

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

GENERAL TEAMSTERS UNION LOCAL 662

and

OCONTO COUNTY

Case 173

No. 68916

MA-14402

(Schneider Discharge)

Appearances:

Attorney Sara J. Geenen, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., 1555 North Rivercenter Drive, Suite 202, Milwaukee, Wisconsin 53212, appearing on behalf of the General Teamsters Union Local 662.

Attorney John J. Prentice, Simandl & Prentice, S.C., 20975 Swenson Drive, Suite 250, Waukesha, Wisconsin 53186, appearing on behalf of Oconto County.

ARBITRATION AWARD

The General Teamsters Union Local 662, hereinafter referred to as the Union, and the County of Oconto, (County), are parties to a Collective Bargaining Agreement (Agreement) which provides for final and binding arbitration of certain disputes, which Agreement was in full force and effect at all times mentioned herein. On May 18, 2009 the Union filed a Request to Initiate Grievance Arbitration and asked the Wisconsin Employment Relations Commission to provide a panel of 5 staff arbitrators from which the parties would select one to hear and resolve the Union's grievance regarding the allegation that the County violated the Agreement when it discharged Linda Schneider (Grievant) on April 27, 2009. The County subsequently joined in that request and the parties selected the undersigned as the Arbitrator. Hearing was held on the matter on September 22, 2009 in Oconto, Wisconsin, at which time the parties were given the opportunity to present evidence and arguments. The parties agree that this matter is properly before the Arbitrator. The hearings were transcribed and have thus become the official transcript of the proceedings. The parties filed post-hearing briefs by December 3, 2009 marking the close of the record. Based upon the evidence and the arguments of the parties, I issue the following Decision and Award.

ISSUES

The parties stipulated to the issue to be decided by the Arbitrator as follows:

Did the County violate Article 15 of the Collective Bargaining Agreement when it terminated the Grievant?

If so, what is the appropriate remedy?

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 15
RULES AND REGULATIONS

The rules and regulations for the Oconto County Sheriff's Department shall be as set forth in the "Rules and Regulations Governing Oconto Sheriff Department."

Correctional Officers shall be required to fulfill duties created in the jail as a result of any possible changes in procedures for providing food or laundry services to prisoners.

No Employee will be disciplined, suspended or discharged except for just cause. All discipline shall be based on a progressive discipline system; i.e., Step 1, oral warning (written record); Step 2, written warning; Step 3, suspension; Step 4, discharge. In a situation of a more serious infraction, the penalty need not follow the steps enumerated above. The County reserves the right to issue multiple disciplines at various steps on a non-precedential basis.

No warning notice need be given to the employee before he/she is discharged due to dishonesty, being under the influence of intoxicating beverages or illegal drugs while on duty, drug addiction, or other flagrant violations. Discharge or suspension shall be in writing with a copy to the Union and the employee affected.

Discipline will be subject to the grievance procedure and/or arbitration procedure.

RELEVANT COUNTY PERSONNEL MANUAL PROVISIONS

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B. Violation of County Rules of Conduct

The continued employment of County employees shall be contingent upon acceptable conduct, satisfactory job performance and compliance with the rules and regulations set forth in this handbook, and always acting in a professional manner in the context of the employee's particular position and the Oconto County's mission. County employees are also expected to observe a set of reasonable non-statutory rules governing their behavior on the job. Failure to meet acceptable job performance or the violation of these rules and regulations shall be reason for disciplinary action including reprimands, suspension without pay, or dismissal. The exact form of discipline shall depend on the seriousness of the offense committed. An employee shall be considered to have engaged in misconduct if he/she violates any of the following listed reasons, such list not to be considered all-inclusive:

...

11. The employee has been abusive in his/her behavior and language or has been abusive in his/her conduct to fellow employees or the public.
12. The employee has violated any lawful or official regulations, order or rule, or failed to obey lawful and reasonable direction given him/her by his/her supervisor.

...

17. The employee has hindered the regular operation of his/her department or County office because of unauthorized absenteeism, tardiness or has absented himself/herself from duty.

...

26. The employee has failed to begin and/or end work as prescribed by his/her defined work schedule without a valid and documented reason approved by his/her supervisor.

...

28. The employee has refused or delayed carrying out work assignments or the instructions given by the work unit supervisor, department head or a County official exercising lawful authority over an employee.

...

BACKGROUND

The facts in this case are largely undisputed. On April 22, 2009, the Grievant was employed by the Oconto County Sheriff's Department as a certified correctional officer at the Oconto County jail. She had been so employed for about three years. She underwent a three week training course, including PASC (principle and subject control) training as well as additional training from time to time. She is a high school graduate.

Her duties at the jail included, for the most part, dealing with inmates of the jail. One such inmate was B. Inmate B had been an inmate of the jail on several occasions. The Grievant was fairly well acquainted with him. He had "issues" according to the Grievant. In the past she had removed various items of contraband from his cell including notes passed to other inmates, labels on his walls, writing or scratching his name on the walls, the tables and the heater vents. Sometimes their relationship was confrontational. She considered him to be "unstable" at times and he acted like a child. Occasionally he would attempt to hurt himself.

On April 21, 2009 the Grievant, during a cell search of Inmate B's, removed some C-cream. C-cream is basically Crisco and is used for various medical treatments and is prescribed by the nurse. She removed the C-cream because his prescription had run out and she considered it to be contraband. She also took various other items including some song lyrics which she thought were excessive. She does not recall specifically what she did with the lyrics after she took them from Inmate B.

At some time following the above events Inmate B was taken to isolation where he tried to hurt himself. Consequently, he was transported to the Brown County Mental Institution. He was returned to the Oconto County Jail the following day, April 22, 2009. When the Grievant reported for her shift on April 22, she was informed by Assistant Jail Administrator Kopp that Inmate B had been returned. The Grievant then went to the booking room where she encountered Officer Stamstra printing song lyrics for Inmate B at the request of Kopp. The Grievant questioned Stamstra about this and, with some anger, expressed concern about giving him the lyrics after what he had done the night before. She told Stamstra that she (Stamstra) did not have to follow Kopp's orders.

Following her confrontation with Stamstra, the Grievant went to the Control Room where Kopp was stationed. The Grievant confronted Kopp and angrily questioned Kopp as to why she had given the lyrics back to Inmate B. Kopp explained that she had cut a deal with Inmate B. Kopp would give him some of the lyrics back if he would cooperate with the nurse and take his medication without being forced to do so. The Grievant accused Kopp of making agreements with the inmates that the corrections officers would find difficult to keep.

Grievant became more and more upset and the argument escalated. She took off her duty belt and either threw it or put it on the chair. It fell off onto the floor. She said "This is bullshit", (Inmate B) got his way again", "I'm outta here" and "I'm leaving." As she left Kopp called to her to return. She did not return, leaving her post and the building.

Later that evening she called Sheriff Michael Jansen and explained that she had had an altercation with Kopp and that she wanted to talk to him about it. The following morning the Grievant came to his office and they had a conversation about the incident. Following his conversation with the Grievant the Sheriff conducted an investigation into the incident and ultimately spoke with County Administrator Kevin Hamann. They decided that the Grievant should meet with them prior to her returning to work. This meeting took place on Monday, April 27, 2009. The Grievant brought Union Steward and fellow Corrections Officer Scott Buhandt with her to the meeting. During this meeting the Grievant explained that promises had been made by supervisors in the past to inmates and that these promises weren't always "by policy." The supervisors would then leave, leaving the staff to "put up with the problems that those promises caused during the rest of the shift." (Sheriff's words.) The Grievant told them that she had become physically ill and left the building.

Following the meeting with the Grievant the Sheriff and Hamann left the room to discuss the options and decided that because the Grievant had left her post without permission she should be terminated. The Grievant was discharged on April 27, 2009 and this grievance followed in due course.

THE PARTIES' POSITIONS

The County

The County had just cause to discharge the Grievant. The County's Personnel Manual states that it is misconduct if the employee had been abusive in her behavior and language or had been abusive in her conduct to fellow employees or the public. The Manual states that it is misconduct if the employee . . . failed to obey lawful and reasonable direction given by her supervisor. She so failed in this regard when she left the facility after her supervisor told her to "stop." The Manual also states that it is misconduct if the employee fails to begin and/or work as prescribed by her defined work schedule without a valid and documented reason approved by her supervisor. When she left work without permission she violated this provision. Under the provision of the Manual it is misconduct if an employee refuses or delays carrying out work assignments or the instructions given by the work unit supervisor. . . exercising lawful authority over an employee. When the Grievant refused to work her shift she violated this provision. She also violated the Manual because her leaving the workplace "hindered the regular operation of her department or a County office because of unauthorized absenteeism, tardiness or (absenting) herself from duty." By doing so she hindered prisoner visitation and impacted the ability to do prisoner transports and fill-in should a co-worker become ill. As Arbitrator Houlihan noted in SAUK COUNTY, No. 53288 (Houlihan, 1996):

It is clear to me that the grievant knew, or should reasonably have known, that he could not simply abandon his job and not return. This premise is fundamental to the existence of the job. Any reasonable man knows that abandoning his job in the middle of his shift will subject him to some disciplinary consequence.

No evidence suggests that the Grievant was not aware of the County's policies and procedures and it is not reasonable that she was unaware that abandoning her position could lead to discharge. The foregoing, then, satisfies Daugherty's first standard of just cause, i.e. the question asking whether the employee was placed on notice that her behavior was objectionable.

The Grievant's conduct threatened the efficient and safe operation of the jail. Her conduct is especially egregious in the context of a paramilitary organization operating a corrections facility. Unflinching respect and support of the chain of command is required if the facility is to operate successfully. Hence, Dougherty's second question, whether or not the rule was reasonably related to the efficient and safe operation of the business, is satisfied.

The County's investigation was fair and complete and produced substantial evidence to prove Grievant's misconduct. Sheriff Jansen spoke with the Grievant and with Ms. Kopp; met with the Grievant and her union representative along with Mr. Hamann, the HR Director; reviewed written statements from each of the witnesses who witnessed Grievant's conduct; and considered all sides of the issues before making his decision to terminate the Grievant. The record does not suggest bias in the investigation and the investigation produced substantial evidence of the Grievant's misconduct. This satisfies Daugherty's third question.

While the Grievant attempted to minimize the seriousness of her conduct by pointing out that other officers have been no-call no-shows and that they had sworn and been angry while on duty, she could not point to another incident where the employee had sworn at her supervisor and stormed out of the facility and off the job in a rage during her shift. Thus, Dougherty's fourth question, whether the employer had applied its rules, orders, and penalties without discrimination, has been satisfied.

The final criteria in the *just cause* standard (and the real issue here) is whether the degree of discipline administered is reasonably related to the seriousness of the offense in light of the Grievant's record of service. Clearly the Grievant's misconduct was serious. It left the employer "in the lurch." As a member of a para-military organization it is critical that the Grievant's fellow officers be able to depend on her. It should not be forgotten that the Grievant is only a three year employee with an unremarkable service record. Other Arbitrators have found conduct similar to, or even less egregious than, the Grievant's to constitute just cause for termination. Arbitrator Nielsen noted that walking off the job is generally considered to be a serious offense and in the absence of evidence that a more lenient disciplinary practice has been followed in the past, termination is not on its face a disproportionately harsh response. (MANNING LIGHTING CO., cite omitted.)

Arbitral authority establishes that an arbitrator should not disturb the employer's judgment concerning the penalty unless it is shown to be unreasonable, arbitrary or capricious. A specific penalty should not be disturbed absent proof of an abuse of discretion and once just cause has been established the arbitrator should affirm the decision.

The Grievant's conduct was a flagrant violation of County policy and, as such, the County was not obligated to follow the order of progressive discipline. The County cannot possibly define every example of "flagrant violation." By its very nature, the term is designed to be a catchall to incorporate a variety of (examples of) serious misconduct. Reasonable people would agree that Grievant's conduct constituted a flagrant violation of County policy and of the reasonable expectations of the employer. Regardless of whether the Grievant's conduct was "in the heat of the moment" it is nothing short of shocking. No reasonable explanation can excuse the Grievant's conduct.

The Grievant should have "worked now and grieved later." The obey now and work later dictum is unassailable. Grievant was contractually obligated to carry out, or at least not interfere with, management directives. If she disagreed with the directive given she could have subsequently filed a grievance. Instead, she walked out without any real concern for her fellow officers, inmates or the mission of the facility. If the County allows her to walk out in the middle of her job there is nothing to prevent other officers from doing the same. This creates a "slippery slope" that the County must avoid at all costs.

The Union

The County has the burden of proving just cause for discharge and compliance with Article 15 of the Agreement. The employer must prove misconduct in conjunction with the fact that the punishment imposed was proper under the circumstances. The measure of discipline must be appropriate and the relevant facts to be considered are the notions of progressive discipline, due process protections and disparate treatment. The County overstated its case by setting forth any number of types of violations which do not apply under the circumstances of this case.

None of the alleged offenses justify summary discharge under the Agreement. The only disciplinary violations for which an employee can be discharged (under the terms of the Agreement) are dishonesty, being under the influence while on duty, drug addiction, or undefined "flagrant" violations. Arbitrators follow the rule that mentioning several items in a list and not mentioning others means that the parties intended to exclude any unmentioned items. (*Expressio unius est alterius*.) To express one thing is to exclude another or to provide for some exceptions means there are no other exceptions.

The plain language of the Agreement does not permit the discharge of the Grievant on the grounds that she committed multiple infractions. Also, except for the specifically enumerated exceptions in the Agreement, the County cannot avoid the warning requirement prior to discharge. The County can only justify discharge if it can prove she is guilty of one of the enumerated exceptions: dishonesty, being under the influence while on duty, drug addiction or some other undefined "flagrant" violation.

The Grievant's actions and reactions were unplanned and emotionally-fueled and there was no intention to violate any rules. "Flagrant" means an offense which is extremely, flauntingly or *purposefully* conspicuous. (Citing Webster's Third New Int'l Dictionary, 3d ed.) This definition

suggests that the offender intended to and purposefully violated the rules. It also suggests that, whatever the offense, it is subjectively and objectively so extreme that the mere commission of such an offense is patently incompatible with being a corrections officer. Such an interpretation is not consistent with how the word *flagrant* has been interpreted in the past. Arbitrator Houlihan, in *CITY OF OCONTO*, No. 55702, MA-10071 (Houlihan, 1998) said:

In the parties' collective bargaining agreement, "*flagrant*" behavior is that behavior which may warrant discharge with no warning notice required nor progressive discipline due. It is used to continue a sentence which describes dischargeable behavior such as "dishonesty, being under the influence of intoxicating beverages while on duty, drug addiction, or other *flagrant* violations." That is the standard against which the termination is measured.

Schneider's actions were not *flagrant*. She did not report to work intent on arguing with her boss, rather, subsequent developments dictated her conduct. While she handled the situation improperly, her motivation was born of the heat of the moment. She had no reason to believe, since she had not been given notice of the consequences of her actions, that she would be terminated. She knew, of course, that she would be subject to some discipline but was not aware of the drastic nature of it.

The County cannot prove the Grievant was insubordinate. Relying on Arbitrator Levitan's definition of insubordination as set forth in *KENOSHA COUNTY*, No. 67695 (Levitan, 2009) and Arbitrator Millot's definition as set forth in *DOUGLAS COUNTY*, No. 68205 (Millot, 2009) insubordination is:

". . .the refusal by an employee to work or obey an order given by the employee's supervisor." This basic definition, however, is subject to the following qualifications: an employee's refusal to work or obey must be knowing, willful and deliberate; the order must be both explicit and clearly given; the order must be reasonable and work-related; the order must be given by someone with appropriate authority; the employee must be aware of the consequences of failing to perform the work, and, if practical, the employee must be given time to correct the purportedly insubordinate behavior.

The facts of this case do not support the conclusion that the Grievant was insubordinate.

The discharge was procedurally deficient because the County cherry-picked various violations found in hundreds of pages of policies and procedure manuals looking for any and every violation it could dig up in order to support its case for discharge. This behavior contravenes the progressive disciplinary language in the Agreement and raises serious procedural and due process concerns. The purpose of progressive discipline is to allow an employee the opportunity to correct offending behavior without incurring the severe penalty of discharge. Nothing here suggests that the Grievant's behavior could not have been corrected.

The Grievant's prior attendance was good notwithstanding the County's allegations to the contrary. The events relevant to this proceeding constitute the only time in her work history with the County that she failed to be at her post. This one-time occurrence does not support the conclusion that her attendance history was poor.

Leaving the shift is not a terminable offense and did not interfere with the facility's operations. There is no evidence to suggest that employees are or were aware that leaving a shift early, after notifying the supervisor, is grounds for summary termination. While the Grievant missed only one shift, the County Personnel Manual states that a three-day no call or no-show may be considered grounds for termination. Also, the Grievant, before leaving her shift, determined that minimum staffing levels were in place and that another corrections officer would not have to be called in to cover for her.

Although the Grievant swore during the altercation, and her language was set forth partly as the reason for her discharge, the evidence shows that swearing and name calling in the jail was a common occurrence and that no-one had been disciplined for swearing or name calling in the past. Although this is a breach of the "Demeanor" regulation the County cannot arbitrarily and without notice to affected employees determine when heated discussions are inappropriate. Where one employee is singled out for conduct that is condoned when committed by others, there is a due process violation. It is disparate treatment and cannot be condoned.

DISCUSSION

At issue is whether the County had just cause to discharge the Grievant. Discharge places the Grievant's job, seniority, contractual benefits and reputation at stake and constitutes the most extreme penalty available in the workplace. Hence, the burden is on the County to show wrongdoing and justification for its actions by a preponderance of the evidence.

As in most collective bargaining agreements, this Agreement does not contain a definition of "just cause." There is no uniform definition of what constitutes just cause and so it becomes the job of the Arbitrator to define such parameters based on the facts of each case. On the function of the Arbitrator in such cases, I have consistently agreed with Arbitrator Harry Platt. He said:

It is ordinarily the function of an Arbitrator in interpreting a contract provision which requires "sufficient cause" as a condition precedent to discharge not only to determine whether the employee involved is guilty of wrongdoing and, if so, to confirm the employer's right to discipline where its exercise is essential to the objective of efficiency, but also to safeguard the interests of the discharged employee by making reasonably sure that the causes for discharge were just and equitable and such as would appeal to reasonable and fair-minded persons as warranting discharge. To be sure, no standards exist to aid an Arbitrator in finding a conclusive answer to such a question and, therefore, perhaps the best he can do is to decide what reasonable men, mindful of the habits and customs of industrial life and of the standards of justice and fair dealing prevalent in the community ought to

have done under similar circumstances and in that light to decide whether the conduct of the discharged employee was defensible and the disciplinary penalty just. *RILEY STOKER CORP.*, 7 LA 764, 767 (Platt, 1947).

I believe that just cause requires a finding that the employee is guilty of the conduct in which she is alleged to have engaged and that the level of discipline imposed as a result of that conduct is reasonably related to the severity of the conduct. Just cause mandates not merely that the employer's action be free of capriciousness and arbitrariness but that the employee's performance be so faulty or indefensible as to leave the employer with no alternative to impose discipline. (See Platt, "Arbitral Standards In Discipline Cases", in *The Law and Labor-Management Relations*, 223, 234 (Univ. of Mich., 1950).

It is clear, as the Union states, that the issue is not solely whether there was cause for some discipline. Clearly, there was. The real issue, as the Union appears to argue, is that while the actions of the Grievant should have resulted in some measure of discipline, they should not have resulted in the most extreme measure of discharge. The County, on the other hand, believes that the actions of the Grievant constituted a flagrant violation which, under the terms of the parties' Agreement, allowed the Grievant's immediate discharge. Further, says the County in so many words, that based upon the facts the Grievant's discharge was just, equitable and reasonably related to the severity of her conduct.

The Union says that the offenses set forth by the County justifying the Grievant's discharge are inadequate for a number of reasons. The right to discharge is explicitly limited to only four circumstances allowing for circumvention of the warning requirement prior to discharge. They are: dishonesty; being under the influence of intoxicating beverages or illegal drugs while on duty; drug addiction; and "flagrant" violations. The Union argues that the rule of *expressio unius est alterius* applies here. This maxim provides that when certain things are specifically provided for in an agreement, the interpreter may presume that the writers intended to exclude all other things. The Union seems to argue that because the parties set forth specific violations, and the reference to "flagrant" violations is undefined, then "flagrant" violations should somehow be excluded from consideration. It cites *BROWN & WILLIAMSON TOBACCO CO.*, 92 LA 722 (Nicholas, 1989) as standing for the proposition that ". . . when certain things are specified in a contract, an intention to exclude all others from its operation may be inferred." The Union presents an interesting argument in this regard but not a persuasive one. I agree with the reasoning used by Arbitrator Houlihan in *CITY OF OCONTO*, No. 55702 (Houlihan, 1998) who reasoned:

The use of the term "flagrant" conjures up images of behavior so glaring, notorious, outrageous, and/or shocking that it can neither escape notice nor be condoned. The term "flagrant" takes on further meaning in the context in which it is used. In the parties' collective bargaining agreement, "flagrant" behavior is that behavior which may warrant discharge with no warning notice required nor progressive discipline due. It is used to continue a sentence which describes dischargeable behavior such as "dishonesty, being under the influence of

intoxicating beverages while on duty, drug addiction, or other “flagrant” violations.

The Agreement is clear - it provides for the immediate discharge of employees who are guilty of flagrant violations. The question, then, is whether the actions of the Grievant were “flagrant” thus supporting the County’s actions under the terms of the Agreement.

The Union cites OCONTO COUNTY, No. 53919, (Knudson, 1996) as standing for the proposition that to be “flagrant” the violation must be premeditated. In short, the Union argues that the Grievant must have had the *intent* to leave her post *when she arrived at work* in order for her conduct to rise to the level of flagrancy. I believe this conclusion goes too far. I do not believe that the Grievant must have had the intent to leave her post when she arrived at work in order for her actions to constitute flagrant behavior although a prior intent to do so would aggravate the matter. The Union argues that the term “flagrant” as used in the Agreement is ambiguous because it is too subjective. It says that the term, because it must be judged retroactively, cannot be understood by the employees. It is, in effect, a moving target. For this reason, the Grievant was not given proper notice of actions which might amount to flagrant behavior but rather was subjected to the subjective judgment of management as to what might result in her discharge. This argument, too, goes too far. A certain set of facts may very well cause all reasonable persons to conclude that they are flagrant while another set of facts may cause some reasonable persons to agree and some to disagree on what is flagrant behavior. The term cannot be specifically defined. As the County says, it is a catch-all phrase designed to incorporate a variety of serious acts of misconduct. This is why, as in the present case, it is necessary to consider the specific facts of each case in order to decide whether an action is flagrant or not.

The Union does not argue that the Grievant was unaware of her duty to man her post during her hours on shift. This would have been a difficult argument to make. It is clear that she knew, or should reasonably have known, that the abandonment of her post would have resulted in severe disciplinary action, including the possibility of termination. The County’s Personnel Manual makes this clear. This is even more significant when viewed in the context of a jail setting where staffing is an integral part of the efficient and safe operation of the facility. Clearly, leaving the jail understaffed places at risk the efficient and safe operation of the facility. The Union suggests that the Grievant made certain that her departure would not leave the facility understaffed. This assertion flows from the testimony of the Grievant herself and fails to explain how she made this determination during the relatively short and heated exchange leading up to her departure. In any event, it was not the Grievant who was charged with the task of properly staffing the facility. Someone further up the chain of command than the Grievant had made that decision. The undersigned also notes that the facility operates as a para-military organization and, as such, the Grievant’s fellow officers must have faith that she can be depended upon. The abandonment of her post does not serve to strengthen this faith; it serves to weaken the command structure and to erode the efficiency and safety of the facility.

The events leading up to the final confrontation with Kopp prior to the Grievant’s departure demonstrate a significant lack of respect on the part of the Grievant towards the persons in charge

of making the decisions as to the efficient and safe operation of the facility. In short, her actions demonstrated a profound lack of respect towards the chain of command structure; a structure designed to provide the most efficient and safe operation of the facility. Kopp had determined the best means by which the inmate could be managed and the Grievant, armed with much less training, experience and authority unilaterally decided to countermand Kopp's orders to Stamstra and to challenge Kopp's authority in the presence of other subordinate employees. Reserve Control Officer John Heimerman testified credibly that when the Grievant confronted Kopp:

I witnessed the most deplorable disrespectful temper tantrum by an employee that could be imagined by someone that has been in the workforce environment for thirty plus years as I myself have been. I watched an employee with very little experience try to tell someone who was not only her boss but someone with far greater experience and education that she did not know what she was doing or how to handle an inmate. I watched my boss calmly try to explain to her that she made improvised decisions and bargained with an inmate to keep him from severely hurting himself and to please get some papers for him and I watched this employee get upset and angry tell her no I will not he is not going to win I will not do it. When my boss tried to reason with her she got more upset and said I am not going to do it I am going home this is bull shit and she got her coat and bags and stormed out of the control room yelling this is bullshit. My boss seemed to be totally bewildered and dumbfounded by what had just happened. It was an emotional and angry outburst that in my opinion was reprehensible unprofessional and totally unacceptable by someone who would don a uniform. . .

Funk & Wagnalls' *New International Dictionary of the English Language, International Edition*, (1987) defines the word "flagrant" as:

1. Openly scandalous; notorious; heinous. 2. Burning; blazing; also, raging. . .*Synonyms*: atrocious, disgraceful, enormous, flagitious, heinous, monstrous, nefarious, outrageous, scandalous, shameful, shocking. *Antonyms*: see synonyms for EXCELLENT.

The Grievant made a conscious decision to vacate her post in the face of her supervisor's efforts to calm her down and to get her to stay. In light of the totality of the circumstances as related by Heimerman, along with the other witnesses called to testify and of the Grievant's own testimony, the account of her conduct fits squarely within the above definition and I conclude that the County has shown wrongdoing and has justified its actions by a preponderance of the evidence. Consequently, I must conclude that her conduct was "flagrant" as that word is contemplated by the parties' Agreement and as presented by the facts of this case. I also conclude that the abandonment of her post at the jail did adversely effect the efficient operation and safety of the facility. This conduct may be considered by reasonable and fair minded persons as warranting discharge.

Contrary to the assertions of the Union, the record does not support the conclusion that the County has applied its rules, orders and penalties in a discriminatory manner. The Grievant's actions here constitute the first such misconduct and presented the County with a case of first impression.

Based on the above and foregoing and the record as a whole, the undersigned issues the following

AWARD

1. The County did not violate Article 15 of the Collective Bargaining Agreement when it terminated the Grievant.
2. The Grievance is denied and dismissed in its entirety.

Dated at Wausau, Wisconsin, this 24th day of February, 2010.

Steve Morrison /s/

Steve Morrison, Arbitrator

SM/gjc

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