

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

PORTAGE COUNTY

and

**WISCONSIN PROFESSIONAL POLICE ASSOCIATION,
LAW ENFORCEMENT EMPLOYEES RELATIONS DIVISION**

Case 195
No. 66753
MA-13619

Appearances:

J. Blair Ward, Corporation Counsel, Portage County, 1516 Church Street, Stevens Point, Wisconsin, 54481, appeared on behalf of the County

Nicholas E. Fairweather, Cullen, Weston, Pines & Bach, 122 West Washington Avenue, Madison, Wisconsin 53703, appeared on behalf of the Association

ARBITRATION AWARD

On February 22, 2007 the Wisconsin Professional Police Association and Portage County filed a request with the Wisconsin Employment Relations Commission seeking to have the Commission appoint William C. Houlihan, a member of the Commission's staff, to hear and decide a dispute pending between the parties. Following appointment, a hearing was conducted on May 9, 2007 in Stevens Point, Wisconsin. Post-hearing briefs and reply briefs were filed and exchanged by August 21, 2007.

This Award addresses a one-day suspension given to Tricia Reshel, who is employed as a Corrections Officer.

BACKGROUND AND FACTS

Tricia Reshel, the grievant, has been employed by Portage County as a Corrections Officer (Jailer) for approximately five years as of the date of hearing. Ms. Reshel worked the third shift in October, 2005, the time period relevant to this dispute. On, or about February 6, 2006 Reshel was given a one work day suspension, which was served on February 9, 2006 for certain events which occurred in late October, 2005. The basis of discipline is summarized on the Discipline Report as follows:

Detail of Workplace Violations

Officer Reshel clearly violated a number of Department Policies relating to employee performance and behavior.

Officer Reshel violated Department Policy on 10-26-2005 by failing to perform assigned duties of cell checks every 30 minutes. . . .Further, repeated less than satisfactory performance on her evaluations is a violation of paragraph A of the same section which states "Officers/employees shall maintain sufficient competency to properly perform their duties and assume the responsibilities of their position." . . .

Officer Reshel violated Department Directive 96-19 on 10-26-2005 and on 10-27-2005 by engaging in insubordination toward CPLs Bolder and Jakubiak on those nights. . . .further, her participation in the harassment of Officer Penny Borski, by altering her coffee cup and placing it in Borski's mail box is a violation under #7 of this section stating: "Fighting or creating a disturbance among fellow employees, resulting in an employee having adverse effect on morale, production or maintenance of proper discipline."

A grievance was filed on March 2, 2006 and was denied.

The underlying events, referenced in the Discipline Report, occurred on October 26 and 27, 2005, during the third shift. Three Corrections Officers, Reshel, Dean Seitz, and Chris Glodowski, experienced a rash on their respective hands and forearms. Reshel first noticed the rash on Monday, October 24. The rash did not go away, and became more pronounced over the next couple of days. Reshel, and her co-workers were concerned that they had become infected by a jail related source. On Wednesday, October 26, Reshel went to an Urgent Care facility, and was seen by a Doctor who indicated the rash could be scabies, and prescribed an ointment for the three employees to use. The ointment was successful in clearing the rash.

Captain Evan Hansen was contacted on the evening of October 26. His report of that contact indicates:

Later that night, I was just beginning a 2 day vacation up north when I received a call on my personal cell phone from Corporal Terri Ziem. She advised me that Dean Seitz, Trisha Reshel and Chris Glodowski were all concerned that they had contracted scabies at work and wanted to know what the county was going to do about it. All four officers were speaking on the speaker phone and I had very poor reception on the cell phone so some parts of the conversation were difficult. I told the officers that I would do my best to get answers for them, but there was not much I could do at 8PM when they were asking me. The officers seemed upset about the fact I did not have answers to give at that

time. They further went on to state that the county would be responsible to steam clean all of their furniture and the seats in their cars. At that point I advised that I felt the conversation was over.

Upon his return to work, Hansen discovered that the scabies incident was not over, and that there had been discord within the jail. He initiated an investigation, which led to the discipline of three corrections officers.

The testimony of Corporal Marcia Jakubiak provides much of the basis for the discipline imposed. It was Jakubiak's testimony that on Thursday night, October 27 certain Corrections Officers, including Reshel, were upset that they had contracted scabies, and were complaining loudly, using profanity, and directed remarks at the Chief Deputy. When told to stop, the group continued and made a point of telling officers who brought prisoners to the jail that they had contracted scabies. It was Jakubiak's testimony that Reshel and Glodowski carried on, and made remarks such as; "F___ing Graettinger said not to worry about it, so it's okay." Comments such as this were made in areas where they could be heard by officers and others. Jakubiak indicated that Reshel and others refused to stop making the remarks when told to do so.

In her report Jakubiak included the following:

MEMO from Corporal Jakubiak

TO: Captain Evan Hansen

DATE: Tuesday, November 01, 2005

RE: Requested report on incidents for Oct. 27th through Oct. 30th, 2005

I reported for duty on October 27, 2005 at 8pm. As I walked up to the booking area Officers Seitz, Reshel and Glodowski were seated there. I said hello to everyone and no one responded. . . .For most of the night shift all they did was talk very loudly about "how the county is ----ing with them" and "----ing Graettinger doesn't give a s--- about us jailers" These comments came from both Tricia and Chris. This continued on through the night. I made numerous attempts to stop the conversations with no success. I told them several times to knock it off or stop it. They then used those words on and off during the night mocking me and even laughing about it. I told them it wasn't funny and to stop it. For the most part that evening I received the cold shoulder treatment.

. . .

Throughout the night I heard several rude comments made in reference to Penny Borski. I asked Dean what that was all about and he told me that he and Penny had gotten into a shouting match earlier in the day and he was “sick of her s---”. At one time during the night I walked up to the booking area and saw a cup with Penny’s name on it. Someone had written her name on it in a derogatory way. There was a kitchen package of hot cocoa stuck inside. Chris pointed to it laughing and said “how do you like that”. I looked at him, shook my head and just said “no, you’re looking for trouble”. Lisa was at the booking counter and showed me the package and said “I did that” in reference to the package reading “Suck it up buttercup” which is one of Dean’s sayings.

The County also relied on the testimony of Corporal Richard Bolder. Corporal Bolder worked the night of October 26. He testified that Reshel, Seitz and Glodowski were complaining and bitching, and there was a lot of talk about what is the County going to do for them. Bolder testified that cell checks were missed that night. It was his testimony that two checks were missed. County Officer Location Reports confirm that fact. He further indicated that if the jail was busy checks were at times missed. He indicated that there were prisoners returned from another County close to midnight, and that “So, I’m not sure exactly when they came in but I know that would have been a cause for conceivably missing a check.”

Ms. Reshel testified. It was her testimony that she was not originally upset with the Management of the jail. She testified that she subsequently became upset with Chief Deputy John Graettinger, when she understood him to ask of Seitz whether there was inappropriate behavior going on between the Jailers that might have led to the scabies. Reshel testified that someone had placed a printout on scabies with a yellow highlighted section, indicating that it spread through sexual contact, on a bulletin board in a public area. She indicated that someone had written “is anything inappropriate going on” on the printout.

Ms. Reshel acknowledges that she and her co-workers complained about their treatment. She denied using profanity. She acknowledges that Jakubiak told them to quiet down once, because they were too loud. She denied that the conversations continued through the shift. She disagrees with Jakubiak’s characterization of her behavior. Reshel testified that Corp. Bolder had asked her about the skin condition on three separate occasions on the evening of October 26. During the second exchange, she indicated that Bolder told her that he had talked to his wife, an R.N., and that his wife had indicated the marks were not scabies. Reshel indicated that Bolder approached her a third time at the booking desk, and asked again what the Doctor had said. Reshel indicated that she took the conversation to a private place and repeated what the Doctor had said.

ISSUE

The parties stipulated to the following issue:

Did Portage County have just cause to suspend the Grievant for one day without pay as set forth in the Portage County discipline report dated February 6, 2006.

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

Section II – Management Rights

The County possesses the sole right to operate the Sheriff's Department and all management rights repose in it, subject only to the provisions of this contract and applicable law. These rights include, but are not limited to, the following:

...

- D. To suspend, demote, discharge and take other disciplinary action against employees for just cause:

...

**RELEVANT PROVISIONS OF THE PORTAGE COUNTY
SHERIFF'S DEPARTMENT DIRECTIVES**

XIII. DISCIPLINE AND DISCHARGE

- A. Disciplinary Action: The purpose of discipline is correcting job behavior and performance problems of employees. Employees shall be informed of standards of conduct and performance. Rules and standards shall be consistently applied. Penalties shall be appropriate to the circumstances. Persons administering corrective discipline shall systematically document the case. Records of verbal reprimands shall be maintained in the employee personnel file. Copies of written reprimands, suspensions, and terminations shall be provided to the employee, the Personnel Director, the employee's personnel file, the employee's supervisor and union steward if appropriate. Suspensions and terminations shall be discussed with the Personnel Director before such actions are taken. In the event that the Personnel Director cannot be reached, the employee shall be suspended pending investigation.
- B. Grounds for Discipline: The following shall be grounds for discipline ranging from a verbal warning to immediate discharge depending upon circumstances and the seriousness of the offense in the judgement of management:

1. Dishonesty or falsification of records;
2. Insubordination (refusal to obey reasonable orders, insolence, etc.);
3. Theft or destruction of County equipment or property;
4. Unauthorized use or abuse of County equipment or property;
5. Intoxication, including consuming intoxicants during working hours or being under the influence of liquor or drugs during working hours or bringing intoxicants or drugs into the work place;
6. Condition brought about from use of intoxicants away from work which interferes with job performance, efficiency, or discipline;
7. Fighting or creating a disturbance among fellow employees, resulting in an employee having adverse effect on morale, production or maintenance of proper discipline;
8. Habitual tardiness or abuse of sick leave or unauthorized absence from work without substantiated reason, including violation of an approved department absenteeism policy;
9. Use of official position or authority for personal or political profit or advantage;
10. Disregard or repeated violation of safety rules and regulations;
11. Discrimination because of race, color, creed, national origin, ancestry, marital status, age, sex, or disability;
12. Knowingly making false or malicious statements with intent to harm or destroy the reputation, authority or official standing of individuals or organizations;
13. Unlawful conduct defined as a violation of or refusal to comply with pertinent laws and regulations when such conduct impairs the efficiency of County service;
14. Failure to adequately perform assigned job duties;
15. Failure to follow duly established work rules, policies and procedures;
16. Professional unethical conduct or behavior;
17. Violation of the confidentiality requirements of the department.

Other circumstances may warrant disciplinary action and will be treated on a case-by case basis.

POSITIONS OF THE PARTIES

It is the view of the County that the grievant was appropriately disciplined for her failure to perform cell checks and her insubordination toward her supervisor. It is the view of the County that the evidence establishes that two cell checks were missed, that they were the primary responsibility of the grievant and Glodowski, and that both were disciplined for missing the checks. There is no justification for the missed checks. The County investigated internet usage on the night in question and found that someone(s) were on line at scabies related sites at the times in question.

The second basis for discipline was the failure to follow direct orders of supervisors. The County refers to the testimony and report of Corp. Jakubiak in support of this claim. It is the County's view that Reshel's behavior was grossly inappropriate and that Jakubiak told her to stop repeatedly. Jakubiak testified that Reshel repeatedly refused to halt the objectionable behavior.

The matter was investigated and appropriate discipline was imposed.

It is the view of the Association that the County bears the burden of establishing just cause, and that Portage County has failed to meet its burden. The Association cites Arbitrator Daugherty's seven tests of just cause and contends that the County has failed several of the tests.

The Association contends that Hansen was irritated that he had to deal with the scabies complaints during his vacation. It is the view of the Association that the department has designated the Mobile Security Officer as the position assigned to ensure that the cell checks are done.¹ There was no effort made to determine who the Mobile Security Officer was that evening. Hansen punished the Officers for intruding into his vacation. Explanations for the missed check were not considered. Evidence indicates that cell checks were missed in the past. Reshel is the only one ever disciplined for missing cell checks. Reshel was part of a team, including Glodowski and others, that missed the cell checks. Only Reshel was suspended.

As to the insubordination charge, the Association points to the testimony that Bolder had asked Reshel about her visit to the emergency room three times. She became irritated the third time when the inquiry was made in front of co-workers, and took the conversation into a private place.

With respect to the testimony of Jakubiak, the Association contends that Jakubiak did not distinguish the actions attributable to Reshel from those attributable to Glodowski. The County invoked discipline rather than address whatever misunderstandings existed between employees.

¹ At a September 1, 2005 weekly jail staff meeting, Captain Hansen advised the Jail employees "The Mobile Security Officer needs to ensure cell checks are done." There is no indication that a system which identifies Mobile Security Officer as having primary or exclusive responsibility for all checks was implemented.

The Association urges that I disregard the performance evaluation as a basis for discipline, in that it was issued months before the discipline was issued. The Association points to the record testimony that Glodowski took full responsibility for the coffee cup incident, and reject it as a basis for discipline of Reshel.

DISCUSSION

The grievant was disciplined for four reasons; 1) her failure to make cell checks, 2) her performance evaluation, 3) insubordination toward two supervisors, and 4) her participation in the harassment of Borski. Each will be addressed in turn.

In its post-hearing brief the County essentially abandons the charge relating to Borski's coffee cup. However, the document which supports the discipline finds a work rule violation "...by altering her coffee cup and placing it in Borski's mail box...". Hansen conducted an investigation into the incidents leading to this discipline. It was his testimony that Glodowski indicated that he was responsible for the cup incident. The investigative memo from Jakubiak, dated 11/1/05 indicated that Lisa told Jakubiak that she (Lisa) had written on Borski's cup. There is nothing in the record to suggest that Reshel participated in this prank, other than as an observer. The factual assertion contained on the discipline document is contrary to all evidence gathered as a part of the investigation into this matter.

It appears that Borski had previously been involved in exchanges and pranks involving a number of jail employees, including Reshel, which caused certain managers to believe that Borski was an unwilling target of attention. This view, as opposed to the investigation, more explains the inclusion of this charge.

The performance evaluation, for the period 7/10/04 – 12/9/05, was cited as a second basis for the discipline. This document covers a period of 17 months. It is characterized as annual, but falls five months after the ostensible evaluation period. Rather, it was timed to follow the October events that led to the discipline. The evaluation cites a need to improve in dealings with co-workers and initiative. These are general references to performance. The October events are far more specific, and form a part of the basis for the evaluation remarks.

On its face, the evaluation lends little to the disciplinary record. It recites Reshel's performance over the preceding 17 months. It does not say that it is to be treated as disciplinary. It was issued on, or about December 23. The discipline was issued a month and one half later. If the concerns registered in the performance evaluation were such that discipline was warranted, the evaluation should so indicate, and the discipline should follow promptly. I do not believe the evaluation forms an independent basis for discipline.

Reshel was disciplined for a failure to perform cell checks. I believe the record supports a finding that two cell checks were missed. It further supports a finding that she and Glodowski were responsible for the cell checks that evening. Others were on the shift, but had other assignments. I believe that certain jail employees, including Reshel, were on the internet

looking at scabies related sites at various points through the evening. It is unclear how long Reshel was on the site. It was her testimony that she was not on for long. There was a prisoner transfer of a number of prisoners just before midnight. Jail staff helped in the transfer.

Hansen testified that there were no excuses for missed cell checks. It was his testimony that cell checks are the single most critical function performed by jail staff. He further testified that once the current system was established, and Jail staff became familiar with the system, cell checks were not missed. Two other witnesses testified as to cell checks. Both Reshel and Corp. Bolder testified that cell checks are missed on occasion. No one has previously been disciplined for missing a cell check.

The real question presented is whether there was a good reason for missing the cell checks. Hansen says there is no such reason. Bolder testified that the prisoner transfer may have been a good reason for one of the checks to be missed. Reshel testified that she could not recall either missing the checks or what explanation might explain the missed checks. There is a statement from Glodowski in the record, which indicates that he did not know. There was evidently a statement taken from Reshel, which is not a part of the record. It is not clear when the statement was taken, whether or not it addresses the cell checks, and if so, what it says. The employer attacks Reshel's lack of recall as to the cell checks. The criticism is unpersuasive. The County took a statement from her. It is not in the record. The discipline occurred on February 6, 2006. This falls over three months after the incident complained of.

In summary, I believe that there was at least one cell check missed for which there is no good explanation. However important, I do not believe that to be a unique event. Glodowski and Reshel bear joint responsibility for the missed check. In light of the fact that no one had previously been disciplined for missing a check, I believe a warning, but not time off, is supported.

Reshel was disciplined for insubordination toward Bolder and Jakubiak. With respect to Bolder the charge stems from his report that Reshel "blew a fuse" in response to his inquiry as to what the doctor had advised as to the scabies. It was Reshel's testimony that the context of this exchange was that it was the third time Bolder had inquired into the matter, and that the inquiry was made in public. She was exasperated, the topic was obviously sensitive, and she took the conversation into a private place. In context the reaction is understandable. It may not have been tactful. It was not insubordinate.

Bolder testified that people on the shift were complaining. He indicated that he could not tell if inmates could hear what was being said. He was asked if the exchanges were "open and loud". He responded that they were "open". I do not believe there is evidence of insubordination involving Bolder.

Corporal Jakubiak's testimony is another matter. She describes inappropriate conduct carried on within earshot of prisoners and other visitors with business in the jail. The conduct persisted in the face of repeated directives to stop. The behavior described does constitute

insubordination. The Union contends that Jakubiak's testimony lumps all of the jailers together, and does not specifically attribute actions and remarks to Reshel. I disagree. Jakubiak specified that certain remarks and behaviors came from Reshel.

Reshel denied using the profanities attributed to her, and further denied that repeated requests were made to stop. I credit the essence of Jakubiak's testimony. Jakubiak's testimony was detailed and specific. It is consistent with the statement she prepared immediately following the incident. It is also supported, at least in tone and tenor, by a number of other witness statements taken at the time.

In summary, I believe there was cause for discipline. The Union contends that the discipline was not uniformly applied. All participants were disciplined. Glodowski received a lesser form of discipline. He was certainly every bit as culpable. The record is silent as to Glodowski's disciplinary history. It is not possible to compare his disciplinary status with Reshel. Reshel has previously been given a warning about playing a prank after being told not to do so. This incident has the same markings.

The background surrounding this dispute is filled with incidents of disrespect, rudeness, and a general lack of civility. The record is filled with references to employees and supervisors who feel abused and preyed upon. There are reports of jokes and pranks which have gone too far. Much of the conduct described in this matter was acted out in front of prisoners, law enforcement officers, and other visitors to the jail. This dispute involves one part of an effort to change this climate. This work environment needed to be addressed.

AWARD

The grievance is denied.

Dated at Madison, Wisconsin, this 5th day of February, 2008.

William C. Houlihan /s/

William C. Houlihan, Arbitrator

