BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	:	
COLUMBIA COUNTY COURTHOUSE EMPLOYEES, LOCAL 2698-B, WCCME, AFSCME, AFL-CIO	:	Case 148 No. 49429 MA-7949
and	:	
COLUMBIA COUNTY	:	

Appearances:

Mr. David White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719-1169, appearing on behalf of Columbia County Courthouse Employees, Local 2698-B, WCCME, AFSCME, AFL-CIO, referred to below as the Union.

Mr. Donald J. Peterson, Corporation Counsel, Columbia County Courthouse, 400 DeWitt Street, Portage, Wisconsin 53901, appearing on behalf of Columbia County, referred to below as the Employer.

ARBITRATION AWARD

The Union and the Employer are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The Union requested, and the Employer agreed, that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve a dispute reflected in a grievance filed on behalf of Russell Krakow, referred to below as the Grievant. The Commission appointed Richard B. McLaughlin, a member of its staff. Hearing on the matter was held on September 14, 1993, in Portage, Wisconsin. The hearing was not transcribed. The parties stated their positions at the hearing and did not file written briefs.

ISSUES

The parties stipulated the following issues for decision:

> Did the Employer have just cause to suspend the Grievant for three days?
>
> If not, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE XV - MANAGEMENT RIGHTS

> 15.1 The County possesses the sole right to operate county government and all management rights repose in it, subject only to the provisions of this contract and applicable law. These rights include, but are not limited to the following:
>
> . . .
>
> D) To suspend . . . and take other disciplinary action against employees for cause . . .

BACKGROUND

On November 17, 1992, 1/ Larry Martin, the County's Director of Buildings and Grounds, met with the Grievant, and issued him the following notice of suspension:

> . . . On October 9, 1992, we sat down . . . and . . . went over the Rules for the Janitors one at at (sic) time. On November 3, 1992, Ed Riley received a letter of complaint from Carol Schultz stating you had stopped and talked to her on two different nights, October 30, 1992, and November 2, 1992, and that your were making statements that were untrue and border line slander.
>
> This is a violation of rule # 2 which you had signed. I asked Mrs. Schultz what time it was when you were talking to her. Her reply was that it was 4:10 p.m.
>
> This justifies a 3 day suspension without pay.
>
> . . .

Schultz is employed by the County in its social services department and works at the John Roche building. Her complaint reads thus:

> **October 30, 1992**

1/ References to dates are to 1992, unless otherwise indicated.

(The Grievant) came into the file room down stairs, and began visiting. He said he had never seen me before. I told him where I was working, and that I had come from personnel in Wyocena. He continued to talk about his boss, making very hurtful statements about him. "He's an idiot", He doesn't have a clue what he is doing", and something about helping one of the maintenance men move and that he moved more county property than personal. He seemed to think this was very funny. He continued to tell me about how he was disciplined for keeping other employees from doing their work, and that he felt this was very unfair and uncalled for. I remember thinking that I could understand how this must have taken place. (The Grievant) proceeded to talk about employees at the court house, Judy Ness and Jim Aiello, in particular. He made a very slanderous statement about Jim. He continued to talk even when I ignored him and did not answer him. I finally told him that I had to leave and then come back upstairs, just to get away from this conversation.

November 2, 1992

(The Grievant) came into the file room downstairs and proceeded to talk about the situation at the nursing home in Wyocena. He asked if I had heard about that personnel director that had been stealing funds "it was in the paper and everything". He was making this statement to myself and another employee, Diane (sic). He did not know either of us. I became very angry with him and told him that I was the person he was talking about, and that I did not appreciate what he was saying, and suggested he might get his facts straight before he spread rumors like that. I said if he repeated that story one more time, I would take him to meet Tom Pink. When he realized he had made a mistake, he said that he was "just joking". I told him that I did not see anything funny in spreading such garbage, and he should not take parts of stories and make up his own version.

. . .

Martin made notes of his conversation with the Grievant on November 17. Those notes are dated November 19, and read thus:

> On the night of November 17, 1992, Bob Okan, Night Supervisor, Craig Kluth Union Representative, and myself went up to the John Roche Building to give . . . reprimands.
>
> . . .
>
> I then call (sic) (the Grievant) down and gave him his reprimand. He read the letter that was sent to us. (The Grievant) turned and made excuses right away. (The Grievant) told me she . . . had called him into the room to ask him the time . . . That would have been acceptable, but not stand there holding a conversation with her. (The Grievant) then said he could reverse what was said and say Carol Schultz said it to him.
>
> (The Grievant) did then admit that he had told her that an ex-janitor, Jeff Vike, had told him that he had helped me . . . move, and he told (the Grievant) he saw a lot of county property. I told (the Grievant) that was what I mean (sic). The story was false and that Jeff never helped me move anywhere. By spreading the lie it was hurtful and there were no facts to back up the allegation. After listening to (the Grievant) get off the subject for a few minutes, I told (the Grievant) that we were not picking on him nor were we trying to get him fired. I told him that we had received a letter and that we were following procedure.
>
> I was again asked if we were trying to get him fired. I told him that we had also received letters from two people in the Nurses Department that we didn't even include in the reprimand. If those letters would have been about a resent (sic) encounter. Ed Riley and John Tramburg would have said fire him. Because those were over past encounters we didn't include them. Also, I told (the Grievant) that John Tramburg instructed me to confer with Don Peterson before I took any action on the remaining issue. I did and I told (the Grievant) that Don Peterson had said

> that a 3 day suspension was the next step, and we should follow procedures. I then told (the Grievant) of a corrective action that I tried to talk to him the 9th of October and was interrupted. His work was good over all, but his problem was talking.
>
> I told (the Grievant) to stop standing around talking and he wouldn't get into trouble. I tried to tell him this at our meeting on October 9th. The (sic) being upstairs before 4:30, changing the starting time at the Roche Building so they couldn't get upstairs early and talk that this was the reason for most of the reprimands. (The Grievant) then told me he would be grieving this and I told (the Grievant) he had that right. (The Grievant) then again asked me if I was trying to get him fired. I told (the Grievant) that I gave him a course of action to correct the problem (not to be standing around talking to people) . . . I then told (the Grievant) it was up to him to use that corrective action or not . . .

The October 9 events referred to by Martin concern a settlement agreement reached by the County and the Union concerning grievances filed by the Grievant and another janitor. That settlement agreement reads thus:

> 1. The written reprimands . . . dated October 23, 1991 shall be removed from the grievant's files;
>
> 2. The letter of one (1) day suspension . . . dated March 9, 1992 shall be reduced to a written reprimand;
>
> 3. The letters of three (3) day suspensions . . . dated May 29, 1992, shall be reduced to a one (1) day suspension for each grievant;
>
> 4. (The Grievant) shall be reimbursed for three (3) days lost pay . . .
>
> 5. All grievances involving (the Grievant) . . . as of October 1, 1992, shall be withdrawn . . .
>
> 6. The grievants, with Union representation, shall meet with appropriate representatives of

the Employer to define rules and work expectations;

7. The grievants will enter into written statements of work rules, consistent with the terms of the collective bargaining agreement, addressing: breaks; hours of work; contacts with other employees; and avoidance of harassment, sexual or otherwise, by any county employee;

8. The discipline referred to in item 3, above, was imposed for alleged failure to properly complete cleaning tasks; the parties were unable to agree on the validity of those allegations.

. . .

The County and the Union met regarding the work rules referred to in Section 7 of the October 9 settlement agreement. The County promulgated "RULES FOR JANITORS" consisting of 21 numbered rules. The Grievant reviewed and signed those rules. Work Rule 2 reads thus:

> You are not to stand around talking to other employees or friends during working hours. A greeting such as hi or good night is not what we mean.

The Grievant issued a written response, dated December 11, to his suspension. His response reads thus:

> . . . Ms. Schultz has misrepresented my conversations with her of October 30 and November 2, 1992. Her version of these conversations is inaccurate . . .
>
> On October 30, 1992, I was in the process of setting up for WIC when I noticed a person unfamiliar to me tearing files apart. I approached the woman and asked her who she was since it is not uncommon to find unauthorized persons in county buildings. She became indignant when I asked her who she was and replied that I should certainly know that she was the "star" witness in the County Home incident. She went on to say that as the Personnel Director for the Wyocena Home she was similar to Judy Ness or Jim Aiello in her

position at the home. Then, she asked me if I knew either of these people and I replied that I did know them.

Ms. Schultz went on to discuss her job at the home and her key witness role in well publicized problems that surfaced there. I advised her that I could not spend time talking to her since I was working. She called to me as I left and asked for help with boxes she was attempting to lift. She continued to speak about the legal problem that surfaced at the home and her knowledge of who was supposed to have stolen from the home. I advised her that I do not believe everything that I hear and I gave her an example. I told her that a janitor had told me that he had moved more county property on a certain day than his own personal property. This seemed difficult to believe.

On November 2, 1992, I was in the process of checking to see if WIC was finished so that I could clean the area. I noticed Ms. Schultz and another person working in the file closet. I asked her if they would need any help with boxes again that day. Then I told her that I had read some of the articles in the Portage Press about the Wyocena Home. Ms. Schultz became very angry appearing to deny ever telling me all that she had on October 30. At this point, I apologized if I had upset her and I left to assume my duties.

It appears that Ms. Schultz enjoys talking about what she believes to be her role in the Wyocena Home legal case. It also appears that when she is alone, she readily talks about anything, but when there is another person to witness what she says, she becomes angry and retaliates.

Action was taken against me for a situation that was not represented accurately. It also appears that Ms. Schultz acted against me because I knew that she was talking about a situation that she shouldn't have been talking about to other people.

. . .

Testimony at hearing supplemented the documentary material noted above. An overview of the testimony of each witness will complete the factual background to the grievance.

Larry Martin

Martin has served as the County's Buildings and Grounds Director for about fifteen years. He testified that the Grievant's socializing with other workers has been a long term and continuous problem. The Grievant had, Martin noted, a reputation for talking to other workers whether those workers wished to talk to him or not. The problem was part of the discipline which was the background to the October 9 settlement agreement. The immediate cause for that discipline was the Grievant's failure to complete his work assignment. Martin noted, however, that he authored Work Rule 2 with the Grievant specifically in mind.

Martin stated that the Grievant was, during October and November of 1992, assigned to the Roche Building, and specifically to clean the west end of the basement of that building. At one end of the hallway in the west end of the building is a windowless room which serves as a storage area for County files. The Grievant has no responsibility to clean that room, unless he is specifically directed to do so. On October 30 and November 2, Carol Schultz was working in the file room. On neither night was the Grievant directed to clean the room.

Martin testified that his written statement accurately summarized the events surrounding the Grievant's suspension. He noted he discussed Schultz's complaint with Schultz before determining to suspend the Grievant, but did not discuss the complaint with Bixby. Based on his conversation with Schultz, he concluded the women felt harassed by the Grievant. He viewed the imposition of a three day suspension to be an appropriate extension of the one day suspension noted in the October 9 settlement agreement. He acknowledged that the County had a policy of utilizing progressive discipline. He did not, however, feel that each progressive step had to be based on the violation of the same work rule or on the same type of conduct as the prior progressive step.

Dianne Bixby

Bixby is the "Diane" referred to in Schultz's written statement. She no longer works for the County, but was working for the County as a limited term employe on November 2. On that date, she and Schultz were moving County files from offices upstairs to the basement filing room. Bixby noted the Grievant entered the room to speak with Schultz. She could not recall him

bringing any cleaning tools with him. She did not pay a great deal of attention to their conversation, but noted that the Grievant initiated the conversation, and that Schultz did not appear to be "fully engaged" in the conversation. She stated the Grievant never asked, or was requested, to do any cleaning in the room. She noted that at one point in the conversation Schultz became visibly upset, and the Grievant apologized. She could not remember when the conversation occurred, guessing that it might have been mid-morning or mid-afternoon. She estimated the conversation lasted from ten to fifteen minutes.

Carol Schultz

Schultz testified that the Grievant entered the filing room on October 30 on his own, and initiated the conversation she reported on her written statement. She believed the Grievant entered the room at about 4:00 p.m. She did not know he was a janitor, and stated he never offered to clean the file room or help her with her duties. She stated she asked the Grievant the time, and left the room at about 4:25 p.m. to avoid any further discussion with him.

She noted that she was working with Bixby on November 2, and had shut the door. The Grievant entered the room at about the same time as he did on October 30. She noted he entered without any tools, was not asked to, and did not do, any work. She testified that her written statement, if anything, understated how upset she was with him. She felt he was spreading gossip which could destroy her reputation, and stated she yelled at him. She noted she was so upset about the conversation that she discussed it with other employes. She noted those employes told her the Grievant regularly talked at length to employes whether the person he spoke to cared to share the conversation or not. She stated employes told her the only way to avoid such conversations was to walk away from him.

The Grievant

The Grievant noted that on October 30 he was working in a room across the hall from the room in which Schultz was working. He stated he saw her pulling files apart, and wondered what she was doing. He noted it was not unusual for him to see non-County employes in County buildings with no County-business reason to be there. He stated he approached her initially to protect the County's files. He stated Schultz called him into the room and asked him what time it was. He said he gave her the time, 4:10 p.m., and asked her who she was. Schultz then identified herself as the Personnel Director from the County Home. He noted he warned her he could not stay and talk due to a warning he had received, but did stay long enough to move a box of files for her,

at her request. He estimated he was in the room roughly five minutes.

He noted he returned to the file room at about 4:25 p.m. At this point, Schultz identified herself as the star witness in a prosecution involving misappropriation of funds at the County Home. She noted to him that she was moved to the Roche building to be kept closer to the District Attorney, and boasted that her testimony would drive the Director of the Nursing Home from his job. He noted he terminated the conversation to get back to work.

He acknowledged he started the conversation on November 2. He stated he asked if he could help with the filing boxes. He then mentioned events surrounding the County Home, only because Schultz had spoken at length about those events on October 30. He denied the door to the filing room was closed, and estimated this conversation lasted no more than five minutes.

The Grievant denied the accuracy of much of Martin's November 19 notes. He specifically denied telling Martin that he "could reverse what was said" by Schultz during the two conversations. He noted that he has worked for the County for roughly five years, and had enjoyed a "real spotty" relationship with his supervisors. Neither Martin nor Okan respected his work, the Grievant noted. Beyond this, he stated that Okan would swear at him, and would regularly threaten to fire him. Among other threats, Okan would tell the Grievant he was too old to find another job, and should behave toward supervision accordingly. The Grievant noted he had actively watched County facilities, and had warned supervision about a gas leak and exposed asbestos.

Craig Kluth

Kluth has worked for the County for roughly three years, and presently serves as the Union Steward. He served as Steward at the time the Grievant received his suspension. He stated that Martin's notes accurately represented what was said during the November 17 meeting.

Further facts will be set forth in the DISCUSSION section below.

THE EMPLOYER'S INITIAL STATEMENT OF POSITION

The Employer asserted the issues posed by the grievance are straightforward, and based on the Grievant's chronic inability to perform his job duties without interfering with other employes. This problem is, according to the Employer, a longstanding one. The October 9 settlement agreement reflects the history of the

problem, the Employer contended, and sets the background for the severity of the conduct at issue here, since that conduct arose within three weeks of the settlement.

The Employer asserted that even though the Union did not admit the validity of the discipline underlying the October 9 settlement agreement, the fact remains that the Union accepted the imposition of discipline. It follows, the Employer argued, that the incidents at issue here progressively and appropriately built on that one day suspension.

The Employer contended that with the Grievant's work and disciplinary history as background, there can be no question that the County had cause to suspend him for three days. The Employer asserted that the Grievant's account of his conduct on October 30 and November 2 is both incredible and irrelevant. The account is irrelevant, the Employer contended, because even under the Grievant's account Work Rule 2 has been violated. Beyond this, the Employer argued that the Grievant's account is incredible because the accusations are, on their face, unworthy of belief; because the two witnesses who witnessed his conduct had no prior contact with him and no reason to fabricate his conversations on those dates; and because any view of the evidence indicates a chronic inability on the Grievant's part to comply with a simple work rule.

The County dismissed the Grievant's contention that his supervisors are deliberately seeking to fire him for any reason at all as "ludicrous". The County contended that the Union has, at most, attempted to create a procedural flaw in the three day suspension by asserting that the October 9 settlement agreement cannot be used as the basis for any discipline. The Employer disputed this view of the settlement, and contended that it has been more lenient with the Grievant than the contract or the settlement agreement require. The County concluded that it had cause to suspend the Grievant for three days, and that the grievance should be denied.

THE UNION'S INITIAL STATEMENT OF POSITION

The Union contended that for the Employer to prove its case, it must establish not only that the incidents alleged by Schultz did occur, but also that those incidents are a violation of Work Rule 2 which warrant a three day suspension. The Union viewed the Employer's case as tenuous on each point.

Initially, the Union noted that Schultz's and Bixby's testimony do not fit well together. Contending that there is no reason to doubt the Grievant's credibility, the Union concluded that there is no way to know what happened on October 30 and

November 2. More specifically, the Union asserted it cannot be assumed that Schultz and Bixby have no reason to lie, while the Grievant's desire to protect his job gives him a reason to lie. Such an assumption wrongfully makes any accusation against an employe meritorious, according to the Union. The Union argued that the consistency of the Grievant's account establishes that Schultz's allegations cannot be proven.

Even if Schultz's testimony is credited, the Union does not believe a violation of Work Rule 2 has been proven. At most, Schultz recounted an exchange of pleasantries, which the Union argued cannot be considered a work rule violation. The Union asserted that Schultz's testimony does not prove she was unable to carry on her work assignments.

The Union's next major line of argument was that the penalty imposed by the County does not "fit the crime". Initially, the Union asserted that the County seeks to discipline the Grievant for disparate conduct as if that conduct was repetitive. This defeats, according to the Union, the corrective purpose discipline is meant to serve. Beyond this, the Union argued that the discipline has not been progressive. According to the Union, the October 9 settlement agreement did not involve either party's admission of the validity of the underlying allegations. Since the Employer did not prove the validity of those allegations in this case, it necessarily follows, the Union concluded, that the one day suspension agreed to in the October 9 settlement agreement cannot be used as the basis for a three day suspension in this case. The Union concluded that the most stringent penalty the County could impose on the Grievant, consistent with progressive discipline principles, is a one day suspension.

THE EMPLOYER'S REBUTTAL STATEMENT

The Employer contended there is no procedural flaw in its discipline of the Grievant. That it agreed to reduce the three day suspension to one day establishes, the Employer argued, that it is entitled to rely on that one day suspension. The Employer contended that if it cannot rely on that suspension the settlement offered it nothing. Beyond this, the October 9 settlement agreement is not ambiguous, according to the Employer. The Employer argued that even if it could be considered unclear, then it must be construed against the Union as the drafter of the document. The Employer also denied that it relied on any discipline expunged from the Grievant's file by the October 9 settlement agreement, and specifically denied the Union's contention that the Grievant did not interfere with Schultz's performance of her duties.

THE UNION'S REBUTTAL STATEMENT

The Union noted that it has not contended that the Employer has wrongfully attempted to use discipline expunged from the Grievant's record. The essence of its case is, the Union asserted, two-fold. First, the Union argued that earlier discipline relied on by the Employer was not for interfering with other employes, but for failing to complete his duties. Second, the Union argued that Section 8 of the October 9 settlement agreement precludes the Employer from relying on the one day suspension without proving the validity of the underlying allegations. Viewed together, these factors establish, the Union concluded, that the Grievant was at the one-day, not the three-day, suspension step of a progressive discipline system.

DISCUSSION

The issue is stipulated and questions whether the County had cause to suspend the Grievant for three days.

The parties have not stipulated what the cause analysis should consist of. In the absence of such a stipulation, I believe the cause analysis is composed of two elements. First, the Employer must prove the existence of conduct by the Grievant in which it has a disciplinary interest. Second, the Employer must prove that the discipline imposed reasonably reflects its disciplinary interest.

In this case, the first element is not in doubt. Even under the Grievant's account, each conversation lasted five minutes. There is no dispute the Grievant has a history of talking too much to other employes, and no dispute this conduct falls within the scope of Work Rule 2. The Grievant has been counseled, and was aware, that he should not interrupt another employe's work. The Union has questioned whether the conversations at issue here were incidental in nature, but the five minutes acknowledged by the Grievant take the conversations, on this record, beyond an incidental greeting.

The core of the parties' dispute falls under the second element of the cause analysis. The Union questions the reasonableness of the suspension based on two primary contentions.

The Union's first contention is that the three day suspension is based on conduct so dissimilar to that underlying the one day suspension that the Employer cannot reasonably build on the earlier suspension. This argument is not persuasive here. The prior conduct involved the Grievant's "failure to properly complete cleaning tasks". The incidents at issue here are for

similar conduct. It is undisputed the Grievant was not working during the conversations. He was, that is, not performing his cleaning tasks. To say he completed his tasks that evening, thus making the conduct distinguishable, elevates form over substance. It is arguable that separate discipline for different types of conduct is appropriate to avoid punishing employes who are, in response to discipline, improving the work behavior subject to the prior discipline. Accepting that argument in this case unpersuasively assumes the October 9 settlement agreement, which required discussion of Work Rule 2, did not put the Grievant on notice that interrupting his work to talk to fellow employes was a disciplinable offense.

The Union's second contention is that the progressive discipline system requires a one day suspension. This contention has a contractual and a factual component. Contractually, the contention presumes that the parties have implemented a system which requires that a three day suspension follow a one day suspension. The contention also presumes that Section 8 of the October 9 settlement agreement precludes the County's reliance on the issuance of a one day suspension under Section 2.

The record does not establish whether or not the parties have, by practice, established a progressive discipline system requiring that a three day suspension follow a one day suspension. This point is not, however, significant here. Even assuming the parties have such a system, the Grievant was at the three day suspension step.

The Union contends that Section 8, by preserving the parties' positions on the validity of the allegations which led to the May 29 discipline, requires the County to prove the allegations underlying the May 29 discipline. This argument effectively reads any benefit to the County from that settlement agreement out of existence by putting the County in a worse position in this proceeding than it would have been in had the October 9 settlement agreement not been reached. The County removed various items of discipline from the Grievant's file, and paid him for the three day suspension. Under the Union's argument, the County must still prove the merit of the May 29 discipline just as it would have to have done had it not made those concessions.

I believe a more persuasive reading of the October 9 settlement agreement is that the parties, under Section 8, chose to avoid litigating the merits of the May 29 discipline to pursue more constructive options. Under Section 7 of the agreement, the County obligated itself to create work rules, and to counsel the Grievant on them. Under Sections 2 and 3 of the agreement, the County agreed to lessen the discipline imposed on the Grievant. Under Section 1 of the agreement the County agreed to "clean up"

his personnel file. The net effect of this was to put the Grievant in a position in which he was put on notice of the need to change his conduct and was given a "cleaner" opportunity to do so. The settlement agreement lessened the pressure on the Grievant by making the next disciplinary step a suspension, not a discharge. Reading the October 9 settlement agreement in this fashion serves the purpose of the progressive discipline system. Ultimately, the purpose of lower levels of discipline, such as the one day suspension at issue here, is to sanction inappropriate behavior, and to provide an incentive to improve that behavior. Reading the settlement agreement as noted above serves that purpose. In sum, without regard to the underlying merit of the May 29 discipline under Section 8 of the agreement, the County was entitled to rely on the notice afforded the Grievant by the one day suspension and the related work rule promulgation and counseling.

This conclusion poses the credibility issue argued by the parties. The sole remaining basis to question the reasonableness of the three day suspension is to credit the Grievant's account and conclude the violation of Work Rule 2 was negligible.

The Grievant's account of his conduct is not, however, credible. Initially, it must be noted there is no reason to doubt the testimony of Schultz. She did not know the Grievant before October 30, and has no apparent reason to fabricate her account. Beyond this, Bixby's testimony corroborates Schultz's on the key points of the November 2 conversation. She affirmed the Grievant entered the room uninvited, initiated the conversation, and did no work. That she was not clear on the time of the conversation indicates no more than that her testimony was unrehearsed.

This is not to say the Grievant's account must be discredited because he had an incentive to minimize his role in the conversation. Rather, his account must be discredited because it is implausible, internally inconsistent and uncorroborated.

That Schultz would claim, to a stranger, to be a star trial witness, and then attempt to cover the claim up cannot be dismissed as impossible. It does, however, strain the limits of the plausible. Why she would need to cover up such a claim, even if it had been made, is not immediately apparent. It did appear that the Grievant believes such a claim would have to be covered up, but this offers no explanation of the behavior he ascribed to Schultz. Beyond this, the Grievant's claim that he mentioned an allegation concerning Martin's possession of County property to illustrate that he doesn't believe everything he hears strains belief. At most, the claim is thinly veiled gossip. His own account points more to the accuracy of Schultz's perception that he wished to gossip than to his stated view that the conversation

was superficial. Schultz's and the Grievant's manner of testifying bear this out. Schultz spoke directly and succinctly to the questions asked of her. The Grievant addressed the questions posed him in a non-responsive, talkative and argumentative manner.

The Grievant's testimony was internally inconsistent. His initial testimony was that he terminated the October 30 conversation, advising Schultz he had been warned not to talk to other employes. Shortly after making this statement, and while still on his direct examination, he denied telling Schultz he had been so warned. Beyond this, his testimony at hearing indicated he spoke to Schultz twice on October 30. His December 11 letter indicates only one conversation. Beyond this, his estimates of the time the conversations took are not reconcilable to his account of what was said and done during the conversations. His testimony would indicate all of the conversations he had with Schultz would have taken less than five minutes.

The Grievant's testimony was not corroborated by Bixby, as noted above. More significant here, however, is Kluth's unwillingness to corroborate the Grievant's assertion that he did not make the statements Martin noted in his November 19 statement. Martin noted the Grievant stated he could reverse everything Schultz said, and ascribe it to her. Kluth confirmed the accuracy of those notes. Those notes describe exactly what the evidence establishes the Grievant has done.

In sum, Schultz's and Bixby's accounts of the conversations are more reliable than the Grievant's. Under these accounts the Grievant initiated and maintained, with little if any encouragement, two prolonged conversations which kept at least himself and one other employe from performing their duties. This has been a recurrent problem, and one the Grievant was counseled about three weeks before the initial incident at issue here. The County could reasonably conclude that the Grievant had not responded to its counseling of him, and that the problem was chronic. It was not unreasonable for the County to suspend him for three days.

In sum, the County has proven that it had a disciplinary interest in the Grievant's conduct on October 30 and November 2, and that a three day suspension reasonably reflected that interest.

AWARD

The Employer did have just cause to suspend the Grievant for three days.

The grievance is, therefore, denied.

Dated at Madison, Wisconsin, this 18th day of October, 1993.

By Richard B. McLaughlin /s/
Richard B. McLaughlin, Arbitrator