that new policy was approved prior to these incidents, there is no evidence that Mr. Adams had received a copy of the new policy until after these incidents occurred and AD Gifford testified that, as promised, she had not discussed with Adams

the policies, procedures, and performance standards that were alleged to have been violated in Adams' August 21, 1998 Letter of Reprimand.

Some of the cited policies and procedures are contradictory. For example, Exhibit 37, the policy on restraints, states that staff assigned to Juvenile Hall may restrain a minor under the following circumstances: 1. In self defense, 2. In defense of another, 3. To prevent an escape, 4. To protect a minor from self-inflicted injuries or suicide, and 5. To maintain necessary control of a minor (type of restraint determined by minor's level of cooperation). The language of that policy that states "Do not become physically involved with the minor." appears on page 10 of that policy under paragraph "E. Supervisors/Management staff will:." While it is clear that Supervisors and Management staff are not to become physically involved with minors under normal circumstances, the exceptions noted on page one of the policy override that statement under those stated conditions. Adams testified that he understood at the time that the "preferred" role for SPCs was to be objective in the neutral observer role and that normally he would not become physically involved with a minor. Adams further testified that he did not believe at the time that he was violating any policy.

In this case we find a situation wherein a specific policy statement prohibits supervisors from physically engaging with minors except under certain prescribed situations. It was the judgment of the investigators, who were not present at the time of the incidents, that Adams' judgment in both of the incidents was faulty as, again in the investigators' judgment, the situations did not meet any of the exceptions that would justify a supervisor going hands-on with a minor. Thus, it is necessary to look at each of the incidents separately.

The first incident involving Paul R. was one in which the Grievant testified that he felt that Crown was in danger because the minor's left arm was free and the minor was resisting. Adams testified that he had known the minor for some two to three years prior and had a pretty good relationship with him. Adams also testified, as did other staff, that this particular minor would often be argumentative and difficult but would usually comply with directives just short of the necessity for any physical contact. However, this situation escalated to a point requiring physical intervention when the minor continued his refusal to comply after he had been secured in his room and covered his window. Adams then directed Crown to move the minor to the corner so that his property could be removed. As Crown attempted to comply, the minor continued to struggle and scream threats. Adams' judgment that the minor was resisting was supported by both Crown's testimony and his SIR, and PC Levine's SIR (Co. Exs. 3, 5, 8). The SIRs also show that the minor was using profanity and threatening language to the point where Levine reported that she thought the minor may strike SPC Adams (Co. Ex. 8). At that point Levine even readied her pepper spray. Crown also testified that he expected assistance when he was attempting to restrain the minor; however, he expected that Levine would provide the assistance rather than Adams. Crown also testified that he did not feel he was in danger at the moment that Adams interceded. However, Crown's belief that he was not in danger is not sufficient proof that Adams did not perceive him to be in danger. As Adams testified, he noted the free arm and reacted. One might argue that due to his long supervisory experience, Adams appropriately anticipated a situation that could reasonably have led to injury to a staff member and acted accordingly to prevent such an injury.

This particular incident was the subject of much discussion among staff following the event. Staff members testified that they discussed the incident after it occurred and agreed that it was their job to handle physical restraints of minors. There was a concern by one staff member that her reputation was possibly being impugned by the Grievant's action. Such after-the-fact evaluations of actions are understandable and can even be instructive for similar incidents in the future. However, such discussions are not proof that the Grievant's judgment was in error at the time.

The County also relies on the fact that other staff in attendance did not affirmatively state in their SIRs that Adams needed to intercede. It must be pointed out that neither did any of the staff indicate in their SIRs that Adams abused his discretion, inappropriately interfered or violated the minor's rights in any way. As SPC Ulster testified, one has to assess the situation at the moment. Although one tries to anticipate and be proactive in dealing with disruptive minors, instantaneous decisions are often required. In this case, it is not clear that Adams exercised poor judgment in coming to Crown's assistance in restraining the minor. Given the somewhat confusing policies noted above, the minor's uncharacteristic behavior on this occasion and Adams' testimony that he believed that Crown was in danger of being struck by the minor's free arm, it cannot be concluded that the incident fell outside of the exception that permits a supervisor to go hands-on with a minor in defense of another.

With respect to the second incident with minor Ken K., Ulster's testimony that pushing is used regularly and is not considered a physical restraint because no pain compliance technique is present was unrebutted. The Grievant testified that he felt at the time that a quick shove of the minor into his room averted the need for him to order a physical restraint by one of the ISU staff and thereby averted a greater potential for the minor or someone else to be injured. In this incident we have a possible ulterior motive for the minor's filing a grievance over the incident beyond his mere surprise that a supervisor would go hands-on. PC Franck testified that the minor was concerned that charges would be filed on him if he was returned to Unit I again. She testified that the minor was looking to excuse his responsibility for his return to Unit I to avoid further charges. The fact that this second incident occurred just the day following the incident with Paul R. has little significance with regard to Mr. Adams' judgment. He had not been reminded at that time of the prohibition against supervisors restraining minors and, in fact, did not restrain minor Ken but merely shoved him into his room. No injuries were sustained by the minor or others and the immediate incident to secure the minor in his room was speedily resolved by his action. Again, given all of the circumstances surrounding this incident, it cannot be found that SPC Adams exercised poor judgment in this situation.

The County argues adamantly that these incidents are corollary to the prior two incidents in which the Grievant was disciplined for using poor judgment and infers thereby that there is a pattern by Mr. Adams that demonstrates increasingly poor judgment. That inference is not persuasive because the types of judgment called for in these earlier incidents differ substantially from the issue of minors and the attendant policies prohibiting physical restraint by supervisors. The first memorandum issued to Mr. Adams on January 24, 1997, involved allegations of unprofessional and inappropriate conduct with female staff members (Co. Ex. 25). While supervision requires modeling appropriate and professional conduct, those interactions are quite different from the technical assessments that must be made in determining whether to order the

restraint of minors or to go hands-on with a minor. Adams' failure to model appropriate and professional conduct was alleged in this case as well; however, there were no specific allegations of how his behavior fell short and no evidence that subordinate staff could no longer look to him as a role model.

The August 21, 1998 Letter of Reprimand concerning the demonstration of a physical restraint on a visitor is more closely akin to the current situation. However, again, it is not the kind of judgment that is required on a daily basis in discharging one's responsibilities with minors under the referenced policies. It is true that the June 1998 incident involved physical contact with another individual. The issue of whether Mr. Adams requested permission to demonstrate a physical restraint was in dispute and it is apparent that the subject of the demonstration had first inquired about how minors are controlled (Co. Ex. 26). Further in regard to the August 1998 reprimand, the review of policies, procedures and performance standards was not discussed as promised within two weeks of the letter or at any time before the instant matters arose. A correlation between the judgments in these prior issues and the current incidents is not found.

Judgment is a highly personal and subjective cognitive activity. As a result of the investigation conducted by AD Gifford and SPO Vincent, both exercised their judgment in concluding that the Grievant's actions did not fall under any of the exceptions to the policies that prohibited a supervisor from becoming physically involved with a minor. Equally subjective and plausible is Mr. Adams judgment, at the time of the incidents, that his intervention was necessary and justified. Having carefully considered the totality of the circumstances in this case and recognizing the County's burden, it is found that reasonable cause was not present to support any discipline.

AWARD

For all of the reasons set forth above, the grievance is sustained. The ten-day suspension shall be revoked and all records relating thereto shall be destroyed. The County shall make the Grievant whole by restoring any pay and benefits he would have received had he worked during the suspension period.

Judy A. Gust, Arbitrator
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December 15, 2000