BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

La CROSSE COUNTY JAILERS of the
WISCONSIN PROFESSIONAL POLICE ASSOCIATION, LEER DIVISION

and

La CROSSE COUNTY

Case 209
No. 66449
MA-13530

(Rose Zielke Discharge Grievance)

Appearances:

Tamara Packard, Cullen, Weston, Pines & Bach, Attorneys at Law, 122 West Washington Avenue, Suite 900, Madison, Wisconsin 53703, appearing on behalf of the Wisconsin Professional Police Association.

Anna Pepelnjak, Weiss, Berzowski & Brady, Attorneys at Law, 700 North Water Street, Suite 1400, Milwaukee, Wisconsin 53202-4273, appearing on behalf of La Crosse County.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Association and County, respectively, were parties to a collective bargaining agreement which provided for final and binding arbitration of grievances. Pursuant to the parties' request, the Wisconsin Employment Relations Commission appointed the undersigned to decide the above-captioned grievance. A hearing was held on March 28, 29 and 30, 2007 in La Crosse, Wisconsin at which time the parties presented testimony, exhibits and other evidence that was relevant to the grievance. The hearing was transcribed. The parties filed briefs and reply briefs, whereupon the record was closed July 10, 2007. Having considered the evidence, the arguments of the parties, the applicable provisions of the agreement and the record as a whole, the undersigned issues the following Award.

ISSUE

The parties stipulated to the following issue:

Did the County violate Article II of the Agreement when it terminated Rose Zielke? If so, what is the remedy?

PERTINENT CONTRACT PROVISION

The parties' 2004-2006 collective bargaining agreement contained the following pertinent provision:

ARTICLE II

ADMINISTRATION

2.01 Except as otherwise provided in this Agreement, the County retains the normal rights and functions of management and those that it has by law. Without limiting the generality of the foregoing, this includes the right to hire, promote, transfer, demote, or suspend or otherwise discharge or discipline for proper cause; . . .and to adopt and enforce reasonable rules and regulations.

BACKGROUND

A. Introduction

The County operates a jail. The Association is the exclusive collective bargaining representative for the County's jailers. Rose Zielke was a jailer with the County from 1999 until her discharge on September 13, 2006. This case involves her discharge.

B. Overview of the Jail

The La Crosse County Jail is operated by the La Crosse County Sheriff's Department. The Sheriff oversees the jail staff which consists of a jail administrator (a captain), six sergeants and about 45 jailers. The jailers are responsible for ensuring the safety and security of the inmates. Their job description provides that they "receive prisoners committed to the County jail. . .; make out jail records, such as booking and release information; supervise the activities of inmates . . .; maintain close surveillance of inmates for security, prevention of accidents and of inmates doing harm to themselves or others. . .; and keeps records and makes reports." With regard to this last task (i.e. "keeps records and makes reports") it is standard operating procedure for jailers to document in writing everything that happens/occurs. As an example, when a jailer makes rounds, they document it. The jailers' conduct is governed by laws, rules and regulations which govern both the care of prisoners and the maintenance of security in the jail. These laws, rules and regulations, which are rigid and extensive, are designed to maintain safety and security in the jail and protect both inmates and jailers. Jailers staff five duty stations in the jail: Master Control, Booking, Housing, Rover and Female. The main jail is located at the County's Law Enforcement Center. The female jail is located in the

County's Administration Building. The female jail, which is across the street from the main jail, is the older of the two facilities.

C. The Booking Process

As previously noted, jailers book inmates into the jail. When jailers perform this task, they follow a specific protocol: they search the inmate, take their personal property, update the contact and other basic information about them in the jail's computer and complete paperwork associated with the arrest. If fingerprints are needed, a jailer obtains the prints and a photograph (i.e. a "mug shot") is taken. If the inmate is not bonding out, the inmate is placed in an orange jail uniform, given a wrist band and is medically screened. (Note: The last matter just referenced – medically screened – will be described in detail later). If the inmate thinks they can bond out, a jailer lets them use the phone to make those arrangements. If bond is on the way, the inmate is placed in a conference room or the holding tank until the bond arrives. The inmates who bond out – those who are booked and released – are not put in orange uniforms, given wristbands or medically screened.

Inmates can post bond by credit card using a service known as GPS which stands for Government Payment Service, Inc. The process of posting bond through GPS involves the following sequential steps: (1) the jailer fills out the top portion of a form called "Cash Bond Fact Sheet for Credit Card Payments" and gives it to the inmate; (2) the inmate calls GPS and provides them a credit card number; (3) GPS verifies the availability of credit and faxes a transaction record to the jail within 15 minutes; (4) the inmate signs the transaction record; and (5) the jailer signs the transaction record and faxes it back to GPS. If that all happens, then the inmate is released.

Sometimes inmates believe they are going to be bonded out but that does not occur and they stay in the jail. Those people can become upset and unruly.

D. Jail Suicides and the Medical Screen

The record indicates that jail suicides have become a serious problem in the La Crosse County Jail and elsewhere. In La Crosse County, there have been four successful suicides in the main jail since it opened in 1997. Additionally, there have been unsuccessful suicide attempts. Apart from the human element, jail suicides can expose the County to financial liability. Given that potential liability, the County attempts to reduce the risk of inmate suicide. Various regulations and policies exist which are designed to reduce the risk of inmate suicide. Jailers are trained on these policies and are supposed to follow them. As one of the precautions against inmate suicide, both state law and department policy require that a medical/mental health screening form be completed during booking. (Note: This is the medical screen referenced earlier). The medical screen form, which was developed by health care professionals, is designed to elicit information pertaining to each inmates' medical and dental condition, medical illnesses or disabilities, mental illnesses, developmental disabilities, alcohol or other drug abuse problems and suicide risk. The health screening form specifically

consists of 34 detailed questions regarding the inmates' mental and physical condition. One of the questions asks about seizures. Another question asks whether the inmate takes medication and whether the inmate has the medication with them. The booking jailer is required to ask the inmate all 34 questions when they (i.e. the booking jailer) admit the inmate to the jail. The inmate's answers to these questions are recorded by the booking jailer as thoroughly and completely as possible. The booking jailer is then supposed to forward the completed medical screen to the jail nurse. The jail nurse, in turn, is supposed to review the completed medical screen in order to be aware of the inmate's medical and/or health care problems. If the booking jailer is unable to complete the health screening form for any reason, jail policy requires that the booking jailer document in the inmate's confinement narrative that the health screening form was not completed and still needs to be done. Jailer Zielke had done this numerous times before. When jailers complete the health screening form, they are supposed to be alert for unstable inmates. Jailers are trained to recognize various signs and symptoms of distress and evaluate the inmate's behavior. If a jailer decides an inmate is stable, the inmate is put in a regular cell. If the jailer decides the inmate is unstable, they are placed on suicide watch in a special cell. There are seven monitored infirmary cells in the main jail where an unstable inmate can be housed. The female jail has no infirmary or medical cells. Not all inmates are placed on suicide watch.

Not everyone who is booked in for a stay at the jail gets a medical screen upon arrival. The record indicates that Friday and Saturday nights produce six or seven inmates per week who are combative, uncooperative or simply refuse to answer the medical screen questions. Those inmates are not screened until the next morning by first shift jailers. As noted earlier though, if no medical screen is done by the booking jailer, the jailer is supposed to document in the inmate's confinement narrative that the medical screen was not completed and still needs to be done.

While the medical screen is designed to identify suicidal inmates, it certainly does not identify all suicidal inmates. To illustrate that point, one need look no further than the four successful suicides which have occurred at the main jail since it opened in 1997. In each instance, a medical screen was done on the inmate (who later committed suicide in the jail). Even if the medical screen is a poor predictor of suicidal inmates, it is better than no predictor at all.

E. Zielke's Discipline History

Zielke was hired as a jailer in 1999. After being hired, she participated in 120 hours of jail school (as do all newly-hired jailers). After that, she was regularly trained during inservices on the policies and procedures of the La Crosse County Jail.

Zielke's disciplinary history is as follows.

In March, 2005, Zielke entered what should have been a signature bond as a cash bond on the jail paperwork for inmate Todd Stoeckly. Stoeckly was brought into the jail on

March 12, 2005 for a probation "hold" and a new criminal offense. The next day, Stoeckly went to court and was given a $1,000 signature bond on the new offense. On March 14, 2005, Zielke mistakenly entered the bond in Stoeckly's prisoner control record as a cash bond. Stoeckly's probation hold was cancelled on March 28, 2005, but another jailer mistakenly entered the cancellation as a hold. Thus, both Zielke and another jailer made mistakes. The second jailer's mistake was discovered on April 6, 2005 when another jailer took a call from Stoeckly's probation officer who inquired why Stoeckly was still in jail. Stoeckly was then released. Afterwards, when Stoeckly's mistaken hold was being investigated, Zielke's error was discovered. Zielke admitted she erred in entering Stoeckly's signature bond as a cash bond. As a result of Zielke's and the other jailer's combined mistakes, Stoeckly spent ten more days in jail than what the court ordered.

About the same time, Zielke mishandled jail paperwork involving inmate Rodell Thompson. Thompson was sentenced to serve time in the state correctional system. At the time, Thompson was being held in the La Crosse County Jail, pending the issuance of a probation revocation order. When Zielke received the revocation order for Thompson, she was unfamiliar with what needed to be done with it. The information which she subsequently entered into Thompson's prisoner control record narrative section was incomplete. This resulted in Thompson spending nine additional days in the La Crosse County Jail, when he should have been transferred instead to a state prison. Following this incident, Zielke was instructed on how to process revocation order paperwork.

On June 15, 2005, Zielke was given a five-day suspension for the two matters just referenced by Sheriff Michael Weissenberger. The first paragraph of the suspension letter provided as follows:

> This letter is in regard to two incidents in which you made errors in entering hold information into inmate's files. The first incident occurred on 3-14-05 and contributed to an inmate remaining in jail ten additional days after he should have been released. The second incident occurred on 5-4-05 and resulted in an inmate remaining in our jail nine additional days before he was transported to prison.

The second and third paragraphs of that letter then identify the facts involved in the Todd Stoeckly matter. Since those facts have previously been identified, those two paragraphs of the letter are not repeated here. The fourth and fifth paragraphs of that letter provided as follows:

> You have been employed by La Crosse County as a jailer for over five years and have received training related to jail paperwork. Sergeant Anderson discussed the error with you. At that time you admitted you had made a mistake and stated you had obviously entered the inmate's signature bond as a cash bond.

> Your negligence in dealing with the paperwork contributed to the inmate spending an additional ten days in jail. This not only exposes La Crosse County to liability but also is a violation of the inmate's civil liberties. Forcing a citizen to lose their freedom and spend ten days in jail due to your careless mistake will not be tolerated. Jail staff has been given a major responsibility in the ability to detain incarcerated persons. This responsibility requires jail staff to deal with inmates professionally and competently.

The sixth, seventh and eighth paragraphs of that letter then identify the facts involved in the Rodell Thompson matter. Since those facts have previously been identified, those three paragraphs of the letter are not repeated here. The final three paragraphs of the letter provided as follows:

> Again, you have been a La Crosse County jailer for over five years and received training on jail related paperwork. The error you made resulted in the inmate remaining in our jail for nine additional days. The inmate potentially may have spent a significantly more time in our jail had the error not been discovered when it was.
>
> It is absolutely critical that jail paperwork is handled competently. There is no excuse for the mistakes you have made except carelessness. In the future it is imperative that you pay close attention to detail when dealing with jail paperwork and if you have questions, ask a supervisor.
>
> The disciplinary action I am imposing is a five day unpaid suspension. This suspension will be served on June 20, 21, 22, 28 and 29, 2005. Any further mistakes pertaining to jail paperwork, violations of work rules, policies and procedures, will result in severe discipline up to and including termination.

Zielke served the five-day suspension in June, 2005. The discipline was grieved. The disposition of her grievance will be addressed later in this section.

. . .

On March 20, 2006, Sergeant Jeff Dikeman examined the jail logs and discovered that someone had failed to log an "hour out" for an inmate in administrative segregation. Administrative segregation is used to discipline disruptive inmates. Inmates in administrative segregation are confined to single-person cells for 23 hours per day. Dikeman checked the day's videotape and discovered that the jailer who had not performed that task was Zielke. This was a violation of jail policy. In the course of reviewing the day's videotape for the matter just referenced, Dikeman concluded that Zielke had also violated other jail policies for different matters that same day. Specifically, he observed that Zielke had twice not entered Block D during rounds, but instead had looked into the area through a window. Jailers are supposed to enter Block D when doing rounds (i.e. security checks). He also discovered that

Zielke once physically entered Block D without backup and entered an inmate's cell while the inmate stood outside. Dikeman felt that this constituted a security violation because the inmate could have harmed Zielke, obtained her keys and escaped that section of the jail.

After making the observations referenced above from March 20, 2006, Dikeman reviewed the videotapes of other days to check on Zielke's work performance. The record does not indicate how many hours/days of videotape he reviewed. In any event, in the course of reviewing videotapes, Dikeman found three more instances where Zielke had not complied with jail policies. Those three instances were as follows.

On March 30, 2006, Dikeman observed that Zielke permitted female inmates to not wear their full jail uniforms in the dayroom.

On April 5, 2006, Dikeman observed that Zielke failed to "sterilize" an inmate's cell. Sterilizing a cell refers to the process of a jailer removing an inmate's mattress and blanket. It is a form of punishment.

Dikeman also observed that the same day, Zielke failed to physically enter an inmate's cell during rounds.

In April, 2006, management convened a meeting with Zielke concerning the six matters just referenced. At that meeting, Zielke was asked about those matters and was given the opportunity to respond to the charges.

On May 8, 2006, the Sheriff gave Zielke a letter of reprimand for failing to follow proper jail procedures in the six matters referenced above. The letter, which was three single-spaced pages long, identified the six charges against Zielke and the responses she gave to the charges at the April, 2006 meeting. The letter, which is not reproduced here, charged Zielke with three instances of not entering a cell block and/or not doing rounds with a partner; one instance of allowing inmates to not wear their full jail uniforms in the day room; one instance of entering a cell block without back up; and one instance of not "sterilizing" an inmate's cell by taking away the inmate's mattress and blanket. The final paragraph of that letter provided thus:

> This letter will serve as a formal disciplinary letter of reprimand for your negligence in following jail procedures in violation of Policies 100.01 Conduct of Jail Personnel, 103.03 Jail Uniforms, 103.08 Cellblock Security Checks and 104.10 Jail Rules. Any further violations of policies, procedures or work rules will result in discipline up to and including termination.

. . .

On April 19, 2006, an arbitration hearing was held on Zielke's five-day suspension from June 15, 2005. At the hearing, the parties resolved that grievance. One part of the

settlement was that the five-day suspension was reduced to a letter of reprimand. Another part of the settlement was that Zielke was not reimbursed for the five days of pay she lost from the five-day suspension. Another part of the settlement concerned the letter of reprimand involving the six matters just referenced. That letter of reprimand had not yet been issued, but the Association knew that it was going to be issued. As part of the settlement, the Association agreed to not grieve the forthcoming letter of reprimand. (Note: That was the letter of reprimand dated May 8, 2006).

On May 23, 2006, County Personnel Director Robert Taunt sent a letter to Union Business Agent Joseph Durkin which summarized the grievance settlement terms from April 19, 2006. That letter provided in pertinent part:

> We met at the time set for the Arbitration Hearing in the above matter with Arbitrator John Emery and discussed a settlement of the discipline of 2005 and a pending discipline for recent violation of jail policies. After lengthy discussion, in which both Union and Management made clear their positions on these matters, we came to a resolution which puts to rest both the 2005 discipline and the current discipline.
>
> We agreed that Rose Zielke would have all mention of the suspension taken out of the 2005 disciplinary letter, which would remain in her file, and no additional suspension days would be given for the recent admitted violations of Jail policy, but a letter would be put in her file.
>
> The Sheriff has now prepared the letter regarding the 2006 Jail violations, and has revised the 2005 letter removing mention of the suspension. Both letters are enclosed. . . .

One letter which was enclosed was the one dated May 8, 2006. The other letter which was enclosed was dated June 15, 2005. (Note: That was the letter which was identified in detail earlier in this section wherein the Sheriff imposed a five-day suspension on Zielke). The letter which was enclosed was identical to the original June 15, 2005 letter except that the last paragraph was changed. The last paragraph was the only part of the letter which was changed. That new paragraph changed the discipline from a five-day suspension to a letter of reprimand. The new paragraph provided thus:

> This letter will serve as a formal disciplinary letter of reprimand for your negligence in accurately completing inmate confinement records as a violation of Policy and Procedure 100.02, Operation and Function of Jail Staff. Any further mistakes pertaining to jail paperwork, violations of work rules, policies and procedures, will result in severe discipline, up to and including termination.

FACTS

Here is an overview of the facts which follow. On August 18, 2006, Zielke was the booking jailer for inmate Kerri MacDonald. When Zielke booked MacDonald, she failed to do the health screen on MacDonald. Additionally, she did not note in the narrative section of the prisoner control record that it had not been done. Two hours after inmate MacDonald left Zielke's control, MacDonald attempted suicide in the female jail. The next day, August 19, 2006, Zielke's husband visited her in the booking area of the jail. The booking area is a secure area and employees are supposed to get permission for family members to be there. Zielke did not get permission from a supervisor for her husband to be there. The Sheriff discharged Zielke for not following department procedures in these two matters.

A. The Kerri MacDonald Matter

1. Zielke's involvement with MacDonald

At 1 p.m. on August 18, 2006, Kerri MacDonald was brought to the main jail on a Vernon County warrant for failing to appear at a court hearing. Zielke was the booking officer for MacDonald. It was a busy day in booking. Zielke began booking MacDonald about 1:30 p.m. During booking, MacDonald cooperated with Zielke and was not combative. MacDonald had been in the La Crosse County Jail before, so she was aware of the booking process. While MacDonald was being booked, she was placed in and out of conference rooms and a holding cell. By 1:45 p.m., Zielke had obtained MacDonald's background information, photograph and fingerprints.

As is standard operating procedure in the jail, Zielke then gave MacDonald the opportunity to post bond by credit card with GPS. Zielke filled out the Cash Bond Fact Sheet for Credit Card Payments form for MacDonald and explained the questions that MacDonald would be asked by GPS and how to answer them using the information on the Fact Sheet. After Zielke explained that to MacDonald, she (MacDonald) was very confident that she would be able to post her bond (via a credit card) and get out of jail. MacDonald then called GPS and Zielke observed her giving the usual information to GPS. After a few minutes on the phone, MacDonald hung up the phone and told Zielke that the GPS person had approved her credit card and that GPS would be faxing the paperwork in about five minutes. Since Zielke had done hundreds of bookings, she knew that is what inmates typically say when their bond has been successfully posted.

Based on the assumption that MacDonald was going to bond out, Zielke then contacted Charlie Jacobson at the Vernon County Sheriff's Department for a new court date to put on a Bond Sheet for MacDonald. She also told him that MacDonald was posting bond with her credit card. Zielke completed the Bond Sheet and set it aside while waiting for the fax from GPS. She also documented the new court date in the narrative section of the computerized prisoner control record. At that point, Zielke thought that MacDonald would be released by 2 p.m.

By 2:30 p.m. though, the confirming fax had not arrived from GPS. The reason the confirming fax had not arrived by that time was because GPS had mistakenly sent it (the confirming paperwork) to the wrong department. Specifically, GPS sent the confirming paperwork to the Vernon County Jail rather than the La Crosse County Jail. Neither Zielke nor MacDonald knew at the time that this error/mistake had been made and that it was the reason that the confirming paperwork had not arrived. All they knew at the time was that the confirming paperwork did not come. Had GPS sent the confirming paperwork to La Crosse County as they should have, rather than to Vernon County as they did, MacDonald presumably would have signed the form authorizing payment to her credit card and been released from jail that afternoon. However, that did not happen. Instead, she stayed in jail and the following events occurred.

Since no confirming fax had arrived from GPS by 2:30 p.m., Zielke asked the other staff in the booking area if they had seen the missing fax, but they had not. Zielke then called GPS herself. The GPS person who Zielke spoke with could find no record of the transaction with MacDonald. Upon learning this, Zielke gave the phone back to MacDonald to permit her to try again. This time though, MacDonald was told that her credit card was rejected/declined because of insufficient funds. Upon learning this, MacDonald was confused and frustrated; she thought she was going to bond out and now she was told she could not.

Based on the fact that no confirming fax had been received from GPS, Zielke realized that MacDonald's situation had changed and she would not be bonding out soon. Zielke then opened up the medical screen form on the computer to ask MacDonald the 34 questions on the form. MacDonald essentially responded that she did not need to answer the (medical screen) questions because she was still going to be able to post bond -- all she needed to do was get ahold of her husband. Zielke then permitted MacDonald to use the phone again, this time to call her husband. MacDonald called her husband numerous times, but insofar as Zielke knew, she (MacDonald) was not successful in contacting him. MacDonald told Zielke that she thought she could not contact her husband at work because of the message that starts every call by stating that the call is coming from the La Crosse County Jail. In response, Zielke suggested that MacDonald use the phone in the female jail to call her husband, because that phone does not identify the call as coming from the jail.

By this time, it was now close to 3 p.m., which was the end of Zielke's shift. Court officer Tom Olson happened to come through the booking area, and Zielke asked him to transport MacDonald to the female jail. He did, about a half hour later. Transferring MacDonald from the main jail to the female jail ended the booking process. At that point, MacDonald was no longer a "book and release" prisoner. The jailers at the female jail don't do bookings.

About 3 p.m., the second shift jailers for the booking area, Jailers Eric Faas and Greg Martel, arrived to relieve the first shift jailers. Zielke briefed Faas about the events of the first shift, and in particular, about MacDonald. Specifically, Zielke told Faas the following: that MacDonald had tried to post bond via GPS, but that the paperwork had not come; that she

(Zielke) had unsuccessfully tried to track it (i.e. the missing paperwork) down; that MacDonald had tried to bond out through GPS a second time, but that effort had failed when GPS rejected her (MacDonald's) credit card; that MacDonald had then tried unsuccessfully to contact her husband so that he could post her bond and get her out of jail; that she had already obtained MacDonald's new court date, completed the bond sheet, and filled in the prisoner control record reflecting a 2 p.m. release time; that when MacDonald did bond out, that information in the prisoner control record would need to be changed to reflect the updated information; and that if MacDonald did not post bond, they would need to call Vernon County to pick her up.

Also about this same time, one of the incoming second shift jailers at the female jail - Jailer Teri Serres – was in the booking area picking up paperwork. Serres saw that MacDonald was on the phone, but she did not know who MacDonald was talking to. Zielke told Serres that MacDonald had been on the phone for a long time.

Zielke left at 3 p.m. at the end of her shift. When she left, MacDonald was still in the booking area. Zielke did not complete the medical screen for MacDonald before she left. Additionally, Zielke did not make any notation in the narrative section of MacDonald's prisoner control record that the medical screening form was not completed and still needed to be done. Additionally, Zielke did not tell anyone that the medical screening form was not completed for MacDonald and still needed to be done. Additionally, Zielke did not ask anyone to complete the medical screen on MacDonald.

2. That Day's Events on the Second Shift

MacDonald remained in the booking area until about 3:30 p.m. While she was there, she made some more phone calls – presumably to her husband. Based on what she said later to Jailer Serres, MacDonald must have reached her husband.

At some point, Jailer Faas noticed that MacDonald was upset about still being in jail because she raised her voice to him. However, in his view, MacDonald's reaction was not out of the ordinary in terms of what he sees on a daily basis (when an inmate thinks they are going to bond out but does not and has to remain in jail).

Sometime after MacDonald was delivered to the female jail (exactly when is unclear), Serres learned that the reason MacDonald had been transferred there (i.e. to the female jail) was because MacDonald had not successfully posted bail. Serres learned that MacDonald had tried to post bond via GPS, but the confirming paperwork had not come.

After MacDonald arrived at the female jail, she did not use the phone there. The reason was this: Serres knew that MacDonald had made phone calls from the main jail, so she (Serres) thought that MacDonald did not need to make any more phone calls. Additionally, no one told her otherwise. Thus, MacDonald did not make any phone calls from the female jail.

The first thing that Jailer Serres had MacDonald do was to change into an orange jail uniform. When MacDonald did so, it was apparent to Serres that MacDonald was angry and upset because she yelled and threw her clothes on the floor. MacDonald told Serres that she was upset with her husband because rather than helping her get out of jail, he told her they did not have enough money on the credit card for her to bond out. MacDonald also told Serres that her husband said he was going to leave her.

Serres then placed MacDonald in a receiving cell. Once placed in that cell, MacDonald told Serres that she was prone to seizures, which were aggravated by being in small confined areas, and that she needed her seizure medication. About 4 p.m., Serres called the jail nurse (Baker) for information about MacDonald's medications. Baker said she would check MacDonald's health screening form and get back to Serres.

About 4:40 p.m., Serres was directed to help out in booking. Booking is located in the main jail, so Serres left the female jail. After she arrived at the main jail, Nurse Baker told her that she could not find any medical screen on MacDonald, and that she had no medications for MacDonald. Upon learning that no medical screen had been done for MacDonald, Serres knew that either she or her partner at the female jail needed to perform the medical screen on MacDonald. Nurse Baker also told Serres that Vernon County deputies were en route to pick up MacDonald and transport her back to Vernon County (because she was not going to bond out).

When Serres returned to the female jail a little after 5:00 p.m., she became aware that another inmate, who had been placed in a receiving cell as discipline, was due to be returned to the cell block. As Serres was asking the disciplined inmate to pack her belongings, she glanced at MacDonald's cell door. Serres saw a strip of blanket tied around the handle of MacDonald's cell door. Looking through the feed slot, Serres saw MacDonald slumped against the cell door, facing the wall with a strip of blanket tied around her neck. MacDonald was attempting to hang herself with the blanket. Serres called her partner (Jailer Toby Berg) for help, and then radioed for any available jailer and all medical staff to come to the female jail. Jailer Berg then cut the blanket strip from the cell door with a special cutting tool and opened the cell door. Serres and Berg then went into MacDonald's cell and took the blanket strip off MacDonald's neck. Serres checked MacDonald's pulse and found that she still had one (i.e. a pulse). MacDonald then started breathing. About that time, the jail nurse, the EMT's and other jailers arrived on the scene. They revived MacDonald and gave her medical care. While giving her medical care, MacDonald had a seizure.

While the events just referenced were unfolding at the female jail, deputies from Vernon County arrived to pick up MacDonald. When they learned that she had just attempted suicide, they refused to accept custody of MacDonald from La Crosse County.

The medical people who were treating MacDonald consulted with a physician about her status. The physician decided that MacDonald did not need to be transported to the hospital for further treatment, so MacDonald was not transported to the hospital. It was decided

though to move MacDonald from the female jail to the jail infirmary at the main jail, and place her on a suicide watch.

While the arrangements were being made to move her, MacDonald stayed in her existing cell unattended. A couple of minutes later, Jailers Serres and Berg checked on MacDonald and discovered that she (MacDonald) still had the blanket which she had just tried to kill herself with, and was in the process of ripping it. Jailers Serres and Berg took the blanket away from MacDonald.

No transport car was available to move MacDonald at the time, so she stayed at the female jail for another hour. About 6:30 p.m., MacDonald was transported from the female jail to the main jail. When she was being moved, it was discovered that she had two small cuts on her right wrist. The cuts were self-inflicted. It was later determined that MacDonald had made the cuts with a piece of plastic medical packaging which had been left behind in MacDonald's cell by the EMT's.

About 10 p.m. that night, MacDonald was cleared by the County's crisis intervention people to be released from jail. She then posted bond. The bond which MacDonald posted was the payment she had authorized to her credit card at 1:30 p.m. that afternoon, but which GPS had mistakenly sent the confirming paperwork to Vernon County. That evening, after MacDonald attempted suicide, someone from the Vernon County Jail called a La Crosse County booking jailer and told them that Vernon County had received MacDonald's GPS confirmation form. Vernon County faxed MacDonald's GPS confirmation form to the La Crosse County Jail at 6:47 p.m.

Sometime that evening (exactly when is unclear), Serres was back in the booking area at the main jail. While she was there, Sgt. Hoesley asked her if the Cash Bond Fact Sheet for Credit Card Payments (that jailers complete for inmates using GPS) was often thrown away. Hoesley was asking about the form that Zielke completed for MacDonald because he was trying to figure out why the GPS confirmation fax had been sent to Vernon County by mistake. Serres responded that this form is often thrown away. She then looked into the garbage pail and pulled out the form that Zielke had completed for MacDonald.

. . .

Following MacDonald's attempted suicide, Zielke and Serres prepared written incident reports detailing their involvement in the matter. No written reports were gathered from anyone other than Zielke and Serres.

B. <u>The August 19, 2006 Matter</u>

On August 19, 2006, the day after MacDonald's attempted suicide, Zielke was again working in booking on the first shift. Her shift ended at 3 p.m. About 2:30 p.m., her husband (hereinafter Mr. Zielke) came to the jail to give her some money.

About the time that Mr. Zielke arrived at the jail, Zielke and her partner in booking were doing rounds: they went through the receiving and medical areas to check on the inmates. As they completed the round, they collected inmate Kevin Stevens to bring him back into the booking area and complete his booking. Stevens had been brought into the jail the night before. At that time, he was intoxicated and uncooperative, so booking had not been completed then. Inmate Stevens is known to jail personnel because of his frequent stays in the jail. He has a reputation of being uncooperative, especially when he is intoxicated.

When Zielke re-entered the booking area with her partner and inmate Stevens after completing rounds, she found her husband standing there in the booking area. This was a surprise to her. Although she knew he was going to come to the jail that day, she had asked him to wait for her in the hallway (a public area) until she was done with her shift. The reason she had told him to wait in the hallway was because jailers know that jail policy is that family members are permitted in secure areas only for brief visits, and only with the shift sergeant's permission. Mr. Zielke did not wait in the hallway. Instead, he went into the booking area. The booking area is considered a secure area of the jail. The doors from public areas into and out of the booking area and garage are locked, and controlled by the jailers stationed in master control. The only way a civilian can get into the booking area is by being buzzed in by staff working in master control. Staff at master control are responsible for the movement of all people within the jail. They control movement of all doors to get through the secure facility, and deal with members of the public who come to the window.

When Zielke and her partner returned to the booking area, Zielke wrote the entry for the round into the log book. As she finished doing that, Sergeant Jeff Dikeman entered the booking area. Dikeman's presence made Zielke uncomfortable because she felt she was under a magnifying glass because of MacDonald's suicide attempt. When Dikeman entered the booking area, he saw that Mr. Zielke was there. Dikeman, who had just come on duty, did not know how long Mr. Zielke had been in the booking area, or if Zielke had obtained permission from the duty sergeant for her husband to be there (in the booking area). Dikeman did not ask Zielke about those matters, but did make small talk with Mr. Zielke for a minute or so. During their small talk, Dikeman did not tell Mr. Zielke that his (Mr. Zielke's) presence in the booking area posed a safety issue or ask him to leave.

Mr. Zielke remained in the booking area for about 20 minutes until Zielke's shift ended at 3 p.m. Dikeman was in the area for about 10 to 15 minutes of that time. During that time, Zielke never asked her husband to leave the booking area. At one point while he waited, Mr. Zielke was about six feet away from inmate Stevens while he was being booked. Inmate Stevens was cooperative when he was booked.

The next day, Dikeman asked the duty sergeant if Zielke had permission for her husband to be in the booking area the previous day. The duty sergeant told him that he had not granted permission to Zielke for her husband to be there. Thus, Zielke did not have permission for her husband to be in the booking area on August 19, 2006.

. . .

When Dikeman investigated the matter of Mr. Zielke's presence in the booking area on August 19, 2006, he never talked to Zielke to get her side of the story. The reason he did not do so was because, as will be noted below, she was on suspension. Dikeman never asked the person(s) working in master control who let Mr. Zielke in. The record does not identify who let Mr. Zielke into the booking area. Whoever did so was not disciplined.

. . .

On August 29, 2006, Sheriff Weissenberger placed Zielke on administrative leave with pay, pending an investigation into her actions that month.

On September 12, 2006, management conducted an investigatory meeting with Zielke concerning the events of August 18 and 19, 2006. At that meeting, Zielke was asked about the events of those days and was given the opportunity to respond.

Following the meeting, Captain Daggett reported on it to Sheriff Weissenberger. He concluded there was sufficient evidence to uphold the charges against Zielke, and that discharge was warranted under the circumstances.

On September 13, 2006, Zielke and her union representatives were summoned to a disciplinary meeting wherein Sheriff Weissenberger told Zielke she was being discharged. Weissenberger then gave Zielke a two-page discharge letter dated that same day. The first paragraph of that letter provided thus:

> This letter is regarding your failure to follow policies, procedures and directives in conjunction with your work performance as a jailer for La Crosse County.

The next part of the discharge letter referenced the two letters of reprimand which Zielke received dated June 15, 2005 and May 8, 2006 and the facts involved. The next part of the discharge letter referenced the incidents which occurred August 18 and 19, 2006. That portion of the letter provided thus:

> On 08/18/06 you once again violated policies and procedures of the La Crosse County Jail when you failed to complete the initial medical/mental health screening form on an inmate and the inmate attempted suicide just two hours after she was moved from booking to the female jail. Because you did not complete the screening form or make a notation in the inmate's narrative, jail staff in the female jail were unaware of the potential suicidal tendencies of this inmate. You have been a jailer in La Crosse County for almost seven years and have initiated over 500 bookings and have completed numerous initial screening forms as required by Wisconsin Department of Corrections Chapter 350 and Policy and Procedures 100.02, 101.03 and 101.04.

> If you were unable to complete the initial screening form, you have demonstrated in the past that you know the procedure to document the need for the completion of the screening in the inmate's confinement narrative. A previous violation resulted in an inmate spending additional time in jail; a loss of freedom. Your failure to perform the required duties of your job, once again, to complete the screening form on 08/18/06 almost resulted in the death of an inmate. The inmate was found hanging with a strip of blanket wrapped around her neck and emergency services had to be called; fortunately the inmate was revived. Your actions again have exposed La Crosse County to potential legal liability for negligence in inmate care.
>
> On 08/19/06 there was another violation of Policy and Procedure 100.01 Conduct of Jail Personnel when you allowed your husband to stand in the secure area of the jail for 20 minutes without a Sergeant's approval. You received training on this policy in 2002 and were again trained on the policy in May of 2006. There was an unsecured inmate present in the booking area. You state you do not remember seeing the inmate when your husband was standing at the booking counter; that inmate has a history of being uncooperative and both jail staff and your husband were placed in jeopardy because of this breach of security. You state you felt "uncomfortable" having your husband in the booking area, yet you did not ask him to leave or wait in the visitor waiting area. Sgt. Dikeman observed your husband in the booking area but, at the time, did not know how long he had been in the area of if you had obtained permission from the previous shift supervisor to approve a brief visit.
>
> You have received hundreds of hours of training and have demonstrated that you are able to perform the duties of your job; however, you continue to choose to violate policies, procedures, directives and state codes even after receiving written reprimands and warnings that failure to follow work rules could result in job termination. Given the history of your poor work performance and failure to improve your job performance following additional training, your position is terminated effective today.
>
> . . .

The discharge was grieved that same day. It was ultimately appealed to arbitration.

POSITIONS OF THE PARTIES

Association

The Association introduces its case this way. It acknowledges at the outset that on August 18, 2006, a terrible thing happened at the La Crosse County Jail: namely, inmate Kerri MacDonald attempted suicide. According to the Association, a number of unfortunate occurrences, involving numerous people, agencies and companies, created the conditions under which this event happened. Said another way, there were numerous factors that contributed significantly to the conditions in which the attempted suicide took place. As the Association sees it, no single person was solely responsible or even primarily responsible for creating the conditions under which MacDonald made an attempt on her own life. The Association avers

that it certainly was not Zielke that created this terrible incident (by failing to complete MacDonald's medical screening form), nor was Zielke the only person who could have prevented MacDonald's suicide attempt. Thus, the Association disputes the Employer's claim that MacDonald's suicide attempt was Zielke's fault, and occurred because she was negligent in performing her duties. According to the Association, the Sheriff "needed a scapegoat to blame for the suicide attempt", and he picked Zielke "who had already been marked by management for eventual discharge anyway." Aside from that, the Association maintains that the County's case against Zielke is founded on faulty investigations, unequal treatment of Zielke as compared to other employees, and (unfair) piling on. Consequently, it is the Association's position that the Employer did not have proper cause (i.e. "just cause") to discharge Zielke. It elaborates on these contentions as follows.

First, the Association addresses the standard which the arbitrator should use in reviewing the claims against Zielke. It acknowledges that arbitrators generally require management to prove that the grievant committed wrongdoing worthy of termination by a preponderance of the evidence standard. The Association maintains that in this case though, that standard (i.e. the preponderance of the evidence standard) is insufficient because of the Employer's "unequal treatment, biased investigation and outcome-driven conclusions." The Association therefore asks the arbitrator to use the clear and convincing standard in this case. Its reason for doing so is this: that standard requires a higher quantum of proof than the preponderance of the evidence standard does.

Next, the Association addresses, in detail, the MacDonald matter and the incident involving Zielke's husband. As the Association sees it, Zielke did not commit misconduct in either matter. It addresses the MacDonald matter first.

The Association acknowledges at the outset that Zielke did not medically screen MacDonald. It contends that here, though, no medical screen was needed because it is "accepted practice" that medical screens are not required in "book and release" circumstances. Building on that premise, the Association avers that MacDonald was a "book and release" situation, or at least Zielke thought MacDonald was going to be bonding out. To support that premise, it cites the following: 1) that MacDonald was still trying to get bail through her husband, and was in the process of trying to reach him by phone; 2) that Zielke told Jailer Faas this; 3) that Zielke told Faas about the paperwork she had drafted in anticipation of MacDonald's release; and 4) that Zielke told Faas that once MacDonald bonded out, the paperwork – including the prisoner control narrative – would need to be revised. With regard to the fact that Zielke sent MacDonald to the female jail, the Association avers that when Zielke did that, she did not intend for MacDonald to be checked in and be an inmate there; instead, her only intent (in sending MacDonald to the female jail) was to give MacDonald the chance to use the phone there so she could call her husband and post her bond. With regard to the fact that Zielke did not note in the prisoner control record narrative that a medical screen needed to be done, the Association avers that even if she had done so, it would not have mattered. According to the Association, no one looked at that record until after MacDonald attempted suicide.

The Association argues in the alternative that even if Zielke erred in not medically screening MacDonald, at least one member of management on the second shift – namely, Sgt. Hoesley – knew that MacDonald had successfully bonded out through GPS earlier that afternoon (before her suicide attempt). To support that premise, the Association avers that sometime before 4:40 p.m. Sgt. Hoesley "learned from a telephone call from someone in Vernon County" that MacDonald had successfully posted her bond, but that the bond confirmation paperwork had been sent to Vernon County, rather than to La Crosse County. According to the Association, Sgt. Hoesley's theory was that Zielke had given MacDonald the wrong paycode number, and that this caused the misdirection of the bond verification fax. The Association maintains that Sgt. Hoesley was more concerned with nailing Zielke with another error that caused an inmate to stay confined in the La Crosse County jail than he was with ensuring that inmate MacDonald was properly and promptly released. The Association asserts that had Hoesley released MacDonald upon learning she had bonded out, she would not have attempted suicide, or at least not on the County's watch. The Association characterizes Hoesley's conduct as a "missed opportunity to prevent the suicide attempt".

Building on that last point made in the preceding paragraph, the Association avers that there were other factors that contributed to MacDonald's attempted suicide, and there were numerous opportunities to prevent the suicide which were squandered. It cites the following to support that proposition. First, it notes that when MacDonald was in the booking area, she displayed no signs that led the jailers to question her mental health or stability, but after she arrived at the female jail, she threw her clothes and yelled. She told Jailer Serres that not only was her husband not going to bail her out, but that he was leaving her. The Association believes this last comment should have triggered concern about MacDonald's mental state and put Serres on notice that MacDonald was dealing with a family crisis and was in a fragile emotional state. Second, it notes that when Serres placed MacDonald in a small receiving cell, MacDonald told Serres that she had a seizure disorder triggered by confinement to small places, and that she needed to take medication if she was to remain in the cell. Serres then relayed that information to Nurse Baker (that MacDonald had a seizure disorder which required medication when confined to a small cell). The Association faults Nurse Baker's response to this information. As the Association sees it, Nurse Baker could have suggested as a precautionary measure that the inmate be placed in a larger cell, or asked that she be brought back to the main jail to be kept in a medical cell, or suggested that Serres check MacDonald's personal property, which had been brought to the female jail, for any medication. She did none of those. The Association also points out that the nurse did not speak with the inmate herself to learn who her physician was and what medication she might need, so that she could verify the inmate's report and obtain the medication needed to keep MacDonald from having a seizure. Instead, the nurse said she would call Serres back, but she took no immediate action. The Association characterizes the nurse's failure to act as another missed opportunity to prevent MacDonald's suicide attempt. Lumping the inactions of Serres and Nurse Baker together, the Association maintains that if they had "acted proactively on the information they had, the suicide attempt might have been prevented." Third, the Association emphasizes that Nurse Baker learned that a medical screen had not been completed on MacDonald before the suicide attempt occurred. To support that contention, it notes that she looked for it after Serres

called her at 4 p.m. about MacDonald's medical condition, but could not find one. Nurse Baker told Serres that she could not find a medical screen on MacDonald sometime between 4:40 and 5:05 p.m. Thus, by 5:05 p.m., both Nurse Baker and Serres knew that a medical screen had not been done on MacDonald. The Association characterizes this as another missed opportunity to prevent MacDonald's suicide attempt.

The Association's final argument about the MacDonald matter is that the Employer did not prove their claim that Zielke's failure to do a medical screen on MacDonald enabled her suicide attempt. As the Association sees it, just because Zielke did not do the medical screen for MacDonald does not mean that MacDonald's subsequent suicide attempt is Zielke's fault.

Next, the Association makes the following comments about the incident involving Zielke's husband being present in the booking area. First, it emphasizes that Zielke did not invite her husband into the booking area; instead, she told him to wait in the public area when he came that day. Second, the Association notes that she was not even at the booking counter when her husband arrived, so she could not have been the one who asked the person in master control to let him in. Third, according to the Association, Sgt. Dikeman implicitly gave permission for Mr. Zielke to be in the booking area because after he saw that Mr. Zielke was there, he did not ask him to leave. Instead, he allowed him to stay in the booking area. As the Association sees it, "the County does not get to retroactively withdraw the permission that Zielke perceived and which Sgt. Dikeman intended to give, so that it can heap additional charges of misconduct upon her." Building on all the foregoing arguments, it is the Association's view that Zielke's conduct in relation to her husband being present in the booking area was not misconduct.

Next, the Association addresses the level of discipline which the Employer imposed here. It asserts that even if some misconduct on Zielke's part was proven, the penalty which the Employer chose was excessive and too severe, and therefore should be lessened/overturned by the arbitrator. Here's why.

It notes at the outset that disciplinary offenses can be characterized as falling into two classes: those that are extremely serious and justify summary discharge, and those less serious which call for a penalty aimed at correction. According to the Association, what Zielke did falls into the latter category, not the former.

Second, it maintains that the Employer treated Zielke unfairly in both the MacDonald matter and the situation with her husband. Here's why. In the MacDonald matter, the Association notes that Zielke was the only employee who was disciplined for anything relating to MacDonald's suicide attempt. It emphasizes that the second shift jailers at the female jail were responsible for MacDonald's safety and security, yet after she attempted to kill herself with a blanket, those jailers left her with the same blanket in the same cell; they only took the blanket away later after they noticed she was ripping it. Additionally, they did not ensure that nothing was left behind in the cell after the medical personnel attended to MacDonald, and MacDonald used a piece of plastic which the EMT's had left behind to cut herself. According

to the Association, it does not "raise these facts to argue that those staff members should be disciplined", but rather to argue that those jailers' behavior "was at least the same level on the 'negligence – diligence' scale as Zielke's behavior with regard to MacDonald." As the Association sees it, the principle of equal treatment dictates that since those jailers received no discipline for their behavior, then Zielke should not be disciplined either. If Zielke is disciplined, this holds Zielke to a different standard than her co-workers which, in turn, violates the principle of equal treatment which is implicit in the notion of just cause. With regard to Zielke's husband being present in the booking area without permission, the Association argues that if Zielke showed "complete disregard for the safety and security of the jail" as Sgt. Dikeman alleged in his report, then so did Sgt. Dikeman because he too was present in the booking area when Mr. Zielke was there, yet he did nothing to alter the situation.

Third, the Association contends that Zielke's unequal treatment by management is a continuation of a pattern that began after she grieved her 2005 discipline. To support that premise, it maintains that while that discipline was being appealed to arbitration, "the County began an in-depth investigation into virtually every movement Zielke made in her job, scouring hours upon hours of videotape to find something that it could claim she had done wrong." Not surprisingly, management found some rule violations (namely, doing rounds alone, not going into a cell to personally check on an inmate and allowing inmates to not be in their jail uniforms). However, the Association cites the testimony of local president Devine that in the last two years, no one else in the bargaining unit has been disciplined for doing rounds alone, or for not going into a cell block to personally check on an inmate, or for allowing inmates to not be in their uniforms at all times. The Association also maintains that with respect to the solo rounds charge, jailers did that routinely; that is, until they heard that Zielke was disciplined for it.

Fourth, it avers that the arbitration award which the County relies on (DOUGLAS COUNTY) wherein Arbitrator Greco sustained a jailer's discharge can be distinguished on its facts.

Next, the Association avers that the Employer violated the principle of progressive discipline "by piling on claims and allegations for which it has no support, and by exaggerating her disciplinary record". With regard to the former claim, the Association characterizes the charge about Zielke's husband's visit to booking as overreacting and piling on. Building on that premise, the Association asserts that "the County's efforts at piling on should be recognized for what they are – an effort to persuade the Arbitrator that the cumulative weight of all of the alleged wrongdoings support discharge." With regard to the latter claim (exaggerating her disciplinary record), the Association maintains that while the termination letter accurately describes Zielke's prior discipline as two letters of reprimand, the Sheriff's characterization of Zielke's disciplinary record at the hearing was inaccurate because he referenced a five-day suspension. The Association emphasizes that on April 19, 2006, the parties reached a settlement which resolved the grievance over Zielke's five-day suspension, as well as pending disciplinary issues. Part of that settlement was to reduce the five-day

suspension to a written reprimand. The Association argues that the Sheriff overlooked that part of the grievance settlement, and that this undercuts his credibility. As the Association sees it, what the Sheriff did (in his testimony) was to claim that the original five-day suspension – which was settled – is what should be counted for Zielke's disciplinary history. The Association avers that is not only inaccurate, but also amounts to illegal double-jeopardy (i.e. imposing multiple punishments for a single act).

Finally, the Association argues that the Employer's investigation into both of the matters involved here was seriously flawed and unfair. With regard to the investigation that Sgt. Hoesley conducted into the MacDonald matter, the Association first contends that Hoesley should not have investigated that matter because he was the one who discovered prior to 5:05 p.m. that MacDonald's bail payment had been processed by GPS and that she could be released. However, rather than doing that (i.e. releasing MacDonald), the Association alleges that "he delayed her release while he conducted an investigation into why GPS had sent the verification fax to Vernon County rather than La Crosse County." The Association avers that Hoesley was the wrong person to conduct the investigation into the MacDonald matter because "he had an error of his own to hide." As the Association sees it, this fact should cast doubt on Hoesley's testimony. The Association also argues that Hoesley's investigation was incomplete because: he only got written reports from Serres and Zielke; he failed to contact other obvious witnesses such as Nurse Baker; and afterwards, he did not file a written report but instead only reported orally to Captain Daggett. With regard to the investigation that Sgt. Dikeman conducted in the matter involving Zielke's husband being present in the booking area, the Association asserts that investigation was also severely compromised because Dikeman did not get to the bottom of how Mr. Zielke got into the booking area to begin with. The Association emphasizes that Dikeman's report is devoid of any mention that he was personally in the booking area for the vast majority of the time that Mr. Zielke was there (and thus could have asked Mr. Zielke to leave).

In sum, it is the Association's view that the Employer did not prove that it had proper cause to discharge Zielke. It maintains that the events of April 18, 2006 will likely never be repeated. According to the Association, "the worst thing that can be fairly said about Zielke's performance that day is that she did something uncommon, and which may not comport with best practice, but which did not violate accepted practice, and certainly was not the sole or even the most immediate cause of MacDonald's efforts at self-harm." The Association therefore asks that the grievance be sustained, Zielke reinstated, and a make-whole remedy issued.

County

The County's position is that it did not violate Article II of the collective bargaining agreement when it terminated Zielke's employment. As the Employer sees it, it had proper cause to discharge Zielke for her workplace conduct on August 18 and 19, 2006. The conduct it references is this: On August 18, 2006, Jailer Zielke failed to complete the medical screening for inmate MacDonald. Zielke also failed to document the fact that the medical

screening form had not been completed in the inmate's confinement narrative. She also did not tell the next shift or her supervisor that she had not done MacDonald's medical screen. Two hours after she was moved from booking to the female jail, inmate MacDonald attempted suicide. The very next day – August 19, 2006 – Zielke's husband came into a secure area of the jail. Jailers know that they are supposed to get permission to have visitors. Zielke did not get permission from the sergeant on duty for her husband to be in the booking area. Additionally, Zielke failed to direct her husband to go to the visitor area to wait for her. The Employer contends that in both instances, Zielke's work performance was substandard and constituted misconduct because she violated rules and regulations which are designed to protect inmates and jailers. The Employer avers that Zielke has repeatedly failed to comply with departmental rules and regulations, and has been previously disciplined for that. After Zielke committed the misconduct involved here, the Employer concluded it could no longer trust Zielke to perform her job properly, so it fired her. In the Employer's view, it provided sufficient evidence to satisfy its burden of proving that discharge was warranted under the circumstances. It makes the following arguments to support these contentions.

First, in response to the Association's argument about the standard of proof to be used here, the Employer notes that typically, the standard used in just cause cases is the preponderance of the evidence standard. In its view, that standard is sufficient here and there is no legal basis for imposing the clear and convincing evidence standard as requested by the Association. In support thereof, it notes that the reason the Association asked for the higher standard was that the County supposedly charged Zielke with enabling a suicide attempt. The Employer emphatically responds that Zielke was not charged with enabling or causing MacDonald's suicide attempt. Instead, Zielke was "charged with failing to perform a medical screen that might have provided information to prevent the self-harm and failing to properly document the lack of a screen." As the County sees it, that "charge does not implicate 'general social disapproval' any more than any other involuntary termination does", so the higher standard of proof is not needed.

Second, building on the premise that this case involves the grievant's failure to follow the Employer's rules and regulations, the Employer emphasizes the importance that rules and regulations play in running the jail. It notes that the jail operates under an extensive set of rules, regulations and procedures. It avers that these rules, regulations and procedures are essential to the safe operation of the jail. The County calls attention to the fact that the Association did not challenge the reasonableness of these rules and regulations, or allege they are invalid or unlawful. It also calls attention to the fact that the Association did not argue that the Employer's rules and regulations are incapable of being understood, or allege that Zielke was inadequately trained. Be that as it may, the County asserts that its jailers are extensively trained on these rules and regulations. To support that premise, it notes that jailers are trained at jail school, at in-service training sessions and in one-on-one sessions conducted by the department's training officer. Building on that last point, the Employer avers that Zielke had specifically been trained on the Employer's rules and regulations concerning jailers performing medical screens and having visitors in the booking area. The Employer contends that while Zielke knew what the Employer's rules were concerning those two matters, she failed to

comply with them on August 18 and 19, 2006 because she failed to conduct a medical screen on MacDonald and she failed to get permission for her husband to be in the booking area. As the Employer sees it, that was misconduct.

Having given that overview, the County elaborates further on the health screening form and its purpose. It notes at the outset that both state law and departmental policy require jailers to complete an inmate medical screening form during booking. The County avers that the health screening form is part of the County's effort to prevent jail suicides. According to the County, jail suicide is not an abstract fear; it is a very real risk. To support that premise, it notes that La Crosse County has had four successful suicides since 1997. Additionally, it notes that nearby Monroe County recently filed a lawsuit for damages sustained by an inmate who attempted suicide and failed; the lawsuit was settled for 13 million dollars. The Employer acknowledges that conducting a health screen does not guarantee that suicidal inmates will be identified and their self-harm prevented. It further acknowledges that an inmate (who is asked the questions on the health screen) could minimize or even lie about his or her condition. Be that as it may, the County asserts that it tries to prevent inmates from harming themselves, and the medical screen is one tool which the County uses to help achieve that goal. The County avers that jailers are required to complete medical screens on inmates as part of the booking process. According to the Employer, it is a basic part of a booking jailer's job duties, and it is standard operating procedure to complete it.

Building on the foregoing, the County argues that Zielke knew that she was to complete the medical screen on MacDonald. To support that premise, the Employer first notes that it is a task that MacDonald had done hundreds of times before on other inmates, so she knew how to do it. Second, it also notes that in her testimony, Zielke said she pulled the medical screen up on her computer to do it. Unfortunately, though, that is all Zielke did, because she admits she did not complete the medical screen for MacDonald. The Employer emphasizes that Zielke also knew that if she did not do the medical screen on an inmate, there was a process whereby she was supposed to note that. Specifically, she was supposed to note, in the narrative portion of the prisoner control record, that the medical screen had not been done and still needed to be done. The Employer points out that that was not done either. Finally, the Employer emphasizes that Zielke did not tell anyone that the medical screen had not been done or ask any of the other jailers to do it. The Employer speculates that if Zielke had conducted a health screen on MacDonald as she was supposed to, she may have learned that she (MacDonald) was taking medication for seizures. Building on that point, the Employer speculates further that Zielke may have also discovered that MacDonald's seizures were aggravated by confinement in small places. It emphasizes that this information about MacDonald's physical health, as well as any information about her mental health, was unknown to jailers Faas and Serres because Zielke failed to do her job and medically screen MacDonald. According to the Employer, it was unacceptable behavior for MacDonald to skip this job duty, even if it was a busy day. The Employer avers that given that lack of information, "neither jailer took precautions" and two hours later, MacDonald attempted suicide. The Employer asserts that Zielke's actions in failing to complete a medical screen on MacDonald or make a notation on the narrative that one still needed to be done exposed the County to financial liability.

As part of its discussion on the MacDonald matter, the County contests the Association's version of some of the facts.

First, it alleges that the Association's assertion that management knew that inmate MacDonald had bonded out before her suicide attempt is just plain wrong. It acknowledges that while Jailer Serres originally testified that she obtained the Cash Bond Fact Sheet from the trash while she was helping out in booking before MacDonald attempted suicide, the County points out that Serres later changed/corrected her testimony and said that she talked to Hoesley about the Cash Bond Fact Sheet after MacDonald attempted suicide. The County avers that the statement in the Association's brief that Sgt. Hoesley "learned from a telephone call from someone in Vernon County" that MacDonald successfully bonded out before she attempted suicide is a gross misstatement of the record. According to the County, what Sgt. Hoesley actually said was that he spoke with a Vernon County representative after MacDonald's suicide attempt – not before. That being so, the County asserts that Hoesley did not learn that the GPS form had been incorrectly faxed to Vernon County until after MacDonald had attempted suicide. To buttress that point, it asserts that prior to her suicide attempt, "MacDonald was not on anyone's radar screen." MacDonald was just another inmate, so to speak, so neither Sgt. Hoesley nor anyone else had any reason to look for paperwork or to investigate anything. Building on the foregoing, the County repeats that it did not know that MacDonald's credit card was accepted by GPS until after the suicide attempt.

Second, the County disputes the Association's assertion that the reason Zielke transferred MacDonald to the female jail at 3 p.m. was to use the phone there because MacDonald could not get through to her husband on the regular jail phone. According to the County, there are two defects in this factual assertion. First, it ignores evidence that there is at least one other phone in the booking area, which prisoners are permitted to use with a sergeant's permission. Zielke did not bother to ask for such permission, even in the face of her stated belief that MacDonald could promptly post bond. Second, the County notes that Zielke did not tell Jailer Serres that MacDonald needed to use the phone to call her husband. As a result, Serres did not offer MacDonald a phone call, and MacDonald made no phone calls from the female jail. Thus, whatever calls MacDonald made were made from the main jail. The County submits that given the statement that MacDonald made to Serres (that she was upset because her husband would not bond her out and was leaving her), the County believes it is apparent that MacDonald reached her husband by phone while she was at the main jail. Building on that point, the County characterizes Zielke's statement that she transferred MacDonald to the female jail to use the phone there as a fabrication. Additionally, the County submits that MacDonald's statement to Serres proves that MacDonald knew that her bond was not only not "on the way", but that her husband did not intend to post it at all. The County implies that if MacDonald knew that she was not getting out of jail, then certainly Zielke, as the person in charge of the booking process, had no objective basis to believe that MacDonald was a "book and release" inmate.

Next, the Employer addresses what it calls the Association's "book and release" defense. According to the Association, there is an unwritten exception to the rule that a

medical screen always has to be done on an inmate and the exception is this: a jailer does not have to perform a medical screen on an inmate when the inmate is going to be promptly released. The County responds as follows. First, it notes that neither state law nor county policy contains such an exception. Second, it asserts that the evidence which was offered at the hearing on the existence of this exemption is mixed. From its perspective, what the record evidence shows is that while the medical screen can be delayed due to intoxication, belligerence, etc., it cannot be ignored. It notes that MacDonald was not intoxicated or belligerent. Third, while Zielke may have originally thought MacDonald was going to be a "book and release" prisoner, it certainly did not turn out that way. Here's why. MacDonald was ultimately in the booking area waiting for bond for over two hours. The County calls attention to the union president's testimony that the longest he had anyone wait for bond was one hour and 45 minutes, and then he did the medical screen. The Employer emphasizes that when Zielke left at 3 p.m., MacDonald was still trying to contact her husband, but had not been successful in doing so. As a result, the Employer maintains that Zielke had no realistic reason or factual basis to conclude that MacDonald could still post bond. The Employer avers that as Zielke's shift drew to a close, and it became clearer that MacDonald was not going to post bond on Zielke's shift, then Zielke had two options: she could have filled out the medical screen or asked someone else to do it. She did neither.

Finally, the Employer addresses what it calls the Association's "missed opportunities" defense. It notes that in this defense, the Association attempts to deflect blame from Zielke by targeting the jail nurse and Jailer Serres. Specifically, the Association accuses them of failing to take immediate action by placing MacDonald in a larger cell or transferring her back to the main jail. However, the Association does not contend that either Nurse Baker or Serres should have been disciplined. Rather, they argue that many people made mistakes but no one deserved discipline. The Employer contends this argument should fail because neither Nurse Baker nor Jailer Serres broke any identified rule. According to the Employer, they both did their jobs to the best of their ability, given the limited amount of information with which they were provided. That was not the case with Zielke though. Since Zielke was the booking jailer, she was the one whose duty it was to find out if MacDonald had any mental or physical problems. No one else had that task. That being so, the County asks the arbitrator to reject the Association's attempt to deflect blame from Zielke by targeting others.

The County addresses what happened the next day as follows. It notes at the outset that the jail is not a public workplace. Rather, it is a secure facility in which dangerous criminals are involuntarily detained. As a result, members of the public are not permitted to spend time in the secure areas of the jail without express permission to do so. What happened that day is that Zielke allowed her husband to stay in a secure area of the jail (namely, the booking area) without permission. What is astonishing to the Employer about Zielke's failure to either seek or obtain permission for her husband to be there is this: at the hearing, Zielke testified that she felt she was "under the microscope" that day due to events of the previous day (referring, of course, to MacDonald's attempted suicide). The Employer does not dispute her assertion. Instead, "knowing that her superiors were examining her conduct" she allowed her husband to stay in the booking area for 20 plus minutes without permission. The County avers that in

doing so, Zielke once again failed to comply with the department's rules because a visit of that duration requires a sergeant's permission and Zielke never got such permission. In response to the Association's contention that Sgt. Dikeman or the jailer in master control did something wrong by either admitting or permitting Zielke's husband into the booking area, the County characterizes that as blame-shifting. It emphasizes that Mr. Zielke came to see Zielke. Building on that premise, it is the Employer's position that she was the person responsible for his presence. Additionally, the Employer notes that Zielke's stated reason for her husband being there was to drop off some money. The Employer asks rhetorically how long that takes: one minute, two? According to the Employer, Zielke could have simply collected the money and sent her husband on his way. That, of course, did not happen.

Next, the Employer addresses the discipline which it imposed and whether it was justified under the circumstances. It alleges that it was.

First, it responds to the Association's claim that Zielke was treated unequally because no one else was disciplined for the events relating to MacDonald's attempted suicide. According to the County, this is a curious reversal of the Association's previous argument that no one should have been disciplined. Now, according to the Association, Jailers Serres and Berg deserved reprimands for leaving MacDonald's blanket and some medical packaging materials behind. The County contends that when a party makes inconsistent arguments, as the Association does here, the trier of fact is entitled to ignore one or both of them. The County submits that in this case, both arguments should be scrapped because they are both "smoke screens" for Zielke's unsatisfactory job performance. Aside from that, the County asserts that Jailers Serres and Berg broke no rules by their conduct herein.

The County notes that the Association makes the same argument about the events of August 19th. This time though, the Association claims that Sgt. Dikeman should have been disciplined for allowing an unsafe situation to occur in the jail. The County disputes that assertion. Additionally, it maintains that Sgt. Dikeman provided an uncontested reason why he did not usher Mr. Zielke from the secure area – namely, that he didn't know if permission had been granted by the "on duty" sergeant. The Employer asserts that it was only after discovering that Zielke had not even asked for permission that the discipline was issued.

Second, it addresses the Association's claim that when the Employer imposed discipline here, adding the August 19th occurrence to the charge amounted to (unfair) "piling on". It disputes that assertion. According to the County, this contention has three defects. First, the Employer maintains that there is no factual basis in the record for the Association's assertion that "piling on" is the County's standard practice in disciplinary cases. Second, the Employer notes again that on that date, Zielke broke the rules when she failed to seek or obtain permission for her husband to be present in a secure area of the jail. As the County sees it, it is not required to disregard rule-breaking conduct, especially when it occurs one day after another such episode. Third, the Employer submits that the tenets of progressive discipline require that the employer take previous workplace conduct into account when determining the severity of the punishment. It maintains that Zielke had been counseled time and time again to

follow the rules. While the Association characterizes that counseling as "ancient, gossipy and petty", the Employer asserts it was "foundational, instructive and, as it turns out, predictive of her future conduct." The Employer contends it is accepted practice for an employer to consider past conduct when imposing discipline.

Next, the County addresses the Association's contention that it "exaggerated" Zielke's disciplinary record. It disputes that assertion and contends the following facts support its position. First, it notes that in 2005, Zielke was disciplined for two rule violations. In one incident, she entered a signature bond as a cash bond. Another jailer also made a mistaken entry for the same inmate, and entered a cancellation order as a hold. The combined mistakes resulted in the inmate spending an extra ten days in jail. In the other incident, she mishandled paperwork ordering another inmate to be transferred to the state correctional system. The Employer imposed a five-day suspension for these two incidents which Zielke grieved. The Employer acknowledges that the grievance was later voluntarily settled. One part of the settlement was that the suspension was reduced to a written warning. Another part of the settlement was that Zielke was not reimbursed the income that she lost due to the five-day suspension. In other words, she "ate" that penalty (i.e. the loss of five days pay). The County disputes the Association's contention that the five-day suspension completely disappeared by virtue of the grievance settlement. As the County sees it, "it remains of record" that Zielke served a five-day suspension and was not reimbursed for it. That being so, the Employer believes it was a proper matter for the Sheriff to consider when imposing discipline. Second, the Employer notes that in 2006, Zielke received a written warning for six rule violations: three instances of not entering a cell block and/or not doing rounds with a partner; one instance of allowing inmates to not wear their full jail uniforms in the day room; one instance of entering a cell block without back up; and one instance of not "sterilizing" an inmate's cell by taking away the inmate's mattress and blanket. The County characterizes the Association's description of how the Employer learned of these six incidents as "insidious" and "almost paranoid". It asserts that Dikeman learned of these incidents as follows: on March 20, 2006, he noticed that one of the inmates listed on 23/1 administrative segregation had apparently not had his hour out. Dikeman asked the second shift jailers if the inmate got his hour out, and they did not know. Consequently, Dikeman looked at the videotape for the previous shift. In doing so, he discovered that Zielke had not done her job and let the inmate out. The Employer argues that "unfortunately for Ms. Zielke", when Sgt. Dikeman was reviewing the videotape, he "discovered that she repeatedly shirked her duties that day. . .". The Employer maintains that is how it learned of Zielke's rule violations.

The Employer contends that its purpose in giving Zielke these written warnings was to change her workplace behavior so that she paid more attention to her job duties and followed the Employer's rules and regulations. The Employer emphasizes that both written warnings say in the final paragraph that "any" further mistakes and/or rule violations "will result" in discipline "including termination". As the County sees it, given that strong language, Zielke had no basis to expect light or lenient treatment if she violated the Employer's work rules again. Just three months later, Zielke violated the Employer's work rules again. The Employer asserts that given the short time period that elapsed between the second written

warning and the two matters involved here (i.e. the incidents on August 18 and 19, 2006), Zielke "cannot avail herself of the argument that she is entitled to credit for correcting her behavior." Additionally, in response to the Association's assertion that Zielke's conduct in the MacDonald matter did not precisely mirror her prior mistakes, it is the Employer's view that it did resemble her prior mistakes, so it was proper for the Employer to consider them in imposing discipline.

Finally, the County addresses the Association's contention that both investigations which the Employer conducted into Zielke's conduct on August 18 and 19, 2006 were flawed. It disputes that assertion.

With regard to Sgt. Hoesley's investigation of the MacDonald matter, the Employer first argues that the Association's contention that Sgt. Hoesley should not have led the investigation because he was at fault for delaying MacDonald's release is "more than contrived – it is completely made up" and lacks a factual basis. To support that premise, it emphasizes once again that Sgt. Hoesley did not know that MacDonald had bonded out before her suicide attempt. According to the County, the testimony which the Association relies on to prove the converse (i.e. that Hoesely knew that MacDonald had bonded out before her suicide attempt) was Jailer Serres' initial testimony on the matter which she later recanted. That being so, it is the Employer's view that nothing in the record indicates that Sgt. Hoesley had, as the Association puts it, "an error of his own to hide". Second, in response to the Association's assertion that Hoesley's investigation was incomplete, the Employer simply disputes that assertion.

With regard to Sgt. Dikeman's investigation into Mr. Zielke's presence in the booking area, it notes that Dikeman personally observed the conduct in question (i.e. Mr. Zielke being present in the booking area). Since he observed the conduct, it is the Employer's view that all he had to do afterwards was verify whether Zielke had or had not obtained permission for her husband to be in the secure area of the jail. Dikeman did that when he checked with the sergeant on duty and learned that Zielke had neither sought nor obtained permission for her husband to be there. That being so, the Employer believes Dikeman verified Zielke's misconduct. In response to the Association's assertion that Dikeman could have asked Zielke's husband to leave or asked Zielke if she had permission for her husband to be there, the Employer acknowledges that yes, Dikeman could have done those things. The Employer implies that Dikeman did not do those things because he assumed that Zielke was following the rules and had sought and obtained permission for her husband to be present in the booking area.

Given all the above, the Employer submits it did not abuse its discretion in making the decision to discharge the grievant, and its exercise of judgment should not be overturned. The Employer therefore asks that the grievance be denied and the discharge upheld.

DISCUSSION

The parties stipulated that the issue to be decided here is whether the County violated Article II of the parties' collective bargaining agreement when it discharged Zielke. Article II provides, in pertinent part, that "the County retains the. . .right to. . . discharge. . .for proper cause." This clause gives the County the right to discharge employees, so long as it has "proper cause" for doing so. Since the grievant was discharged, the obvious question to be answered is whether the County had proper cause to discharge her.

I find at the outset that the phrase "proper cause" is simply another phrasing of the concept commonly known in labor relations parlance as "just cause". In other words, I see no significant difference between the two phrases.

The phrase "proper cause" is not defined in the collective bargaining agreement, nor is there contract language which identifies what the employer must show to justify the discipline imposed. Given that contractual silence, those decisions have been left to the arbitrator. Arbitrators differ on their manner of analyzing just cause. While there are many formulations of "just cause", one commonly accepted approach consists of addressing these two elements: first, did the employer prove the employee's misconduct, and second, assuming the showing of wrongdoing is made, did the employer establish that the discipline which it imposed was commensurate with the offense given all the circumstances. That's the approach I'm going to apply here.

Having so found, the next question is what level of proof the Employer needs to meet to satisfy the two elements just referenced. Both sides aver that the normal standard used by arbitrators is the "preponderance of the evidence" standard. The Association contends that in this case though, that standard is insufficient because "the County's allegations include the claim that Zielke's actions enabled a suicide attempt, certainly an allegation which carries significant social stigma", so the arbitrator should use a higher standard, namely the "clear and convincing" standard. I disagree. As just noted, the Association's request for the higher standard is based on the premise that the County's charges against Zielke amount to enabling a suicide attempt. While the matter will also be addressed later, it suffices to say here that Zielke was not charged with enabling a suicide attempt. That being so, I find there are not sufficient grounds in this particular case for imposing a higher standard of proof than normal that the Employer needs to meet.

As just noted, the first part of the just cause analysis being used here requires a determination of whether the employer proved the employee's misconduct. In making that call, I will address two separate components: did the employee do that which was alleged, and if so, was that misconduct? These two components will be addressed in the order just listed.

The conduct in question was identified in the discharge letter. In that letter, the Sheriff alleged that Zielke committed workplace misconduct on August 18 and 19, 2006. The conduct will be addressed in that order.

The discharge letter alleged that on August 18, 2006, Zielke failed to complete MacDonald's medical screen. It also alleged that Zielke failed to document that the medical screen had not been completed on the inmate's confinement narrative.

I've decided to discuss Zielke's responses to these allegations from two perspectives. I will first review what she said in her written document. After that, I will review what she said when she testified at the hearing.

Following MacDonald's suicide attempt, Zielke made a written statement about her involvement with MacDonald on August 18, 2006. The written statement contained the following reference to the medical screen matter: "I then pulled up the med. form to ask her questions. . ." The language just quoted is the only reference in the four page statement to MacDonald's medical screen. That's it. That being so, Zielke's written statement did not address whether or not she completed MacDonald's medical screen. Additionally, her written statement did not address whether or not she documented anything in the inmate's confinement narrative about MacDonald's medical screen. Additionally, her written statement did not address whether or not she told anyone that day about the status of MacDonald's medical screen.

At the hearing, Zielke clarified most of the uncertainty about the matters just noted. Here's why. First, she admitted that she did not complete MacDonald's medical screen. Second, she admitted that she did not document in MacDonald's confinement narrative that the medical screening form had not been completed. She could not recall though whether she did or did not tell Jailers Faas and Serres that MacDonald's medical screen was undone.

In light of the admissions just noted, the factual premise for the remainder of my discussion is that Zielke did not complete MacDonald's medical screen, and that Zielke did not document that the medical screen form had not been completed on the inmate's confinement narrative. I further find that Zielke did not tell anyone that day that MacDonald's medical screen had not been done.

Next, the grievant's admissions relative to MacDonald's medical screen will now be considered in the following context.

First, the record indicates that the County tries to prevent inmates from harming themselves, and the medical screen is one tool which the County uses to help achieve that goal. While there are exceptions which will be noted later, jailers are required to complete medical screens for inmates who are booked into the jail. Completing a medical screen is standard operating procedure and is considered a basic job duty for jailers doing bookings.

Second, while it was just noted that jailers are required to complete medical screens for inmates who are booked into the jail, an exception applies to those inmates who are combative, uncooperative or intoxicated. Inmates who fall into these categories do not have a medical screen performed on them initially. When those inmates become non-combative, cooperative,

or sober, then they are medically screened by a jailer. MacDonald was not combative, uncooperative or intoxicated when she was with Zielke on August 18, 2006, so none of those things precluded Zielke from medically screening her.

Third, there is no question that Zielke knew how to complete the medical screen. The record indicates that she had, in fact, been trained on how to complete it. This training involved more than simply learning how to record the inmate's answers to the questions. It also included training to recognize the signs and symptoms of distress. This training enabled her to make an informed evaluation of the inmate's behavior and decide if the inmate was stable or unstable. Stable inmates are placed in a regular cell whereas unstable inmates are placed in special cells. Given that training, Zielke knew how to complete a medical screen. The reason I decided to discuss this basic point is that Zielke was once disciplined for not doing a certain procedure correctly (namely, revocation order paperwork), and her contention afterwards was that she did not know how to do that paperwork. That is not the situation here. In this situation, Zielke had been trained on the medical screen and knew how to do it. In fact, the record indicates she had done medical screens hundreds of times before.

Having noted the foregoing for the purpose of context, the focus now turns to Zielke's involvement with MacDonald on August 18, 2006. On that date, Zielke was the booking jailer for inmate MacDonald. Prior to 2:30 p.m., Zielke thought MacDonald was going to be a "book and release" prisoner. However, the situation changed when Zielke spoke to GPS by phone about the missing confirmation paperwork, and MacDonald's second attempt to use her credit card to post bond was rejected by GPS. At that point, Zielke realized that MacDonald's situation had changed and she would not be bonding out soon. Zielke then opened up the medical screen form on the computer. The logical inference which is drawn from this act is that Zielke planned to ask MacDonald the 34 questions and complete the medical screen. However, as Zielke admitted at the hearing, that's as far as she got. She did not ask MacDonald a single question off the medical screen form, much less complete the form. Since Zielke was an experienced booking jailer who had done this task hundreds of times before, she knew that if she did not complete the medical screen on an inmate for any reason, the next step of the process was to note, in the narrative portion of the prisoner control record, that the medical screen had not been done and still needed to be done. The record indicates that she's made such notations many times before. However, as Zielke admitted at the hearing, she did not do that either. Based on her work experience, Zielke also knew that if she did not do a medical screen on an inmate or note in the narrative that the medical screen had not been done, then she was supposed to tell someone that the medical screen had not been done so that someone would do it. She did not do that either.

Although Zielke never explicitly characterized her failure to do those tasks related to MacDonald's medical screen as an accident, the Employer did not assert that she intentionally overlooked it. That being so, the undersigned has decided to presume that Zielke's failure: 1) to complete MacDonald's medical screen; or 2) to make a notation in the narrative that the medical screen had not been done; or 3) to tell someone that day that the medical screen had not been done; was accidental. Zielke obviously dropped the proverbial ball in terms of doing the tasks just noted in relation to MacDonald's medical screen.

Building on the premise that Zielke's failure to perform those tasks was accidental, the next question is whether fault can fairly be assigned to Zielke for that conduct. The Employer asserts that it can, while the Association disputes that assertion.

The Association offered several defenses for Zielke's conduct which, in its view, should excuse or justify her conduct, or deflect fault from Zielke onto others. Those defenses are addressed next.

I'm first going to address the Association's "book and release" defense. According to the Association, it is "accepted practice" that medical screens are not required in "book and release" circumstances. Building on that premise, the Association avers that MacDonald was a "book and release" prisoner so Zielke rightfully believed she did not have to do a medical screen on her. In addressing this contention, I've decided to assume for the sake of discussion that it is "accepted practice" – as averred by the Association – that medical screens are not done in "book and release" circumstances. The reason I made that assumption is this: even if it is the "accepted practice" that booking jailers do not have to perform a medical screen on "book and release" prisoners, MacDonald did not turn out to be a "book and release" prisoner. Here's why. Initially, it looked like MacDonald was going to be a garden variety "book and release" prisoner. She called GPS which posted the bond amount to her credit card. Then, she and Zielke waited for the confirming fax. In most "book and release" situations, GPS sends back a confirming fax to the County within 15 minutes. Had that happened, MacDonald likely would have been released shortly thereafter. Here, though, La Crosse County did not get the confirming fax in a timely fashion because GPS mistakenly sent it to the wrong county. That mistake was not cleared up until hours later. It certainly was not cleared up by 3 p.m. when Zielke's shift was over. At that point, all Zielke knew was that GPS had denied MacDonald's second attempt to bond out on her credit card, and she was trying to contact her husband so that he could come and bond her out. When Zielke left at 3 p.m., as the Association put it in their initial brief, "MacDonald was still attempting to make bond. . .MacDonald had not exhausted her opportunities to bond out." What the Association is referring to, of course, is that MacDonald was still making phone calls from the booking area trying to reach her husband. When Zielke left though, MacDonald had not yet reached her husband (meaning she had not gotten ahold of him). That factual situation made Zielke's next move very significant. Here's why. Zielke testified that when she left, she thought MacDonald was going to be bonding out soon. If that was the case, and MacDonald was indeed going to be bonding out soon (through her husband), one would think that Zielke would have let MacDonald stay in the booking area until that happened (i.e. making bail). However, that's not what happened. What happened, of course, is that Zielke transferred MacDonald from the booking area to the female jail. In doing that, Zielke was not pressured to transfer MacDonald by her supervisor or any of the jailers at the main jail or the female jail. Instead, she made that call on her own volition. That's what jailers do. By that, what I'm referring to is that jailers decide when the booking process has come to an end (i.e. when it is finished). Zielke's transfer of MacDonald from the booking area to the female jail ended/finished MacDonald's booking process because jailers at the female jail don't do bookings. Once MacDonald was transferred from the booking area to the female jail, MacDonald was no

longer even arguably a "book and release" prisoner anymore. At that point, she was an inmate at the female jail. Obviously, this transfer undercuts Zielke's assertion that when she left work, MacDonald was still a "book and release" prisoner who was going to be bonding out soon. It also bears repeating that it was Zielke, and no one else, who decided to end MacDonald's booking process by transferring her to the female jail.

No doubt aware that this was problematic, Zielke tried to address the matter just noted (i.e. her transfer of MacDonald to the female jail) by asserting at the hearing that when she did that, it was not her intent that MacDonald be "checked in" and become an inmate there; instead her (Zielke's) intent (in sending MacDonald to the female jail) was only to let MacDonald use the phone there (at the female jail) to call her husband (to post her bond). If that was indeed Zielke's intent, one would think Zielke would have shared that valuable piece of information with the jailers at the female jail or her supervisor. However, Zielke did not tell them that the only reason MacDonald was being transferred to the female jail was just to use the phone there so she could make bail. While she may have told the court officer who transferred MacDonald to the female jail that MacDonald was going there to make phone calls, that message was not relayed to the jailers at the female jail. Since the jailers at the female jail were not told differently, they treated MacDonald as a regular inmate who had already been offered the chance to "book and release", but could not make bail. That process involves making phone calls, and Serres had seen MacDonald using the phone in the booking area when she was there around 3 p.m. Consequently, the jailers at the female jail did not offer to let MacDonald use the phone there. When Serres had MacDonald change into a jail uniform, MacDonald told Serres that she was upset because her husband was not bonding her out and was leaving her. Since MacDonald never used the phone at the female jail, this statement establishes that MacDonald must have reached her husband from the phone in the booking area before she was transferred to the female jail. The undersigned surmises that MacDonald reached her husband sometime after 3 p.m. (when Zielke left) and 3:30 p.m. (when she was physically delivered to the female jail by the court officer). Based on the above, I conclude that Zielke's belief that she did not have to do a medical screen on MacDonald because MacDonald was going to be released soon lacks a sound factual basis. Accordingly, the Association's "book and release" defense has not been found persuasive.

Next, the focus turns to what I'm calling the Association's "missed opportunities" defense. In that defense, the Association essentially attempts to deflect blame from Zielke onto three other people. Those three people, and their actions, will be addressed below.

First, the Association avers that "Sgt. Hoesley knew early in the shift that MacDonald had successfully accomplished bond through GPS earlier that afternoon. Had Sgt. Hoesley acted promptly to release her, there never would have been a suicide attempt." To support this premise (i.e. that Hoesley knew that MacDonald had successfully bonded out before the suicide attempt occurred), the Association avers that sometime before 4:40 p.m., Hoesley "learned from a telephone call from someone in Vernon County" that MacDonald had successfully posted her bond, but that the bond confirmation paperwork had mistakenly been sent to Vernon County rather than to La Crosse County. According to the Association, after

Hoesley learned this, he did not promptly release MacDonald, but rather was more concerned with nailing Zielke for causing this error "than he was with ensuring the inmate was properly and promptly released." The problem with the Association's assertion in this matter is that the record evidence does not support it. Here's why. To support its premise, the Association relies on Jailer Serres' testimony that she talked to Hoesley about the Cash Bond Fact Sheet when she was helping out in booking before MacDonald attempted suicide. The Association extrapolates from that testimony that it proves that Hoesley knew that MacDonald had successfully bailed out before the suicide attempt occurred. However, Serres later changed/corrected her testimony on that point and said she talked to Hoesley about the Cash Bond Fact Sheet after MacDonald attempted suicide – not before. That being so, Serres' overall testimony does not support the Association's assertion that Hoesley knew that MacDonald had successfully bonded out before the suicide attempt. Aside from that, Hoesley had no reason to look for paperwork related to MacDonald or investigate anything related to MacDonald before her suicide attempt. Before her suicide attempt, MacDonald was just another inmate, so to speak. That obviously changed after her suicide attempt when everybody in the jail probably knew her name. That's when the investigation started – not before the suicide attempt. Given the above, I find that the Association's assertion that Hoesley knew that MacDonald had successfully bonded out before her suicide attempt is not supported by the record evidence.

Second, the Association targets the conduct of Nurse Baker and Jailer Serres and what it calls their "missed opportunities" to prevent MacDonald's suicide attempt. According to the Association, both made various mistakes relative to MacDonald, and had they "acted proactively on the information they had, the suicide might have been prevented." The Association invites me to second guess their actions and conduct and, after doing so, blame them for MacDonald's suicide attempt. I decline to do that. Here's why. In my view, what the Association is trying to do via this defense is make MacDonald's suicide attempt the subject matter being reviewed and who should be responsible for it. However, that is not the subject matter being reviewed. What is being reviewed – at least right here – is MacDonald's missing medical screen and who bears responsibility for it. Baker and Serres had nothing to do with MacDonald's missing medical screen. It was not their job to complete it – it was Zielke's job. That being so, I find that the Association's attempt to shift the blame for MacDonald's missing medical screen onto Baker and Serres – via the argument that they were to blame for MacDonald's suicide attempt – is not persuasive.

The Association's final defense on the MacDonald matter is that the Employer did not prove the claim that Zielke's failure to do a medical screen on MacDonald "enabled her suicide attempt." The problem with this contention is that Zielke was not charged with enabling MacDonald's suicide attempt. Additionally, the Employer did not allege that MacDonald's suicide attempt was Zielke's fault. Since those charges were not made against Zielke, the Association's contentions relative to same miss the mark.

Having considered the Association's defenses for Zielke's conduct in the MacDonald matter and found them to be unpersuasive, I find that fault can fairly be assigned to Zielke for

her conduct. Her failure to conduct a medical screen on MacDonald was inexcusable misconduct. Had Zielke done her job and conducted a health screen on MacDonald, she might have learned that MacDonald was taking medication for seizures. Additionally, she might have learned that MacDonald's seizures were aggravated by confinement in small places. Had that information been learned, it could have been relayed to the jailers in the female jail. However, no information whatsoever about MacDonald's mental or physical health was relayed to the jailers in the female jail because Zielke failed to do her job and do a medical screen on MacDonald. It also was inexcusable misconduct for Zielke to not make an entry in MacDonald's prisoner control record narrative that a medical screen needed to be done. In making this finding, it is noted that I considered the Association's contention that it did not matter that Zielke failed to make an entry in the narrative section that MacDonald's medical screen needed to be done because no one looked at the narrative section until after MacDonald attempted suicide. However, that contention is not factually accurate because Nurse Baker looked at the narrative section before MacDonald attempted suicide. She was the one who discovered that a medical screen had not been done and relayed that information to Serres.

. . .

The focus now turns to Zielke's conduct on August 19, 2006.

The discharge letter alleged that on that date, Zielke "allowed [her] husband to stand in a secure area of the jail for 20 minutes without a sergeant's approval."

Before I address what happened that day, I've decided to comment on the following to help put what happened in perspective.

First, the record indicates that much of the jail is not open to the general public. The jail has a public area, but the booking area is not part of the public area. The booking area is part of the secured area which is locked. Members of the public are not permitted to be in secure areas of the jail without express permission. The only way a civilian can get into the booking area is by being buzzed in by the staff working in master control.

Second, for safety reasons, the Employer has a rule governing visits by jailers' family members. The rule essentially says that family members are permitted in secure areas only for brief visits, and only with the shift sergeant's permission.

Third, there is no question that Zielke knew that was the rule. The record indicates that she had, in fact, been trained on it. Since she had been trained on it, she knew she was to comply with it.

Having noted the foregoing for the purpose of context, the focus now turns to what happened on August 19, 2006. On that date, Zielke was working the first shift. While she was working, her husband came to the jail to give her some money. Zielke's husband came into the booking area. Zielke did not let her husband into the booking area – someone else

did. The record does not indicate who let him in. In any event, once Zielke's husband was admitted to the booking area, he stayed there for about 20 minutes until Zielke's shift was over. During that time, no one asked Mr. Zielke to leave – not Zielke, and not Sgt. Dikeman, who was in the booking area for much of the time that Mr. Zielke was there. Zielke never got permission from the shift sergeant for her husband to be in the booking area.

The last item referenced above is what the Employer considered misconduct.

The Association offered several defenses for Zielke's conduct which, in its view, should excuse or justify her conduct or deflect fault from Zielke onto others. Those defenses are addressed next.

First, the Association correctly points out that Zielke did not invite her husband into the booking area. It also correctly points out that Zielke was not the person who let her husband into the booking area; it was someone in master control who did that. Be that as it may, Zielke was responsible for her husband and his actions while he was there because he came to see her. Once her husband got into the booking area, Zielke was responsible for his presence there.

Second, the Association tries to get around the fact that Zielke never got permission for her husband to be there by arguing that Sgt. Dikeman implicitly gave permission for Mr. Zielke to be there because he (Dikeman) did not ask Mr. Zielke to leave, or ask Zielke if she had permission for her husband to be there. In my view, the permission contemplated by the Employer's work rule is explicit permission; implicit permission is not enough, nor is perceived permission. Thus, the employee has to ask for and receive permission from the shift sergeant for a family member to be in the booking area. Here, though, Zielke did not seek or obtain permission from the shift sergeant for her husband to be present in the booking area.

Having found the Association's defenses for Zielke's husband being present in the booking area without permission to be unpersuasive, the next question is whether Zielke's failure to get permission constituted misconduct. I find that it did. As previously noted, Zielke knew that when she had a family member visit her in the booking area, she's supposed to get permission first. She failed to do that. It would be one thing if her husband's visit could be characterized as just a simple in and out to drop off some money. However, that's not what happened because Mr. Zielke stayed in the booking area for 20 minutes (until the end of Zielke's shift). Even if that qualifies as a "brief visit" under the rule, the fact of the matter is that the employee still has to get permission from the shift sergeant for the visit. Zielke should have done so.

Aside from that, what is surprising to the undersigned about Zielke's failure to comply with this relatively simple work rule regarding having visitors in the booking area is the timing of Zielke's rule violation. Here's what I mean. The rule violation in question occurred the day after MacDonald's attempted suicide. By her own admission, Zielke felt she was under a magnifying glass because of her conduct the previous day with MacDonald. It is not uncommon for certain employees to be put under the microscope, so to speak, and have their

work conduct scrutinized by management. Usually, when employees feel they are being scrutinized by management, they comport themselves accordingly. Here, though, Zielke failed to comply with the rule regarding visitors being present in the booking area at a time when she knew she was being scrutinized. Not only that, but she did it right in front of a supervisor. Not surprisingly, he chose not to overlook it.

Having addressed Zielke's conduct on August 18 and 19, 2006, and found that it constituted misconduct, the next question is whether that misconduct warranted discipline. I find that it did for the following reasons. The Employer has a legitimate and justifiable interest in ensuring that jailers perform their work completely and accurately. Employers that tolerate incomplete and sloppy work by their employees can, under certain circumstances, expose themselves to financial liability for doing so. Additionally, the Employer has a legitimate and justifiable interest in ensuring that jailers follow the extensive rules and regulations which are in place. On August 18 and 19, 2006, Zielke violated the rules referenced in the discharge letter. It follows from that finding that discipline could be imposed on Zielke for her substandard work performance.

The second part of the just cause analysis being used here requires that the Employer establish that the penalty imposed was appropriate under the relevant facts and circumstances. In reviewing the appropriateness of discipline under a just cause standard, arbitrators often consider the notions of progressive discipline, due process protection and disparate treatment. The undersigned will do likewise in reviewing the appropriateness of the discipline imposed here (i.e. discharge). These matters will be addressed in the order just listed.

With regard to the first matter referenced above (progressive discipline) it is noted at the outset that an employee who has already been disciplined is rightly exposed to more severe consequences for their actions than another employee with a clean record. It is basic progressive discipline that as disciplinary steps become more severe, employees are supposed to modify their behavior. If they do not, they can justifiably be discharged. Zielke had previously been formally disciplined for not following the department's rules, regulations and policies. It happened twice. In 2005, Zielke was disciplined for two separate instances of rule violations. In that discipline, the Employer imposed a five-day suspension. Zielke served the suspension and grieved it. This grievance was voluntarily settled at the arbitration hearing in 2006. One part of the settlement was that the suspension was reduced to a written warning. Another part of the settlement was that Zielke was not reimbursed for the five days pay that she lost (due to the suspension). In litigating this case, both sides debated how the discipline involved in that settlement should be characterized. Not surprisingly, each side emphasized just part of the settlement (i.e. the Association relying on the part that the suspension was reduced to a written warning and the Employer emphasizing that Zielke served the five-day suspension and was not reimbursed for the lost pay). For the purpose of discussion, I'm going to accept the Association's description of the agreed – on discipline as a written warning. (Note: My rationale for doing so will be addressed later in this section). In 2006, Zielke was disciplined again for not following the department's rules, regulations and policies. This time, it was for six separate instances of rule violations. In that discipline, the Employer imposed a

written warning. This written warning was not grieved as part of the settlement of Zielke's other discipline (i.e. her 2005 discipline). In imposing both these written warnings, the Employer's stated purpose was to get Zielke to change her workplace behavior so that she paid more attention to her job duties and followed the Employer's rules and regulations. Both written warnings say in the final paragraph that "any" further mistakes and/or rule violations "will result" in discipline "including termination." These warnings should have put Zielke on notice that she was on thin ice job-wise, and if she violated the work rules again, she would be disciplined. It is set against this backdrop that just three months after Zielke got her second written warning, she committed the misconduct involved here. The Association emphasizes that Zielke's misconduct on August 18 and 19, 2006 did not precisely mirror her prior misconduct, and contends that is significant. I don't see it that way. The misconduct at issue here was for rule violations – just like her previous discipline was. The common feature in all of them is that they involved rule violations. Besides, while some labor agreements specify that the employer can only consider previous discipline which is factually similar, that type of language is not contained in the labor agreement involved here.

When I previously addressed the matter of how Zielke's agreed-on discipline from 2005 was going to be characterized, I indicated that I was accepting the Association's description of the agreed–on discipline as a written warning. My decision to call it that, rather than something else, does not affect the outcome of this case. Here's why. While a suspension normally follows a written warning in the progressive discipline sequence, the labor agreement involved here does not require that the Employer impose a suspension following a written warning. That being so, there is nothing in this labor agreement which requires that a lesser form of discipline – such as a suspension – had to be imposed in this particular case.

The Association's final argument in this category is that the Employer violated the principle of progressive discipline when it piled on the charge about Zielke's husband visiting the booking area without permission. In raising this issue, the Association cites the generally-accepted arbitral principle that arbitrators are skeptical of discharges wherein the employer makes a discharge decision based on one basis, and then scours the employee's work history for other evidence of wrongdoing which is then thrown in to justify greater discipline. However, notwithstanding the Association's assertion, I find that the Employer's decision to include the charge of Zielke's husband being present in the booking area without permission along with the charge in the MacDonald matter was not unfair piling on. I know unfair piling on when I see it, and this isn't it. Oftentimes, piling on involves something that was dug up from long ago. The situation of Zielke's husband being present in the booking area without permission does not fit into that category because it's something that happened the very next day. Thus, it was as ripe a charge of misconduct as they come. Not surprisingly, the Employer decided to hang their hat on it, so to speak, because it was another rule violation. The Employer could do that. Said another way, the Employer did not have to disregard yet another instance wherein Zielke failed to follow the Employer's rules. As a result, the Association's piling on defense has not been found persuasive either.

With regard to the second matter referenced above (due process protection), there is no evidence that Zielke was denied due process before she was fired. This finding is based on the following facts. First, following the incidents which occurred on August 18 and 19, 2006, Zielke was placed on administrative leave with pay pending an investigation. Second, department supervisors then conducted investigations into both incidents. The investigations which were conducted will be addressed separately below. Third, a meeting was held on September 12, 2006 wherein Zielke was given the opportunity to tell her side of the story. She did. As a result, the Employer heard from Zielke before it issued its disciplinary action. Fourth, the Sheriff was then briefed on the results of the September 12, 2006 meeting. After reviewing the grievant's personnel file/disciplinary history, he decided to discharge Zielke. In my view, there is nothing in the facts just noted that raise any so-called red flags regarding procedural due process.

The second part of the Association's due process argument deals with the Employer's investigations in both matters. The Association contends they were flawed and unfair. I find otherwise for the reasons noted below.

My initial focus is on the investigation in the MacDonald matter. The Association first contends that Sgt. Hoesley should not have investigated the matter because he was at fault for delaying MacDonald's release and thus "had an error of his own to hide." What the Association is referring to, of course, is their contention that Hoesley (supposedly) discovered that MacDonald had successfully bonded out before she attempted suicide, but he failed to release her. This contention was addressed previously in the section dealing with the Association's "missed opportunities" defense. To recap, I found that the Association's assertion that Hoesley knew that MacDonald had successfully bonded out before her suicide attempt was not supported by the record evidence (specifically, Serres' overall testimony). That finding applies here too and disposes of the Association's contention that Hoesley should not have conducted the investigation herein. I find there was nothing wrong with Hoesley conducting the Employer's investigation. With regard to the investigation which he conducted, the Association criticizes him for not getting written reports from more people than just Zielke and Serres, for not interviewing other witnesses such as Nurse Baker, for not watching the video of Zielke and MacDonald in the booking area, for not speaking with GPS, and for not making a written report but instead just reporting orally to Captain Daggett. Certainly Hoesley could have done some or all of those things as part of his investigation. However, in my view, the question is not whether Hoesley could have done more as part of his investigation, but instead whether his investigation was so botched or flawed that it denied Zielke basic due process. Using that criteria, I find the investigation was sufficient to pass muster.

The focus now turns to Dikeman's investigation into Mr. Zielke's presence in the booking area on August 19, 2006. Sgt. Dikeman saw Mr. Zielke in the booking area that day. His investigation afterwards essentially consisted of finding out whether Zielke had obtained permission from the shift sergeant for her husband to be there. Dikeman subsequently did that and learned from the shift sergeant that Zielke had not asked or gotten permission for her husband to be there. Since Dikeman's investigation answered the question of whether Zielke

had permission for her husband to be there, I find the investigation was sufficient to pass muster. In so finding, I am well aware that Dikeman's investigation did not answer the question of who in master control let Mr. Zielke into the booking area. That does not matter though because as previously noted, once Mr. Zielke got into the booking area, Zielke was responsible for his presence there. Subsumed into that responsibility was getting permission from the shift sergeant for him to be there.

With regard to the third matter referenced above (disparate treatment), it is noted at the outset that the principle of equal treatment dictates that an employer must enforce rules and assess discipline in a consistent manner; employees who engage in the same type of misconduct are to be treated the same unless a reasonable basis exists for variations in the assessment of punishment. In the MacDonald matter, no one else engaged in the same type of misconduct that Zielke did (i.e. the misconduct being her failure to complete the medical screen on MacDonald). It was her job to complete that task. The Association's assertion that the jailers at the female jail and the nurse engaged in the same type of misconduct that Zielke engaged in was not proven. In my view, their conduct was not similar at all to Zielke's misconduct. Additionally, the record evidence does not prove that other jailers have engaged in the same misconduct as Zielke and not been disciplined for it. With regard to the matter of Mr. Zielke being present in the booking area, at the hearing Zielke cited an instance where a jailer's family once visited him in the booking area for 45 minutes and the jailer was not disciplined. If the record indicated that the jailer in that instance did not have permission for his family to be there – just like Zielke's situation – then that would certainly show that Zielke was treated differently than that jailer and be a classic example of disparate treatment. However, the record does not show that because Zielke did not know if that jailer had permission for the visit. Permission, of course, is the big issue here, so the instance cited by Zielke does not prove that Zielke was treated unfairly. I therefore find that Zielke was not subjected to disparate treatment in terms of the punishment imposed.

Accordingly, then, it is held that the severity of the discipline imposed here (i.e. discharge) was not excessive, disproportionate to the offenses, or an abuse of management discretion, but rather was reasonably related to the grievant's proven misconduct. The County therefore had proper cause within the meaning of Article II to discharge Zielke.

Those arguments not addressed in my discussion were considered, but were deemed unnecessary to decide this matter.

In light of the above, it is my

AWARD

That the County did not violate Article II of the Agreement when it terminated Rose Zielke. Therefore, the grievance is denied.

Dated at Madison, Wisconsin, this 4th day of October, 2007.

Raleigh Jones /s/
Raleigh Jones, Arbitrator

REJ/gjc
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