

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

SHEBOYGAN COUNTY

and

**SHEBOYGAN COUNTY
SUPPORTIVE SERVICES EMPLOYEES,
LOCAL 110, AFSCME, AFL-CIO**

Case 421
No. 69548
MA-14645

(Ribbens Discharge Grievance)

Appearances:

Mr. Sam Gieryn, Staff Representative, AFSCME, Wisconsin Council 40, 187 Maple Drive, Plymouth, Wisconsin 53073, on behalf of Local 437.

Mr. Michael J. Collard, Human Resources Director, 508 New York Avenue, Room 336, Sheboygan, Wisconsin 53081, on behalf of the County.

ARBITRATION AWARD

Sheboygan County, hereafter County or Employer, and Sheboygan County Supportive Services Employees, Local 110, AFSCME, AFL-CIO, hereafter Union, are parties to a collective bargaining agreement that provides for final and binding arbitration of disputes arising there under. The parties requested the Wisconsin Employment Relations Commission to appoint a member of its staff to serve as arbitrator of the instant dispute. The undersigned was so appointed and a hearing, which was not transcribed, was held on March 23, 2010 in Sheboygan, Wisconsin. The record was closed on May 19, 2010, following receipt of the parties' post-hearing written argument. Having considered the record as a whole, the undersigned makes and issues the following Award.

ISSUES

At hearing, the parties stipulated to the following statement of the issues:

1. Did the County have proper cause to terminate the Grievant?
2. If not, what is the appropriate remedy?

The parties further stipulated that there were no procedural arbitrability issues.

RELEVANT CONTRACT LANGUAGE

. . .

ARTICLE 3**MANAGEMENT RIGHTS RESERVED**

Unless otherwise herein provided, the Management of the work and direction of the working forces, including the right to hire, promote, transfer, demote or suspend, or otherwise discharge for proper cause, and the right to relieve employees from duty because of lack of work or other legitimate reason, is vested exclusively in the Employer.

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BACKGROUND

On June 25, 2009, C.O. Brad Ribbens, hereafter Grievant, received a copy of a Sheboygan County Employee Report that included the following:

. . .

DEPARTMENT AND POSITION: Sheriff's Department - Correctional Officer

DATE: June 25, 2009

Michael W. Helmke, Sheriff of Sheboygan County, believes and has determined that (the Grievant) engaged in conduct meriting termination of employment from the Sheboygan County Sheriff's Department and a forty (40) day unpaid suspension.

STATEMENT OF INCIDENT

On March 23, 2009, Lieutenant Risseeuw was assigned to investigate allegations of an unprofessional relationship between (the Grievant) and a female inmate, while on duty. As a result of Lt. Risseeuw's internal investigation, the following violations of Department policies were substantiated.

Conflicts of Interest 1-13-1 and Correctional Staff Conduct 3-1-2

On June 2 and 12, 2009, Lieutenant Risseeuw conducted Garrity interviews with (the Grievant) in reference to his possible improper relationship with (Inmate RT). During the course of these interviews, (the Grievant) admitted to questioning (Inmate RT) about the possibility that she was in possession of controlled substances prior to conducting a search of (Inmate RT's) cell and warning her of the impending cell search. (The Grievant) stated that he knew (Inmate RT) was under suspicion of possessing controlled substances, within the

jail, at the time of these contacts.

The first occasion (the Grievant) talked to (Inmate RT) about her alleged drug possession, before a cell search, was prior to March 12, 2009. (Inmate RT) was performing her duties as a trustee when (the Grievant) questioned (Inmate RT) about possessing drugs. (The Grievant) elaborated that while he had informed (Inmate RT) of the imminent search of her cell, she would not be able to gain access to her cell until after the search had been completed.

The second time (the Grievant) questioned (Inmate RT) about her suspected possession of controlled substances and informed her of an impending cell search was on or about March 12, 2009. This conversation occurred in (Inmate RT's) cell. (Inmate RT) again denied being in possession of any controlled substances. According to (the Grievant), he then in all likelihood made a statement to (Inmate RT) to get rid of any illegal drugs if she had any in her cell. (The Grievant) then left (Inmate RT) alone in her cell and returned much later to conduct a search of (Inmate RT's) cell.

(The Grievant) stated he had never given an inmate advance notice of a cell search, prior to (Inmate RT), when the search was to be conducted in an attempt to locate controlled substances and that it was improper to give inmate (Inmate RT) forwarning.

(The Grievant's) actions of informing (Inmate RT) of upcoming cell searches, most likely advising her to get rid of any drugs she may have, and then leaving (Inmate RT) in her cell unsupervised before conducting the cell search is a violation of the Department policy, on Conflict of Interest 1-13-1, which states, "A conflict of interest occurs when the existence of a set of circumstances operates to prevent an employee from acting fairly with his oath, the orders of his superiors, or the law. A conflict of interest can arise because of favors, gratuities, friendship, relationship with another, outside employment, financial obligation, position and other reasons."

(The Grievant's) actions further compromised the safety and security of the inmates and fellow employees in violation of Department Policy, Correctional Staff Conduct 3-1-2, which states, Correctional Service personnel shall conduct themselves in a manner as not to compromise the integrity or security of the Detention Center" and "Correctional Services personnel are cautioned against developing non-professional relationships with inmates and their families. Staff must always be aware that building security and inmate/staff safety may be compromised by fraternization or inappropriate conduct."

Action taken for violation of Department policy 1-13-1 - Termination

Action taken for violation of Department policy 3-1-2 - Termination

Department Directive/Policy on Public Association and Rules of Conduct for All Employees 1-12-4 (1)(2)(23)(28) — Over the course of several months, (the Grievant) developed an unprofessional relationship with (Inmate RT). This relationship reached its most advanced level during the months of March and April of 2009. During that time, (the Grievant) became infatuated with (Inmate RT). (The Grievant) admitted being attracted to (Inmate RT) both physically and emotionally. Further, (the Grievant) developed a significant relationship with (Inmate RT) in which (the Grievant) warned (Inmate RT) of upcoming cell searches, carried on lengthy conversations with her while on duty, gave her gifts on two occasions, sniffed her underwear (flirtation), came in before his shift to see and compliment (Inmate RT) on a new hair cut, attempted to access Department records concerning an ongoing drug investigation against (Inmate RT), and (the Grievant) admitted he intentionally treated (Inmate RT) in a better fashion than all other inmates.

(The Grievant) had been previously disciplined for similar behavior on April 20, 2006, at which time he received a 10-day unpaid suspension, with 7 days running concurrently or held in abeyance.

(The Grievant's) actions were in violation of the Department Directive on Public Association, which states in part, "Employees shall not associate on a significant personal basis or have a significant business relationship with persons whom they know, or should have reason to believe have been convicted of a felony, are in the custody of Sheboygan County Corrections, are on probation or parole, are involved in felonious activities, or are under criminal investigation or indictment..." (The Grievant's) actions with (Inmate RT) also violated Department policies on Rules of Conduct for All Employees 1-12-4 (1) (2) (23) (28), which respectively state,

1-12-4 (1) "Employees shall not engage in conduct that brings or may bring discredit, dishonor nor disgrace upon themselves or the Department."

1-12-4 (2) "Employees shall obey all Federal, State, County and Municipal laws and all policy, procedure, rules, orders, and directives of Sheboygan County and the Sheriffs Department."

1-12-4-(23) "Employees of the Department shall not conduct personal business while on duty or devote any or their on-duty time to any activity other than that which relates to law enforcement, except for meals and breaks."

1-12-4 (28) “No employees of the Department shall engage in any activity, which may be detrimental to job performance or the Department.”

Action taken for violation of Public Association Policy and Rules of Conduct for All Employees 1-12-4 (1) (2) (23) (28) - forty (40) days unpaid suspension

ACTION TAKEN: Termination of employment for violation of the Department Policy 1-13-1. Termination of employment for violation of Department Policy 3-1-2. Forty (40) days unpaid suspension for violation of Department Directive on Public Association and Rules of Conduct for All Employees 1-12-4(1) (2) (23) (28). Any future misconduct will result in progressive discipline appropriate with the severity and/or frequency of the misconduct.

The employee is reminded that Employee Assistance Program is available and may be reached by calling 1-800-236-3231.

...

On or about June 30, 2009, the Union filed a grievance including, *inter alia*, the following:

...

Statement of Grievance:

(Circumstances of Facts): (Briefly, what happened) Through an internal investigation conducted by the Sheboygan County Sheriff's Dept. Officer Braden Ribbens was found in violation of Dept. policy 1-12-4(1)(2)(23)(28) which resulted in a 40 day unpaid suspension. Furthermore, Officer Ribbens was found in violation of dept. policy 1-13-1/3-1-2 both of which resulted in termination.

(The contention - what did management do wrong?) (Article or Section of contract which was violated if any)

Article 3-Management Rights, Article 26-Grievance Procedure, Article 2-Freedom of Choice in Union membership and any other contract violation and/or violation of State and Federal laws that may apply.

(The Request for Settlement or corrective action desired): Immediately reinstate grievant to his employment position in the Sheriff's Dept., grant him full employment status held prior to the disciplinary action, remove any and all reference to the disciplinary action from any and all personnel records, and make the grievant whole.

...

On or about July 1, 2009, Shift Commander Brieco provided the Union with the County's first step response, which included the following:

...

Please consider this letter as the Department's step one response to your grievance. On June 25, 2009, C.O. Ribbens was issued discipline that resulted in his termination, effective at 1500 hours on June 26, 2009, for violation of Department policies 1-13-1 and 3-1-2. Along with these two termination violations, C.O. Ribbens was also found to have violated Department policies 1-12-4 (1)(2)(23)(28), which would have resulted in a 40-day unpaid suspension if he had not been terminated.

The grievance filed on behalf of CO. Ribbens indicates violation of the current labor contract under Articles 2, 3, and 26, along with violations of unnamed current labor contract articles, and/or state and federal law. Furthermore, it is requested that all disciplinary action be removed from C.O. Ribbens' personnel file and he be returned to full employment status.

Upon review of the discipline taken against C.O. Ribbens, I find there is no violation of the current labor agreement, nor any violation of state or federal law. Therefore, I must deny your grievance. Furthermore, C.O. Ribbens will not be returned to full employment status.

...

The grievance, which was denied at all steps of the grievance procedure, was submitted to contractual grievance arbitration.

POSITION OF THE PARTIES

County

The County began its investigation of the Grievant in response to inmate statements. The inmate statement that he had given a warning to Inmate RT while she was in her cell is not uncorroborated hearsay in that they were confirmed by the Grievant. The video recordings of the investigatory interviews establish that the Grievant was not coerced into making admissions out of fear that he may be terminated for being untruthful during the investigation.

The Grievant clearly stated in his first interview that he was "fairly certain" that he had given Inmate RT warnings at least twice; once in the laundry room and at least once when she was left in her cell. Subsequently, he confirmed that this warning was not just a casual type of admonition to not keep extra food in the cell, but rather, pertained to a "formal search where specifically the target was someone in the cell block and in this case, specifically her, where someone had pills."

The Grievant's recollection was not lacking in detail in that he was able to remember:

- That Inmate RT denied having any contraband
- That the Grievant left Inmate RT's cell immediately after hearing this denial
- That he didn't recall hearing a toilet flush as he left her cell
- That he didn't notice her rummaging through her stuff as he left
- That when he left he just turned his back and walked out.
- That he came back later to search the cell, initially with Officer Zorn and then later joined by Sergeant Fenn.

The Grievant's actions may have allowed Inmate RT's illicit drug possession to evade detection and to allow Inmate RT to continue to supply these drugs to other inmates.

The absence of a report that the cell had been searched does not indicate that the cell search had not occurred. Such a conclusion is supported by witness testimony, as well as the fact that there is no report of the cell search which took place after the warning in the laundry.

When the Grievant met with the Sheriff, he did not deny committing the alleged violations. Rather, he apologized to the Sheriff.

As the Union and the Grievant processed the grievance, they did not state that the crucial facts had not occurred. At Step 3, the Union conceded that the Grievant had committed misconduct, but argued that the penalty should be reduced to a suspension.

Memories tend to fade, not improve, over time. There is no reason to credit the Grievant's current denial over earlier and repeated confirmations that the warnings were given.

On cross-examination, the Grievant admitted that if he had acted in the manner described in the termination report, he would have been guilty of serious misconduct. He also agreed that such actions would have endangered the safety and security of staff and inmates.

Previously, the Grievant had been suspended as a result of allowing his judgment to be clouded by a personal relationship that he had developed with a female inmate. The fact that he has continued to engage in misconduct of the same category, but of a greater degree, shows that, despite his other strengths as an employee, he cannot be entrusted with his duties as a Correctional Officer.

The Union suggests that a burden of proof higher than the preponderance of the evidence should be used. This standard, when used, is applied to discharges in which the grievant had been accused of criminal acts or other similar socially stigmatizing behavior. Neither of which is present in this case. In this type of case, most arbitrators apply "preponderance of the evidence" standard.

The Department's senior management readily admitted that the Grievant was an outstanding officer. Clearly, no one was out to get the Grievant.

To be given physical custody and control of another adult human is no small thing. The County, in good conscience, cannot allow even a moderate risk of harm to others.

The Sheriff's judgment that the Grievant's misconduct was such that the Grievant no longer could be entrusted with the responsibility that must be assumed by Correctional Officers must be respected. The grievance should be dismissed.

Union

The Grievant was a highly skilled, respected and promising young Correctional Officer. Contrary to the position of the County, the Grievant did not corroborate the hearsay statements made by Inmate JA that the Grievant alerted Inmate RT to the fact that a search of her cell was imminent and that Inmate RT flushed narcotics down the toilet, thus escaping detection.

The Grievant states that he may have had discussions with Inmate RT regarding her possible possession and warning her to get rid of any if she had it, but that he never forewarned that any particular search was scheduled. According to the Grievant, his statements to Inmate RT were simply a reminder of the reality of searches and the consequences of a drug possession charge. Inspector Bruckbauer testified that merely asking an inmate if they possessed any contraband and advising them to dispose of it if they had it was not a policy violation.

During the investigatory interview, the Grievant remembered a conversation in the laundry in which he warned Inmate RT that her cell would be searched later that day. The Grievant did not consider this to be improper because Inmate RT was sequestered in the laundry room and he viewed the warning as an incentive for Inmate RT to admit any wrongdoing prior to the search.

During the investigatory interview, the Grievant was pressed regarding the possibility of a second similar event where Ribbens might have forewarned Inmate RT about a search he knew to be imminent while she was in her cell. Although the Grievant did not remember such an event, he admitted to the possibility that he might have had conversations with Inmate RT while she was in the cellblock and warned her to dispose of anything she had. "Maybe" and "possibly" are not admissions.

The Grievant testified that the reason why he acknowledged the possibility that he had discussed drug possession with Inmate RT prior to a search, even though he could not recall such an event occurring, was because he was careful to be completely truthful. Prior to the start of the interview, the Grievant was required to sign forms. These forms prominently indicated that any refusal to respond, or any untruthfulness, could result in suspension or termination of his employment. Additionally, the Grievant was warned that the Sheriff maintained that any refusal to respond or untruthfulness would result in termination of his employment.

Inspector Risseuw failed to ask the Grievant directly if he purposefully forewarned Inmate RT about a specific search other than the one that occurred while Inmate RT was in the laundry. The Grievant confused the second search with the first search, which followed the conversation in the laundry. When asked if he ever had a similar conversation with Inmate RT immediately preceding a prearranged cell search, the Grievant testified unequivocally “No.”

The Grievant was unable to say with complete certainty that certain events did not happen because they do happen. Asking inmates about contraband was not uncommon. Warning inmates of the likelihood of searches and the consequences was not uncommon. Searching cells was not uncommon.

The Employer attempts to line up scattered recollections into a single event; which the Grievant does not remember. Given the warnings against untruthfulness, could the Grievant safely deny a past event given his lack of recollection?

The Union requested and received all of the incident and activity reports created by Department employees from February through April of 2009. No report was produced documenting the second search.

The Grievant’s discharge would stigmatize the Grievant as someone who is unemployable in Corrections or Law Enforcement. Given the impact upon the Grievant, the Employer’s appropriate burden of proof is one that is often used by arbitrators in cases involving criminal conduct or stigmatizing behavior, *i.e.*, “clear and convincing” or “beyond a reasonable doubt.”

The Employer did not show that the Grievant purposefully forewarned Inmate RT and, thus, has not proven that he violated Policy 1-13-1. The Employer did not show that the Grievant compromised the security of the jail and, thus, has not proven that he violated Policy 3-1-2.

The fact that the Grievant may not have initially claimed that the alleged incident never happened should not prevent the Arbitrator from finding that the incident alleged was unproven. The disciplinary notice does not state that he warned RT of a specific impending search, but only of an impending search. Inasmuch as Inmate RT had been the subject of searches for several months, the Grievant would not be telling Inmate RT anything that she did not already know.

The Grievant claims that he maintained a professional demeanor and viewed Inmate RT as a professional acquaintance. The Grievant never discussed his personal life with Inmate RT or had any inappropriate physical contact.

The grievance should be sustained on the basis that the Employer lacked proper cause for the discipline. The Grievant should be reinstated with no loss of wages or benefits.

DISCUSSION

The disciplinary letter indicates that the Sheriff's decision to terminate the Grievant was based upon his conclusion that the Grievant had interacted with Inmate RT in a manner that violated two Department Policies, *i.e.*, 1-13-1 and 3-1-2. During his investigatory interviews, the Grievant acknowledged that he was aware of the substance of these two policies.

The disciplinary letter further indicates that the Sheriff's conclusion that the Grievant had violated these two Department Policies was based upon the Grievant's responses to the investigatory interviews conducted by Lieutenant Risseeuw. Thus, although inmate hearsay statements triggered the Department's investigation of the Grievant, they did not serve as a basis for the Grievant's discharge.

The Sheriff concluded that the Grievant's actions of informing Inmate RT of upcoming cell searches, most likely advising her to get rid of any drugs she may have, and then leaving Inmate RT in her cell unsupervised before conducting the cell search violated Department Policy 1-13-1 and that the appropriate discipline for this violation was termination. Department Policy 1-13-1 is defined as "A conflict of interest occurs when the existence of a set of circumstances operates to prevent an employee from acting fairly with his oath, the orders of his superiors, or the law. A conflict of interest can arise because of favors, gratuities, friendship, relationship with another, outside employment, financial obligation, position and other reasons."

The disciplinary letter does not identify the oath, orders of his superiors, or the law that the Grievant did not "act fairly with." Accordingly, the undersigned cannot reasonably conclude that the Grievant has violated Department Policy 1-13-1.

The Sheriff further concluded that the Grievant's actions compromised the safety and security of the inmates and fellow employees in violation of Department Policy 3-1-2 and that the appropriate discipline for this violation was termination. Departmental Policy 3-1-2 states "Correctional Services personnel are cautioned against developing non-professional relationships with inmates and their families. Staff must always be aware that building security and inmate/staff safety may be compromised by fraternization or inappropriate conduct."

One may reasonably conclude, as the undersigned concludes, that the referenced Grievant actions are the actions that are addressed in that portion of the disciplinary letter that focuses on the Grievant's discharge. These actions include warning Inmate RT, on two separate occasions, of an impending/imminent cell search.

The first such incident is alleged to have occurred while Inmate RT was performing Trustee duties. The second such incident is alleged to have occurred while Inmate RT was in her cell.

During the investigatory hearing, as well at hearing, the Grievant admitted that he had warned Inmate RT about an impending cell search while this inmate was performing Trustee duties in the laundry. According to the Grievant, Inmate RT could not take advantage of his warning because she was locked in the laundry and did not have access to her cell. At hearing the Grievant acknowledged that it would have been more appropriate to place her in a holding cell until the search had been completed.

At hearing, the Grievant stated that he is not sure that the second incident, in the cell, had happened. According to the Grievant, he has had a lot of time to think about the matter; that, during the investigatory interviews, he confused the second incident with the laundry incident; and, in response to the Union's request, the County could not provide an incident report that documented the search.

Under Department protocol, cell searches of the type that are involved in this discipline are supposed to be documented. The record, however, does not establish that there is such strict adherence to the documentation procedure that the absence of an incident report documenting a cell search cell means that such a search could not have happened.

As the County argues, if the Grievant had a good faith doubt as to whether or not the second incident had occurred, it is likely that he would have challenged the Sheriff's finding regarding the second incident prior to the day of hearing. Nonetheless, inasmuch as the Sheriff based his disciplinary decision upon the content of the investigatory interviews, the reasonableness of the Sheriff's disciplinary decision must be judged upon the content of these interviews.

As the Union argues, there is confusion in the questions and answers that deal with the second incident. However, within context, the Grievant's responses, taken as whole, are sufficient for the Sheriff to conclude that the Grievant admitted that, while Inmate RT was in her cell, the Grievant forewarned Inmate RT of an impending drug search of her cell and then left Inmate RT alone in her cell. As the County argues, the record provides no reasonable basis to conclude that the Grievant made false admissions due to a fear that his employment would be terminated for being untruthful during the investigation.

During the investigatory interviews, the Grievant acknowledged that, at the time of each incident, he knew that the focus of RT's cell searches were illicit drugs. When the Grievant was questioned about the second incident, the Grievant indicated that he told Inmate RT about the cell search because he thought he and Inmate RT had a "decent rapport" and that she would tell him "straight up" if she had something.

In summary, the investigatory interviews support the Sheriff's conclusion that the Grievant admitted that, on two separate occasions, he warned Inmate RT of a cell search at a time in which the Grievant and Inmate RT knew that the focus of Inmate RT's cell searches were illicit drugs. Contrary to the argument of the Union, the Grievant's statements during the investigatory interview, taken as a whole, warrant the conclusion that the Grievant knew that a search was about to happen.

The Grievant states that it was common to warn inmates of impending searches for contraband. As the record establishes, however, such warnings involve minor contraband, such as left over food and extra linens. The record provides no reasonable basis to conclude that it is appropriate, or common, to warn inmates of impending searches for illegal drugs.

The testimony of the County's Director of Operations for the Sheboygan County Sheriff's Department establishes that illicit drugs, unlike minor contraband, present a significant risk to the health and safety of inmates and correctional staff. The health of inmates who use the illicit drugs is at risk because the drugs potency is unknown. The safety of inmates and correctional staff are at risk because inmates who use illicit drugs may act irrationally, thereby creating conflicts with and endangering the safety of other inmates and Correctional Officers. The County's interest is to identify those who have possession of illicit drugs and confiscate these drugs; not only to ensure that such drugs are not used within the Jail, but also, to disrupt the illicit drug pipeline.

The Grievant claims that Inmate RT was not able to take advantage of the first warning because, at the time he left her in the laundry, she was locked in the laundry and did not have access to her cell. It is not evident, however, that all of the other Correctional staff knew that Inmate RT was to be kept out of her cell and isolated from other inmates. Absence such evidence, it would not be reasonable to conclude, as the Grievant concluded, that Inmate RT could not have acted on this warning to dispose of and/or remove illicit drugs that may have been in her cell.

With respect to the second warning, Inmate RT was warned while she was in her cell and was then left alone in her cell. Thus, Inmate RT was at liberty to dispose of and/or remove any illicit drugs that may have been in her cell.

Conclusion

Departmental Policy 3-1-2 warns against developing non-professional relationships that compromise building security and inmate/staff safety. At hearing, the Grievant characterized his relationship with Inmate RT as a "professional acquaintance."

According to the Grievant, as a Correctional Officer, his normal procedure is to bring books and magazines to the Jail Library and allow Trustees first pick. The Grievant did not follow his normal procedure when he selected a book and made a gift of this book to Inmate RT to comfort her. The Grievant admits to looking at Inmate RT's photo on several occasions, but does not provide a business reason for looking at this photo. Upon learning that Inmate RT was missing underwear, the Grievant searched for this underwear, retrieved this underwear from another inmate's cell, returned to Inmate RT's cell, had a discussion with Inmate RT as to whether the underwear was clean, pretended to sniff this underwear because he wanted to make her laugh, then took this underwear to the laundry and requested that it be laundered.

Prior to starting work in the juvenile facility, the Grievant went to Inmate RT's cell in the adult facility for the purpose of viewing her new haircut. According to the Grievant, if Inmate RT wanted to talk, he would listen. The Grievant states that, while he always talked to Trustees, he talked to Inmate RT more often than to other Trustees and other inmates. The Grievant states that he not only conversed more frequently with Inmate RT, but also that his conversations with Inmate RT generally were lengthier than those he had with other inmates.

The Grievant recalls that, on at least two occasions, he had a conversation with Inmate RT in which he asked if she had anything (referring to illicit drugs) and that she would always say that she did not have anything. According to the Grievant, he was always honest with Inmate RT and he thought she was honest with him.

As the Union argues, rapport between inmates and guards may prevent hostility, foster communication and assist with rehabilitation. However, the Grievant's relationship with Inmate RT was likely to foster inmate hostility and a lack of respect for the Grievant that impaired communication and rehabilitation.

In summary, the Grievant developed a non-professional personal relationship with Inmate RT that caused the Grievant to forewarn Inmate RT of impending cell searches at a time in which the Grievant knew that Inmate RT was suspected of possessing controlled substances. After providing this forewarning, the Grievant did not take adequate measures to deny Inmate RT the opportunity to dispose of and/or secrete any controlled substances that she may have possessed. As the Sheriff concluded in the disciplinary letter, the Grievant's actions compromised the safety and security of inmates and fellow employees in violation of Department Policy 3-1-2.

Having concluded that the Grievant violated Department Policy 3-1-2 as charged by the Sheriff, the undersigned turns to the issue of whether discharge is the appropriate remedy. Given the potential harm to the safety and security of inmates and fellow employees, the Grievant's violation of Department Policy 3-1-2 involves significant misconduct.

According to the Sheriff, with the exception of the conduct that resulted in the Grievant's prior discipline and this discharge, the Grievant has been a good employee. This testimony is consistent with the evidence of the Grievant's excellent attendance record even while coping with a serious illness; evaluations that rate the Grievant as "Superior" or "Highly Satisfactory" in the vast majority of categories; a willingness to work overtime and assume additional work such as Cert and Classification and a good relationship with co-workers and supervisors.

Approximately three years before his termination from County employment, the Grievant was disciplined for cultivating an inappropriate personal relationship with another inmate. Shortly before this inmate was released from jail, the inmate provided the Grievant with her personal telephone number while the Grievant was on duty. After the inmate was

released from jail, the Grievant socialized with the inmate on several occasions over a one-week period. This discipline involved “Two (2) three (3) twelve-hour days of unpaid suspension to run concurrent, with two (2) 12-hour days of unpaid suspension to be held in abeyance for one (1) year.”

Contrary to the argument of the Union, the Grievant conduct that was the subject of the disciplinary suspension was similar to the Grievant conduct towards Inmate RT. In each case, the Grievant allowed his professional judgment to be adversely affected by his personal interest in a female inmate. As the Union argues, discipline is designed to correct improper behavior. It is apparent that the earlier suspension did not correct the Grievant’s improper behavior.

On February 3, 2009, Lt. Detienne spoke with the Grievant regarding the excessive time that he was spending with Inmate RT. At that time, Lt. Detienne told the Grievant that he needed to watch the amount of time that he spends with Inmate RT, that she is manipulative and that he was going to get himself in trouble. The Grievant responded, “I know.”

Contrary to the argument of the Union, it is not evident that Lt. Detienne was aware of, or disregarded, disciplinable behavior. Rather, the most reasonable conclusion to be drawn from the record evidence is that Lt. Detienne warned the Grievant that he needed to guard against engaging in inappropriate behavior with Inmate RT.

The nature of the Grievant’s violation of Department Policy 3-1-2; the fact that the Grievant disregarded Lt. Detienne’s warning; the fact that a previous disciplinary suspension was insufficient to deter the Grievant from developing an inappropriate personal relationship with a female inmate; and the fact that the Grievant continues to describe his relationship with Inmate RT as a “professional acquaintance;” supports the Sheriff’s conclusion that, despite his other strengths as an employee, the Grievant can no longer be trusted to perform his duties as a County Correctional Officer. Under the circumstances of this case, the County has proper cause to terminate the Grievant.

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

AWARD

1. The County has proper cause to terminate the Grievant.
2. The grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 27th day of December, 2010.

Coleen A. Burns /s/

Coleen A. Burns, Arbitrator