BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
BAYFIELD COUNTY (SHERIFF'S DEPARTMENT)	
and	Case 51 No. 46415 MA-6976
BAYFIELD COUNTY DEPUTY SHERIFF'S LOCAL, WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION	

Appearances:

Cullen, Weston, Pines and Bach, by Mr. Gordon E. McQuillen, 20 North Carroll Street, Madison, Wisconsin, appearing on behalf of the Union.

Weld, Riley, Prenn and Ricci, by Ms. Kathryn J. Prenn, 715 South Barstow, Eau Claire, Wisconsin, appearing on behalf of the County.

ARBITRATION AWARD

Bayfield County (Sheriff's Department), hereinafter referred to as the County, and Bayfield County Deputy Sheriff's Local, Wisconsin Profession Police Association/Law Enforcement Relations Division, hereinafter referred to as the Union, are parties to a collective bargaining agreement which provides for final and binding arbitration of grievances. Pursuant to a request for arbitration the undersigned was appointed by the Wisconsin Employment Relations Commission to arbitrate a dispute over the discharge of an employe. Hearing on the matter was held in Washburn, Wisconsin on December 18, 1991, February 26 and 27, 1992, and April 29 and 30, 1992, and stenographic transcripts of the proceedings were prepared and received by the undersigned by June 5, 1992. The County's post hearing arguments were received by the undersigned by July 22, 1992. The Union's reply brief was received by the undersigned by August 26, 1992. The County's reply brief was received by the undersigned by September 30, 1992. Full consideration has been given to the testimony, evidence and arguments presented in rendering this award.

ISSUE

During the course of the hearing the parties agreed upon the following issue:

> "Did the County have just cause to terminate the grievant?"
> "If not, what is the appropriate remedy?"

PERTINENT CONTRACTUAL PROVISIONS

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Article III - Discipline, Dismissal, or Suspension

A. The parties recognize the authority of the Employer to discipline, discharge, or take other appropriate disciplinary action against employees for just cause.

B. The following shall be the sequence of disciplinary action:

1. Oral Reprimands;
2. Written Reprimands;
3. Suspension;
4. Discharge.

The above sequence of disciplinary action need not apply in case where the infraction is considered just cause for immediate suspension or discharge.

C. If any disciplinary action is taken against an employee, both the employee and the Association will receive copies of this disciplinary action.

D. Should the Association present a grievance in connection with the discipline, dismissal or suspension of an employee within ten (10) days of such discipline, dismissal, or suspension to the Personnel Committee, the discipline, dismissal, or suspension shall be reviewed under the terms of the grievance procedure as specified in Article IV. This provision does not apply to probationary employees.

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Article XXIV - Weekly Hours, Overtime Rates and Use of Squad Cars

Section H: ...Employees already scheduled to work are not allowed to trade or "bump" shifts in replacing an employee off on short notice. The Sheriff or his designee, and the dispatch center, shall be notified by the employee being replaced, of all short notice replacements.

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PERTINENT COUNTY POLICIES

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Division Policy 9 - Resident Grievance

The purpose of the resident grievance policy is to ensure that each person being incarcerated has a right to report a grievance and that the grievance should be delivered without alteration, interference or delay to the person or entity responsible for receiving and investigating grievances. . .

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Jail Division Policy 16 - General Rules Jail Staff

To provide for consistency in the day to day operation by the Jail staff.

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PROCEDURES:

1. All department employees assigned to the Jail Division will be guided by Jail Division Policy and Procedures, Dept. Policy and Procedures, along withe [sic] the County Personnel Policy

   YOU ARE RESPONSIBLE TO ACQUAINT YOURSELF WITH THE PROVISION OF THE RULES, DIRECTIVES AND CURRENT MEMORANDUMS AS POSTED.

2. Problems or situations which arise and are likely to arise again are to be reported and discussed thoroughly if not covered in the Policy and Procedures.

. . .

6. Request for time off, change in days off with another officer, etc. has to be requested (24) hrs. prior to the time requested, and approved by the Jail Sergeant or Chief Deputy.

7. Employees are not permitted to leave the areas of assignment, unless authorized by the supervisor.

8. All employees must refrain from using coarse, violent, profane, discriminatory language towards other staff and inmates.

9. Employees are not to discuss department policies or business with the inmates. . .

BACKGROUND

Amongst its various governmental functions the County operates a Sheriff's Department with a jail and dispatch center in Washburn, Wisconsin. Prior to May 15, 1991 the occupants of the County's Jailer/Dispatcher positions were represented by American Federation of State, County and Municipal Employes. On May 15, the Union became the bargaining representative for these positions with the following provisions:

A Article XVI (A through I) will not apply to the position of Dispatch/Jailer.

B Article XXXI, shall apply with the difference being the amount of monies allocated to Dispatch/Jailer being in the amount of $200.00 per year.

C Wages for the Dispatch/Jailer, shall increase as bargained for by AFSCME on behalf of the Dispatch/Jailer position. This shall remain in effect for this entire contract period ending Dec. 31, 1992.

D Scheduling of the Dispatch/Jailers, will be a 5-2, 5-3 schedule, eight (8) hours per shift. This is consistent with the BCDA contract consisting of approx. 1,960 hours per year. This allows for the rotation of employees to affect the working shift.

Dated this 3rd day of June, 1991.

The County has employed Tom Zinski, hereinafter referred to as the grievant, for approximately twenty (20) years as a Jailer/Dispatcher. The grievant's duties include dispatching for squad cars, ambulances, and fire department vehicles, taking phone call messages, and taking care of the jail. The instant matter arose during the Spring of 1991 when the County conducted an undercover drug operation. Jim Jacobson, a County Investigator, was assigned to coordinate the operation and Ed Wollwert was an undercover officer. On April 10, 1991 approximately 15 (fifteen) persons were arrested by the County. One of which was the adult son of the grievant and another was the adult son of another County Jailer/Dispatcher, Leroy Smith. At the time of the arrest the grievant was on duty and he was offered the opportunity to have another employe book his son into the County's jail. The grievant declined and booked his own son. Thereafter the grievant's son was not charged with any wrongdoing. Smith's son did go to trial and was convicted.

Evidence uncovered during the uncover drug operation indicated that some of the drug sales occurred at a tavern in Washburn. A public hearing was held in Washburn on the evening of August 19, 1991 to determine whether the liquor license for this tavern should be renewed. Both Jacobson and Wollwert were requested to testify at this hearing and did so. The grievant was on duty that evening, Smith was off duty and attended the hearing. Smith reported to work at approximately 11:00 p.m. and informed the grievant of what had occurred at the hearing including the fact that both their sons names had been identified. Smith called the Washburn Police Department from the County's dispatch center and informed a Washburn police officer that Wollwert had been high on drugs or alcohol while testifying at the hearing and requested the City do something about it. The following day the City of Washburn filed a complaint with the County concerning Smith's conduct and the matter was assigned to Chief Deputy Tom McAllister and Lieutenant Mike Frederick.

The County at this time had a prisoner named Walter Maki. Maki had been jailed at the County on a number of occasions and was considered a "regular" prisoner. During the early part of August Maki was on a work release program under the Huber Law. While performing work under the Huber Law he was injured and began receiving workmen's compensation. Maki was then released by a doctor for light duty and the employer he had been working for offered him a light duty job which Maki declined. County Sheriff Ralph Neff informed Maki that if he wanted to remain on Huber privileges he was to perform light duty around the jail and to continue to make Huber payments to the County (in effect a form of room and board) out of his workers' compensation monies. Normally when a prisoner performs duties around or in the County jail they receive community service hours which are put towards reducing their sentence. Maki complained about this action to the grievant. 1/ Maki also may have threatened to sue the County over this matter. On August 12, 1991 Maki submitted funds to the grievant pursuant to the Sheriff's direction and the grievant gave Maki a receipt. On this receipt the grievant wrote: "For being on Community Service, Auth. 42 T.M." (42 T.M. being the call sign for McAllister). On August 20, 1991 Maki submitted funds for Huber fees to the secretary for the Sheriff's Department, Diane Fizell, and informed her it was for Community Service which she so stated on the receipt. On August 21, 1991, at approximately 4:00 p.m., the grievant informed Sergeant Investigator Robert Fizell of a possible lawsuit by Maki against the County (under a previous Sheriff Fizell had been the immediate supervisor of Dispatcher/Jailers).

On August 20, 1991 the grievant was scheduled to work the 3:00 p.m. to 11:00 p.m. shift. Smith contacted employe Severt Dahl to work the grievant's shift and Dahl reported to work for the grievant. No supervisor was informed of the change of work shifts. Upon his return to work the next day the grievant was required to turn in a payroll deduction sheet indicating that he did not work on August 20, in accordance with Sheriff's Department procedures. The grievant had followed this procedure on eight (8) previous occasions. The grievant was questioned on September 10, 1991 as to why he did not turn in one and responded he had. On September 10, the grievant turned in a payroll deduction sheet.

On September 13, 1991 McAllister and Frederick completed their investigation and submitted a memo to Sheriff Ralph Neff. McAllister and

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1/ Maki was subpoenaed to testify at the hearing by both parties for the February 26th hearing date. However he failed to show up and neither party could find him. He was located and appeared at the commencement of the hearing on February 27th. At that time Maki was not physically able to testify and at County's request and with the Undersigned's approval the County found him a place to sleep for a few hours. Maki was placed in an unlocked jail cell and while the Undersigned viewed the County's jail cells, Huber area and dispatch area Maki informed the Undersigned he had recovered sufficiently enough to be able to take the stand and testify.

Frederick identified nine counts of violations in the grievant's behavior and/or work performance as follows and recommended that the grievant be terminated:

DATE: SEPTEMBER 13, 1991

TO: SHERIFF RALPH NEFF

SUBJECT: INTERNAL INVESTIGATION OF TOM ZINSKI

FROM: CHIEF DEPUTY TOM MCALLITER
LT. MIKE FREDERICK

THE INVESTIGATION OF EMPLOYEE TOM ZINSKI HAS BEEN COMPLETED. IT IS OUR RECOMMENDATION THAT TOM ZINSKI BE TERMINATED AS AN EMPLOYEE OF THE BAYFIELD COUNTY SHERIFF'S DEPARTMENT. THIS RECOMMENDATION IS BASED ON THE INVESTIGATION WE CONDUCTED AND THE VIOLATIONS OF THE DEPARTMENTS POLICIES AND PROCEDURES BY TOM ZINSKI.

ATTACHED YOU WILL FIND NINE (9) COUNTS OF DIFFERENT VIOLATIONS THAT WE FOUND. THERE ARE NUMEROUS MORE THAT WE HAVE NOT ADDRESSED AT THIS POINT. ALL INTERVIEWS HAVE BEEN TRANSCRIBED AND ARE AVAILABLE FOR YOUR REVIEW.

RESPECTFULLY SUBMITTED,

Tom McAllister /s/
TOM MCALLISTER
CHIEF DEPUTY

Mike Frederick /s/
MIKE FREDERICK
LIEUTENANT

. . .

COUNT 1 -- INSUBORDINATION

On August 22, 1991, Chief Deputy McAllister told Tom Zinski not to discuss with any inmate the issue regarding Walter Maki's law suit against the County. On or about August 22, 1991 after being told not to discuss it, Mr. Zinski did question inmate Walter Maki as to Maki's interview with Chief McAllister and Lt. Frederick. This was in violation of a direct order.

COUNT 2 -- INSUBORDINATION

On August 22, 1991, Tom Zinski mentioned to Sheriff Neff, Chief McAllister, Lt. Frederick that he knew of a law suit. Mr. Zinski was quoted saying "JUST LIKE THAT SUIT THAT THEY'RE GOING TO PUT ON THE COUNTY. I KNOW ABOUT THAT," end quote. Mr. Zinski was asked by Chief McAllister what suit he was talking about and Zinski stated Walter Maki's suit. Chief McAllister then said, would you like to enlighten us about it. You are an employee of the Sheriff's Dept. As your supervisor, I'm asking you what suit you are talking about and Mr. Zinski was quoted to say "I DON'T HAVE TO, YOU'RE GOING TO FIND OUT ANYWAY", end quote. This was in violation of a direct order.

COUNT 3 -- INSUBORDINATION

ON SEPTEMBER 2, 1991 Tom Zinski did engage in a conversation with inmates Charles Boyle, Walter Maki and jail/dispatcher Knobby Smith. This conversation was about the investigation and Walter Maki's law suit against the county. This took place after Mr. Zinski was told not to discuss either one of the issues. This was in violation of a direct order.

COUNT 4 -- VIOLATION OF GENERAL RULES JAIL STAFF NUMBER 16, PARAGRAPH 2.

Which states: Problems or situations which arise and are likely to arise again are to be reported and discussed thoroughly if not covered in the Policy and Procedures.

On or about Aug. 12, 1991 Mr. Zinski learned from inmate Walter Maki that Maki had a complaint over having to pay his Huber Fees. Statements from inmate Maki, Sgt. Mellen and Deputy Jeffords of the Bayfield County Sheriff's Dept., show that Mr. Zinski encouraged Maki to see an attorney and sue the Chief and the County over the Huber Fee issue. Mr. Zinski failed to notify the Sheriff or Chief Deputy as to Walter Maki's complaint or his impending law suit. This is a direct violation of this Policy and Procedure.

COUNT 5 -- VIOLATION OF GENERAL RULES JAIL STAFF NUMBER 16, PARAGRAPH 8.

Which states all employees must refrain from

using course (sic), violent, profane, discriminatory language towards staff and inmates.

On August 19, 1991 Tom Zinski while on duty and off duty did make insulting, slanderous and unprofessional remarks about a fellow co-worker at the County Jail. Mr. Zinski stated that he was going to get Jim Jacobson's job and said that fucker messed with the wrong guy. That because Jim Jacobson is always getting nose bleeds, awhile back here, that he's doing coke. These comments were made in the presence of Deputy Don Jeffords and inmate Walter Maki. Also on August 20, 1991 Mr. Zinski told the Mayor of Washburn that he was going to get Jim Jacobson's job. Mr. Zinski has made this same remark to Deputy Don Jeffords, Reserve Deputy Tim Danke and Inmate Walter Maki on different occasions. This is a direct violation of this Policy and Procedure.

COUNT 6 -- VIOLATION OF GENERAL RULES JAIL STAFF
NUMBER 16, PARAGRAPH 9.

Which states Employees are not to discuss policies or business with the inmates.

Investigation shows that from August 12, 1991 through Sept. 2, 1991 Mr. Zinski on numerous occasions did discuss with inmates, Maki and Boyle the investigation which was being conducted against Zinski and Smith. Also during this time the issue of Maki's Huber Fee's was discussed. Both of these issues are in violation of this Policy and Procedure.

COUNT 7 --VIOLATION OF DEPARTMENTAL POLICY AND
PROCEDURES
RESIDENT GRIEVANCE NUMBER 9.

Which states in part: Any inmate may file a complaint or grievance if they feel their rights have been violated.

On or about Aug. 12, 1991, Mr. Zinski was told by inmate Walter Maki that he had a complaint over the fact that he had to pay Huber Fee's while on disability. Instead of advising Maki to follow the Departmental Policy and Procedure on Resident Grievances, Mr. Zinski advised Maki that he should see an attorney and sue the County. Mr. Zinski was quoted to say that you can turn those bucks into big bucks. Mr. Zinski failed to follow this Policy when he received a complaint from an inmate which is a violation of this Policy and Procedure.

COUNT 8 -- VIOLATION OF GENERAL RULES JAIL STAFF
NUMBER 16 PARAGRAPH 6.

Which states: Request for time off, change days off with another officer, etc. has to be requested (24) hours prior to the time requested and approved by the Jail Sergeant or Chief Deputy.

On August 20, 1991 Mr. Zinski failed to report to work or notify a supervisor as to why he would not be working. On August 20, 1991 Severt Dahl showed up to work for Mr. Zinski, according to Dahl he received a phone call around 1:00 p.m. The call came from Knobby Smith who wanted Dahl to work that day for Zinski on the 3pm to 11pm shift. Mr. Zinski failed to notify a supervisor that he would not be into work that day. Mr. Zinski also violated the deputies contract which states: The employee shall notify the Sheriff or his designee and the dispatch center as to his unavailability to work. This procedure was not followed either by Mr. Zinski on August 20, 1991, a violation not only of the General Rules - Jail Staff but of the Deputies Contract with the County.

COUNT 9 -- VIOLATION OF DEPARTMENTAL PROCEDURES
FILLING OUT OF A PAYROLL DEDUCTION SHEET

Mr. Zinski failed to turn in a payroll deduction sheet indicating that he did not work on August 20, 1991. Mr. Zinski knew of the Departmental Procedure as he had followed the procedure on the following dates: 2-18-91, 2-19-91, 4-17-91, 4-21-91, 5-23-91, 6-12-91, 7-12-91, 7-22-91 and 8-3-91. Mr. Zinski's failure to fill out the deduction sheet allowed him to keep an additional eight (8) hours on the vacation/comp., book. Mr. Zinski did fill out said payroll deduction sheet on Sept. 10th after his interview with investigators who raised the question as to why he did not submit one. Failure to turn in a payroll deduction sheet in a timely fashion is a violation of Departmental Procedures.

On September 17, 1991 Sheriff Neff submitted a memo to the County's Board of Supervisors' Sheriff's Committee with the following recommendation:

TO: BAYFIELD COUNTY BOARD OF SUPERVISORS
SHERIFF'S COMMITTEE
CARL WICHLIDAL, CHAIRMAN

REF: REQUEST TERMINATION
DISPATCHER/JAILERS:
LEROY SMITH AND THOMAS ZINSKI

DATE: 9/17/91

On the basis of a completed internal investigation report requested by me, I am requesting termination of employment of the above named employees.

This investigation was conducted under the supervision of Chief Deputy McAllister, independent of my direct involvement. This was done properly and without secrecy to the employees. I have thoroughly reviewed material presented and feel my request is warranted.

This process is not a pleasant course of action

for me to take. Both gentlemen have been considered by me as friends for a majority of the 14 years we have worked together. This termination has nothing to do with their hands-on duty capabilities. This termination is based on the past 14 years of experienced work history plus the current attached reasons.

As Sheriff I will not tolerate the disruptive actions that this investigation revealed to me. No matter who supervises them they cyclically turn against the Administration, Rules/Regulations, fellow employees and now the County. If allowed to continue their employment, they will not be accepted by a majority of the employees. This will adversely affect the Sheriff's Departments operations.

I recommend that Leroy Smith be offered the opportunity to retire versus forced termination. I recommend that Thomas Zinski be allowed to resign versus forced termination. I am also requesting their immediate removal from the duty schedule.

Respectfully,

Ralph Neff /s/
Ralph Neff
Sheriff

On the same date the Sheriff's Committee voted to accept the Sheriff's recommendation and on September 17, 1991 McAllister sent the following memo to the grievant:

SEPTEMBER 17, 1991

TO: MR. TOM ZINSKI

FROM: CHIEF DEPUTY TOM MCALLISTER

SUBJECT: TERMINATION OF EMPLOYMENT

ON THIS DATE SHERIFF NEFF MET WITH THE BAYFIELD COUNTY SHERIFF'S COMMITTEE TO DISCUSS OUR INVESTIGATION AND YOUR EMPLOYMENT STATUS. SHERIFF NEFF RECOMMENDED THAT BASED ON OUR INVESTIGATION THAT YOU BE TERMINATED EFFECTIVE IMMEDIATELY. THE SHERIFF'S COMMITTEE VOTED UNANIMOUSLY IN FAVOR OF THE SHERIFF'S RECOMMENDATION. THEREFORE I AM INFORMING YOU IMMEDIATELY THAT YOUR POSITION AS DISPATCHER/JAILER HAS BEEN TERMINATED EFFECTIVE SEPTEMBER 17, 1991.

ATTACHED YOU WILL FIND A LETTER FROM LT. FREDERICK AND MYSELF TO THE SHERIFF ALONG WITH THE CHARGES DISCOVERED DURING OUR INVESTIGATION.

The grievant grieved the County's actions and was placed on paid suspension until a hearing before the County's Personnel Committee on October 7, 1991.

The Personnel Committee denied the grievant's grievance and all payments to the grievant ceased. Thereafter the matter was advanced to the arbitration step of the grievance procedure in accordance with the parties collective bargaining agreement.

COUNTY'S POSITION

The County contends that all nine (9) counts against the grievant are supported by the facts in the instant matter that they did occur and demonstrates the County had just cause to terminate the grievant. The County has set forth its arguments on each of the nine (9) counts.

Count 1. On August 20, 1991 McAllister and Frederick met with the grievant. During that meeting the County asserts the grievant was placed on notice that he was under investigation. Further, the grievant was given a direct order not to discuss the Maki lawsuit or the Smith trial with any inmates or with other employes. A transcript of this proceeding was made by the County and it points to the following excerpt from an interview with the grievant on August 22, 1991, County Exhibit 12:

T: McAllister R: Neff M: Frederick Z: Grievant

. . .

T. I'm saying you have the right to attend any meeting you want to.

Z. I didn't attend it.

T. I'm saying you have the right to attend any meeting that you want to but your comments, any derogatory comments about the operation of the Sheriff's Dept. or about this particular case that's taking place across the street right now, you know, I'm giving you a direct order not to discuss it here at the Sheriff's Dept. amongst the inmates or amongst the employees.

R. And the reason for that is that we want to keep everything going as far as the operation of the Dept. now forward so that you're aware of that, we don't want any actions to happen.

Z. I never did anything wrong, and I have nothing to worried about anything. I make that very clear. I don't need no attorney, I didn't do anything wrong so I'm not worried about that.

T. Well, don't discuss it with Officer Greene, don't even talk to him about this internal investigation.

Z. I never did talk to him.

T. No, I don't want you to in the future, from this moment on until after the investigation is over, OK.

R. I want to explain why I want it done this way, Tom, is as a result of the trial over there, that trial is for Knobby and his son, it's his son's trial, and I don't want the Dept. to become involved any more with our daily operations, in other words from here on right now that trial is not to have any place in the Dept. functions. Your job is a dispatcher or jailer back there, leave that trial where it's at, in other words.

. . .

T. But just don't be talking with the inmates either, don't forget that portion of it.

Z. Hey, I don't have to talk to inmates, inmates are talking to me. Just like that suit that they're going to put on the County, I know about that.

T. Would you like to enlighten us about it. You're an employee of the Sheriff's Dept. As your supervisor, I'm asking you what suit you're talking about.

Z. Walter Maki's suit.

T. OK. Tell us about it.

Z. I don't have to, you're going to find out anyway.

T. OK. Then we'll find out later.

Z. Um-hum. I mean I had nothing to do with that.

T. I'll tell you what, I think it would be in everyone's best interests just to leave things well enough alone, right now, and we'll talk to you again at a later date after we finish our investigation, OK.

Z. Sure.

T. To be fair.

R. From this point forward do your job and don't get yourself wrapped up in anything other than your job.

. . .

The County asserts the grievant did discuss with Maki, after direct orders not to, Maki's lawsuit and did question Maki about Maki's interview with McAllister and Frederick. The County points to Maki's testimony and excerpts from interviews and the hearing before the County's personnel committee to support its position the grievant committed the allegations contained in Count 1. The County also argues that as Maki was sober during these events his testimony is credible.

Count 2. The County contends the grievant was given a direct order by his supervisor to inform him of the Maki lawsuit against the County, Maki lawsuit. The County asserts the grievant refused to comply with this directive and the grievant therefore committed the allegation contained in Count 2.

Count 3. The County asserts the testimony of Chris Boyle demonstrates that on or about August 29, 1991 the grievant discussed, with Maki, Smith and with Boyle present, the receipt Maki received for Huber fees. Thereafter the grievant solicited and received a written statement from Boyle concerning that discussion. Further, the grievant asked Boyle to keep his ears open concerning any discussions about the receipt or things said to Maki (T. 12/18/91, pp. 139-140). In addition the grievant contacted him to find out if he knew anything about Wollwert and asked him to keep his eyes open for information about Wollwert. The County also points out the grievant acknowledged he had a conversation with Smith in the County's booking room regarding issues relating to Maki's lawsuit while Maki and Boyle were in the booking room and points to County Exhibit 24 (September 10, 1991 transcript of interview with the grievant) to support the allegation the grievant was aware he had been given a direct order not to discuss the Maki case with employes or inmates and that he did discuss the matter with inmates and employes.

Count 4 and Count 7. The County contends that by at least August 12, 1991 the grievant became aware of Maki's complaint and/or impending lawsuit. The County contends the grievant did not comply with Sheriff's Department Rules, rule number 16, when the grievant failed to report to Maki's problem to the Sheriff or Chief Deputy. The County also contends the grievant violated Sheriff's Department policy when the grievant did not have Maki file a resident grievance and urged Maki to sue the County. The County argues the testimony of Maki, Reserve Officer Renz (T. 2/26/92, pp. 66-67), Sergeant Melland (T. 2/26/92, pp. 38-46) and Reserve Officer Tim Danke (T. 2/26/92, pp. 4-9) support its position. Renz testified that on August 3, 1991 he heard the grievant tell Maki to sue the County, that he was informed by the grievant he (the grievant) could do anything he wanted to, and that because he was disturbed by the grievant's actions he made a notation on his personal calendar of the matter. Danke testified that on the evening of August 21, 1991 the grievant told two inmates, Maki and Ainsworth, that they should sue the County. Melland testified that on the evening of August 21, 1992 the grievant informed him that he had told Maki to sue the County, that he thought the County's actions concerning the grievant's fees was discriminatory, that he had asked Maki how Maki was proceeding in his lawsuit against the County, and that he had issued Maki a receipt in which he indicated that the receipt was pursuant to the order of the Chief Deputy. The County argues this testimony supports it contention the grievant committed the allegations contained in Count 4 and 7.

Count 5. The County contends the grievant violated general rules of the department when he made insulting, slanderous and unprofessional remarks about a fellow co-worker. In support of its position the County points to the testimony of Maki, Danke (T. 2/21/92, pp. 4-7, 29, and 34) and Deputy Don Jeffords (T. 2/26/92, pp. 98-103). Danke testified that on the evening of August 21, 1991 the grievant stated within hearing distance of Maki that he wanted Jacobson's job and that "the Sheriff shouldn't be fucking Sheriff.". Danke further testified he thought such statements were inappropriate and that he had never heard other employes make such derogatory statements or use profanity when referring to other employes. Jeffords testified that on the evening of August 21, 1991 in the presence of Maki the grievant stated he was going to sue the County, that he was going to have Jacobson's job and that Jacobson had fucked with the wrong guy. The County argues this testimony supports a conclusion the grievant committed the allegations contained in Count 5.

Count 6. The County contends the grievant violated general rules of the department when he discussed policies or business with inmates. The County argues that even if the grievant had not been issued direct orders, the grievant's discussions with Maki and Boyle violated departmental rules. The County points out the grievant had received the updated rules in April of 1991, had opportunities in April and May, 1991 to review them and received a final draft of the rules on June 1, 1991. The County points out the grievant acknowledged he received a copy of the rules. The County argues the grievant was aware of the County's policy and thus the grievant committed the allegation contained in Count 6.

Count 8. The County contends the agreement clearly requires notice to the grievant's supervisor, the Chief Deputy, and the dispatch Center when requesting a day off. On August 20, 1991 the grievant did not report to work and did not notify his supervisor or the Chief Deputy. The County contends this is a clear violation and further, that the grievant had on eight previous occasions followed County policy.

Count 9. The County contends the grievant further violated County rules when he did not submit a payroll deduction sheet in a timely matter. The

County points out the grievant did not submit one until the matter was brought to his attention on September 10, 1991. The County contends this is a clear violation of departmental procedures.

The County also argues its investigation was fair and impartial, thorough and objective. McAllister and Frederick, a member of the bargaining unit, handled all aspects of the investigation including the interviews of Maki, Smith, Jeffords, Danke, Fizell and the grievant, a written statement from Melland and Renz, and a follow up interview with the grievant and his Union representative on September 10, 1991. The County also contends the grievant's termination is supported by the record and that several of the counts on their own, insubordination and encouraging Maki to sue the County and helping him to create a paper trail particularly flagrant and easily support a termination. Even if the grievant had a stellar work record. The County contends it had made numerous efforts to get the grievant to be more responsible and to follow rules and regulations. The County concludes that the record supports the County's actions in terminating the grievant's employment.

UNION'S POSITION

The Union in replying the County's arguments contends the County did not have just cause to terminate the grievant. The Union contends the County did not put the grievant on notice that his conduct would or could lead to termination. The Union points out that the grievant at most could expect a sequential disciplinary action unless he engaged in flagrant conduct. The Union argues as the County did not place the grievant on notice it failed to satisfy the first step in just cause and therefore the grievant should be reinstated.

The Union also contends the County has failed to establish it had reasonable rules which the grievant violated. The Union argues the direct order given to the grievant at the August 22, 1991 interview was issued by the Chief Deputy before the possibility of a lawsuit by Maki ever arose. Further, that the County relies almost exclusively on Maki's testimony that the grievant was insubordinate. The Union asserts that it is quite clear from Maki's testimony during his interviews, at the personnel committee hearing and at the arbitration hearing that Maki was utterly confused much of the time. The Union also argues that the County assertion that the request from a supervisor to "tell them about the Make law suit" is a direct order is absurd. The Union contends it was clearly a request which was subsequently rescinded. The Union also contends the grievant did not view the Chief Deputy's request as a direct order but believed they were seeking more information from him (T. 4/30/92, p. 131). The Union asserts the allegation the grievant violated the rule concerning use of violent, profane and discriminatory language is not congruent in any way with a charge the grievant used insulting, slanderous and unprofessional conduct. The Union also argues this rule is absurd to define let alone enforce. The Union contends the County rule concerning the allegation the grievant discussed policies or business with inmates is extraordinarily broad and thus unreasonable. The County assertion that the grievant violated a rule respecting the right of a inmate to file a grievance is absurd because the rule applies to inmates not the grievant. The Union also points out the rule concerning time off which is to be taken with a 24 hours notice does not speak to short notice or less than 24 hours. The Union also points out there was no rule which controlled the submission of payroll deduction sheets. Thus, there was no rule which the grievant could of violated. The Union also points out that after May 15, 1991, the date of the implementation of the new collective bargaining agreement, no one had ever provided the jailer-dispatchers with an in-service training session to inform them of the provisions of the agreement. The Union concludes that only in a few instances can the County demonstrate it adopted reasonable work rules. For

the bulk of the counts the Union argues the undersigned should conclude that no rules existed and therefore no just cause existed for the grievant's termination.

The Union also contends the County failed to conduct a full and fair investigation into this matter. The Union argues investigation connotes no bias. Herein, however, the Union asserts the proceedings conducted by the County were interrogation and trial rather than investigation. The Union argues all the proceedings, including the presentation before the Sheriff's grievance committee, were presentations were the grievant was not represented. The Union points out it was not until the grievant was placed on unpaid suspension on September 17, 1991 that the grievant received a list of the charges against him. The Union also points out the Committee terminated the grievant without even hearing from him. The Union also asserts that the hearing before the Personnel Committee was not a part of the investigation but in fact a trial and cannot cure the defects in the County's investigation. The Union also stresses the County's conduct towards Maki was anything but fair and objective, pointing out Maki was shook up, paranoid whenever he was called into the office because he thought he had done something wrong, felt threatened when interviewed and that his answers were structured by the County (T. 2/27/92, pp. 90-97). The Union also stresses that when Maki was interviewed there were times when the tape recorder was turned off. The Union concludes that in the absence of a fair investigation the County did not have just cause to terminate the grievant.

Turning to the specific counts against the grievant the Union argues the County failed to prove the charges against the grievant.

Count 1. The Union argues that the grievant was unaware he was under a direct order not to discuss the Maki law suit with inmates or employes. The Union further argues that it would be entirely possible for someone to misunderstand the difference between a question and a direct order. The Union further contends the Chief Deputy in effect countermanded his own order when he informed the grievant they would leave things alone and talk to the grievant again when the investigation was over. The Union also points out there were two subjects taken up in the interview, the Smith drug case and the Maki law suit. The Union asserts the County did have the right to direct the grievant to stay out of the Smith drug case. The Union argues that the County did not have the right to direct the grievant to stay out of the investigation into any employe wrongdoing without offering the grievant the opportunity to have Union representation. The Union concludes that in the absence of clarity that the grievant was given a direct order the grievant cannot be fired for this supposed act of insubordination.

Count 2. The Union points out the initiation for the investigation was the complaint against Smith. Thus when the questions turned to the grievant's conduct, which was a surprise even to the sheriff (T. 2/27/92, pp. 25-27), the grievant exercised his rights to have the interview terminated. The Union notes here that Frederick was already aware at the time of the interview of the possibility of a law suit by Maki. The Union argues that Frederick in effect set out to entrap and provoke the grievant. Here the Union points out the grievant had already followed the chain of command by informing two different sergeants of the Maki law suit, one of whom had told Frederick. The Union asserts the conduct of the County was therefore outrageous. The Union claims Melland testified the grievant had informed him of the potential Maki law suit and that he reported to Frederick the very next morning, August 22, 1991 (T. 2/26/92, pp. 38-40). The Union also argues that once the grievant reported the potential of a law suit, that was all he was obligated to do. The Union concludes the County's discharge of the grievant cannot be justified by the County's proof of Count 2.

Count 3. The Union contends the ambiguity of the order to the grievant not to discuss with inmates the on going investigation would of prevented the grievant from conducting his own defense. Further, that McAllister's contention that the grievant should of worked through his bargaining representative or an attorney is only McAllister's opinion (T. 4/29/92, pp. 87-89). The Union also argues the statement the grievant obtained from Boyle was while the grievant was off duty and the Union argues the County cannot discipline the grievant for conducting his own defense on his own time because there must be a greater degree of relatedness between off duty conduct and damage to the County's mission than there has to be demonstrated for on duty conduct. The Union also argues Renz's calendar notation of August 3, 1991 rather August 12, 1991 concerning the grievant's comments about suing the County may have been the grievant's anger concerning the treatment of his son. Which is why Renz wrote "Zinski sue County" in his calendar. The Union concludes the County has failed to establish proof for its Count 3.

Count 4. The Union asserts this allegation is clearly contrary to the evidence presented at the hearing and contends the grievant clearly complied with this rule even though it is an ambiguous rule. The Union argues Frederick was clearly aware the grievant had reported to Sergeant Frizell on August 21, 1991 that Maki was going to sue the County. The Union points out here that the only employe evaluation ever performed on the grievant was done by Frizell. The Union contends the County had raised the outrageous concept that even though Frizell outranked the grievant, that Frizell was not the grievant's superior. The Union also notes that Frizell informed his wife (the Sheriff's secretary) of the potential law suit in the mistaken belief she would pass in on to the Sheriff. The Union also points out that under the previous Sheriff Frizell was in charge of jailer/dispatchers and not until April 30, 1992 was he informed the chain of command had changed (T. 2/27/92, pp. 83-85). Here the Union stresses the jailer/dispatchers believed whatever sergeant was on duty was their immediate supervisor. The Union also asserts the grievant informed Sergeant Melland of the potential of a lawsuit by Maki. The Union points out that the grievant asked Maki about the potential for a law suit and then immediately reported to Melland who then immediately reported to Frederick (T. 2/26/92, pp. 44-47). The Union also points out it was Smith who acknowledged it was he who suggested to Maki he may have been discriminated against (T. 4/30/92, pp. 25). The Union further points out that Jeffords testified he only heard the grievant agree with Maki that Maki had enough to sue the County (T. 2/26/92, pp. 105, 111-118). The Union, in addition, argues that Danke's testimony is confused and disjointed. The Union concludes the grievant is not guilty of Count 4.

Count 5. The Union contends the proof and rule cited in Count 5 are an attempt by the County to trample on the grievant's first amendment rights. Further, that the County offers no standard to judge how the grievant's use of profanity differed from profanity used by other employes. The Union asserts that the grievant cannot be terminated for violating this rule because he did not violate it, that his conduct in this are is unremarkable from other employes, and because his comments are protected free speech.

Count 6. The Union asserts the rule cited in Count 6 is impossible to adhere to because everything a jailer/dispatcher does with inmates relates to County policies or business. The Union further argues the County cannot quixotically enforce a rule leading to termination of the grievant in light of its own considerable laxity in enforcement.

Count 7. The Union contends the rule cited in Count 7, inmates grievance procedure, applies to inmates and does not apply to the grievant. The Union points out that Maki was a regular and knew what his rights were and where

inmate grievances went. The Union acknowledges that the grievant may have commiserated with Maki. However, the Union stresses there is scant evidence to suggest that the grievant told Maki to sue the County and, even if he did, there is no County rule which prevents him from doing so. The Union concludes this Count provides no basis for terminating the grievant's employment.

Count 8. The Union points out that for time off wanted with less than 24 hours notice the grievant followed the practice in existence. The Union also points out the County has not provided any written policy which covers short time notice time off. Thus, the Union argues the practice of the parties governs this situation and claims the grievant followed the parties practice. The Union stresses that the grievant took time off within 24 hours, got his own replacement, and no shift was left unfilled. The Union concludes the grievant cannot be terminated for following the old ways even if new rules governed his activity because his absence would have been the first violation of the new policy.

Count 9. The Union contends this is not the first time a time sheet has gone missing and points out this is the first time an employe has been disciplined for such an action. The Union argues the County has concluded the grievant intentionally failed to turn in a timesheet, notwithstanding the fact he immediately submitted one when it was brought to his attention. At most, the Union asserts, what the grievant did was fail to turn one in timely and when this was brought to his attention he immediately did so. The Union also points out there is no evidence the grievant attempted to defraud the County. Therefore the Union concludes there is no proof to sustain a termination.

The Union also claims the County did not apply its rules, orders and penalties even-handedly. The Union points out that in the past only verbal reprimands have been given to employes for failing to turn in a time sheet and there was no notice to the grievant that such a failure would result in discipline. The Union also argues that other inmates have threatened to sue the County and employes were not placed on notice to not discuss the matter with the inmate. Nor has an employe ever received a discipline higher than a verbal warning for using profanity in and around the jail. The Union also points out Smith testified he used profanity and made a threatening gesture towards the Sheriff and did not receive any discipline (T. 4/30/92, pp. 77). The Union also points out Jeffords was not disciplined for making the comment he was pissed about an undercover cop being dirty (T. 2/26/92, pp. 122).

The Union also points out the Secretary Frizell was not disciplined for writing "for community service" on a receipt she issued to Maki. The Union also argues that the County has a standard for the appropriateness of discipline and even the current sheriff has benefited from that standard. Here, the Union points out, Frederick was not disciplined by the Sheriff when at the August 20, 1991 interview of the grievant even though he knew of the Maki law suit and had not informed the Sheriff of the matter (T. 2/27/92, pp. 45-46). The Union also claims the fact that the County disputed the grievant's unemployment compensation claim and did not dispute Smith's claim demonstrates the Department's administrators were and still are angry at the grievant.

The Union also contends the degree of discipline in this matter is excessive. The Union argues that Frederick's recommendation of discipline in this case was based on Frederick's personnel knowledge of the grievant's work record including a personnel matter which should have been expunged from the grievant's work record. The Union also argues there is no cause and effect between McAllister's attempts to work with the most experienced employe in the jail/dispatch area and deciding that the grievant needed to be fired. The Union also points out there was no progressive discipline in this matter and there is no evidence that the grievant is not remediable. The Union further

points two sergeants with supervisory authority over the grievant did not discipline or tell the grievant he had done anything wrong.

The Union concludes that the County did not demonstrate the County had just cause to terminate the grievant and asserts the grievant should be reinstated.

COUNTY'S REPLY BRIEF

The County argues that just cause is the applicable standard in the instant matter and asserts it had just cause to terminate the grievant's employment. The County also argues that as early as April 29, 1980 when the grievant received a written warning the grievant was placed on notice that violation of the County's rules, regulations and procedures would result in discipline. The County also asserts these rules, regulations and procedures are reasonable. The County stresses it is necessary for employes to follow the chain of command and not to be insubordinate is a part of the common law of the shop. The County also asserts that to require the County to have a written rule prohibiting employes from telling inmates they should sue the County is absurd when such a rule is so basic. The County also argues the Union cannot claim Maki's testimony is unreliable and then attempt to rely on it. The County also reasserts that its investigation was thorough, fair and objective.

The County also asserts the facts alleged in the nine counts are supported by the evidence. In Count 1, the grievant was clearly told not to discuss the Maki lawsuit with inmates, there was no need for the grievant to begin a defense of himself because at the time of the August 22, 1991 interview there was no case against him, and that the County did have the right to direct the grievant not to discuss matters pertaining to an on going investigation. In Count 2, when the grievant refused to discuss the Maki law suit he committed an act of insubordination, Melland was not the grievant's supervisor, and that the grievant informed Melland the grievant had told Maki he was being discriminated against, the grievant had told Maki to sue the Chief Deputy and the Department, and that the grievant had checked with Maki to see what Maki had done about the matter.

In Count 3, the Sheriff had told the grievant not to discuss the matter with inmates or employes because the Sheriff did not want the grievant interfering with the department's investigation. In Count 4, clearly the Chief Deputy was the grievant's immediate supervisor and the grievant never raised the Maki issue with the Chief Deputy. In Count 5, the County has not infringed on the grievant's rights to free speech. In Count 6, as of August 22, 1991 the grievant was under direct orders not to engage in conversations regarding investigations with inmates or employes. In Count 7, Frederick testified it would be inappropriate for an employe to tell an inmate to sue the County (T. 12/18/91, p. 86). In Count 8, the only supporting evidence is the testimony of Smith who had his own problems with the County and whose credibility is suspect. And in Count 9, the County refers the undersigned to its previous arguments.

The County asserts it applied The County's rules, orders and penalties even-handedly. The County further asserts the termination of the grievant is supported by the record, that the seriousness of the offenses of insubordination and telling Maki to sue the County alone justify termination. The County would have the undersigned dismiss the grievance.

DISCUSSION

The initial action that commenced the investigation launched by the County concerned a complaint filed by the Washburn Police Department concerning

the actions of Jailer/Dispatcher "Knobby" Smith. On August 22, 1991 the County interviewed the grievant about this matter and the County's investigators, Chief Deputy McAllister, Lieutenant Frederick, as well as Sheriff Neff, became aware of actions by the grievant which they deemed inappropriate. These actions particularly concerned the grievant's handling of a problem concerning Huber fees and inmate Maki. The record demonstrates Maki has been incarcerated in the County's jail on a number of times and is referred to as a "regular". The record also demonstrates that Maki is a personal friend of the grievant's, has known the grievant all his life and has been to the grievant's home a number times. Maki was interviewed by McAllister and Frederick at least three times, testified at the hearing before the County's Personal Committee and testified at a unemployment compensation hearing concerning the grievant's request for unemployment compensation. The County subpoenaed Maki to testify at the arbitration hearing and he was scheduled to appear on February 26, 1992. Maki never arrived and the County launched a search for him. On the morning of February 27, 1992 he was found and Maki was brought to the hearing. During his initial testimony Maki acknowledged he was having difficulties with the questions being asked him. He further acknowledged he had "... one hell of a big hangover." (T. 2/27/92, pp. 59). Maki was allowed by the undersigned to have some time to rest. After a lunch break and a tour of the County's jail facilities with both parties' representatives Maki returned for testimony. Maki's testimony was confusing, inconsistent and vague. He could not recall certain remarks he had made even after transcripts of interviews and hearings were presented to him for his review. Maki later testified that anytime he was called into the office for questioning he was paranoid (T. 2/27/92, pp. 90). Further, that he felt threatened when he was questioned (T. 2/27/92, pp. 92-93), and, that he felt threatened while he was testifying at the arbitration hearing (T. 2/27/92, pp. 98). In addition, Maki testified he not only told the County what he thought the County wanted to hear, he told the grievant what he thought the grievant wanted to hear (T. 2/27/92, pp. 94-95). Maki also testified that the grievant supplied him with a copy the transcript of his testimony at the October 7, 1991 Personnel Committee hearing. Maki went through this testimony at the grievant's home, while he was "pretty well in the bag too" to determine if there were any discrepancies in his testimony (T. 2/27/92, pp. 167-173). The undersigned finds that the testimony of Maki is not credible. Clearly, being a friend of the grievant and paranoid about being questioned by authorities, Maki has given so many different versions about what has occurred in the instant matter the result is Maki can not distinguish between what did occur and what information he has given the County or the grievant. Maki was clearly reluctant to testify in the instant matter and it is evident from his testimony that even at the first interview he had with McAllister and Frederick he may have told the interviewers what they wanted to hear rather than what actually did occur. The undersigned therefore concludes Maki's knowledge of the events surrounding the grievant's actions is not credible and neither the County or the Union can rely on his knowledge of the events in support of respective positions in the instant matter.

The undersigned also finds the testimony of Smith to be not credible. Smith is clearly a close friend of the grievant. Smith has also had his own problems with the County and, as the County has pointed out, may have his "own ax to grind" against the County.

Turning to the specific Counts raised by the County against the grievant the undersigned finds the following:

Counts 1 and 3 - Insubordination. The undersigned has combined these two Counts because both concern McAllister's directive to the grievant. A careful review of the transcript of the interview on August 22, 1991 demonstrates, as the Union as argued, that the directive to not discuss the Maki lawsuit with inmates or employes is at most a directive to keep quiet and do his work.

Clearly, the grievant did not do this because the record demonstrates he discussed the matter with Boyle who acknowledged Maki was present on Friday, August 29, 1991. At most, the grievant committed a technical violation of the directive and such a violation would not be sufficient to discharge the grievant. However, the record also demonstrates that the grievant contacted Boyle after being told to stay out of the matter involving Smith's son, Boyle's testimony (T. 12/18/91, pp. 141-147). The grievant violated the directive not to discuss the matter concerning Smith's son when he contacted Boyle after the direct order that he was not to do so. The undersigned finds the County had cause to discipline the grievant for insubordination on this matter, however, the undersigned also notes that this action did not occur until after September 10, 1991 when the grievant was informed of the list of charges against him and at this time he may of been attempting to mount a defense to these charges.

Count 2 - Insubordination. The grievant was given a direct order to tell Neff, McAllister, and Frederick about the Maki law suit. The fact that the grievant had informed other superiors about the law suit, Frizell or Melland, is irrelevant. The fact that McAllister said, "OK. Then we'll find out later.", does not correct the grievant's insubordination. The grievant refused to answer a question which the undersigned finds a reasonable directive. The fact that at the time the County did not press the matter or immediately discipline the grievant does not excuse the grievant's refusal. The grievant was insubordinate and the County has cause to discipline the grievant for this action.

Count 4 - Violation of Work Rule. The record demonstrates that as early as August 12, 1991 the grievant was aware of Maki's displeasure over having Huber fees deducted from his workmen's compensation funds and that Maki may sue the County over the matter. The record also demonstrates that the earliest the grievant informed a superior of this problem was August 21, 1991 (Frizell). There has been no explanation from the grievant as to why he waited to do this. The County's rule that problems which arise are to be reported is a reasonable work rule. The fact that the grievant may have been sympathetic to Maki's plight does not excuse him from delaying in reporting the problem. Clearly the grievant was aware of Maki's distress and did not report it in a timely manner which could allow a problem to fester. The undersigned concludes the County had cause to discipline the grievant for this action.

Count 5 - Violation of Work Rule. This Count concerns the use of improper language and statements made by the grievant. Both Danke and Jeffords testified concerning statements and language used by the grievant while an inmate was present. The language used and the statements made were prior to August 22, 1991. It is clear that the grievant was upset at Jacobson's concerning his son's name being mentioned at the August 20, 1991 meeting at the Washburn City Hall. Contrary to the Union's arguments, this rule clearly covers the language used by the grievant and the County's concern about appropriate language being used by employes towards staff and inmates. While the statements and language used by the grievant are clearly contradictory to this rule, there is the fact the grievant was distraught over Jacobson's actions. While the undersigned finds the County had cause to discipline the grievant over this matter, at most a verbal reprimand is warranted.

Count 6 - Violation of Work Rule. This rule clearly bars employes from discussing policies or business with inmates. However, the undersigned finds this rule overly broad. In effect it prevents employes from explaining County policies to inmates or how the County operates to inmates. As the Union has pointed out, virtually every contact a jailer/dispatcher has with an inmate involves policies and business. Thus, the undersigned finds no merit in the County's claim that it had cause to discipline the grievant because he

discussed County policies or business with inmates because the work rule is unreasonably broad.

Count 7 - Violation of Work Rule. The record demonstrates the grievant was aware of the County's inmate grievance procedure. Even if the grievant had an opinion concerning how an inmate's grievance would be handled or on the grievance's eventual outcome, once the grievant became aware of Maki's concern over payment of Huber fees the grievant's responsibility was to report the matter and to inform Maki of the internal process available for the resolution of complaints. By not doing so the grievant permitted a bad situation to become worse and, in effect, violated Maki's right's by not immediately bringing Maki's concern to the attention of his superiors. Thus the undersigned finds the County had cause to discipline the grievant for this Count.

Count 8 and 9 - Violation of Rules and Procedures. The record demonstrates that the grievant did not inform his supervisor of his use of a day off. Clearly the collective bargaining agreement requires such notice. However, the record also demonstrates that the grievant's actions were consistent with the practice among jailer/dispatchers and there is no evidence that the employes were ever placed on notice that this practice was to cease once they became covered by the collective bargaining agreement in May of 1991. The Union can assume that such a notice has now been given, but, prior to such a notice, the undersigned finds the County does not have cause to discipline the grievant for this action. The undersigned finds that the grievant's failure to turn in a time sheet, if in fact he failed to do so, is harmless because he immediately did so when the matter was brought to his attention. The undersigned also notes here that the burden is on the County to demonstrate it had consistently enforced this procedure and disciplined employes who failed to follow. The undersigned finds the County has failed to demonstrate such a consistency. Therefore the undersigned concludes the County did not have cause to discipline the grievant for the acts alleged in Counts 8 and 9.

The undersigned has therefore found the County had cause to discipline the grievant on Counts 1, 2, 3, 4 and 7, at most to verbally reprimand the grievant on Count 5, and that the County did not have cause to discipline the grievant on Counts 6, 8, and 9. Having found the grievant to have committed some of the actions for which the County disciplined him but did not have just cause for all of the actions the undersigned deems it necessary to determine whether the punishment, termination, fits the crime. The undersigned notes here that the grievant does not have a very good work record, but that he hasn't been formally disciplined since 1985. There is however some question as to whether Frederick, who originally recommended the grievant's discharge, took into consideration when making his recommendation the fact the grievant had been disciplined for a matter which the parties had voluntarily expunged from his record. This matter, which the undersigned will refer to as the "Deer" episode, may have prejudiced Frederick when he originally recommended termination. There is no evidence that either McAllister or Neff took the Deer episode into consideration when they recommended the grievant's discharge. However, they may have relied on Frederick's recommendation. There is also some evidence that McAllister and Frederick, in their search for the truth, may have unintentionally intimidated Maki into making statements which where damaging to the grievant. While the County may have in good faith relied on Maki's information, it is clear Maki was trying to watch out for himself rather than telling the truth. Given the above, and the evidence, testimony, and arguments presented, the undersigned concludes that while the County had just cause to discipline the grievant termination is too severe a penalty for the infractions the grievant has committed. At the same time it is evident that the grievant allowed personal matters and friendships to interfere with the proper performance of his duties. Particularly his failure to promptly inform

his superiors of Maki's complaint about Huber fees. Further, his contacting Boyle while he was still under a direct order not to discuss the Smith matter are grounds for discipline. Given the above the undersigned concludes the County did not have just cause to terminate the grievant. The County is hereby directed to immediately reinstate the grievant to his former position and to reduce his discipline to a suspension with an ending date of the date the grievant returns to work. Such a return to work should be no later that one (1) week after receipt of this award. The undersigned does find the actions committed by the grievant to be serious infractions and therefore the grievant is not to be made whole for lost wages and/or benefits.

AWARD

The County did not have just cause to terminate the grievant. The County is directed to reinstate the grievant to his former position within one week of the date of this award and to reduce the grievant's discipline to a suspension.

Dated at Madison, Wisconsin this 29th day of December, 1992.

By Edmond J. Bielarczyk, Jr. /s/
Edmond J. Bielarczyk, Jr., Arbitrator

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