

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**THE LABOR ASSOCIATION, INC., FOR AND ON BEHALF OF THE JEFFERSON
COUNTY LAW ENFORCEMENT OFFICERS
ASSOCIATION, LOCAL 102**

and

THE COUNTY OF JEFFERSON

Case 131
No. 69853
MA-14770

Appearances:

Benjamin M. Barth, Labor Consultant, appearing on behalf of the Labor Association of Wisconsin, Inc., N166 W16033 Main St., Germantown, Wisconsin 53022.

Phillip C. Ristow, Corporation Counsel, appearing on behalf of the County of Jefferson, 320 South Main Street, Jefferson, Wisconsin 53549.

ARBITRATION AWARD

Pursuant to the terms of the 2008-2010 collective bargaining agreement (CBA) between The County of Jefferson (the County) and The Labor Association of Wisconsin, Inc. (the Union),¹ the parties selected me from a panel of arbitrators generated by the Wisconsin Employment Relations Commission to hear and resolve a dispute between them. The dispute involves the interpretation and application of the CBA regarding the County's imposition of a ten-day suspension without pay on the grievant for conduct allegedly occurring on March 14, 2010.

A hearing in the matter took place on August 25, 2010, at the Jefferson County Courthouse, 320 South Main Street, Jefferson Wisconsin. A registered professional reporter was present, and transcripts of the proceedings were made available to the parties' advocates and to me. The parties thereafter filed written briefs, the last of which was received on November 1, 2010. Following my receipt and review of the briefs, I posed additional questions to clarify assertions in the Union's brief. The last e-mail communication in response to my questions was received via e-mail on January 28, 2011.

¹ The Labor Association of Wisconsin, Inc. is further identified on the title page of the CBA as the party appearing "for and on behalf of The Jefferson County Law Enforcement Officers Association Local 102".

ISSUE

The parties stipulated to the following statement of the issues:

Was the 10-day suspension dated March 25, 2010, issued with just cause? If not, what is the appropriate remedy?

RELEVANT CONTRACTUAL PROVISIONS

Contract provisions germane to this dispute state in relevant part:

ARTICLE IV – MANAGEMENT RIGHTS

Section 4.01: The Association recognizes the Employer as having the exclusive right, unless specifically modified by other provisions of this Agreement, . . . to discipline and discharge for just cause; to establish, revise and enforce reasonable rules of conduct; . . . provided, however, that these rights are applied equitably to all employees

. . .

ARTICLE XXV – EMPLOYEE DISCIPLINE

Section 25.01: Employees who have completed the initial probationary period provided for in Section 24.02 shall not be disciplined, suspended, demoted or discharged without just cause. Just cause shall be deemed to include, without restriction by enumeration, incompetence in the performance of his/her duties.

. . .

BACKGROUND

Overview of Grievant's Employment and Layout of Jefferson County Jail Facility

As of the arbitration date, the Grievant had been employed as a night-shift Deputy with the Jefferson County Sheriff's Department, Jail Division, for approximately two years. The relevant acts and omissions on which her ten-day suspension was based took place in the county jail on March 14, 2010. That facility is comprised in part of a circular perimeter of individual cells that open up to common areas referred to variously as dayrooms, pods or units. These units are identified as Units A – H, and about four to five cells access each of them.

These units, in turn, open on the sides opposite the cells to a central pod area, in the middle of which is the pod control center, an enclosed area used by Sheriff's Department personnel.

Acts and Omissions on Which the Grievant's Suspension Was Based

The acts and omissions on which the County based the ten-day suspension related to an inmate's written request to be transferred from Unit F to a different unit. The inmate claimed that because another inmate had recognized him as a former corrections officer at a different institution, his safety was jeopardized.

After receiving the inmate's request for transfer, Sergeant Brooks discussed it with the Grievant, Deputy Kanters and Deputy Wiedenfeld. Although the Grievant suggested that the inmate should be subject to administrative lockdown or confinement,² her suggestion was, in her words, "overruled." Sergeant Brooks advised the deputies that the inmate should be removed from his cell in the morning before the unit pods were opened, which typically occurred at about 5:00 a.m., to get more information from him. However, Sergeant Brooks did not issue a direct order to any of the deputies present during this briefing to remove the inmate.

When Sergeant Brooks' shift ended at 1:00 a.m., he was replaced by Sergeant Hacht, who some time later learned of the inmate's written transfer request. At 3:00 a.m., Deputies Wiedenfeld and Kanters ended their shifts and Deputies Ganser and Owen began theirs. Shortly thereafter, Deputies Ganser and Owen reviewed the transfer request. Deputy Owen then discussed the request with the Grievant, who apprised Deputy Owen of having made a suggestion regarding how to handle the request and having been "overruled".

Deputy Owen subsequently discussed the transfer request with Sergeant Hacht, the Grievant's supervisor, and volunteered to talk to the inmate. Sergeant Hacht, however, refused Deputy Owen's offer and informed her that he wanted the Grievant to take care of the situation. At approximately 4:30 a.m., Sergeant Hacht discussed the situation with the Grievant, who was involved in processing an inmate release and who explained that she had made a suggestion to deal with the inmate transfer request but had been overruled by Sergeant Brooks. In response, Sergeant Hacht discussed the situation and advised that if he were handling it, he would talk to the inmate prior to the inmate's unit (*i.e.* Unit F) being unlocked. He added that he would attempt to ascertain whether the threats that allegedly had been made to the inmate were valid. Sergeant Hacht did not issue a direct order; he only advised what he would do if he were handling the situation.

² Administrative "lockdown" is more restrictive and punitive than administrative "confinement", in that the former deprives the inmate of a mattress, sheets, and personal effects. While the Grievant testified she had suggested administrative confinement, others testified she had suggested administrative lockdown. Whatever her suggestion was, it was rejected.

Notwithstanding this discussion, by approximately 4:40 a.m., the inmate request had not been addressed. At that time, the central pod unit and subsequently Units A – H were unlocked. Prior to 5:00 a.m., however, Deputy Ganser relocked Unit F when he discovered that the inmate request for transfer had not yet been addressed.

At approximately 5:00 a.m., the Grievant began her duty of dispensing medications to the inmates. When she got to Unit F, she discovered that the inmates were still in lockdown. She made a loud banging noise by slamming the metal box that houses controls to the pod unit door locks. She then passed out medications in Unit G and proceeded to the central pod to inquire why Unit 5 was still in lockdown, given that she had to dispense medications. Deputy Owen, who was present in the central pod with Deputy Ganser and Sergeant Hacht, explained that they were waiting for the Grievant to remove the inmate and talk to him before releasing the other Unit F inmates from their cells. During this conversation, the Grievant yelled and was upset. She also indicated that someone else should deal with the inmate transfer request, because she was dispensing medications.

Following this discussion and on Sergeant Hacht's directive, the Grievant released the inmate from the F Unit and Deputy Owen placed him in a conference room. Deputy Owen advised the Grievant that the inmate would be locked in the conference room until the Grievant had time to talk to him.

After the Grievant had finished dispensing medications, Deputy Owen approached her and told her that she should not yell at supervisors and that when she's given a direct order, she should follow it. Deputy Owen mistakenly thought at the time that the Grievant had been given a direct order to handle the situation involving the requested inmate transfer. In response, the Grievant became upset, raised her voice, used profanity, accused others of not doing anything, and pointed out that they could have taken care of the inmate's transfer request. As Deputy Owen walked away, she heard the Grievant make some reference to Deputy Owen not having stripes.

Later, Deputy Owen again spoke with the Grievant and explained that she was just trying to help her, because if she did not change her attitude, she was not going to have a very long career there. The Grievant responded that she was never given a direct order. While they were having this conversation, the Grievant was beckoned on the radio by Sergeant Hacht. Before keying the microphone on her radio to respond, she said that she would "get right fuckin' on that," or words to that effect. She then keyed her microphone and responded, "10-4."

Work Rules Allegedly Violated

The Jefferson County Sheriff's Department "Employee Disciplinary Notice" form contains various categories of infractions with boxes next to each to be checked, if they apply. The Notice drafted by Sergeant Hacht and issued to the Grievant contained "x's" in boxes

corresponding to the following categories: “Violation of work rule”, “Poor performance”, and “Negligence”. In addition, the Notice identified the following work rule violations:

Under P&P 702, section 9:

m. Interaction with Fellow Employees and Supervisors:

1. Department members are required to discharge their duties in a professional manner.
3. Department members shall conduct themselves in a manner that will foster cooperation among members of this agency, showing respect, courtesy and professionalism in their dealings with one another.
4. Department members shall not use language or engage in acts that demean, harass, or intimidate another person.
5. In carrying out the functions of the Department, members shall direct and coordinate their efforts in a manner, which will tend to establish and maintain the highest standard of efficiency.
9. Department members shall treat their superiors with respect. Supervisors shall treat all Department members in a courteous manner and without favoritism.

...

Additional facts are set forth below where appropriate.

ANALYSIS

I must decide whether the 10-day suspension imposed on the Grievant on March 25, 2010, was issued with “just cause”, as that term is used in Art. IV, § 4.01 and Art. XXV, § 25.01 of the CBA (quoted above).

I. THE APPROPRIATE CONSTRUCTION OF “JUST CAUSE”

The Union asserts that to decide this issue, I should adopt the construction of “just cause” set forth in Wis. Stat. § 59.26(8)(b)(5m)(a)-(g), even though no contractual term expressly adopts or incorporates by reference the cited statutory standard. The County does not argue that this statutory construction does not apply. To the contrary, when I offered the County the opportunity to comment on the applicability of this standard in e-mail correspondence following receipt of the briefs, the County expressly declined any such

comment. In the absence of any such objection, I am inclined to apply the statutory construction the Union urges.

Aside from the absence of objection, moreover, I find the application of the just-cause standard set forth in Wis. Stat. § 59.26(8)(b)(5m)(a)-(g) to be substantively appropriate. That section and its subsections state:

5m. No deputy may be suspended, demoted or discharged by the grievance committee under subd. 3. or 5., based on charges filed by the sheriff, undersheriff or a majority of the members of the civil service commission for the selection of deputies unless the committee determines whether there is just cause, as described in this subdivision, to sustain the charges. In making its determination, the committee shall apply the following standards, to the extent applicable:

- a. Whether the deputy could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct.
- b. Whether the rule or order that the deputy allegedly violated is reasonable.
- c. Whether the sheriff, before filing the charge against the deputy, made a reasonable effort to discover whether the deputy did in fact violate a rule or order.
- d. Whether the effort described under subd. 5m.c. was fair and objective.
- e. Whether the sheriff discovered substantial evidence that the deputy violated the rule or order as described in the charges filed against the deputy.
- f. Whether the sheriff is applying the rule or order fairly and without discrimination to the deputy.
- g. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the deputy's record of service with the sheriff's department.

The following statutory subsections further persuade me that applying these seven just-cause factors is appropriate:

(9)(a) A deputy sheriff in any county may not be suspended or dismissed under sub. (8) . . . without pay or benefits, for any action taken that is within the scope of the deputy's employment, until the matter that is the subject of the suspension or dismissal is disposed of by the grievance committee or civil service commission or the time for appeal of that matter passes without an appeal being made.

(b) An ordinance of any county or *a collective bargaining agreement may not diminish or abridge a right of a deputy sheriff that is granted under par. (a)*. An ordinance of such a county or *a collective bargaining agreement may supplement and expand such a right in a manner that is not inconsistent with par. (a)*.

Wis. Stat. § 59.26(9)(a)-(b) (emphasis added).

Applying the seven just-cause factors set forth in Wis. Stat. § 59.26(8)(b)(5m)(a)-(g) ensures that the CBA does not “diminish or abridge” any statutory just-cause rights guaranteed in subsections (8) and (9)(a) of Wis. Stat. § 59.26. Moreover, applying the seven just-cause factors guarantees that to the extent the CBA supplements the statutory just-cause rights established in subsections (8) and (9)(a), it does so in a manner that “is not inconsistent” with the statute.³

³ I need not, and thus do not, decide whether not applying the just-cause standard set forth in Wis. Stat. § 59.26(8)(b)(5m)(a)-(g) would diminish or abridge statutory rights. However, my decision that the statutory standard *should* be applied avoids that possibility and accords with principles of contract interpretation articulated in SEITZINGER V. COMMUNITY HEALTH NETWORK, 2004 WI 28, ¶ 102, n. 62, 270 Wis.2d 1, 52, 676 N.W.2d 426, 451 and other decisions cited therein:

An interpretation of a contract that could produce unlawful results is not reasonable. *Restatement (Second) of Contracts*, §203(a)(1981) (“[A]n interpretation which gives a reasonable, lawful, and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect.”). *See also* WILLISTON, *supra* note 8, § 32:11 at 453 (“Consonant with the principle that all parts of a contract be given effect where possible, an interpretation which renders a contract lawful is preferred to those which render it unlawful.”).

See also GLENDALE PROF'L POLICEMEN'S ASS'N V. CITY OF GLENDALE, 83 Wis.2d 90, 102, 264 N.W.2d 594 (1978) (“[A] contract provision interpreted to permit an employee to violate an ordinance requiring him to live within the city was illegal.”); WERC V. TEAMSTERS LOCAL NO. 563, 75 Wis.2d 602, 612-13, 250 N.W.2d 696 (1977) (“Just as a contractual provision to directly violate the law is void, a contractual provision conferring upon a third party the power to interpret the contract in such a manner that a violation will occur is also void.”).

II. APPLICATION OF THE SEVEN JUST-CAUSE FACTORS

Applying the seven just-cause factors set forth in Wis. Stat. § 59.26(8)(b)(5m)(a)-(g) compels the conclusion that the County had “just cause”, as that term is used in the CBA, to impose a ten-day suspension on the Grievant.

A. Whether the Deputy Could Reasonably Be Expected to Have Had Knowledge of the Probable Consequences of the Alleged Conduct

Regarding this factor, the Union’s contentions are not on point and are therefore unavailing. It first asserts that the Grievant “did not violate any of the listed infractions of the *Disciplinary Notice*.” (Union Br. 4). However, this assertion is not probative of whether the Grievant could reasonably be expected to have had knowledge of the probable consequences of her alleged conduct. Instead, the Union’s assertion is essentially a conclusory affirmation of the fifth factor: whether the sheriff discovered substantial evidence that the deputy violated the rule or order as described in the charges filed against the deputy. The Union also cites testimony by the Grievant to argue that “at no time during her shift on March 13/14 was she ordered to interview [the inmate seeking transfer].” (Union Br. 4-5). It then concludes that had such an order been given, none of the events in question would have occurred. I agree that no direct order was given, and that had one been given, the events leading to discipline may not have occurred. However, these points beg the question of whether the Grievant could reasonably be expected to have had knowledge of the probable consequences of *her* conduct.

Other proffered evidence, moreover, suggests that she indeed could reasonably be expected to have had such knowledge, namely, a conduct report containing a summary of performance issues, warnings of possible discipline, and actual discipline imposed.⁴ This conduct report includes *inter alia* entries regarding the Grievant’s lack of effective communication with, and respect for, colleagues and superiors, inability to receive constructive criticism, and failure to accept accountability. These shortcomings in past conduct resemble the nature of the alleged work rule violations underpinning the instant grievance: a lack of professionalism, respect, and courtesy for colleagues and superiors and an absence of coordination and efficiency in work performance. Entries in the report include without limitation:

11-13-08 Sgt. Hacht spoke with [the Grievant] about an incident on 11-04-08, ref. [the Grievant] and Deputy Heggie not getting along and [the Grievant] not taking constructive criticism. This incident is documented on 06-09-08 thru 12-09-08 employee performance appraisal.

⁴ The Union stipulated during the arbitration to the accuracy of the contents of this report. (Hr’g Tr. 66, Aug. 25, 2010).

- 11-19-08 Sgt. Hacht talked to [the Grievant] about an incident on 11-13-08, when [the Grievant] did not receive an inmate signature on a check. [The Grievant] said she thought she only needed a stamp because of what “one of her field training officers told her”. This incident is documented on 06-09-08 thru 12-09-08 employee performance appraisal.
- 12-09-08 Also documented, was a conflict/disagreement that [the Grievant] had with another deputy on 11-04-08, that Sgt. Hacht handled, [the Grievant’s] failure to respect her co-workers, accepting accountability, and being able to work together with co-workers.
- 3-23-09 Sgt. Brost spoke with [the Grievant] about using sick days consecutive to days off.
- 4-16-09 Sgt. Brost met with [the Grievant] reference an incident with Deputy Heggie a week before. [The Grievant] has had a couple of verbal arguments that have escalated out of control. Sgt. Brost told [the Grievant] that any more loud and unprofessional conduct will result in disciplinary action.
- 6-25-09 Sick day – before days off
- 09-03-09 I met with [the Grievant] and Sgt. DeNucci, and Detective Maze. Served 2nd probation extension letter and interviewed [the Grievant] reference WTPD incident.⁵
- 09-09-09 I met with [the Grievant] and Sgt. Brost. I recommended that [the Grievant] apologize to WTPD. [The Grievant] said “if that’s what you want me to do”. I told her I wanted her to do if [sic] for herself. Again, she said “if that’s what you’re telling me to do”. Showed no effort to do it on her own.
- 11-04-09 Began 7 day suspension for WTPD incident.

⁵ The WTPD incident refers to an encounter between the Grievant and the Watertown Police Department.

- 12-04-09 Performance appraisal given to [the Grievant] by Sgt. Hacht. Received a "2" (in need of improvement) in the area of "Maintains Jail Security". Other areas needing improvement documented were sick time patterns, constructive criticism without getting defensive, accepting responsibility when making mistakes, respecting others. Documented also was advising her not to sign off on giving medication until she actually gives the medications to the correct inmate.
- 12-12-09 Sgt. Hacht noted that during a meeting with [the Grievant], Field Training Officer Deputy Dubman, and Sgt. Hacht, that [the Grievant] was unprofessional and had outbursts.
- 12-12-09 [The Grievant's] November 09' monthly evaluation report meeting. Documented that [the Grievant] failed to secure Huber dorm 5 door after handing out medication, when she was informed she stated she had just got done handling out medication there and if anyone was coming out she would have seen them as she only had two other people to hand medication to in Huber dorm 4. Also documented is that [the Grievant] still becomes defensive when corrected or given constructive criticism.
- 12-25-09 Sick day – after days off and Christmas
- 1-07-10 Bi-weekly evaluation meeting with [the Grievant], Field Training Officer Steinbach, and Sgt. Hacht. Documented course/argumentative [sic] toward 2 inmates, also documented deputies are kept to a higher standard of professionalism
- 1-31-10 Written Reprimand – Medication Error
- 02-04-10 Restraint training – argumentative [sic] when corrected on the proper way to apply inmate restraints
- 03-12-10 Performance appraisal 12-09-09 thru 03-09-10 given to [the Grievant] by Sgt. Hacht. Concerns with sick time usage, constructive criticism, working on co-worker conflict resolution, and being held accountable for her actions discussed.

- 3-14-10 Sick day – prior to days off
- 3-20-10 Sick day – following days off
- 3-25-10 Served disciplinary notice for 03-14-10 incident. 5 day suspension that was held in abeyance from WTPD incident, began on 03-25-10. I told her that her probation was extended twice, she has received additional scenario training, and that I am trying to do what we can to see that she has a long, rewarding career at the Sheriff's Office. I told [the Grievant] that she could come to me anytime if she had any problems, ideas, or needed anything.
- 04-04-10 Sick day – Easter
- 04-12-10 Sick day – before a vacation day
- 05-05-10 Sick day – before days off
- 05-30-10 Written Reprimand – Absenteeism/Violation of work rule/Poor Performance [the Grievant] did not show up for a[n] overtime shift that she signed up for.
- 06-15-10 Suspension Recommendation (unknown amount of time, discipline investigation is not yet complete) Violations will be: Violation of rules/Unsatisfactory Performance/Reporting for Duty of Time/Chain of Command violation.
- 6-22-10 Called in sick. Scheduled for mandatory training for not completing training on 6/15/10. Brought in doctor's excuse.
- 7-11-10 Called in sick. Brought in doctors excuse
- 07-12-10 Spoke to Deputy Carney. I had heard that [the Grievant] told Deputy Carney that she was going to call in sick on 6-22-10, because she did not want to attend the training because she has affects from OC, so she was going to get a doctors excuse.
- When I spoke with [the Grievant] she denied saying anything about calling in sick to anyone prior to calling in sick for training on 6-22-10
- 08-11-10 Called in sick before her 3 days off. Brought in doctors excuse.

In sum, the conduct report not only highlights unacceptable conduct similar to that on which the grievance was based – unprofessionalism, disrespect, inefficiency, and eschewing accountability – but also warns of potential discipline for similar unacceptable conduct in the future. I thus find that the Grievant could reasonably be expected to have had knowledge of the probable consequences of her conduct.

B. Whether the Rule or Order that the Deputy Allegedly Violated Is Reasonable

The Union expressly concedes that the work rules allegedly violated were not unreasonable.

C. Whether the Sheriff, Before Filing the Charge Against the Deputy, Made A Reasonable Effort to Discover Whether the Deputy Did in Fact Violate a Rule or Order

In support of this factor, the Union re-emphasizes that “the events of the night of March 13/14 could have been prevented if the Department would have just ordered either [the Grievant] or Deputy Owen to interview [the inmate requesting a transfer].” (Union Br. 7). Again, this point begs the question posed by the particular factor to be applied, namely, whether a reasonable effort was made to discover if the Grievant violated rule(s). The Union also points out that other deputies could have handled the inmate transfer request. However, Sergeant Hacht explained that he wanted the Grievant to take the initiative to handle the matter to improve her work performance in areas that had previously been identified as needing improvement. That others could have handled the task, moreover, does not mean that the Grievant could not, and should not, have handled it and does not respond to the inquiry posed by this criterion.

Regarding this factor, in addition to obtaining statements from the other deputies that interacted with the Grievant on March 14, 2010, the Sheriff’s Department afforded the Grievant an opportunity to explain her behavior. More specifically, the Grievant met with Captain Haferman and Sergeant Hacht on March 22, 2010, to explain her conduct, and she was accompanied by Union Representative Steinbach. The Union presents no persuasive evidence that the County’s efforts to determine whether the Grievant violated work rules were not reasonable.

D. Whether the Effort Under the Third Factor Was Fair and Objective

The Union alleges that the County’s investigative efforts were not fair and objective, because it “based its decision that [the Grievant] violated certain work rules solely on the

subjective belief of several other Deput[ies] that [the Grievant] was talking in a loud voice.” (Union Br. 8). As noted, however, the Grievant was afforded an opportunity to explain her conduct while accompanied by a Union representative. And as further explained in the following section, the Union’s euphemistic reduction of the Grievant’s conduct to merely “talking in a loud voice” understates the deficiencies of her work performance. In any event, the Union doesn’t persuasively identify anything about the investigative efforts of the County that suggests unfairness or partiality. Nor can I.

E. Whether the Sheriff Discovered Substantial Evidence that the Deputy Violated the Rule or Order as Described in the Charges Filed Against the Deputy

Substantial evidence suggests that the Grievant slammed the metal box that houses controls to the pod unit door locks when she discovered the F Unit was locked down; yelled at, and was disrespectful towards, her colleagues and supervisor when they were in the central pod control center; and, during a subsequent discussion with Deputy Owen, raised her voice, used profanity, blamed others, and made a demeaning reference to Deputy Owens not having stripes. The testimony of other deputies corroborates these events. In addition, the Grievant’s conduct report reveals an established pattern or habit of being disrespectful to others and reluctant to accept accountability for her mistakes. In sum, substantial evidence supports the conclusion that in violation of work rules 2, 6, 7, and 10 quoted above, the Grievant failed to discharge her duties in a professional manner, to act in a way that fosters cooperation, to show respect and courtesy for others, and to avoid using demeaning language.

Substantial evidence also suggests that the Grievant failed to act and coordinate her actions with others so as to maximize efficiency, in violation of Rule 8. She was one of three deputies who were collectively advised by Sergeant Brooks to remove the inmate from his cell in the morning before the pods were open, to gather more information and determine an appropriate response. That the Grievant’s suggested course of action had been “overruled” did not somehow license her to do nothing more. Although she had not been specifically singled out by Sergeant Brooks to handle the inmate request, the latter did advise her and two other deputies what to do. The two other deputies’ shifts ended at 3:00 a.m., leaving only the Grievant out of the group originally briefed to carry out his advice.

That others arriving to work later could have handled the matter does not exonerate the Grievant for having neglected to follow up on it. In sharp contrast to the Grievant’s passivity in this regard was Deputy Owen’s initiative when she volunteered to talk to the inmate regarding the requested transfer. Although the Grievant was involved in processing an inmate release at approximately 4:30 a.m. and began dispensing medications at 5:00 a.m., she may still have been able to find out more information from the inmate prior to 5:00 a.m., just as Deputy Owen had offered to do. If she were unable to address the inmate request due to conflicting duties, she should at least have communicated her situation to Sergeant Hacht and sought proactively to ensure that another deputy either would handle the inmate’s transfer request or

process the other inmate's release. Instead, she simply assumed someone else would take care of the transfer request – even after Sergeant Hacht had counseled her on what he would do.

Thus, substantial evidence indicates that the Grievant failed to act and coordinate her actions with others so as to maximize efficiency, in violation of work rule 8.

F. Whether the Sheriff Is Applying the Rule or Order Fairly and Without Discrimination to the Deputy.

The Union offers no evidence of discrimination in the County's application of the work rules. It does maintain that such application was unfair, because other deputies were not disciplined and Deputy Kanters was not interviewed. Yet Sergeant Brooks had advised that the inmate should be removed from his cell in the morning before the unit pods were open, which

typically occurred at about 5:00 a.m. By that time, the other deputies who had received this advice had left. In addition, unlike the Grievant, Deputy Owen proactively offered to talk to the inmate requesting transfer. That the Grievant's supervisor preferred to allow the Grievant to show initiative and handle the matter was not unfair, in light of the nature and frequency of the Grievant's past work performance deficiencies. Moreover, Sergeant Hacht provided guidance to the Grievant by suggesting how he would handle the situation. In light of these considerations, I find that the work rules were applied even-handedly.

G. Whether the Proposed Discipline Reasonably Relates to the Seriousness of the Alleged Violation and to the Deputy's Record of Service with the Sheriff's Department

The Grievant's behavior in the events described above and her lack of initiative to follow up on the inmate's transfer request may not, in and of themselves, appear to warrant a ten-day suspension; however, the discipline imposed was not excessive when considered in proper context. First, a correctional facility is distinguishable from other work environments regarding the cooperation and mutual respect among the workforce necessary to ensure safety – of both workers and inmates. Corrections personnel must function as a cohesive unit and trust that they can depend on one another in the event that dangerous situations arise. The Grievant's conduct undermined, rather than furthered, a relationship of mutual respect and trust with her colleagues and supervisor.

Second, the Grievant's inappropriate, fractious behavior and lack of initiative do not constitute an isolated incident. Her conduct report spanning less than two years is rife with notes about her difficulties working with others, her disrespect for them, and her unwillingness to accept accountability. In addition, the conduct report reveals past discipline imposed on the Grievant, including a written reprimand, a seven-day suspension for an incident involving other law enforcement personnel, and a five-day suspension for the same incident which was held in abeyance.

In light of the seriousness of the violations, the Grievant's problematic record of service (including a previous lengthy suspension) and the legitimate objectives of progressive discipline, I find the requisite reasonable relation specified in this factor to be present.

CONCLUSION

For the foregoing reasons, I conclude that all of the seven just-cause factors militate in favor of sustaining the discipline imposed and that the County therefore had just cause to suspend the Grievant for ten days. Accordingly, the Union's grievance is denied.

Dated at Madison, Wisconsin, this 3rd day of February, 2011.

John C. Carlson, Jr. /s/

John C. Carlson, Jr., Arbitrator