

BEFORE THE ARBITRATOR

 :
 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 SHEBOYGAN COUNTY SUPPORTIVE SERVICES : Case 158
 : No. 47898
 and : MA-7422
 :
 SHEBOYGAN COUNTY :
 :

Appearances:

Ms. Helen Isferding, AFSCME District Council 40
 Representative, 1207 Main Avenue, Sheboygan, WI 53083,
 appearing on behalf of the Union.
Ms. Louella Conway, Personnel Director, 615 North 6th Street,
 Sheboygan, WI 53082, appearing on behalf of the County.

ARBITRATION AWARD

The Wisconsin Employment Relations Commission designated the undersigned Arbitrator to hear and determine a dispute concerning the above-noted grievance under the grievance arbitration provisions of the parties' 1989-91 collective bargaining agreement (herein Agreement or Contract), the terms of which were being given effect at all times material to the instant dispute.

The parties presented their evidence and arguments to the Arbitrator at a hearing held at the County Law Enforcement Center in Sheboygan, Wisconsin, on May 19, 1993. The hearing was not transcribed, but the parties agreed that the Arbitrator could maintain an audio tape recording of the evidence and arguments for his exclusive use in award preparation. Both parties submitted initial briefs, and the Union submitted a reply brief. Briefing was completed on July 13, 1993, marking the close of the record.

STIPULATED ISSUES

At the hearing, the parties authorized the Arbitrator to decide the following issues:

1. Did the Employer violate the Contract when it gave Dorothy McClure-Sauer a 10-day suspension on February 14, 1992?
2. If so, what shall the remedy be?

PORTIONS OF THE AGREEMENT

ARTICLE 5
MANAGEMENT RIGHTS

Except as otherwise provided in this Agreement, the Employer shall have the right to:

1. Carry out the statutory mandate and goals assigned to the County utilizing personnel, methods and means in the most appropriate and efficient manner possible. . . .

2. To hire, promote, transfer, demote, discipline, suspend or discharge for just cause its employees.

. . .

4. To adopt reasonable rules and policies and amend the same from time to time.

PORTIONS OF THE SHERIFF'S DEPARTMENT MANUAL

SEC. 1.8-2 PROPER CONDUCT

RULE - Employees shall conduct themselves, both officially and unofficially, in such a manner so as not to bring discredit to the department and/or disgrace or dishonor to themselves.

SEC. 1-8-6 PUBLIC CONTACTS

RULE - When dealing with the public or other members of the department, employees shall exercise control of their tempers, be attentive, discreet, patient, and will not use threatening, profane or insulting language nor behave in a disrespectful, insubordinate or aggressive manner. In serving the public they shall supply the requested information to the best of their abilities and if unable to answer other questions they shall make referrals to the proper authorities.

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SEC. 1-8-26 UNTRUTHFULNESS

RULE - Untruthfulness by any employee will not be tolerated at any time.

SEC. 1-8-50 SEXUAL HARASSMENT

POLICY - Sexual harassment is illegal. No employee, male or female, shall be allowed to sexually harass another employee of this Department or any other person, while said employee is engaged in the performance of duty or otherwise representing the Department.

DEFINITION - Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

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PROCEDURES -

1. Recognizing Sexual Harassment

Sexual harassment does not depend upon the existence of any one given set of facts. . . .

Any unwelcome conduct of a sexual nature in the work place may constitute sexual harassment. Determinations must be made on the basis of the particular facts involved.

2. Reporting Sexual Harassment

It is imperative both for the good of the victim of the harassment and the efficient operation of the Department, that conduct which may constitute sexual harassment be dealt with promptly and fairly. Therefore, the following methods of reporting will be employed;

a. Any employee who believes that he or she is being sexually harassed is encouraged to report such conduct immediately to any supervisor of this Department.

b. Any supervisory employee of this Department that observes conduct that may constitute sexual harassment shall inform the harassing employee's supervisor as soon as practical.

3. Investigation of Sexual Harassment Complaints Prompt and diligent investigation shall be conducted in accordance with procedures in Sec. 1-5-5 Employee Progressive Discipline.

COMMENTARY - All employees have a right to a working environment which is free of intimidation and harassment. Every employee is entitled to be treated with common dignity and courtesy. However, it must also be recognized that because of the nature of this type of complaint, false accusations and/or jumping to conclusions can seriously affect an innocent employee long after the alleged incident occurs. It is important, therefore, that investigating supervisors realize the need to be both discreet and thorough in their handling of these incidents.

. . .

BACKGROUND

The Grievant, Dorothy McClure-Sauer was hired by the County in March of 1979. At the time of the subject suspension, she was employed by the County as an Assistant Cook in the County Jail. Her work there involved meal preparation and distribution for various persons including County inmates. Grievant worked in the Jail kitchen with other County employes, and they were assisted by up to six prisoner trustees who were selected by the Jail sergeants from among prisoners who volunteered to work as helpers in the kitchen. The trustees' participation in that role was subject to discontinuation at the request of either the trustee or the Assistant Cook or other employes with whom they worked. Part of Grievant's responsibilities included serving as a lead worker with respect to the trustees working with her.

The February 14, 1992 Sheriff's Employee Report imposing the instant suspension reads as follows:

STATEMENT OF INCIDENT: On February 3, 1992, there was concern that the trustees were taking cigarettes from the cooks. Capt. Joesse approached Ms. Sauer and asked if she was missing any cigarettes. She became defensive and denied any possibility that the cigarettes were hers and that she hadn't smoked "More" cigarettes for a long time, so they weren't hers. She later spoke to [her immediate supervisor, Food Service Supervisor] Bonnie Pearson telling her about the incident and told her she was going to hang her coat in the cooks bathroom. She again stated that she did not smoke "More" cigarettes and that she had always hung her coat in the locker. Later Bonnie Pearson was approached by trustee Larry BEUREGARD and he asked if Dorothy had complained to her about cig's being taken out of her pocket. When Bonnie asked him what happened, he stated that someone made the remark that the only way we're going to get cigs now is to "take them from the cooks". He said two trustees did take cig's out of Dorothy's pocket. After talking with other trustees, Bonnie confirmed the fact that two trustees did take cigs out of Dorothy's pocket while her coat was in the cook's bathroom, folded up and lying on the floor next to the toilet. The discussion with the trustees indicated that the cigs were "More" cigarettes, they had been taken from Dorothy's coat pocket, and that her coat was in the cook's bathroom. Dorothy made statements to Bonnie denying all of this, when in fact the statements were true. Her failure to give correct and true information is of great concern. There was no reason for Dorothy to lie about these things.

On February 5, 1992, at 14:00 hours, Deb Huberty approached Bonnie Pearson and indicated her concern over a conversation that had taken place in the kitchen the previous evening. Several trustee's were involved in the conversation, including Scott Malowitz, Tom Mullens, Jesse Rosenthal, and Rick March. Each of these trustees expressed concern

about the habit of Dorothy Sauer touching and handling them while they are in the kitchen. Scott Malowitz stated his concern over Dorothy's patting him on the butt; Tom Mullens stated that she will come up behind him and rub, or massage his shoulders; Jesse Rosenthal stated that Dorothy rubs her breasts against his arm while he is working and Rick March stated that if he were a female and Dorothy a male, there would be something more done about it.

Further investigation was conducted by both Detective T. Epping and Detective K. Kaczowski which further corroborated the above statements. Several of the trustees expressed that the close contact makes them nervous and uncomfortable. One stated that he is concerned about her being so close and the contact occurring. Another stated that she patted him on the rearend as he was leaving. Individual statements were prepared and signed by the trustees. This type of conduct is inappropriate in any situation, and certainly in the jail atmosphere. Any unwanted touching or physical contact is strictly prohibited.

On February 9, 1992, trustee T. Firgens, spoke with Sgt. Harmelink, explaining that he no longer wanted to be a trustee. He stated that Dorothy shook her fist in his face and stated "if we are short, it's your ass". She was referring to the amount of pancake batter she was making. Firgens was later moved to another cell block. This conduct, or making a threat of being removed from the job of trustee, create a threatening atmosphere and fear in the trustees, and is again inappropriate behavior.

ACTION TAKEN: The employee will refrain from improper physical contact with the trustees or any other employee.

There will be no interference with questioning or investigations of activities of the trustees or any other individuals. True and correct statements will be given at all times.

In no case will there be any threatening or hostile statements be made to the trustees.

Based on the seriousness of this offense and the concern with the status of the working conditions for the trustees and other employees in the kitchen, a ten (10) work day suspension will be given. The suspension will begin today, 2/14/92 and continue through 3/7/92. The next scheduled work day will be 3/10/92. Continued incidents will result in further discipline, up to and including suspension.

At the arbitration hearing, the County presented testimony in its case-in-chief from Cleaner and former Assistant Cook Deborah Huberty; Head Cook and Food Service Supervisor Bonnie Pearson; and Sheriff's Department Detective Thomas Epping. The County noted on the record that Larry Beuregard and Todd Firgens had been subpoenaed but had not appeared in compliance with those subpoenas. The Arbitrator gave the County an opportunity to decide whether to rest its case-in-chief without the testimony of those witnesses. After a recess, the County announced its intention to proceed to the conclusion of the evidentiary hearing despite the absence of those subpoenaed witnesses.

The Union, in its case-in-chief, presented testimony from Correctional Officer Carol Schmidt, Kwik-Trip Mini-Mart Clerk Karen Bower, former trustee and kitchen helper Keith Adams, and the Grievant.

The County presented rebuttal evidence in the form of testimony from Sergeant and Jail Supervisor John Harmelink and further testimony from Pearson.

Details concerning the testimony and other evidence are noted in the summaries of the parties positions and in the discussion, below.

POSITION OF THE COUNTY

The suspension was imposed for just cause and should be upheld in all respects.

The County and its supervisors have a legal responsibility to investigate and take appropriate action in response to the various allegations about Grievant that were brought to the supervisors' attention. Citing, Sec. 904.29, Wis. Stats., (making it a Class E felony to ill-treat an inmate or to knowingly permit another person to do so); various cases arising under equal rights statutes; the Sheriff's Department's Sexual Harassment policy in Sec. 1-8-50; and a County policy prohibiting mistreatment of

inmates.

The testimony of Bonnie Pearson, Deb Huberty, Detective Epping and Sgt. Harmelink all indicate that the trustees reported incidents of physical contact by Grievant. Huberty testified that the trustees told her they did not want to make trouble because the "Assistant Cook can make life difficult for us." Sgt. Harmelink testified that Trustee Todd Firgens told him Grievant "shook her fist in his face" and Detective Epping's report shows that Firgens told him that Grievant "flies off the handle and she does swear." Other statements by the trustees to Epping corroborate the touching and close contact. Thus, Epping, in his report, noted that Malowitz told him that "he had been patted on the rear end by Dottie"; that Rosenthal told him that "his arm would have come in contact with her boob"; and other similar statements from the trustees were related throughout Epping's report. Firgens is reported to have said that several of the trustees had stated to him that Grievant's behavior "made them uncomfortable" and Rosenthal is reported to have said that there was "concern [among the trustees] about her being as close and the contact occurring." Firgens is reported to have requested removal from the kitchen because he was "sick and tired of working with" Grievant.

When Pearson asked Grievant about the allegations by the trustees against her, Grievant blatantly denied all of them, compounding Grievant's violations of Law Enforcement Department Rules Secs. 1-8-2 (Proper Conduct) and 1-8-6 (Public Contacts) with untruthfulness in violation of Sec. 1-8-26.

Grievant's arbitration testimony that she did not have cigarettes in her coat and that her coat was not in the cook's bathroom are not credible. Pearson testified that the trustees told Pearson that they took cigarettes from Grievant's coat when it was folded in the Cooks' bathroom. Furthermore, Grievant's response when questioned by Pearson indicated that the coat was folded in the bathroom. Epping testified that trustee Mullens admitted taking cigarettes from Grievant's coat in the Cook's bathroom. Epping further testified that the trustees spoke with him voluntarily and without the influence of any threats or promises, such that Epping had no reason to believe that any of the trustees were lying to him about the information Epping related in his report. If anything, the trustees' expressed fear of retaliation from Grievant would have led them to deny that they took cigarettes from Grievant's coat.

Grievant's denials of the other misconduct charged is also directly contrary to the testimony and documents presented by the County.

Union witness Keith Adams' testimony that Grievant had never touched him and that he never observed Grievant touching anyone else in the four months he worked as a trustee seems inconsistent with Grievant's testimony that due to the confined area in which she worked it was impossible to avoid body contact. Since, as Deb Huberty testified, that it was not necessary for the assistant cooks to go everywhere with the trustees, Grievant could have observed what the trustees were doing in the storage room from outside the door rather than standing next to the trustee in that confined area.

The County has therefore proven that Grievant committed the misconduct charged in the suspension notice in all respects.

Only after a review of the statements made by the trustees during a proper and complete investigation did the employer discuss the incidents with Grievant. In the presence of her Union representative, Grievant was given the opportunity to respond, but her response was to deny that any of the incidents occurred without any further discussion or elaboration.

Only after that meeting with the Grievant did the County determine that a 10-day suspension was appropriate in the circumstances. In so concluding the County properly considered the fact that her record contained a one-day suspension, two verbal warnings, a written warning, a three-day suspension and a 15-day suspension that was reduced to a written warning. Those prior infractions are relevant under the County's published progressive discipline policy whether they are of the same type as were involved in the instant case or not. Citing, Bell Aircraft Corp., 17 LA 230, 233 (Shister, 1951) and a bench award by the instant arbitrator in Sheboygan County Case 160.

The arbitrator ought not substitute his judgment and discretion for that of management where, as here, management has acted in good faith upon a fair investigation and has imposed a penalty not inconsistent with those imposed in other like cases. Citing, Elkouri and Elkouri, How Arbitration Works at 665 (BNA, 4 ed. 1985).

The County did a thorough investigation. All involved parties were interviewed and statements were compared to determine their validity. Only then did the County meet with the employe with proper representation afforded. Only thereafter did the County determine the appropriate penalty in a manner that was neither arbitrary nor capricious. For those reasons, the Arbitrator should uphold the suspension and deny the grievance entirely.

POSITION OF THE UNION

The County has not met its burden of proving that Grievant -- a 13 year employe who has never previously been charged by inmates or anyone else with sexual misconduct -- did anything wrong. The accusation of sexual misconduct is so serious that the County should be required to prove it beyond a reasonable doubt. In any event, there is simply no evidence sufficient to support the suspension. The County failed to produce any of the trustees who allegedly received took cigarettes from Grievant's coat, whom she is alleged to have touched inappropriately or whom she is supposed to have threatened, sworn at and shaken her fist at.

Huberty did not testify about having seen Grievant touching the trustees; she only related what the trustees had told her about that subject. She admitted that she was not sure about the reliability of what the trustees were telling her about Grievant and she thought that they might have been exaggerating to get attention. She was therefore not sure whether to even bring the conversation to the attention of supervision. Huberty did confirm, however, that Pearson had told Huberty to report to her about what went on in the kitchen. She also confirmed that people bumping into people can happen given the size and arrangement of the kitchen and the presence of up to six trustees in addition to kitchen employes.

Pearson's testimony is self-serving and not credible. Pearson testified that Grievant had always put her coat in the Cooks' bathroom, but that would have violated Capt. Joosse's posted directive dated August 4, 1991, requiring that "all Asst. Cooks are assigned locker #3 in the female inmates locker room to store their coats and purses. This locker should be kept locked at all times." Pearson's write-up of the suspension notice supports Grievant's testimony that she had been keeping her coat in the locker consistent with that directive, and that she was moving it to the cook's bathroom only after having been questioned about the possibility that cigarettes had been taken from it. Pearson's assertion that Grievant kept cigarettes in her coat is inherently less plausible than Grievant's testimony that she kept them with in her smock pocket so she could step outside and smoke as was required by the January 1992 smoking rule change. Finally, Pearson admitted in her rebuttal testimony that a trustee had been smuggling cigarettes to the other trustees in the hollow handle of a broom, raising further questions about the reliability of statements attributed to trustees against Grievant.

The More brand of cigarettes are distinctive, resembling a long, narrow, cigar. Grievant admits having smoked them years ago, but not recently. Captain Joosse first claimed trustees were obtaining "More" cigarettes, yet even he did not testify in this case. The Union presented the unbiased testimony of the Kwik Trip

store clerk who had sold two kinds of Worth cigarettes to Grievant and her son for 2.5 years preceding the suspension, and not the "Mores" brand.

The Union produced another unbiased witness, Keith Adams, a former trustee who described happenings he observed while working in the kitchen between February 10 and May 25, 1992, and who initially contacted Grievant because he believed she was being unjustly accused. Adams testified, among other things, that Beuregard and Mullens had told Adams that inmates might get an early release if they reported something bad about Grievant to the Jail Administrator. Even though Adams did not believe it, a rumor like that floating around the jail could well have led Beuregard and others to come forward with the cigarette story and the other embarrassing accusations made by trustees against Grievant, in efforts to please jail management. Notably, Pearson (a member of jail management) was present for all of Epping's interviews except that with Malowitz, who was the only one of the trustees interviewed who did not seem to find much fault with Grievant the way the others did. Epping's report and the County witnesses' testimony about what the trustees said about Grievant ought not be given any weight because of its hearsay nature.

The Union also presented the testimony of Correctional Officer Carol Schmidt who said she observed Grievant and Firgens disagreeing over whether Firgens needed to do what Grievant had told him to do. Schmidt said she told Firgens that Grievant, as the cook on duty, is in charge over a trustee. Schmidt made no mention of any fist-shaking in connection with that incident.

Schmidt also testified that it was common to accidentally bump a trustee or other person in the confines of the kitchen. The Arbitrator's work place observation and the pictures submitted of the work areas involved, coupled with the loud music played through the loudspeakers there and Grievant's undisputed use of and difficulties with a hearing aid, all support Grievant's testimony concerning why there is an increased potential for her coming into physical contact with others in the kitchen.

Sergeant Harmelink also testified that Firgens told him Pearson had told Firgens to report any wrongdoing on Grievant's part to Pearson. That sort of message from Pearson would have undermined Grievant's authority with Firgens, and it could well have prompted a trustee to feel that he would have Pearson's support regarding any type of accusation or action in relation to Grievant.

The Union also offered the credible, first-hand testimony of the Grievant. She testified that she first learned about the missing cigarettes on January 28, not in February as Pearson had

testified; that Capt. Joosse had told her Beuregard was stealing cigarettes out of her pocket in the ladies locker room; that she never kept cigarettes in her coat, only in her uniform pocket; that Joosse had identified the cigarettes involved as "More"; that Grievant had not smoked Mores since 1988 because they were too expensive; that she told Pearson of the incident with Joosse and that she was going to put her coat in the bathroom from then on, rather than in the locker room where she had been keeping it; that she never sexually touched anyone; that she did have a problem with Firgens on the weekend in question, but did not threaten him; and that Grievant had asked that Firgens be pulled from the kitchen and that Sgt. Harmelink did that before Firgens approached him.

Finally, it is clear that Grievant had a good reason for going into the storeroom with the trustees: to watch so they would not take things. For, as both Grievant and Pearson testified, the trustees had been using storeroom fruit to make wine that was found in the ceiling of the kitchen.

In sum, the County has failed to meet its burden of proof. The County's case relies on hearsay because the County failed to produce the trustees involved to permit Grievant and the Union to face and cross-examine her accusers. The Union's witnesses were more credible in showing that the allegations against Grievant were false and part of a conspiracy against her.

The grievance should be sustained, and the Grievant should be made whole.

DISCUSSION

The legitimacy of the County's interests in promptly and thoroughly investigating the alleged physical and verbal abuse of inmates is clearly and persuasively established. The County also has the right to expect truthful responses from its employees during investigations such as the one into whether Grievant's coat could have been a source from which trustees were taking cigarettes.

However, neither the obvious validity of the County's investigative purposes, nor the care taken by the County to conduct a prompt and thorough investigation, relieves the County of the burden under the just cause provision in Art. 5. Sec. 2. of proving in this arbitration that the Grievant committed the misconduct for which the suspension was imposed. That misconduct consisted of Grievant's alleged unwelcome physical contacts with trustees; Grievant's alleged swearing and threatening trustee Firgens when they argued on February 9, 1992; and Grievant's allegedly untruthful statements to supervision that she did not

smoke More cigarettes and that she had not been keeping her coat in the Cook's bathroom.

As the summaries of the parties' arguments indicate, the County's case rests almost entirely on the hearsay statements attributed by County witnesses to various of the trustees, which statements are squarely contradicted by Grievant's first-hand testimony and which in some cases are also contrary to other record evidence. For that and certain other reasons noted below, the Arbitrator concludes that whatever standard of proof is applied to the record evidence in this case, the County has failed to satisfactorily prove that Grievant committed any of that alleged misconduct.

Alleged Improper Physical Contacts With Trustees

The County offered no first-hand testimony concerning Grievant's alleged improper physical touching of trustees. It subpoenaed two trustees, but neither appeared and the County chose to rest its case without their testimony. As a result, Grievant's first-hand testimony stands unrebutted by any first-hand testimony.

Grievant testified that she sometimes got close to the people she works with because of a hearing problem, a troublesome hearing aid and the occasionally loud music playing in the kitchen. Her testimony in those regards is variously corroborated by other testimony, exhibits and the workplace tour. Grievant also testified that she sometimes came into incidental contact with the people she works with because of the close quarters of the kitchen workspaces and the need to keep a watchful eye on the trustees. Her testimony in those regards was corroborated by other testimony and the workplace tour, as well. Grievant denied that she ever sexually touched trustees. That assertion is corroborated to some extent by the fact that there is no evidence of prior complaints about Grievant's conduct by trustees even though in some cases the hearsay statements asserted that the conduct had been going on for a long time.

Finally, the Union presented the testimony of Keith Adams that at least two of the trustees accusing Grievant of inappropriate physical touching told him that it might be possible to be credited with additional good time (and hence to obtain a somewhat earlier release) by communicating to jail management information about wrongdoing on Grievant's part. While Adams' testimony related to a four month period immediately following the events giving rise to the instant suspension, it is at least possible that those trustees were under the above impression when they came forward with their accusations against Grievant that led to the instant suspension.

In the context of all of the foregoing, the absence of first-hand testimony from the trustees accusing Grievant of this serious wrongdoing -- and hence the absence of both direct and cross-examination of those individuals -- is fatal to the County's case on the question of unwelcome touching of trustees.

While it is possible that Grievant engaged in the conduct reflected in the trustees' statements as related in the County's second- and third-hand testimony and exhibits, the County has failed to satisfactorily prove in the record developed in this case that Grievant engaged in that conduct.

Alleged Use of Threat and Profanity with Trustee Firgens

With regard to Grievant's alleged swearing at and threatening Firgens with loss of his trustee status during their argument on February 9, 1992, the County has again failed to prove that alleged misconduct. Schmidt testified that she observed Grievant and Firgens were having an argument, and that Schmidt intervened and had occasion to tell Firgens that Grievant was in charge of the trustees she worked with such that he needed to follow her directions. Grievant also admitted that she had had an argument with Firgens. However, Grievant denied that she swore at or threatened Firgens, and Schmidt's testimony made no reference to hearing Grievant either swear at or threaten Firgens. While it appears that the incident prompted Firgens to give up his generally-desirable trustee position, that is not sufficient to establish that Grievant either swore at or threatened him during their argument.

In the above context, the County's failure to offer Firgens' first-hand testimony about the incident and to make him available for cross-examination, is fatal to its allegation that Grievant swore at or threatened Firgens during their argument on February 9, 1992.

Alleged Untruthfulness

It is undisputed that in response to supervisors' questions, Grievant stated that she did not smoke the More brand of cigarettes and that she had not been keeping her coat in the Cook's bathroom. In her testimony on that subject and in the suspension notice itself, Pearson relied heavily on the fact that the trustees' had admitted taking the distinctively long, dark and narrow Mores cigarettes from Grievant's coat which the trustees said had been folded on the floor of the Cook's bathroom.

Pearson also testified that she was personally aware both that Grievant had been keeping her coat in the Cook's bathroom and that Grievant smoked the long, dark and narrow Mores brand of

cigarettes which the Trustees described as having taken. Epping also testified that "at one point in time, through my own recollection, I know that Dottie did smoke cigarettes, ah, she had smoked a cigarette that was kind of long and skinny and brown. I don't know what the name of the cigarettes were. That's from my own knowledge." However, Epping was not asked, and did not state, at what point in time Grievant had been smoking that kind of cigarette. Epping did testify that he has worked with the Sheriff's Department for 9 or 10 years.

Grievant testified that she used to smoke Mores, but that she stopped smoking that brand in 1988 because they were too expensive. In addition, the Union produced a seemingly-disinterested witness who credibly testified that Grievant and her son had regularly purchased two kinds of Worth cigarettes by the carton from her for a period of years ending in the summer of 1992 when the clerk's store moved, and that the store did not carry the Mores brand at all. It seems unlikely that Grievant and her son would regularly purchase the two kinds of Worth cigarettes by the carton at the Kwik-Mart while Grievant was smoking the Mores and buying them separately elsewhere.

The Arbitrator finds it somewhat troublesome that neither Captain Joose nor Pearson simply asked to see Grievant's cigarettes and coat location to resolve any questions about whether Grievant was being truthful with them on those subjects. It is also noteworthy that Joose did not testify, leaving Grievant's first-hand testimony about what was said between them unrebutted by any other first-hand testimony.

On balance, the Arbitrator finds the testimony of Pearson and Epping regarding Grievant's cigarette brand no more persuasive than the contrary testimony of Grievant and the store clerk on that subject.

Pearson's testimony about Grievant's coat location is difficult to credit because it would have meant that Pearson knew of and did not correct what would have been Grievant's blatant disregard of Capt. Joosse's written directive requiring that kitchen employes store their coats in Locker #3 in the Women's Locker Room. Pearson explained in her testimony that she decided to allow Grievant to keep her coat there despite the Captain's directive because she did not want to cause the volatile Grievant to become upset. The Arbitrator finds that explanation both generally improbable, and particularly so in the context of the County's and Joosse's earlier severe disciplinary responses to what appear to have been other relatively minor instances of misconduct on Grievant's part. (Exhibits 15f and g, a 15-day suspension later reduced to a written warning for Grievant's failing on two occasions to wash her hands before working with

food after returning to the kitchen from smoking a cigarette outside the Law Enforcement Center).

As noted above, Adams' credibly testified that (albeit sometime after the incidents in question) trustees Beuregard and Mullens, who had implicated Grievant in the cigarettes matter, spoke as if they believed that an inmate might gain an earlier release by providing jail management with information implicating Grievant in misconduct. That testimony raises at least some additional doubts about the reliability of the trustees' statements that they found Grievant's coat in the Cook's bathroom and/or took cigarettes from that coat. So does the fact that a trustee was found to have been transporting cigarettes in a hollow broom handle. The County's failure to present first-hand testimony from (and to permit cross-examination of) the trustees who implicated Grievant in the cigarettes matter makes the hearsay statements attributed to those trustees worthy of no weight in this proceeding.

In sum, while it is possible that Grievant was being untruthful about not smoking the Mores brand and about where she had been keeping her coat, the County has failed to satisfactorily prove that she was being untruthful with supervision in either respect.

Conclusion

Accordingly, the suspension has been found to have been imposed without just cause. The Arbitrator has ordered it removed from Grievant's record and has further ordered that Grievant be made whole for pay she lost due to her 10-working-day absence from work on suspension from February 14 through March 7, 1992.

DECISION AND AWARD

For the foregoing reasons and based on the record as a whole it is the DECISION AND AWARD of the undersigned Arbitrator on the STIPULATED ISSUES noted above that:

1. The Employer violated the Contract, and specifically the just cause for suspension requirement of Art. 5. Sec. 2., when it gave Dorothy McClure-Sauer a 10-day suspension on February 14, 1992.

2. By way of remedy, Sheboygan County, its officers and agents shall immediately:

a. remove the February 14, 1992 10-day suspension from Dorothy McClure-Sauer's employment record, and

b. make her whole for the loss of pay she experienced due to her 10-working-day absence from work on suspension from February 14 through March 7, 1992.

Dated at Shorewood, Wisconsin
this 19th day of November, 1993 by Marshall L. Gratz /s/
- Marshall L. Gratz, Arbitrator