

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

THE LABOR ASSOCIATION OF WISCONSIN,
INC.

and

ST. CROIX COUNTY

Case 146
No. 53685
MA-9429

Appearances:

Mr. Thomas A. Bauer, Representative, Labor Association of Wisconsin, Inc., 206 South Arlington Street, Appleton, Wisconsin 54915, appeared on behalf of the Association.

Mr. Steven L. Weld, Attorney at Law, Weld, Riley, Prenn & Ricci, S.C., 4330 Golf Terrace, Suite 205, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appeared on behalf of the County.

ARBITRATION AWARD

On December 22, 1995, the Wisconsin Employment Relations Commission received a joint request from the Labor Association of Wisconsin, Inc. and St. Croix County seeking to have the Commission appoint William C. Houlihan, a member of its staff, to hear and decide a dispute between the parties. The Commission, on February 15, 1996, appointed the undersigned to hear and decide the matter. A hearing was conducted on May 2, 1996 in Hudson, Wisconsin. The proceedings were not transcribed. Post-hearing briefs were filed and exchanged by September 13, 1996.

This dispute involves a three-day suspension issued to employe Lisa Heindel, a Sheriff's Department Correctional Officer.

BACKGROUND AND FACTS

The events giving rise to this discipline occurred at approximately 7:00 a.m. on Saturday, May 27, 1995. On that day, Ms. Heindel, the grievant, who was at the time a Corrections Officer I, employed by the St. Croix County Sheriff's Department was working in the control center of the County jail. At the time, her shift began at 11:00 p.m. and ended at 7:30 a.m. Her job consists of a number of tasks, but primarily focuses on monitoring and controlling the jail area. The control room is a secured room with a number of windows which survey a portion of the jail area, primarily the booking area. It contains eight monitors which are fed by 33 cameras positioned throughout the facility.

The control room corrections officer controls which cameras appear on the various screens. Seven of the monitors are banked in a row above a console table. One larger monitor is at the console level. As a practical matter, it appears that the seven overhead monitors are adjusted periodically to survey areas experiencing activity, and thereafter left with a fixed camera. The console monitor is manipulated more frequently to "patrol" the facility.

Much of the jail area is secured, by locked doors which can be "buzzed" open by the control area. The heart of the control room job is to monitor the jail and to control passage of individuals from one area to another.

The control room has a teller-style window with security glass to provide service to the public. That window is physically removed from the monitors and is positioned at an angle which makes it difficult, if not impossible, to transact business and simultaneously be attentive to the monitor screens.

As noted, the incident giving rise to this discipline occurred on or just before 7:00 a.m. on Saturday, May 27, 1995. At that time, the Chief of Police and a Sergeant from the Town of Somerset were delivering a prisoner to the County jail. It was Lisa Heindel's uncontradicted testimony that normally officers transporting a prisoner would radio ahead and alert jail officials to the fact they were delivering a prisoner. Heindel testified that this is particularly the case if the prisoner is dangerous or difficult to manage. Her testimony was that no such call was received.

Prisoners are delivered by vehicle to a secure garage area. When the Somerset officers arrived, they rang the garage doorbell and were passed into the garage by Ms. Heindel. She testified that she was able to observe them as they approached, as they rang the bell, and once they were in the garage; all by camera.

The two officers escorted their prisoner through the locked door that separates the garage and the pre-booking room. Heindel buzzed them through and observed that each officer held the prisoner by an arm. She speculated that the prisoner was either drunk or tired. The pre-booking room has a camera which was monitored and Ms. Heindel saw the men enter. A portion of the room, that part under and immediately in front of the camera, is not picked up by the sweep of the camera and is therefore a blind spot to the control room. There are three interview rooms off the pre-booking room, none of which are monitored by camera. The prisoner was taken to one of these rooms.

When Ms. Heindel saw the three men enter the room she testified that she went on the jail radio and indicated "I think they may need help in pre-booking." By all accounts, her tone of voice was flat and conversational, carrying no sense of alarm or urgency. Her testimony was that she felt no alarm or sense of urgency. According to Heindel, Deputy Jeff Klatt responded to her call and proceeded into the pre-booking area. By the time Klatt arrived, there was a struggle occurring in a pre-booking interview room.

Klatt was not called to testify at this proceeding. He did, however, provide an unsolicited statement dated May 31, 1995 which provides as follows:

On Saturday May 27, 1995 at about 7:00 am, I was booking in M. B, who had been arrested by Hudson P.D. Lisa Heindel, who was in central control, advised me that Somerset P.D. was in the garage. Shortly thereafter, she advised me that she thought that they might need help out in pre-booking. By the sound of her voice it did not appear to be any kind of an emergency. I took B and put him into the holding cell. At this time I did not know what kind of help they needed out in pre-booking until I actually got there.

When I opened door 16, Chief Pfaff was "walking fast" toward the interview room. He indicated toward the room and I looked inside and saw Sgt. Donovan with a male subject up against the wall. It appeared to me that he was trying to kick Donovan. This male subject, later identified as J.L., was extremely intoxicated and combative. I told Donovan that we would take him directly into a receiving cell. I grabbed L's right arm and Donovan had his left arm. L would not walk, so he was basically held up by both of us and "dragged", with his feet dragging on the floor, to receiving cell number 1.

Once inside the cell, L was put on his back, (he was handcuffed in the front.) He was still being combative, so I pinned down his chest with my right lower leg. I was trying to control his head with my right hand but at this point he tried to bite me. Chief Pfaff then went to L's head and applied the mandibular angle on him. This stopped any movement of L's head. As Sgt. Donovan was trying to take the handcuffs off L, L was still attempting to kick as his legs were not secured at this time. Shortly thereafter, Deputy Burns and Burrell arrived. Burns took a hold of L's legs while Donovan removed the handcuffs. We were then able to remove L's shoes, pants and a necklace that he had on.

All officers exited the cell without any further incident.

At no time did I hear Officer Heindel check our status or call for any available help.

I have no further information at this time.

A hallway, and a second door, connect the pre-booking to the booking area. The hall is surveyed by a camera, which was not at the time being monitored. Jail personnel carry keys to secure doors. There are two receiving cells off this hallway. Neither of the cells are monitored. One of these cells is where the prisoner was subsequently taken.

Officers Schrank and Burrell, who were beginning their shifts, entered the control room. According to Ms. Heindel, Burrell asked who needed help and she replied, "I believe pre-booking". Heindel indicated that Burrell could hear her prior radio remarks. Heindel testified that Schrank could also hear her remarks.

Deputy Schrank, who did not testify in this arbitration proceeding, provided the following report, dated May 31, 1995:

ST. CROIX COUNTY SHERIFF'S DEPARTMENT
JAIL DIVISION
INCIDENT REPORT

DATE:05/31/95

DEPUTY: B. SCHRANK #8926

REF: SATURDAY, MAY 27TH

OFFICER BURRELL AND I ARRIVED AT THE CONTROL ROOM AT ABOUT 0650 ON THE ABOVE DATE AS WE ENTERED THE CONTROL ROOM INVESTIGATOR KLANDERMAN WAS JUST LEAVING. OFFICER HEINDEL WAS ON DUTY AND I WENT TO THE LOG, SIGNED OUT A RADIO AND KEYS AND REACHED FOR THE REPORT BOARD, THERE WERE SCHOOL BOOKS LYING ON THE COUNTER OPEN, AND THERE WAS TRAFFIC ON THE SCANNER.

I NOTICED THAT THERE WAS A MAN AT THE WINDOW AND I WENT TO SEE IF I COULD HELP HIM. HE WANTED TO KNOW IF A GUY NAMED "MIKE" HAD BEEN BOOKED THE NIGHT BEFORE. I HEARD OFFICER HEINDEL SAY "I THINK SOME ONE IN PRE-BOOKING MAY NEED HELP." BUT THERE WAS NOTHING URGENT IN THE TONE OF VOICE.

I CHECKED THE BOND BOOK FOR ANY "MIKE"'S

AND HEARD THE DOOR TO THE CONTROL ROOM SLAM. I WALKED TO THE BOARD LOOKING FOR "MIKE" AND ASKED OFFICER HEINDEL IF ANY "MIKE" (I CAN'T REMEMBER THE LAST NAME) HAD BEEN BOOKED THE NIGHT BEFORE. SHE SAID, "WE HAD A JUVENILE BUT I CAN'T REMEMBER HIS NAME." I SAID, "WE COULDN'T TELL THIS GUY ANYWAY CAUSE IT WAS A JUVENILE." SHE SAID, "I KNOW THAT."

I RETURNED TO THE WINDOW AND TOLD THE GUY THAT WE DIDN'T HAVE HIM.

I THEN WENT OUT ON TO THE FLOOR NEVER AWARE THAT ANYTHING HAD BEEN GOING ON IN PRE-BOOKING.

Deputy Burrell, who did not testify in the arbitration proceeding, provided the following statement, dated May 27, 1995:

ST. CROIX COUNTY SHERIFF'S DEPT.
Supplementary Report

DATE: MAY 27TH, 1995

DEPUTY: BURRELL

ON THE ABOVE DATE AT ABOUT 0700 HRS I ENTERED CENTRAL CONTROL, WHERE DEPUTY HEINDEL WAS STATIONED. I COULD SEE THAT TWO OFFICERS WERE IN PREBOOKING WITH A MALE. I ALSO SAW DEPUTY KLATT IN BOOKING, PROCESSING A PERSON. I THEN ASKED DEPUTY HEINDEL WHAT WAS GOING ON? DEPUTY HEINDEL NEVER ANSWERED ME. DEPUTY HEINDEL THEN GOT ON THE RADIO AND SAID, "I THINK THEY NEED HELP IN PREBOOKING, I'M NOT SURE".

I THEN NOTICED DEPUTY KLATT HEADING TOWARDS PREBOOKING. I THEN ASKED DEPUTY HEINDEL AGAIN WHAT'S GOING ON? DEPUTY HEINDEL WOULD NOT ANSWER ME. SHE COMPLETELY IGNORED ME AS IF I WASN'T THERE. I THEN NOTICED THAT DEPUTY HEINDEL HAD HER SCHOOL WORK LAID OUT ALL OVER CENTRAL

CONTROL.

I THEN REALIZED THAT DEPUTY HEINDEL DIDN'T HAVE A CLUE AS TO WHAT WAS GOING ON, BECAUSE SHE WAS INTO HER CLASS WORK. I THEN ASKED DEPUTY HEINDEL TO LET ME OUT OF CENTRAL CONTROL SO THAT I COULD GO OVER TO BOOKING AND SEE IF DEPUTY KLATT NEEDED ANY HELP.

I WILL ADMIT THAT THE WHOLE SITUATION WITH DEPUTY HEINDEL MADE ME VERY UPSET. I DIDN'T LIKE BEING IGNORED, IF SHE DIDN'T KNOW WHAT WAS GOING ON, SHE SHOULD HAVE SAID SO. NOT TO MENTION THAT ONE OF OUR DEPUTIES COULD HAVE GOTTEN HURT IN THE PROCESS.

Lisa Heindel testified that she was never aware of the fact that there was an altercation. Her three co-workers believed that she was inattentive and derelict because she was doing homework. They volunteered the foregoing statements because they believed she was preoccupied with her homework. She denies doing schoolwork, indicates that she was busy at a variety of tasks during the incident, and indicates that she had but a single textbook which was lying closed on the console.

Ms. Heindel had been the recipient of two prior disciplinary warnings. On or about April 27, 1995, she was given a letter of reprimand for failing to attend a mandatory jail staff meeting. She did not attend the meeting because it conflicted with her attendance at school. Sheriff Paul Burch indicated that the Department offered to intervene with her school professor, and that she declined that invitation. Heindel testified that no such offer was forthcoming.

On May 9, 1995, Sergeant M. Klanderma gave Ms. Heindel a verbal warning about changing her password without approval, and also about "working on personal projects on the computer during County time". This latter warning was given to a number of corrections officers.

Gary Scobey, a County corrections officer, testified that he did homework openly, on the job during the same time period as did Ms. Heindel. His testimony was that he did his homework in the control room and elsewhere, and was observed by command officers at the time. Scobey further testified that it was common for employees to bring in newspapers, magazines and books to read. During the course of the proceedings, I was given a tour of the control room, and observed newspapers, magazines, compact discs, and a number of envelopes, addressed and stamped.

Sheriff Burch directed an investigation of the incident to occur following receipt of the complaint noted above. The investigation consisted of talking to the other officers involved, and

receiving their statements. No management official talked to Heindel as a part of the investigation. At the conclusion of the investigation, the Sheriff determined that Heindel was to be given a three-day suspension. On June 2, 1995, Burch suspended Heindel for three days by the following memo:

TO: Lisa Heindel
Correctional Officer

FROM: Sheriff Paul C. Burch

DATE: June 2, 1995

RE: Suspension

Dear Lisa:

As a result of an internal investigation brought about from a formal complaint against yourself, you are hereby notified that you are being suspended for a period of three days. The three days that you are suspended without pay are as follows: Saturday, June 3, Sunday, June 4, and Monday, June 5, 1995. You shall return to work on Tuesday, June 6, 1995.

You are being suspended because of your insubordinate attitude towards your supervisors and county policies as far as continuing to perform personal homework while on county time. You had been verbally warned about this practice on May 9, 1995, and have not changed your practices since. During the time that you were performing homework, while in central control on Saturday, May 27, 1995, you were failing to adequately monitor the jail operations (the safety of fellow officers and inmates) and were unresponsive to questions put forth to you, concerning what was occurring in the jail.

This type of behavior will not be tolerated, because it undermines the safety and security of the running of the jail. Any further violations of county policy and procedures, could result in further disciplinary actions, that could result in termination.

Paul C. Burch
Sheriff
Paul C. Burch /s/

Heindel, and the Association grieved the suspension. The grievance was denied and subsequently appealed leading to this arbitration hearing.

ISSUE

The parties stipulated to the following issue:

Did the Employer have just cause to suspend the grievant for three days without pay for the period from June 3, 1995, through June 5, 1995?

If not, what is the appropriate remedy?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE 3 - MANAGEMENT RIGHTS

Section 1: The County possesses the sole right to operate County government and all management rights repose in it. The County agrees that in exercising any of these rights it shall not violate any provisions of this Agreement. These rights include, but are not limited to, the following:

...

D. To suspend, discharge, or take other disciplinary action against employees for just cause as hereinafter provided.

...

ARTICLE 7 - DISCHARGE-SUSPENSION

Section 1: No employee covered by this Agreement shall be disciplined without just cause. (The question as to what conduct constitutes "just cause" is a proper subject for the grievance and arbitration provisions of this Agreement.)

Section 2: No employee shall be disciplined for any reason unless he/she is provided with a written statement of the reason for his/her discipline. Said written notice shall be served on the employee at the time of meting out the discipline.

POSITIONS OF THE PARTIES

The Association points to Article 7, Section 1, and notes that no employee covered by this Agreement may be disciplined without cause. The Association contends that the Employer has the burden of proof in establishing the existence of cause for the suspension. The Association contends that the Employer has failed to satisfy that burden.

The Association contends that there was no effective warning for the grievant that she was not to be doing homework on County time. The Association points to the prior written warning which was directed at personal projects on the computer during County time. The Association argues that the County warned Deputy Heindel that she was not to be use the computer for "personal projects" during County time, and that warning had nothing whatsoever to do with bringing homework to the workplace. In fact, Heindel testified that the warning was sent out to a majority of employes working in the jail, and had to do solely with the use of the County's computer. The Association points to Scobey's testimony to the effect that he also received the same written warning from Sergeant Klanderman and that he understood it to be applicable only to using the County computer for personal projects.

The Association contends that the Employer never had a specific policy against bringing homework into the workplace. Again, the Association points to the testimony of Scobey to the effect that it was a long-standing past practice for employes to regularly bring into the workplace homework assignments, magazines and newspapers which they were allowed to read on County time. Scobey further testified that Sergeant Klanderman observed him doing homework and never warned or disciplined him for doing so. The Association notes that the jail tour revealed magazines and newspapers in the central control area. Heindel testified that she had been allowed to bring homework assignments into work for classes the County provided employes seeking a reclassification from Correction Officer I to Correction Officer II.

The Association concludes that the Employer did not warn employes that doing homework on the job was the sort of conduct for which discipline was appropriate.

The Association contends that the Employer did not conduct a fair and proper investigation into this matter. The investigation assumed that Deputy Heindel had seen all of what was going on in pre-booking because she is in the central control area. The Association argues that at the time of the altercation, Deputy Heindel testified that not all of the cameras were activated in the pre-booking area, and that she was only monitoring certain sections of the pre-booking area. Additionally, the holding cell where the altercation took place did not have a camera in it, so it was clear that Correction Officer Heindel could not see any fighting with the prisoner from central control. The Association notes that there were a number of other duties that Heindel was responsible for, and which she performed, during the time frame of the altercation.

The Association goes on to point out that neither the arresting officers, nor Deputy Klatt called for assistance notwithstanding the availability of numerous devices which would have permitted that.

The Association points out that Deputy Heindel did notify Deputy Klatt that there were problems in the pre-booking area. All testimony is to that effect.

The Association points out that the Employer brought forward no witnesses present at the time and date of the incident. The Association seeks an adverse inference from the Employer's failure to call any witnesses who observed, or participated in the events. The statements from Klatt, Schrank and Burrell were all admitted into the record over the objection of the Association. The Association continues its objection and notes that none of these "witnesses" were available for its cross-examination. The Association further notes that Captain Humphrey and Sergeant Klanderman, who conducted the investigation into the offense were not called upon to testify. In essence, the Association argues that I reject all of the County's evidence as hearsay.

The Association contends that Deputy Heindel did not commit the offense that the Employer alleges in the letter of suspension, dated June 2, 1995. The Association points out that at no time during the arbitration hearing did the Employer provide any witness who actually saw Deputy Heindel perform personal homework on County time. Heindel denies having done so.

The Association contends that the discipline was extreme, given Heindel's relatively clean prior record.

The County contends that it had cause to discipline the grievant for failing to adequately monitor jail operations. The County contends that the grievant was studying on County time, after having previously been warned twice that County business must supersede personal business. The County contends that the grievant violated a directive from her supervisor and that her violation of that directive resulted in her fellow officer being placed in jeopardy.

The County acknowledges that no one actually saw the grievant doing personal schoolwork on the morning of May 27, 1995. However, Schrank and Burrell, who entered the control room between 6:50 and 7:00 a.m. reported seeing the grievant's schoolbooks lying open on the central control room counter. The Employer contends that Klanderman's verbal warning on May 9, about working on personal projects on the computer during County time was a clear warning to the grievant that the County's work came first. The grievant should have known that work on personal projects which interfere with her ability to do her job and, therefore, endanger her fellow officers, was inappropriate, and would not be tolerated. The County contends that the grievant willfully disregarded that warning. The Employer contends that it has the right to expect that employees will perform the functions of their job. The fact that employees periodically pass the time by reading magazines and books does not relieve that expectation.

The Employer contends that the grievant jeopardized the safety of her co-workers. Her inattention to her duties requires a serious punishment. The grievant was given a warning on May 9 that working on personal projects, or schoolwork, during work hours would not be tolerated. Obviously, argues the County, that verbal warning did not correct the grievant's behavior. A harsher form of discipline is necessary. The County perceives a need to get the grievant's attention. A three-day suspension is alleged to be appropriate.

DISCUSSION

There is an underlying and fundamental dispute of fact in this proceeding. That fact centers on whether or not Heindel was doing her homework at the time of this incident. The importance of this issue is magnified in that it constitutes a key fact upon which the discipline is predicated. Heindel's testimony is the only direct testimony on the subject. She denies doing her homework while this incident transpired. The statements of Schrank and Burrell contradict her in this regard. However, neither of those employees were called to give testimony, and neither was available for cross-examination by the Association. I do not believe the Employer has sustained its burden of proving that she was actually doing homework while this event transpired.

Critical to the task of operating the control center is the monitoring and maintenance of security and safety of the building. I believe this Employer tolerated studying, reading, etc., but not to the detriment of the security of the jail. Similarly, collateral tasks such as serving meals, bond service, maintaining logs, cannot excuse a willful failure to come to the aid of officers in distress.

I believe the grievant and her accusers, had different perspectives. It was her perspective that there was no cause for alarm. Her observation was of two officers escorting a harmless drunk into the jail. Her observation was that they may need help in that they were transporting an unwieldy prisoner. Her call for help was that of someone attempting to bring assistance to those transporting a considerable amount of dead weight.

The perspective of her co-workers was different. They ultimately observed officers in distress, with no aid dispatched.

It appears to me that the fight broke out in one of the rooms immediately off the pre-booking area. I believe the fight must have just broken out as Klatt approached that area. His report of events was that Chief Pfaff was "walking fast" toward the interview room, as he (Klatt) approached. Heindel testified that the two Somerset officers had brought the prisoner into the pre-booking area. Had a struggle begun earlier, I do not believe that Pfaff would have abandoned Donovan. This occurred after Heindel had indicated, in a flat tone of voice, that the Somerset officers might need help.

Burrell's statement indicates a concern that Heindel was unaware of what was going on.

Burrell indicates that she saw the two officers in pre-booking, and that she saw Deputy Klatt heading toward the pre-booking area. There is no indication in this record that any fight had erupted at that point in time. Burrell reports seeing two officers in pre-booking with a male. She does not report a fight in progress. She left because Klatt left. At the time Burrell observed Heindel it is my impression that no fight had broken out. At the time in question, I do not believe there was any sense of urgency or alarm legitimately exercised.

The struggle occurred in an unmonitored room. Schrank and Burrell were both in the control room. Neither of them appeared to have understood that there was a fight going on at the time they were in the control room.

I credit Heindel's testimony that she was unaware of the existence of a fight. I do not believe this record supports a finding that Heindel's lack of awareness of the fight was a by-product of her being preoccupied by her homework. She testified, without contradiction, that there were a number of other tasks she was performing simultaneously. It also appears that there are a number of spots, most notably the interview room in which the fight broke out and the receiving cell where it ended that are blind to her camera. It also appears to me that the fight broke out after Klatt had responded to her radio call that the Somerset officers might need help.

What Burrell and Schrank claim they observed was homework laid out on the console. Crediting their observations, there is nothing to suggest that once Heindel became aware of a prisoner being brought to the jail that her attention focused on her homework instead of the prisoner. To the contrary, it was her uncontradicted testimony that she monitored the prisoner into the pre-booking area. I am troubled by the fact that Heindel, who was aware of a prisoner being brought into the jail, did not have a monitor in the hallway connecting pre-booking to booking. Had she monitored that hallway, she would have observed officers dragging the prisoner down the hallway.

The letter of suspension refers to insubordination. It draws upon the May 9 warning as notice of conduct not to be tolerated. However, the May 9 notice is a verbal warning, and is easily construed as focusing on the use of the County computer. I do not wish to split hairs in this Award. However, the context in which this disciplinary suspension was issued is one in which employees appear to be free to read magazines, and newspapers in the control room. Both the grievant and Scobey testified that homework was permissible conduct in the control room during this time frame. Scobey testified that supervision had observed him doing homework without comment. In that context, I believe the May 9 warning falls significantly short of the mark.

I believe the disciplinary investigation was flawed. I do not understand why Heindel's version of the events were not solicited prior to the imposition of discipline. To the extent the

Employer seeks deference to its judgement on the imposition of discipline, it seems fundamental that the Employer demonstrate that it has considered and balanced the evidence and workplace consequences of discipline. Obviously, no such balance transpired here.

AWARD

The grievance is sustained.

REMEDY

The Employer is directed to reimburse Officer Heindel for all lost wages and benefits attending to the suspension giving rise to this proceeding. The Employer is further directed to expunge from its records any disciplinary reference to this incident. It is the intent of this Award to make Heindel whole for the losses she suffered as a consequence of this discipline.

Dated at Madison, Wisconsin, this 9th day of January, 1997.

By William C. Houlihan /s/
William C. Houlihan, Arbitrator