

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

TEAMSTERS LOCAL UNION 579

and

ROCK COUNTY

Case 299
No. 54530
MA-9707

Appearances

Ms. Andrea F. Hoeschen, Attorney at Law, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., appearing on behalf of the Union.

Ms. Charmian J. Klyve, Deputy Corporation Counsel, Rock County, appearing on behalf of the County.

ARBITRATION AWARD

The Union and the County named above are parties to a 1996-1997 collective bargaining agreement that provides for final and binding arbitration of certain disputes. The parties jointly requested the Wisconsin Employment Relations Commission to appoint the undersigned arbitrator to hear and decide the grievance of Maurice Gladney. A hearing was held in Janesville, Wisconsin, on September 15, 1997, at which time the parties presented their evidence and arguments. At the conclusion of the hearing, the parties argued their case orally in lieu of filing briefs. The transcript of the proceedings was received on October 4, 1997, and the record was closed on that date.

ISSUE

The parties ask:

Was Maurice Gladney discharged for just cause? If not, what is the appropriate remedy?

BACKGROUND

The Grievant, Maurice Gladney, was a juvenile Detention Officer in the County's Juvenile Detention Center. The Grievant started working at the Detention Center in April of 1995. On September 18, 1996, the Superintendent of the Juvenile Detention Center, Fred Atlas, notified the Grievant that he was discharged for using excessive force on August 24, 1996, on a juvenile that will be referred to as J.C. in this Award.

The Juvenile Detention Facility is licensed by the State of Wisconsin and governed by the State Administrative Code which prohibits any use of corporal punishment. The Facility's operational manual, developed by Atlas, states that inappropriate disciplinary actions (used on juveniles) includes corporal or unusual punishment, intentional humiliation, mental abuse, interference with daily functions of living, and the use of restraints such as handcuffs or shackles. The manual also states that examples of misconduct that may result in immediate discharge include conduct endangering the welfare of a juvenile or another person.

The facts in this dispute all center on the events of the evening of August 24, 1996, when the juvenile J.C. got out of hand and the Grievant was asked to help get him under control. The juvenile is described as a 14 year old boy who is about six feet tall, over 250 pounds, and emotionally immature. He has been in the Juvenile Detention Center before this date and is well known to the Detention Officers.

Paula Holte was working at the Center on the evening of August 24, 1996. She was assigned as a floater and was giving the central control worker, Detention Officer Solomon Battle, a break. Holte had asked the Grievant if he would take a boy that was in with J.C. to recreation, and J.C. was angry because he wanted to go to recreation also and could not go because he was being segregated from other boys for recreation. Holte described J.C. as a whiner, a real mouthy child. He started swearing and calling her a "fucking bitch" because she would not let him go with Officer Gladney's group to recreation.

Eric Harrell, another Detention Officer, came to the central control area and J.C. started throwing garbage cans and swearing loudly. Battle and Harrell tried to talk to him first but J.C. got upset with Battle and tried to swing at him. Battle and Harrell then thought it would be better to get him to his cell.

The two officers got J.C. to his cell, and the juvenile fell in the doorway which prevented them from closing the door to his cell. Holte was trying to close the door for them from central control. Battle had to sweep J.C.'s legs into the cell by bringing his own leg around, almost like a motion that kicked J.C., in order to clear J.C.'s legs away from the closing door. Holte thought that Battle had kicked the juvenile. Harrell did not think that Battle had kicked him, but that he had used his legs to make a sweeping motion in order to get J.C.'s feet into the cell.

Battle and Harrell went over to central control from J.C.'s cell and discussed what was happening with Holte. Harrell went back to the cell to check on the juvenile and found that he was flooding the cell, taking toilet water and spreading it everywhere. J.C. had put the mattress up to the door, blocking vision into the cell. The detention officers are supposed to be able to see into the cells for the juveniles' safety. Holte and Harrell thought that they should take everything out of his cell so that the juvenile could not harm himself. Harrell went to the gym to get the Grievant to help out because the Grievant usually had good rapport with the juveniles. The officers hoped that the Grievant could talk some sense into J.C. and that J.C. might listen to him.

The Grievant brought his juveniles back from the gym and the detention officers locked the boys down in their cells in order to focus on the problem with J.C. The Grievant went to talk with J.C. and the juvenile threw toilet water on him, which angered him. The Grievant ordered the door to be opened and he went into the cell. Harrell started taking the bedding out of the cell. Harrell heard the Grievant tell J.C. that they were going to "kick his ass" as they went into the cell. The Grievant stated that Harrell made that remark. The Grievant tried to talk to J.C. and get him to calm down, but J.C. was still out of control. The Grievant told J.C. that he would take him to recreation, but J.C. kept on swearing at them. The Grievant decided to take him to a holding area, and he and Battle planned to move J.C. while Harrell was to remove everything from the cell.

The Grievant yelled to Holte that they were taking J.C. to a holding cell. At that point, Battle and the Grievant were handling J.C. to move him to the holding area. Holte observed them and noticed that the three of them could not come through the cell door at the same time. The Grievant was on the right side of J.C., Battle on his left side. The juvenile was acting like a "madman," according to the Grievant, and he was a strong young man. He was pulling and trying to get loose from Battle and the Grievant. As they started to exit the cell door, Harrell saw the Grievant lift up his right arm and give three shots or punches to J.C.'s side, near the ribs. Battle stated that J.C. was resisting, and he saw the Grievant's arm move but thought that the Grievant was trying to keep a hold on J.C.'s right arm and keep him in control.

The Grievant testified that J.C. had yanked his arm loose and was going to hit him, so the Grievant threw up his left arm to block him and swung his right arm around J.C., trying to grab him around the waist. The Grievant said that J.C. was calling him a "fat mother fucker" and called all the officers "bitches," and that he was very violent at that moment. The Grievant denied hitting or punching J.C. with a closed fist.

Holte also saw a struggle going on while they were in the door of the cell and saw the Grievant punch J.C. with his fist at least three times. She testified that she was shocked by what she had seen, believing that the Grievant had punched the juvenile in the stomach area with his fist at least three times, possibly five times, and that these were intentional blows. She heard the Grievant tell J.C. that he was "gonna kick his ass, boy." She testified that he heard the Grievant call the juvenile a "fat ass" also.

After the juvenile was hit, he hunched over and Battle and the Grievant brought him into the corridor in front of central control and escorted him down the hallway. Suddenly, Holte saw J.C. go down and she heard him saying, "Stop choking me, stop kicking me." At that point, Holte could see Harrell and Battle but not the Grievant or J.C.

When the Grievant stood up, he was right over J.C. Holte could tell through the intercom that J.C. was coughing and gagging. She went over to the door and saw J.C. laying on the floor shaking. The juvenile had a past history of hyperventilating and faking medical emergencies.

Harrell went back to retrieve his walkie-talkie and when he returned to the hall area in front of central control, he saw J.C. on the ground and the Grievant on his knees

in front of J.C. Harrell saw the Grievant put his hands around J.C.'s neck and make a squeezing motion a few times. J.C. was yelling and then he lay there and started shaking violently as if he were having a seizure. Harrell saw something coming out of J.C.'s mouth. Harrell testified that he was basically in shock and didn't know what was going on. He was scared that J.C. might actually die, and he ran to a closet and got a face towel. Harrell gave the towel to Battle, who used it to wipe off J.C.'s head and mouth. Someone suggested that they get a pillow and Harrell ran and got a pillow. They put it under J.C.'s head and Battle was about to perform CPR on the juvenile.

Battle stated that J.C. had become limp in the hallway, that he was not going to move and then he started gagging and coughing, and mucus came out of his mouth. He was concerned about J.C. and cleared his airway to get ready for CPR if necessary. J.C. had incidents in the past where he appeared to fake choking or shaking or gagging. Battle did not think that J.C. was faking his distress while shaking on the floor.

The Grievant testified that when they got J.C. in front of Unit A in the hallway, J.C. froze and said, "I ain't going no Gad damn where." When J.C. went down on the floor, the Grievant ran over to the front of him and pinned him down to the ground and told him that he was not going to let him up until he calmed down. The Grievant stated that he was trying to hold J.C.'s shoulders down, and J.C. kept trying to lift up, but that he never choked the juvenile. The Grievant thought they held him down for almost 20 minutes, and that J.C. acted like he was choking and dying, but he denied ever putting his hands around J.C.'s neck. He stated he was pinning his shoulders to the floor.

Detention Office Kevin Leifker was on duty that night working in the shelter side of the facility. Holte called him and asked him to come over to the secure area, where she was in central control. When he came through the doors, he heard J.C. yelling and screaming. He walked around the corner and heard the Grievant yelling "fat ass, fat mother fucker." J.C. was lying on the floor at that time. As Leifker came into the hallway, he saw Battle standing over J.C., and the Grievant stood up by J.C.'s head as Leifker came around the corner. Leifker heard the Grievant say, "Let's get our stories straight." Leifker then went into the "A" unit and got all of the females into their cells and checked on a couple of other units.

Harrell heard the Grievant say "get your story straight" to everyone in the hallway. Harrell recalled Leifker being in the area at the time.

Battle recalled that the Grievant said something about getting their stories straight, but he could not say exactly what was said. He testified that he could not state that he saw the Grievant punch or choke J.C. but that he believed it happened. He testified that he did not hear J.C. yell "stop choking me, get off me" or anything to that effect.

The Grievant came into central control and yelled to Holte to call 911. Holte at that time had been on the phone with Atlas. She called 911 for an ambulance, and the Sheriff's Department came over also.

Holte asked Atlas who should go with J.C. to the hospital, and Atlas told her that the Grievant should go because he was the more senior worker there. Atlas also told Holte to contact a supervisor, Nichole Kumlien, to come to the facility. Holte said nothing to Atlas about having seen the Grievant hitting or choking J.C.

When Kumlien arrived, she started to find out what happened from Battle and Harrell. Two deputies were also there. Holte was busy at central control and was not questioned by the deputies. The Grievant was still at the hospital with J.C. and Holte had an opportunity to tell Kumlien what she had seen, but at that time, she did not tell Kumlien that she had seen the Grievant hit J.C.

The Grievant brought J.C. back to the Detention Center and they cleaned up his cell together. The Grievant, Harrell and Battle were making out their reports and discussing the incident, and Holte testified that the Grievant said to her, "I guess I was a little rough on that kid, wasn't I?" Holte answered, "Yes, you were," and she punched out and left. The Grievant thought Holte was upset because Kumlien wanted J.C. to sleep in his wet scrubs, and the Grievant got him some clean clothing and linen.

The Grievant described J.C. as a good kid but a compulsive liar who could be dangerous if he felt he was treated unfairly. The Grievant has had to restrain J.C. in the past and has seen J.C. acting as if he were hyperventilating.

At the time, Holte was employed there for only four months and was still on probation. She was disturbed about the whole situation and she went over to the shelter care facility where she talked with Leifker about it. Leifker told her that she had to talk to Kumlien about it.

Kumlien is a social worker and had been a shift supervisor at the Detention Center for two years at the time of this incident. Another supervisor, Mo Ruffin, was scheduled to be on duty the evening of August 24, 1996, but was having car problems. Kumlien was on call after 6:00 p.m., and she was called between 6:30 and 7:00 p.m. by Holte and asked to return to the facility immediately.

Kumlien made a report regarding J.C.'s disorderly conduct, based on her conversation with Holte, Harrell, Battle and the Grievant. This report mentioned nothing about any misconduct on the part of any staff member. No one reported any misconduct at that point. Kumlien went home and received a call from Holte. Holte told Kumlien that she was going to write a different report because she felt there was inappropriate conduct by some of the staff. She told Kumlien that she thought she saw Battle kick J.C. and that she saw the Grievant punch and possibly choke J.C. Kumlien came back after 11:00 p.m.. She called Atlas and reported what she had heard from Holte. At the facility, Leifker told her that Harrell had told him that Gladney "lost it." She and Leifker went to talk with J.C., who had returned from the hospital. Kumlien called Atlas again, and he directed her to call the Sheriff's Department to have a statement taken. The Detention Center has no police power and must rely on the Sheriff's Department to investigate and proceed on criminal matters. Kumlien wrote a second report on

August 25, 1996, dealing with allegations that J.C. was physically assaulted by Battle, Harrell and Gladney.

Holte spoke to Kumlien sometime after 9:00 p.m. that evening, and Kumlien told Holte to write a report in detail. She went home, worked on her report, and returned at 7:00 a.m. the next day. Holte's report does not state that she heard J.C. say, "Stop choking me, stop kicking me." Her report states that she saw him on the ground coughing, gasping for air and screaming that he could not breathe. Holte told the police that J.C. had a past history of hyperventilating.

Harrell also spoke with Leifker later that evening after the ambulance left. He told Leifker that he had a bad feeling about what had happened, that it was not right. He told Leifker about the choking incident that he had seen. Harrell made Leifker promise that he would not say anything. Leifker found Harrell to be visibly upset, and stated that Harrell told him that the Grievant was choking J.C. very hard, that he had lost respect for him and would not lie for him. When Leifker met with Kumlien that evening, he told her everything that Harrell had told him. Leifker wrote up notes in the early morning hours after the incident, the morning of August 25, 1996. His notes reflect his conversations with both Harrell and Holte.

Harrell testified that when the officers made their report to Kumlien, they concocted a story to make it seem as if J.C. were more or less at fault. Harrell testified that every officer agreed on that story -- Holte, Battle, Gladney, and himself. Harrell wrote a report that recommended that J.C. be punished for disorderly conduct and damage to property. He admitted that his first report was not accurate and he wrote a second report a few days later.

Harrell testified that he did not think that the Grievant was acting within his normal character, that the Grievant had just "lost it" on this occasion. The Grievant usually calmed Harrell down when he was upset. The Grievant had given Harrell pointers on how to deal with things if something strange happened or if Harrell would lose control of himself. He knew that there would be repercussions to the Grievant if he told the truth, and he did not want that to happen. He also did not want any trouble and he did not want to lose his own job.

Harrell went home that night and asked his mother what he should do. She told him he better tell the truth even if he had something to do with it. The next day, detectives came to Harrell's home and he gave them the same incorrect report he had given earlier to Kumlien. After that, he talked to his aunt, Emma Harrell, and she told him that he had better tell the truth. She reminded him that he would have to be under oath, and he did not want to lie under oath. His aunt told him that he could tell the truth over and over but he could not tell a lie over and over and he could not cover up for people. The detectives had told Harrell not to talk with Officers Gladney and Battle, and when the two officers came to Harrell's home, Harrell got scared and asked his mother to tell them that he wasn't there. When he returned to work, the detectives had spoken with Leifker.

Harrell was going to drug counseling and after a counseling session, he told Atlas that he wanted to tell the truth at that point. Harrell no longer works for the County. He did not pass his probation period and was dismissed in December of 1996. His probation period was extended once. He was having some trouble with drugs at the time. He had not been using drugs on August 24, 1996 and had not been using drugs for a while previously.

Frederick Atlas has been the Superintendent at the Detention Center for two and a half years at the time of the incident. The facility is licensed by the State Department of Corrections and has to comply with the Administrative Code 346. The Code requires that the facility have an operational plan. The facility's plan states that corporal or unusual punishment is inappropriate disciplinary action. Atlas stated that corporal punishment is excessive force, bodily harm, anything that constitutes child abuse. The operational plan also states that conduct endangering the welfare of a juvenile may result in immediate discharge. Atlas considers striking a juvenile with a closed fist and choking a juvenile to be acts that would endanger the welfare of a child. Atlas stated that it is not unusual to have to restrain a juvenile in a cell. However, he stated that striking or choking a juvenile is not proper restraint.

Atlas spoke with Kumlien and all the other detention officers about the incident, and he reviewed the Sheriff's Department's reports. Harrell told Atlas that he was not telling the truth initially. Atlas put the Grievant on suspension with pay on September 13, 1996 and discharged him five days later. Holte, Harrell and Battle were given verbal counseling for failing to properly write and submit reports. The Grievant's prior record includes a verbal counseling for failing to complete secure observation checks and a written reprimand for misuse of sick leave. Atlas did not mention any prior discipline as a reason for the Grievant's termination.

E.L.(Mo) Ruffin, a shift supervisor for two years, has supervised the Grievant in the past. He never saw the Grievant strike a juvenile or treat a juvenile in a degrading manner. Most of the time, Ruffin found the Grievant to get along well with J.C. They played cards and talked about family problems. Ruffin had prior experiences with J.C. working himself into a frenzy where his heart would pound rapidly. He has seen J.C. hyperventilating more than five times in the past. Shortly before the incident on August 24, 1996, J.C. tried to hit Ruffin and broke Ruffin's watch.

The Sheriff's Department's internal investigation shows that the Grievant told the investigating officers that he might have called J.C. a "fat ass" and his temper might have flared. The Grievant testified that the officers' report was incorrect.

There were some female juveniles in the facility during this incident who would have been behind a wall with glass windows that look into the hallway where the critical events took place. The Arbitrator has disregarded any statements, police reports, statements by witnesses, regarding those juveniles because of the hearsay nature of the evidence. The Arbitrator has similarly disregarded evidence of statements made by the juvenile J.C. or anyone who did not come forward to testify regarding this incident.

THE PARTIES' POSITIONS

The Union

The Union asserts that the County as treated this as the cafeteria plan of discharge cases. The County picks and chooses which evidence it relies on and disregards all the evidence. The County decided to use Kumlien's second report. It decided to use Holte's incident report and Harrell's second report. It decided to rely on statements that other juveniles made to the police to the extent they favored the County's decision to discharge the Grievant, and it chose to rely on J.C.'s allegations against the Grievant.

On the other hand, the Union points out that the County decided not to rely on Kumlien's first report and it did not rely on Harrell's first report. The County decided not to rely on observations of juveniles reported to police, or Battle's statement, or J.C.'s allegations against Battle and Harrell. The Union notes that Battle and Harrell were not disciplined in this incident, only the Grievant.

When there are differing interpretations of what happened, one might rely on the most recent account of what happened. The County did just the opposite in this case. The Union objects to the fact that the County discounted nearly every immediate account of the events in favor of revised and changed reports by employees. The County gave no explanation why it thinks its own employees are more truthful after the fact than they are in the heat of an emergency.

The Union states that another way to differentiate between contradictory statements is to look to the actions, which speak louder than words. The County again did exactly the opposite and disregarded its own employees' actions and the significance of those actions. It disregarded the fact that Holte made no mention of Gladney striking the juvenile at the time the incident was occurring while she was on the phone with either Atlas, Kumlien or the police. It disregarded the fact that none of the employees made any mention of Gladney striking the juvenile when Kumlien first arrived at the scene. It completely disregarded the fact that Gladney was allowed to accompany the juvenile in the ambulance and none of his co-workers protested or even expressed any concerns about that. The County further disregarded the fact that no one intervened in the alleged altercation between the juvenile and Gladney, and it disregarded the fact that no one ever told Gladney he was doing anything improper. The County has disregarded the alleged acts of co-workers and did not discipline either Harrell or Battle. All of the employees admit that they did nothing to protect the juvenile's interests when they thought or alleged that the juvenile was being threatened or harmed by Gladney. Yet none of them received anything more than a verbal counseling. The only way the County expressed any interest in the well being of this juvenile is by firing Gladney.

The Union submits that the allegations are extreme and severe. The Grievant not only lost his job but it is highly unlikely that he will ever be able to work in his field in the future if these allegations are allowed to stand. This is a career-ending case for him and it is humiliating for him to face his parish and members of the community.

Because the County has alleged what is essentially criminal activity, the County should be held to the highest standard of proof, the Union asserts. Many arbitrators have ruled on several occasions that when allegations of criminal conduct affect the employee's career and life, the employer should have the burden of proving its case beyond a reasonable doubt. The Union argues that there is no imaginable way that the County has met its burden in this case. The Grievant's account is just as likely an account of events or more likely.

Even if the Arbitrator does not believe that the standard of proof should be beyond a reasonable doubt, the Union suggests that the clear and convincing standard is appropriate. It argues that the County has not met that standard and cannot even prove its case to a preponderance of the evidence. The Union asks that the Grievant be reinstated with full back pay.

The County:

The County points out that the employees who testified -- such as Harrell and Holte -- were on probation and had not been in the Detention Center for very long at the time of the incident. They did not have a supervisor there on duty to report the incident. Holte reported the incident to Kumlien when she was able to without everyone else being around.

Kumlien came back to the facility to make the later report and Leifker told her what Harrell had reported to him.

The County asserts that Harrell's testimony is credible. He did not want to get the Grievant in trouble, as they were friends or co-workers. The fact that Harrell told Leifker that night what happened, then told his mother and his aunt and came in a day or two later to tell Atlas what happened all goes to his credibility. Both Harrell and Holte were in a position to see what happened.

The County argues that Battle was not in a position to see something, but he saw arm movements. While he could not testify that those arm movements were closed fist punches to the juvenile, that does not make Holte's and Harrell's testimony void. Also, the County argues that there is no reason for Harrell to say that the Grievant choked the juvenile unless it happened. Harrell was scared and couldn't live with himself unless he reported it. The County admits that it is difficult for workers to report misconduct about another worker.

The County further submits that Gladney changed his story when talking to the Sheriff's Department investigators. First he said he was perfectly calm, then he admitted that he was really upset. First he said he did not call the juvenile any name, then he admitted that he called the juvenile a "fat ass." Three separate people heard the Grievant say, "Let's get our stories straight," the County notes. Even though the employees did not come forward immediately, the County maintains that the employees who testified against the Grievant were credible. The testimony established that the Grievant used more force than was necessary under the circumstances.

The previous disciplinary matters also deal with the Grievant's credibility, the County submits. The Grievant did not do his security checks and called in sick as he was not sick. The employer has a right to look at the Grievant's prior record. Atlas looked at the reports and the police reports and concluded that the Grievant had used the force on the juvenile as charged. The County finds the evidence to be overwhelming. It finds the Grievant's statements to be self-serving, and believes that he would not admit something in the arbitration hearing that would result in any criminal penalties.

DISCUSSION

The collective bargaining agreement sets out a just cause standard for discipline and discharge in Section 1.01. In Section 12.11, the contract gives grounds for disciplinary action ranging from a warning to immediate discharge, depending on the seriousness of the offense, and the grounds include disregard or repeated violations of safety rules and regulations and other circumstances which may warrant disciplinary action. The operational plan for the Detention Center prohibits corporal punishment or the use of excessive force on juveniles. There is no real dispute between the parties that if the Grievant punched or choked the juvenile J.C., discharge is an appropriate disciplinary measure.

The burden of proof need not be the criminal standard of beyond a reasonable doubt in an arbitration proceeding. The loss of one's job -- while a severe penalty -- is not the loss of one's liberty. However, due to the nature of the allegations in this case, it is entirely appropriate to hold the County to meet a standard of proof of clear and convincing evidence.

The County has met that burden. While there are some troubling aspects to the evidence, the evidence shows that there were a lot of people present on August 24, 1996 when this incident took place. No one corroborates the Grievant's version of the events. Holte and Harrell corroborate each other's testimony regarding the Grievant's conduct while taking the juvenile through the doorway of the cell, when both of them saw the Grievant punch him. There is a slight difference in their testimony, in that Holte thought the punches were to J.C.'s abdomen and Harrell thought the punches landed in the side around the ribs. However, both of them were certain that the Grievant punched J.C., and both of them saw about three punches.

Harrell saw the Grievant choke the juvenile while he was laying on the floor in the hallway in front of the central control area, across from Unit A. No one else testified to the choking incident quite so directly, although Battle reluctantly agreed that he believed that it happened. The fact that J.C. was gagging and choking does not in itself corroborate Harrell's version, since J.C. was known to the detention officers to fake things like that. Holte could not see J.C. when he was on the floor, but she heard say something like, "Stop choking me, stop kicking me."

Oddly, the guy with the best view in the house can't (or won't) say what happened. Battle had a ring side seat and should have seen and heard everything. He

was a most reluctant witness, refusing to state outright that he had seen the Grievant punch or hit or choke the juvenile, but also stating that he believed that it happened. He claimed not to have heard what Holte heard when J.C. was screaming to stop choking him. He also could not state what the Grievant had said about getting their stories straight, but he knew that something to that effect had been said. The vagueness of his testimony diminishes its value.

The Union makes a good point when it notes that no one, including Holte, stopped the Grievant from escorting the juvenile to the hospital. And no one intervened to stop the Grievant from choking J.C. However, these were not long term employees and they had little experience as detention officers. In fact, the Grievant had more seniority than they did and that's why he was sent by Atlas to go along in the ambulance to the hospital. Atlas had no knowledge at that time of what had transpired, even though Holte could have told him over the phone about what she had seen.

The most damning evidence is that several people heard the Grievant say, "Let's get our stories straight." Leifker heard it. Harrell heard it. Battle heard something to that effect.

Then four of them -- Battle, Harrell, Holte, and Gladney -- set out to put the blame on the juvenile and deflect any wrongdoing on the part of employees at the facility. The Grievant's comment in the hallway about getting their stories straight obviously influenced the other detention officers, although they eventually decided to tell the truth. Both Holte and Harrell were so bothered by the attempt to cover up the incident that they independently sought out Leifker for solace or advise. The evidence shows that there was an attempt on the part of the Grievant to stop others from reporting his conduct, and that it was initially successful, as Kumlien's first report shows only the misconduct on the part of the juvenile, not any of the employees. But Holte and Harrell could not continue in the cover-up, and the Grievant's attempt to get their stories "straight" resulted in only a temporary reprieve.

Some of the most credible testimony came from Harrell, whose version is corroborated in several respects. Holte, Leifker, and Battle all corroborate Harrell's version in part. Leifker heard the same phrase as Harrell, when the Grievant said, "Let's get our stories straight." Leifker later had a conversation with Harrell in which Harrell told him that the Grievant "lost it." Leifker confirmed that conversation and repeated it to Kumlien. Harrell's aunt even testified that her nephew talked to her about the incident and his role in covering up for the Grievant. He was particularly troubled by the lie that the employees had concocted, as he phrased it, and to his credit, he did not perpetuate it. Holte had already decided to tell what she had seen the Grievant do to J.C., and as Harrell stepped forward, the two of them showed the physical misconduct on the part of the Grievant. The fact that these employees did not tell the truth immediately does not mean that they did not tell the truth later. The fact that the County did nothing more than give them verbal counseling does not mean that they were not telling the truth. The evidence is more compelling that Harrell and Holte did tell the truth in their later versions rather than their earlier versions.

The evidence is convincing enough to find that the Grievant punched and choked the juvenile J.C. To reach any other conclusion would be to disregard all the corroborating evidence and accept the testimony solely of the Grievant. The record will not support such a conclusion. Accordingly, the County had just cause to discharge him, and the grievance will be denied and dismissed.

AWARD

The grievance is denied and dismissed.

Dated at Elkhorn, Wisconsin this 11th day of November, 1997.

Karen J. Mawhinney /s/
Karen J. Mawhinney, Arbitrator