BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

THE LABOR ASSOCIATION OF WISCONSIN, INC.

and

MONROE COUNTY

Case 122
No. 53382
MA-9338

Appearances:

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

Ms. Kerry Sullivan-Flock, Monroe County Corporation Counsel, Monroe County Courthouse, P.O. Box 354, Sparta, Wisconsin 54656, appeared on behalf of the County.

ARBITRATION AWARD

On November 22, 1995, the Wisconsin Employment Relations Commission received a joint request from the Labor Association of Wisconsin, Inc. and Monroe 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 January 9, 1996, appointed the undersigned to hear and decide the matter. A hearing was conducted on March 7, and on April 18, 1996, in Sparta, Wisconsin. A transcript of the proceedings was made and distributed by May 22, 1996. Post-hearing briefs were submitted and exchanged. Additionally, the County filed a reply brief which was received and exchanged by August 20, 1996.

This dispute involves a three-day suspension issued to employe Robin Knoll, a jailer with the Monroe County Sheriff's Department.

BACKGROUND AND FACTS

The background underlying this dispute includes the existence of a lawsuit initiated by Ms. Knoll, the grievant, in conjunction with two co-workers, Sandie Wegner, another jailer, and Paul Bingenheimer, who has subsequently married Ms. Knoll. The lawsuit was ongoing during the time frame in which the events giving rise to this grievance occurred, and it in essence pits the three plaintiffs against other Departmental employes. There also occurred a prior incident where Ms. Knoll complained of the conduct of Mark Magnus, another jailer, and her complaint and testimony led to his discipline.

The events leading to the discipline of Ms. Knoll, center on the allegation of a Monroe County jail prisoner, T.R. It is the claim of prisoner "R" that on some unspecified date in approximately late February, 1995, he was walking down the hallway and went into an open closet for the purpose of sharpening pencils. As he stood and sharpened a pencil, he contends that jailer Knoll came up behind him, made some reference to his rear end, to the effect that he should "stop shaking my butt, or my ass, or something like that and she just grabbed ahold of it." "R" contends that Knoll grabbed both of his buttocks with her hands. "R" contends that the event was witnessed by another prisoner, "R.J.". Prisoner "R.J." testified in the proceeding, and corroborated prisoner "T.R."'s account of the events. According to "R.J.", he was walking by and witnessed jailer Knoll walk up behind and grab prisoner "T.R." by the butt.

An interview statement taken of prisoner "E.B.", who did not testify, was admitted into the record. Inmate "E.B." was a cellmate of "T.R." and "R.J.". According to "E.B."'s statement, the evening of the alleged incident "T.R." came into the cell, angry and upset, and indicated that "Robin grabbed me in the ass, did you see that. . ." According to "E.B.", this comment came in an exchange between "T.R." and "R.J.". "T.R." and "R.J." both testified to the same conversation that evening. Additionally, a deposition, taken in connection with the previously-mentioned lawsuit, was taken of prisoner "E.B.". In that deposition, "E.B." indicated that "T.R." was upset, and over the course of the next several days indicated on several occasions "I have been violated". He indicated that "T.R." needed to see a doctor, ostensibly in connection with his psychological state following the alleged assault. "E.B." gave the following response when questioned as to conversations that he could recall following the incident: "Well, like I said, it was kind of like once in a while during that two to three-week period. In other words, maybe it would go a day and then he would say something again. He would say something to the effect that like, 'I am going to the doctor today', or something, like they had talked about, or, 'God, this really bothers me that I got violated' was the word he used a couple times. R would say something once in a while, 'I wonder how T is doing. You know, he is really upset regarding this incident'. . ."

"T.R." testified that this incident was not an isolated event. Rather, he testified that Knoll had made unsolicited and unwelcome advances for years. It was his testimony that she was always flirting with him, that she "talked nice" to him and more or less flirted with him during certain times, that she asked if he was seeing anyone. It was his testimony that when he worked in the kitchen, he would have a towel hanging from his back pocket which he would drape so that the other end hung from his front pocket, and that she would approach him and wipe her hands on the towel while it was in his pockets. He indicated that when so doing she would rub her hands down his leg. It is his testimony that when the two would be handling food trays she would more or less grab or touch his hand before she touched the tray. All of this was done with a smile. Mr. "R" indicated that he attempted to discourage this behavior by advising Ms. Knoll that he was involved with others and did not want to date anyone like her. Mr. "R"'s testimony is that all of these approaches occurred when no one else was around, and that he did not report any of these

incidents for fear of retaliation. It is his testimony that at times, Ms. Knoll was rude to other inmates or directed them to leave an area where he and she were so that they could be alone. It is his testimony that her body language and tone of voice was that of a woman flirting.

It was prisoner "T.R."'s testimony that he attempted to report the grabbing incident to jailer Jill Danielson. According to "R", approximately one week after the incident, while in the kitchen, he attempted, but was unable to communicate with Danielson. It is his testimony that in essence his anxiety overcame his ability to inform Danielson. It was the testimony of Danielson that on March 16, she overheard a conversation between "T.R." and "R.J.". It was her impression that "T.R." wanted her to overhear the conversation. When the allegations against Knoll subsequently unfolded, it dawned on her that the conversation she had previously heard involved the allegation of "R" against Knoll. It is Danielson's testimony that her relationship with Knoll is a poor one.

On March 15, Mark Magnus was working in the kitchen along with "T.R.", "R.J." and "J.B.". According to Magnus, "T.R." initiated a conversation which concluded with his describing to Magnus and others present the incident as has been described above. Magnus indicated that he was shocked and reacted with incredulity. At that point, "R.J." indicated that he was there and had seen it and "E.B." confirmed that when the other two had returned to the trustee block, they had told him about it. Magnus indicated that he had been told that the incident had occurred about two weeks earlier. He asked why they had not reported it earlier and was advised that they had told another jailer, but that that jailer did not believe them or something like that. Magnus' testimony with respect to the March 15 reporting of the incident is consistent with that testified to by "T.R." and "R.J."

Magnus did not immediately report the matter. Rather, he went home and mulled over the appropriate course of action for approximately four hours. He determined to report the incident to Lieutenant Charles Schwarz. Lieutenant Schwarz is a road lieutenant. Magnus made a conscious decision to report the matter to Schwarz in lieu of reporting it to the jail supervisor, Lee Robarge. His decision in that regard reflected the considerable uncertainty he felt due to the litigation and accusations that swirled around and within the jail. Schwarz reported the matter to Sheriff Dale Trowbridge on March 16. Following Schwarz' report, Sheriff Trowbridge assigned Lieutenant Richard W. Yunk to investigate the matters and report back.

Yunk conducted an internal investigation, beginning on March 16, in the late afternoon. At that time, he talked to prisoner "T.R.", and took a statement. Later that evening, he interviewed prisoner "R.J.", and took a similar statement. Yet later that evening, he interviewed prisoner "J.B.", and took a statement. Yunk took a handwritten statement from Magnus.

On March 17, 1995, Yunk attempted to speak with Robin Knoll in reference to the matter. Yunk initiated the conversation by approaching Knoll on another incident, where it was alleged that she had failed to report a matter. From that conversation, Yunk proceeded to indicate that he needed to talk to her about a complaint from an inmate, about her grabbing him in the buttocks.

She responded that she would not make any comment on it until she talked to her attorney. Yunk contacted the lawyer by telephone. The lawyer indicated that he wanted to speak to his client in private, and that she would not talk to him (Yunk) at that time. It was Yunk's understanding that a subsequent meeting would be convened. Knoll also understood that a subsequent meeting was to be convened. No meeting was convened, apparently because Ms. Knoll's lawyer did not pursue such a meeting.

On March 18, 1995, Jill Danielson contacted Yunk and indicated that she had information concerning the investigation. Yunk advised Danielson to complete a written statement which she did.

While the investigation was proceeding, Trowbridge suspended Knoll with pay effective March 17, 1995. Following conclusion of the internal investigation, Trowbridge determined that there existed the possibility that criminal conduct had occurred and referred the matter to the Monroe County District Attorney. He provided Knoll with a status letter, dated March 21, 1995 which provided the following:

> Dear Ms. Knoll:
>
> An internal investigation has been forwarded to the Monroe County District Attorney's office concerning the above-named matter, wherein he has assigned said investigation to a special prosecutor from LaCrosse County, that being District Attorney Scott Horne.
>
> The action taken by myself in regard to your suspension with pay dated 3-17-95 at 3:26 p.m. could include review for two (2) separate charges, those being as follows:
>
> (1) Violation of Wisconsin Statute 940.225(3)(m)-Fourth-degree sexual assault, which is a Class A misdemeanor;
>
> (2) Violation of Wisconsin Statute 940.29(1)-Abuse of resident of facility/correctional institute, which is a Class E felony.
>
> The above matter will be directed to be examined and possibly charged through the proper legal process.
>
> Also, in conjunction with this complaint. . .there are additional violations of Monroe County police policy and procedure manual, those being violations of General Work Rules listed below:

> General Work Rule No. 17 - "All members shall govern themselves with strict regard to the laws of propriety, in relations with members of either sex".
>
> General Work Rule No. 18 - "No member shall intentionally violate another person's legal or constitutional rights".
>
> General Work Rule No. 20 - "No member shall intentionally mistreat or neglect another person".
>
> General Work Rule No. 28 - "No member will conduct himself/herself in such a manner that they will bring discredit on the Department and/or the Monroe County Board or any law enforcement agency."
>
> General Work Rule No. 37 - "Members shall obey all public laws".

Said rules, I feel, have been violated and will be reviewed by the Law Enforcement Committee members, wherein the Chairman of the Law Enforcement Committee has been notified of this matter. As of this time, no specific date and time has been scheduled for review of same, however, you will be notified. The investigation of this matter was conducted by Lieutenant Richard W. Yunk, however, I did also review the above rules and violations thereof and have concurred with same.

Further, it has also been determined a violation of Monroe County Personnel Policy Manual, Section 4.62(1), which states the following:

> "Conduct constituting sexual harassment", was violated by yourself.

If you should have any questions concerning this matter, or need clarification of the above-mentioned violations, please feel free to contact Chief Deputy Charles Amundson or myself.

Sincerely,

Dale Trowbridge /s/
Dale Trowbridge

On March 23, 1995, Trowbridge gave Knoll a three-day suspension without pay for violations of the five work rules set forth in the March 21 status letter.

On March 25, Tom Bauer, the union business representative, telephoned Sheriff Trowbridge, and, according to his testimony, indicated that he was calling pursuant to Step 1 of the grievance procedure. It was Bauer's testimony that Ms. Knoll was concerned about having direct conversation with the Sheriff in light of the allegations pending against her and the ongoing litigation and that Bauer and the Sheriff discussed the matter and concluded with Bauer indicating that he would submit a written grievance. Trowbridge had no independent recollection of the subject matter or date of the telephone conversation. Bauer prepared a grievance dated March 31, mailed it on April 3, and Trowbridge received the grievance on April 4, 1995. It is Trowbridge's uncontradicted testimony that he never agreed to waive Step 1, or any other step of the grievance procedure.

Sheriff Trowbridge responded to the grievant by letter dated May 3, 1995 wherein he denied the grievance and indicated that he believed "the time limit requirement for Step 1 was exceeded and Step 2 was bypassed entirely."

On September 6, 1995, Scott Horne, the LaCrosse County District Attorney sent Sheriff Trowbridge a letter which declined the prosecution of Robin Knoll for the matters cited above. The essence of Mr. Horne's letter is that there are sufficient credibility issues at play to make him uncomfortable invoking the criminal process.

ISSUE

The parties stipulated to the following issues:

1. Is the grievance arbitrable?

2. Assuming the answer to question 1. is "yes", then did the Employer have just cause, within the meaning of the provisions of Article 2 of the Collective Bargaining Agreement, to suspend the grievant for three days without pay on March 23, 1995, for a period to include April 1, 2 and 3, 1995, for an alleged violation of Department policies? If not, what is the appropriate remedy?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE 2. MANAGEMENT RIGHTS

The County possesses the sole right to operate County government and all management rights repose in it, subject only to the provisions of this Agreement and applicable law.

These rights include, but are not limited to the following:

. . .

D. To suspend, demote, discharge and take other disciplinary action against employes for just cause;

. . .

ARTICLE 3. GRIEVANCE AND ARBITRATION PROCEDURE

. . .

C. Time Limitations: If it is impossible to comply with the time limitations specified in the procedure because of work schedules, illness, vacations, etc., these limits may be extended by mutual consent in writing.

. . .

E. Steps in the Procedure:

Step 1: The employe, alone or with the Association representative, shall orally explain the grievance to the Department Head no later than ten (10) days after he/she knew or should have known of the cause of such grievance. In the event of a grievance, the employe shall perform the assigned work task and grieve the complaint later. The Department Head shall, within ten (10) days, orally inform the employe and the representative, where applicable, of the decision.

Step 2: If the grievance is not settled at the first step, the employe and/or the Association representative shall reduce the grievance to writing on a County grievance form, and shall submit the written grievance, within ten (10) days of

> the oral decision, to the Department Head. The employe shall continue to perform assigned tasks as in Step (1), and as in future steps. The Department Head shall consider the written grievance and shall respond in writing within ten (10) working days.
>
> . . .

POSITIONS OF THE PARTIES

The Association contends that the grievance is timely, and has been filed pursuant to the time limits set forth in Article 3. The Association reviews the facts and contends that March 17, 1995 was the first time that Deputy Knoll was made aware of prisoner R's allegation. At the time, Knoll was placed on suspension with pay pending an investigation. No grievance was filed because Knoll was in pay status, there was no loss of benefits, and the investigation was ongoing. The Association acknowledges that Knoll was on notice, as of March 21, 1995, that the matter had been referred to the LaCrosse County District Attorney's office. The Association contends that the letter so advising her was informational only and that Knoll continued to be on suspension with pay, without loss of pay or benefits. It was not until March 23 that Knoll was advised that she would be suspended for three (3) working days without pay. The Association points to the testimony of Bauer, who indicated that he called Sheriff Dale Trowbridge on March 25, regarding the specifics of Knoll's suspension without pay. According to Bauer, he indicated to the Sheriff that the Association would be commencing Step 1 of the grievance procedure. The time period that had expired from the date the Sheriff issued the letter of suspension to the date the Association advised the Sheriff that the grievant was initiating Step 1 of the grievance procedure was two (2) days, well within the Step 1 time limits.

It is the position of the Association that the Step 1 oral explanation was accomplished by Bauer during his telephone conversation with the Sheriff on March 25, 1995. The Association points out that the Sheriff acknowledges the telephone conversation, but did not recall the precise date of that conversation. The Association contends that the contract does not require a face-to-face meeting between the parties.

With respect to Step 2 of the grievance procedure, the Association notes that the Sheriff received his grievance at 9:08 a.m. on April 4, 1995. The Association notes that that is exactly ten (10) days from the time Bauer talked to the Sheriff (March 25, 1995). The Association notes that the postmark of the envelope containing the grievance indicates April 3, 1995 as the postmark. This indicates that the grievance was mailed nine (9) days following the oral step, and within the time limits set forth in the grievance procedure.

The Association goes on to note that the grievance giving rise to this incident was filed at the same time two other grievances involving Deputy Knoll were filed. The Association contends

that these two grievances were processed through the grievance procedure at the same time, were received by the Sheriff in the same envelope, with no procedural objection raised to the timeliness of the other two grievances. The Association contends that the Employer, by its behavior in handling other grievances, has waived whatever right it has to object to the timeliness of this grievance.

The Association contends the Employer lacked just cause to discipline Knoll. Specifically, the Association attacks the investigation conducted by Detective Lieutenant Yunk. The Association analyzed the amount of time Yunk invested in the investigation. It concludes that he spent 38 minutes initially talking to R, 20 minutes interviewing inmate J, and 15 minutes interviewing inmate B. Yunk's follow-up interview with R lasted approximately five minutes. The Association contends that Yunk spent a total of 78 minutes conducting his investigation. The Association complains that Yunk failed to question the two officers (Magnus and Danielson) about their written statements and additionally complains that Yunk's effort to question Knoll was accusatory. The Association concludes that the investigation was hastily performed, thus suggesting bias in the handling of the case.

The Association quotes Yunk as testifying that his only responsibility in the internal investigation was to gather statements from those questioned. Those statements were then to be turned over to the LaCrosse County District Attorney. The Association contends that Yunk's role was limited, and that the real investigation was to be performed by the District Attorney. The District Attorney's conclusion not to prosecute is alleged to also be determinative of the internal investigation relative to Knoll.

The Association contends that the Employer's investigation never establishes a specific date as to when the alleged grabbing incident occurred. The Association contends that the statements of J and B are contradictory. The Association summarizes R's testimony and concludes that it is inconsistent and never identified a date. The Association points to R's testimony to the effect that Knoll was "always coming on to him", that she talked to him in a "seductive" voice, that she would "display body language that would imply that she wanted to be close to him", and that she always wanted to "be my buddy or something" and concludes that R was embellishing his testimony with unsubstantiated accusations that were simply not true.

The Association points to R's testimony that he attempted to tell Deputy Danielson approximately one week after the alleged grabbing incident, but could not get her attention. The Association points to Danielson's report that R approached her on March 16, the day after he told his tale to Magnus.

The Association contends that the testimony relative to the grabbing incident appeared rehearsed. The Association quotes arbitral authority for discrediting witness testimony, where the witness has a reputation for dishonesty, and points to the substantial record testimony directed toward R's inherent incredibility as a witness.

Finally, the Association concludes that Knoll's personnel file was relatively discipline-free. It contends that whatever discipline was appropriate, a three-day suspension was extreme.

The County contends that the grievance is not arbitrable for failure to follow the required timelines in the Agreement. The County contends that the disciplinary action in this matter was commenced by the Sheriff's March 17, 1995 letter. As of that date the grievant knew or should reasonably be held to have known, that she had cause for a grievance. By March 21, the grievant had been advised that an internal investigation had been forwarded to the District Attorney's office. By March 23, the grievant had been formally advised of the imposition of a three-day suspension without pay. Written grievance in this matter is dated March 31, and was not received by Sheriff Trowbridge until April 4, 1995.

The County contends that there was no oral discussion of the grievance. There is no indication the County ever stipulated to the elimination or waiver of Step 1 of the grievance procedure. To the contrary, Sheriff Trowbridge, as a matter of record, preserved his timeliness argument as evidenced by his letter dated May 3. The Employer contends that Step 1 of the grievance procedure was ignored, and that the submission of the written grievance violated Step 2, in that it occurred well after the 10-day time period passed.

The County acknowledges Bauer's testimony with respect to his telephone conversation with Sheriff Trowbridge and argues that Trowbridge's testimony did not corroborate that of Bauer.

With respect to the issue of just cause, the Employer contends that the question before me is whether or not it had cause to discipline Knoll. The Employer points to the testimony of R, who provided a detailed account of the physical encounter initiated by Knoll. The Employer contends that Knoll did physically touch the buttocks of R, who at the time was an inmate in the Monroe County Jail. The Employer summarizes R's testimony as to the physical encounter and to his further testimony as to Knoll's prior sexual comments to him and concludes that the behavior is inappropriate and subject to discipline.

The Employer further relies upon the corroborating testimony of J.

The Employer notes that Lieutenant Yunk conducted an investigation, interviewed all witnesses, and notes that all statements taken contain consistent information.

It is the Employer's contention that it is not my responsibility to determine whether or not Knoll did engage in the behavior that led to the disciplinary action. Rather, the Employer contends that my task is limited to a determination of whether or not just cause existed. The Employer contends that all information compiled, as of the date of the discipline, formed a reasonable basis for disciplinary action. The Employer notes that Knoll refused to cooperate or

participate in the investigation of the incident at the time. At no time leading to the imposition of discipline did Knoll ever take the opportunity to advise the Department that she was denying occurrence of the incident. At the point in time it was necessary for the Employer to make a determination as to what, if any disciplinary action would be taken, the record before the Employer supported the decision to discipline.

The Employer goes on to contend that the severity of the rule violation in question, that being non-consensual physical contact with an inmate, supports a three-day suspension. The Employer notes that other disciplinary matters were pending simultaneously with the imposition of this discipline.

The Employer acknowledges that both R and J have spent a significant portion of their adult life in the criminal justice system. The Employer also cautions that it is the responsibility of the law enforcement officers and particularly jailers, to act as caretakers for individuals who are incarcerated. It would be inappropriate to discredit the testimony of R and J merely because they are jail inmates. To fail to discipline jailers for inappropriate behavior with jail inmates would be to say to jailers that they have free rein to do that which they chose because inmates would not be believed.

In its reply brief, the County clarifies that its procedural objection is that Ms. Knoll was not present during any conversation that may have transpired prior to the filing of a written grievance in this matter. It is the Employer's contention that the grievant's participation is required by the contract. The County objects to references to the County's treatment of any other grievance which was not made a part of the record in this proceeding.

DISCUSSION

The threshold issue in this matter is the timeliness of the grievance submitted. I regard March 23 as the event prompting the grievance. What this grievant complains of is a three-day suspension. This three-day suspension was ordered on March 23. The suspension was served on April 1, 2 and 3. I do not believe it appropriate to begin to mark the time limit at any day earlier than March 23. At any rate, I credit Bauer's testimony that he called Sheriff Trowbridge on March 25. Bauer had a specific memory as to the date and conversation. Trowbridge did not deny either the content or timing of the call, he simply could not recall either the date or much detail. I believe the telephone call fell within the time allowed by the grievance procedure.

The County's real objection in this timeliness dispute is that the grievant was required to participate in the grievance procedure, and did not. I believe the County's factual contention in this regard is accurate. Knoll did not participate in the grievance procedure. As of March 25, there is no indication that Knoll had ever denied the allegations lodged against her. Her unwillingness to cooperate in the investigation placed the Sheriff in the difficult position of attempting to balance all of the facts of this dispute, without being privy to her version of the

events. Since ultimately this entire matter turns on her credibility measured against that of the two prisoners, the dilemma facing the Sheriff is obvious.

The real question here is what consequence should follow from Knoll's non-participation at Step 1 of the grievance procedure. The contract, on its face, has no consequence for the failure of an employe to participate. It is certainly predictable that Ms. Knoll's refusal to participate in the investigation would increase the likelihood that she would be disciplined. She has endured that consequence, as well as the scrutiny of the criminal process. I do not believe she should be precluded from having the merits of her offense adjudicated. I believe that this case represents an extraordinary set of circumstances. There was a lawsuit pending which apparently caused the entire jail operation to be distorted. There were accusations and hard feelings in abundance. Knoll believes that she was set up for discipline by co-workers. It appears that she was acting on the advice of her counsel in not discussing this matter with Departmental management. I am hard-pressed to understand how she might have compromised herself with a simple denial. It appears to me that a meeting, which never occurred, was contemplated by all. However, I do not believe that the Employer has been compromised by the failure of Ms. Knoll to participate at Step 1. The Employer was placed upon immediate notice that its disciplinary suspension would be grieved. That notice came in the form of a telephone call that preceded the disciplinary days off by approximately one week. There is no doubt in my mind that the Employer proceeded to discipline Ms. Knoll with full knowledge that there would be a grievance attacking the propriety of the discipline.

On the merits, I believe this dispute boils down to the question of whether or not Ms. Knoll committed the act with which she is charged. The conduct described is grossly inappropriate. Knoll knew that, or could be reasonably held to such knowledge. I believe a three-day suspension is appropriate for the conduct alleged. The real issue is: Did she do it?

The Union attacks the quality of the investigation. It is the Employer's task to prove that the conduct occurred. To the extent the investigation was conducted quickly, that is irrelevant to me. The very fact that there was a modest time frame allocated to this investigation does not render it inherently flawed. If the Employer garnered the evidence necessary to establish the facts needed to support the discipline, then the investigation was sufficient.

The County contends that I ought not review the facts of the incident or reconcile competing testimony. I disagree. I understand that Ms. Knoll's refusal to cooperate with the investigation was a substantial factor confronting the Sheriff at the time he had to make a disciplinary decision. However, I am not prepared to impose discipline on Ms. Knoll for her investigatory behavior. The Employer did not invoke such discipline. The Employer disciplined Ms. Knoll for her alleged misconduct because it believed the allegation that she had grabbed a prisoner. The Employer had recourse to complete its investigation. The Employer was free to order Ms. Knoll to give her version of the facts, but chose not to do so. While I acknowledge that the Sheriff was in a difficult position at the time, I am not prepared to invoke discipline for

behavior over which the Employer has not imposed discipline.

Because, as noted, I believe the propriety of this discipline turns on whether or not Knoll actually engaged in the conduct for which she was disciplined, this dispute turns on the credibility of the various witnesses. Ms. Knoll has categorically denied all accusations. I found her testimony forthright and unequivocal. While I recognize that she has a self-interest motive in denying that with which she has been accused, I found her testimony credible. "T.R.", the accuser, appeared to be a forthright, persuasive, and at times compelling, witness. He did not waiver or equivocate in his testimony. Mr. "R"'s testimony was corroborated by Mr. "J". I did not find Mr. "J" to be a particularly persuasive witness. "J" had to be lead through a good deal of his direct testimony, he recalled very few details other than those specifically addressing the incident, his testimony was halting and uncertain. On cross-examination, he acknowledged that he could not recall whether the incident occurred during the lunch or dinner period. He seemed distracted. He appeared to have comprehension problems on both direct and cross-examination.

Mr. "B" did not testify. Rather, a deposition taken in connection with another matter was entered into the record as were the notes of the interview conducted with Yunk. Mr. "B"'s observation was relevant in that it corroborated that prisoner "R" indicated that he had been assaulted the evening of the alleged event. "B" also recounted the state of mind reflected by "R" subsequent to the event.

Notwithstanding "R"'s witness stand demeanor, I do not believe the incident to which he testified occurred. I do not find "T.R." to be a credible witness. It was his testimony that Knoll repeatedly came on to him over the course of several years. His testimony in that regard is not corroborated in any fashion. The allegations that he makes with respect to Knoll stretch my imagination beyond the realm of the credible. His claim that he was subject to sexual harassment over the course of several years form the context for this incident. I simply do not believe that occurred.

"T.R." claims that he approached Danielson within one week of the incident. That is simply not true. Danielson's notes reflect that he approached her on March 16. If this is accurate, his approach occurred the day after he confessed to Magnus. Both "R" and Magnus indicate that he indicated to Magnus that he had previously attempted to bring this to the attention of a jailer (Danielson) who had been unreceptive. Danielson testified that it was her impression that the prisoners wanted their March 16 conversation to be overheard.

"T.R." has lived a lifetime at, and beyond, the edge of credibility. Notwithstanding his testimony on cross-examination that "I've always told the truth", he explained his felony conviction by indicating "they just didn't believe me." Mr. "R"'s parole agent testified. She spun a tale of absolute wonder. Her testimony recounted Mr. "R"'s various threats to kill people, his tales of running drugs, and his repeated boasts as to the number of people he had killed. She recounted a tale involving his total fabrication of an incident for the sole purpose of self-

aggrandizement to the potential criminal detriment of his intended victim. While a good deal of the parole agent's testimony falls into the category of hearsay, she did testify that Mr. "R" had lied to both herself and another parole officer about being fired from a job. I believe it appropriate to view Mr. "R"'s testimony in the context of his lifelong inability to tell the truth.

It is alleged that Mr. "R" suffered substantial psychological damage from the incident. He claimed to be outraged, and his outrage was confirmed by other witnesses. According to Mr. "B"'s statement, Mr. "R" repeatedly indicated that he had been "violated", and did so over the course of several days. It was Mr. "R"'s testimony corroborated by Mr. "B" that he needed psychiatric help in order to cope with the incident. This dramatic, and I believe exaggerated reaction, is in stark contrast to his rather nonchalant attitude when he was subsequently threatened with having his legs broken. That affected him not at all.

Mr. "R" is a man who is alleged to have bragged about killing numerous people, and running drugs all over the country. He has been in and out of jail his entire adult life. This is a man who bullied and threatened to kill people who stood between him and that which he wanted. In order to find his testimony credible, I must find that this man was so emotionally traumatized by having his rear end grabbed, that he needed professional help. I simply cannot come to that conclusion.

He approached Magnus and feigned an approach to Danielson. Both of these individuals have an openly hostile relationship with Knoll. He did not approach Robarge, the jail administrator who is Knoll's supervisor, and with whom Knoll had a good relationship. I believe the incident was contrived.

AWARD

The grievance is sustained.

REMEDY

The Employer is directed to remove all reference to this disciplinary incident from Ms. Knoll's records, and to expunge from her personnel file any and all reference to the matter. The Employer is further directed to pay Ms. Knoll the wages lost as a consequence of this discipline, and to make her whole for the loss of any other fringe benefit which has directly resulted from this suspension.

Dated at Madison, Wisconsin, this 27th day of February, 1997.

By William C. Houlihan /s/

William C. Houlihan, Arbitrator