

Vermont Labor Relations Board

GRIEVANCE OF

JOHN OUELLET

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DOCKET #78-26S

FINDINGS OF FACT, OPINION AND ORDER

Statement of the Case .

The grievance of John Ouelett and Vermont State Employee's Association, Inc. dated 15 November 1977 was filed the next day. The State's Answer was filed on December 6, 1977 and notice of hearing mailed to all parties on December 22, 1977. A hearing scheduled for 5 January 1978 was postponed and rescheduled for 9 January 1978. This hearing was postponed at the request of the grievant. A hearing was held in the Alderman's Room, City Hall, St. Albans, Vermont on 27 January 1978, notice having been mailed on 9 January 1978. Certain subpoenas were issued and served. The evidence not having been completed at the first hearing, the same was continued and completed on 10 February 1978 in the Public Service Board Hearing Room, Montpelier, Vermont. Requests for Findings of Fact were filed by both parties on 28 February 1978. State's Ex. 8 was filed with the Board, a letter to the Assistant Attorney General from the Honorable David G. Miller, State's Attorney. The grievant was represented by Alan S. Rome, Esquire, and the State by the Honorable Jeffrey L. Amestoy, Assistant Attorney General.

Findings of Fact.

1. The Non-Management Agreement between Vermont State Employees' Association, Inc. and the State of Vermont was introduced as Joint Exhibit

#1. Article XI of such Agreement contains the reference to "just cause".

2. The grievant, John R. Ouellet, of St. Albans Bay, has served for two years as a Corrections Officer with the Vermont Department of Corrections, his place of duty being the St. Albans Correctional Diagnostic Treatment Facility located on Lower Newton Street in the City of St. Albans.

3. On 3 October 1977, grievant was notified in writing that he was relieved of duty without pay pending an investigation of an incident which occurred on 20 September 1977 (Grievant's Ex. B).

4. On 31 October 1977, the grievant received a letter of dismissal alleging that he violated the provisions of Department of Corrections Policy Bulletin #1041, "Use of Force", and Institutional Policy Rule #17, page 12 of the Personnel Rules and Regulations, Section 200.1 (Grievant's Ex. C).

5. Grievant had received a performance evaluation rating of 4 "frequently exceeds job requirements/standards" for the rating period 1 July 1976 through 30 June 1977. The evaluation states that the grievant is "very security conscious and also is very tactful when dealing with residents. ...It could be possible for him to become an effective supervisor." The document goes on to say that he needs assistance in more effective report writing and that he manipulates co-workers and supervisors to make changes to his advantage.

6. Department of Corrections Policy Bulletin #1041 (State's Ex. 1) states in part:

"Retaliation in Kind: In no case is it justifiable for an employee to retaliate in kind against an inmate because that employee has been abused by the inmate. An employee's use of any punitive sanction on his own is clearly forbidden.

The facility disciplinary process, criminal prosecution and administrative segregation are available for dealing with such behavior."

7. The grievant was familiar with Policy Bulletin #1041, and with the Personnel Rules and Regulations, Policy 200.1, and with Rule 17 of the St. Albans Personnel Rules and Regulations (State's Exs. 1, 2, & 3).

8. The grievant had attended Department of Corrections Training Sessions dealing with the use of force.

9. At all times material, Inmate John Coffin was a resident of the St. Albans Correctional and Diagnostic Facility; Inmate Coffin is approximately 6' 2" and weighs 195 lbs.; he is considered very powerful and extremely aggressive and dangerous.

10. On April 21, 1977 Officer Kelley was attacked without provocation or warning by Inmate Coffin, and suffered severe and disabling injuries. The grievant assisted in subduing the inmate.

11. On September 19, 1977 Inmate Coffin attacked without provocation or warning a fellow Inmate named Gregory, who was severely injured. (See Grievant's Ex. K).

12. On September 20, 1977 Inmate Coffin was in Segregation Wing "D", where he had been placed because of his disruptive behavior; on the day previously he had thrown his lunch and dinner meals at Officer LeClair.

13. For this reason, on September 20, he was offered a "dry" breakfast, consisting of a bag with a sandwich and styrofoam cup and without the usual eating utensils or other instruments that could be used as weapons. At 5:45 A.M. Lieutenant Klasoskus, Officer in charge of the facility at the time, requested the grievant to leave his post at "A" Wing and to assist Officers Prairie and Gagne to feed Inmate Coffin in the Segregation Wing "D".

14. Officer LeClair was in the mini-control room, or "bubble" and requested that the door to Segregation Cell #2, approximately 12' x 8' in dimensions, be opened; Officers Ouellet and Prairie entered the cell and found Coffin covered by a sheet. Ouellet approached Coffin and said, "Good morning, Bill, here's your breakfast." Coffin sprung up from the bed, and slammed the breakfast from Ouellet's hand.

15. Ouellet was able to restrain Inmate Coffin and force him back on the bed, but when he released him, he sprung up again, punching Ouellet in the face several times and scratching him in the throat. Guards Prairie and Gagne assisted Officer Ouellet in restraining Inmate Coffin and were ordered to back out by Ouellet, in order to give him a clear route to the cell door after he had released Inmate Coffin.

16. At this point the evidence is not quite as clear as before. However, the Board finds that Inmate Coffin again attempted to attack the grievant, who hit him twice at less than full force in order to give himself a chance to back out of the cell.

17. During this entire episode Lieutenant Klasoskus was outside the building admitting the bread truck to the facility.

18. Officer Prairie wrote up charges of assault against Inmate Coffin, and eventually all the officers involved made reports.

19. At some time subsequent Officer Prairie, now a Vermont State Trooper, filed a supplemental report or affidavit suggesting that excessive force had been used in the last phase of the incident in the Coffin cell. Since the two reports are mutually inconsistent, either the first report or the last report is not factual.

20. Inmate Coffin is approximately 23 years old, the grievant is a big man and is 48 years of age, while Officers Prairie and Gagne are both approximately 5' 7" and weigh 150 lbs.

21. At the time of the incident the following personnel were on duty in the St. Albans Correctional Facility: two guards locked in to "D" Wing, one guard locked in to "E" Wing, Lieutenant Klasoskus outside of the institution conferring with the breadman; the grievant, Ouellet, removed from "A" Wing which was left without a guard, and Officers Prairie and Gagne in Cell #2. Cells #1 and #3 in "D" Wing Segregation were also occupied.

22. Officer Ouellet was considered by superiors to be tactful in dealing with inmates, and extremely helpful in tense situations in calming inmates without the use of force.

23. During the final phase of the incident involving Officer Ouellet and Inmate Coffin, Officers Gagne and Prairie were outside of or at the cell door, and their vision was partially obstructed by Officer Ouellet; they could not observe Inmate Coffin's face.

24. In order to determine whether an incident or altercation is at an end, it is necessary to be able to observe the eyes and muscle reaction of the combatant. Officer Ouellet was the only person in a position to make these observations during the final phases of the incident in question.

25. Inmate Coffin received a sentence of eight to ten months as a result of plea to a charge of assault against Officer Ouellet which took place at the time of the incident in question.

26. Superintendent Bashaw conducted a thorough investigation of the incident including at least one re-enactment of the scene itself.

27. The policies and guidelines with respect to use of force and especially excessive use of force were thoroughly understood by grievant and by other guards in the St. Albans Correctional Facility. Unless of a clear and unequivocal nature, whether the use of force can be called

necessary or excessive is up to the determination of the officers involved at the time. It is very difficult to second-guess and to judge the mental factors which come into play in these cases during moments of extreme stress.

28. The Board finds that the grievant did know in advance of his suspension and later dismissal that conduct of the nature alleged by the State, deliberate and excessive use of force, could warrant discharge.

29. The Board specifically finds that under all of the circumstances surrounding the incident, and the obvious extreme fear exhibited by Officers Prairie, LeClair and Ouellet, as well as the extraordinarily violent and aggressive behavior of Inmate Coffin in the immediate past and during the incident itself, that the force used by Officer Ouellet throughout the incident was justifiable and even necessary, and was not excessive.

30. The Board finds that it was unreasonable for the State to discharge Officer Ouellet for the conduct alleged in the notice of dismissal.

31. The Board finds that the discharge of the grievant was not with "just cause" within the meaning of Article XI of Joint Exhibit 1.

32. The transcript and exhibits shall form a part of this record for purposes of appeal.

Discussion of the Evidence.

The key witness, other than the grievant himself, was Officer Prairie, a young Vietnam Veteran who had at the time in question made application for assignment to the Vermont State Police, and was at the time of his testimony a probationary officer with that department. There seems to be little question but that Officer Prairie originally gave a false account of the incident. The third guard involved, Officer

Gagne, did not testify. Apparently his version of the facts differed slightly from those of his two companions. His testimony might have been most helpful. The essential difference is at the time of the two blows to the head administered by Officer Ouellet. Prairie says that Coffin was not attacking at that point, and was sitting on the bed supporting himself by his arms when he was struck once on the left side of the head and once on the right side of the head. Ouellet says that when he released Coffin's right arm, he swung at him and spit in his face. Ouellet then threw a left to Coffin's face, then a right to the face of Coffin at one-third speed in order to back out of the room. Ouellet denies that the blows were in retaliation for the injuries admittedly administered previously to Ouellet without provocation. In general the guards tended to support the position of Ouellet, especially Lieutenant Klasoskus, but Superintendent Bashaw disagreed.

Opinion.

The issue is whether or not the grievant was discharged for "just cause" within the meaning of Article XI of the Non-Management Agreement. There is a subsidiary issue as to whether or not the grievant used appropriate or excessive force in dealing with the Coffin situation in accordance with the appropriate bulletins and rules in force at the St. Albans Correctional Facility.

There is no question here as to compliance with the collective bargaining agreement. 3 V.S.A, § 902 (14). The dismissal notice was appropriate and the grievant informed of his rights to appeal. The appeal was timely filed.

The real question before the Board was whether the Superintendent acted reasonably in discharging the employee because of certain alleged misconduct. Carter v. United States, 407 F. 2d 1238, 1244 (D.C. Cir.

1968). It is quite clear that the grievant knew that any excessive use of force, or retaliation in kind against a prison inmate, would be a reasonable ground for suspension if not discharge. The real question here is to whether the use of force under these circumstances was unreasonable or excessive. The Board has found that it was not.

There seems to be no question but what the situation involving Officers Prairie, Gagne and Ouellet and Inmate Coffin was an extremely dangerous and tense one. There is no question but that Coffin attacked Ouellet, who was bringing his breakfast to him, in an unprovoked and highly aggressive manner, inflicting serious damage to the guard. Coffin was an extremely large and powerful man with violent, volatile tendencies. Ouellet was accompanied by two men of rather small stature and little experience. He ordered them out of the cell and then took what appear to be reasonable measures to protect his own retreat from the cell. We can find no just cause for his dismissal, and believe that his conduct was consistent with the proper use of good judgment under the circumstances.

ORDER.

In accordance with the findings of fact, and opinion expressed above, it is hereby ORDERED that the grievance of John R. Ouellet be ALLOWED and that he be reinstated to his position as a correctional officer with the Department of Corrections, St. Albans Correctional and Diagnostic Facility, St. Albans, Vermont, with full pay and benefits, which shall be retroactive to the effective date of his discharge.

Commissioner Brown disqualified himself in this matter.

Dated at Burlington, Vermont this 7th day of April, A.D. 1978.

VERMONT LABOR RELATIONS BOARD

By

John S. Burgess
JOHN S. BURGESS, CHAIRMAN

William G. Kemsley, Sr.
WILLIAM G. KEMSLEY, SR.