BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
OUTAGAMIE COUNTY PROFESSIONAL POLICE ASSOCIATION	Case 203 No. 46210 MA-6911
and	
OUTAGAMIE COUNTY	

Appearances:
Mr. Frederick J. Mohr, Attorney at Law, 414 East Walnut Street, Suite 261, P.O. Box 1015, Green Bay, Wisconsin 54305, on behalf of the Association.
Mr. Roger E. Walsh, Davis & Kuelthau, S.C., Attorneys at Law, 111 East Kilbou

ARBITRATION AWARD

The Outagamie County Professional Police Association, hereafter the Association, and Outagamie County, hereafter the County, are parties to a collective bargaining agreement which provides for final and binding arbitration of disputes arising thereunder. The Association made a request, in which the County concurred, for the Wisconsin Employment Relations Commission to appoint a member of its staff to hear and decide an arbitration concerning the interpretation and application of the terms of the agreement relating to internal investigations. The Commission appointed Stuart Levitan to serve as the impartial arbitrator. Hearing in this matter was held in Appleton, Wisconsin on December 16, 1991; a stenographic transcript was prepared and delivered to the parties and the arbitrator on January 14, 1992. The Association submitted written arguments on January 22 and March 2, 1992. The County submitted written argument on February 26, 1992. On March 12, 1992, I informed the parties that the Wisconsin Supreme Court had scheduled oral argument in Manitowoc County v. Local 986B for April 28, 1992, and invited their comments on whether I should put this matter on hold pending the court's decision. The Association replied in the negative, the County in the affirmative. On March 30, I informed the parties I was holding the matter in abeyance at least until April 28. On June 11, the Court issued its decision. On June 12, I invited the parties to comment on the implications of the Court's decision. The County submitted a statement, on June 29; the Association waived its right to do likewise.

ISSUE

The Association frames the issue as:

> "Did management violate the rules and regulations incorporated by reference in the contract in the manner in which it investigated Gene Sipple?"

The Association's proposed remedy is a cease and desist order prohibiting further violations and a public apology for mishandling the investigation.

The County frames the issue as:

> "Did the County violate the contract in the manner in which it investigated Gene Sipple?"

The Arbitrator adopts the issue as framed by the Association.

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE IV - RULES AND REGULATIONS

4.01 The rules and regulations of the Outagamie County Sheriff's Department as established by the County in accordance with the provisions of and pursuant to Chapter 111.70 of the Wisconsin Statutes shall be made a part of this Agreement by reference. The Association shall be given thirty (30) days notice on any new rules or regulation proposed before it becomes effective.

. . .

ARTICLE VII - GRIEVANCE PROCEDURE

. . .

7.02 - Only matters involving the interpretation, application or enforcement of this Agreement which may arise between the County and employee (employees) or the County and the Association shall constitute a grievance and shall be processed in the following manner by the aggrieved employee or the Association Board of Directors. Individual grievances shall be signed by the aggrieved party. Association grievances shall be signed by the Association Grievance Committee. The written grievance shall include a listing of the section violated, the details of the violation and the remedy requested. If these items are not listed, the grievance will be returned for the items to be included.

. . .

Step 4. The grievance shall be considered settled in Step 3, unless the Association notifies the Personnel Director in writing within five (5) days of receipt of the written determination of the Personnel Director or last date due, of its intent to appeal the matter to arbitration. At the same time, the Association shall request the WERC to submit a panel of five (5) arbitrators to the parties. The parties shall alternately strike names from the panel until one remains, who shall be appointed the arbitrator. 1/ The Association shall make the first strike. The decision of the arbitrator shall be final and binding on the parties and the arbitrator shall be requested to issue a decision in writing within thirty (30) days of the conclusion of the testimony and argument. In rendering his decision, the arbitrator shall neither add to, detract from nor modify any of the provisions of the Agreement.

1/ The parties waived this provision and mutually concurred in the arbitration before a WERC staff member appointed by the Commission.

. . .

ARTICLE XXXI - SAVINGS CLAUSE

31.01 - If any article or section of this Agreement or any addenda thereto shall be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any article or section should be restrained by such tribunal, the remainder of the Agreement and addenda shall not be affected thereby and the parties shall enter into immediate collective bargaining negotiations for the purpose of arriving at a mutually satisfactory replacement for such article or section.

RELEVANT RULES AND REGULATIONS

SECTION I

CHAPTER V INTERNAL INVESTIGATIONS

A.GENERAL POLICY:

It is essential that public confidence be maintained in the ability of the Department to investigate and properly adjudicate complaints against its employees. The Department is a public institution and derives its support from the citizens of the community. By encouraging citizens to report their grievances and fairly investigating those complaints, it is demonstrating its willingness and ability to provide the type of policing the community deserves. Police personnel are unusually vulnerable to recriminations for actions they take in carrying out their responsibilities. Recriminations sometimes take the form of false allegations against an employee. It is important that complaints be processed in a manner that protects employees from false or harassing allegations. Timely and accurate investigations of alleged misconduct serve as a protection to both the employee and the community.

B.RECEPTIONS OF COMPLAINTS:

1.All complaints concerning conduct of police personnel, police services or the use of police equipment shall initially be referred to the immediate supervisor on duty.

2.When a citizen complains to an employee about the employee's own conduct, the employee shall attempt to satisfy the complainant with a brief explanation of the action taken. If the citizen is not satisfied with the explanation, the employee shall inform the person that a complaint may be made to the Department by contacting the employee's immediate supervisor and providing the person with the appropriate telephone number.

3.Any employee of the Department, who receives a complaint concerning another employee, shall suggest the person report the incident to the Division Head and provide the person with the appropriate telephone number.

4.Internal Complaints:

a.Any employee of the Department who has knowledge of an incident of employee misconduct shall immediately report in writing such incident to his/her respective immediate supervisor.

b.If the reporting employee believes the immediate supervisor might be involved in the misconduct or believes the immediate supervisor has knowledge of the misconduct and has not taken any action, the employee may report the matter directly to the Division Head of the involved employee's division.

c.This policy is not meant to be substituted for a supervisor taking disciplinary action to correct an employee under his/her command.

C.INFORMAL COMPLAINTS:

When a complaint appears to be founded merely on a misunderstanding, the immediate supervisor/Division Head will attempt to explain and resolve the matter. The immediate supervisor/Division Head shall inform the complainant of the results.

1.It is possible the immediate supervisor/Division Head will not be able to resolve the complaint at the same time it is made, in which case he/she may further inquire into the matter and then inform the complainant of the result.

2.If the immediate supervisor/Division Head cannot immediately handle the matter or feels it may be better dealt with by a supervisor of another shift or Division Head, the matter may be referred by written details. The supervisor who finally resolves the complaint shall advise the complainant of the result.

3.If the informal complaint process has not satisfied the complainant within 72 hours, the immediate supervisor shall refer the matter with written details to the Division Head. The written details will include the complainant's name, address, telephone number, nature of the complaint, action taken by the immediate supervisor and any other appropriate records. (i.e. incident report, dispatch records)

4.When the Division Head is notified of an informal complaint that has not been satisfied, he shall, at his earliest convenience, inform the Sheriff of the complaint.

D.FORMAL COMPLAINT PROCESS:

Whenever a complaint alleges criminal activity, excessive force, violation of Constitutional rights, gross misconduct or another complaint that has not been resolved through the informal process, the following formal process will be followed:

1. The complaint will be referred to the immediate supervisor on duty, who will take brief information concerning the nature of the complaint, complainant's name, address and telephone number and identity of the officer(s) involved, if known. The immediate supervisor will prepare a written report including the above information and any additional background information available and refer to the Division Head of the employee(s) involved. The report will be completed before the end of the shift on which it was taken.

2. The immediate supervisor shall inform the complainant that the Division Head will be in contact to further discuss the complaint.

3. The Division Head shall inform the Sheriff of the complaint at his earliest convenience and of the steps being taken to investigate the complaint.

E. PROCESSING FORMAL COMPLAINTS:

1. The Division Head shall attempt to gain as much information as possible during an initial interview with the complainant. All complainants who wish to make a formal complaint will be required to make their complaint at the Department; however, if unusual circumstances exist, the complaint may be taken at some other location.

2. All complaints shall be filed and a record of the names of the complainants shall be kept.

3. The Division Head shall take a formal statement, have it signed and have it notarized. This shall be done in the presence of another sworn employee. The Division Head may inform the complainant that if the complaint is found:

a. To be frivolous, he/she may be prosecuted for interfering with an employee's performance of duty.

b. To be made for harassment or retaliation, the employee may file a civil suit.

4. The Division Head shall determine when the employee involved and the immediate supervisor shall be notified of the investigation. In any situation where the misconduct is major, the employee shall be informed as soon as possible, as long as it would not interfere with the investigation.

a.If the Department charges are filed, the employee shall receive a copy of the full charges.

b.If Department charges are not filed, the employee will be informed of the nature of the allegation and the findings of the investigation.

5.At any time an employee is being informed of an investigation into his/her misconduct, the Bargaining Unit and the immediate supervisor shall also be notified.

F.INVESTIGATION OF FORMAL COMPLAINTS:

The investigation of formal complaints will be conducted by the Division Head. When specialized investigative skills are required, the Division Head may utilize employees and equipment from other divisions.

1.A thorough investigation shall be made of each complaint, including an interview with the employee(s) involved.

2.Investigations will be completed within thirty (30) working days (Saturdays, Sundays and Holidays listed in the contract excluded) of the receipt of the signed complaint, unless an extension of time is granted by the Sheriff for good cause. The Division Head shall forward a report of the investigation with conclusion of facts to the Sheriff. The Department shall determine whether it wishes to file Department charges against the employee as quickly as possible upon completion of the investigation.

3.All complaints and complaint investigations shall be confidential and shall not be discussed within or outside the Department without approval of the Sheriff.

4.All employees are required to cooperate with an investigation. An employee is required to answer all questions posed by persons conducting the interview. Failure to cooperate with an investigation may be grounds for disciplinary action.

5.When criminal charges may be filed against an employee, interviews shall be preceded by the appropriate Miranda Warnings and an employee may claim 5th Amendment privilege.

6.When a complaint is associated with a police investigation or criminal case pending before another jurisdiction, the Sheriff will be notified by the Division Head prior to starting the Department's investigation. If the Sheriff desires to

temporarily delay a complaint investigation pending action by the other jurisdiction, the complainant shall be notified. However, the fact that an investigation or charges may be pending against an employee in another jurisdiction shall not be allowed to prevent the Department from accepting the complaint.

G.DISPOSITION:

1.If a complaint is found to be unfounded or unsubstantiated, no record of the complaint shall be placed in the employee's personnel file.

2.In all complaints that are found to be justified, the appropriate supervisor may take disciplinary action.

3.All complaints which are founded, where the disposition is to be more severe than an oral or written reprimand, shall have charges drawn up by the Division Head and referred to the Sheriff. The Sheriff, after reviewing all appropriate information, shall make his disposition of the matter in writing and the employee and the Bargaining Unit shall receive a copy.

4.All information concerning discipline for employee misconduct shall be removed from the personnel file after a period of five years has elapsed, assuming additional discipline for similar offenses has not taken place.

5.The Division Head shall inform the complainant of the results of the investigation and any subsequent action taken.

6.Nothing in these disciplinary rules shall be construed to limit the management prerogative of the Sheriff or any other supervisory employee to take corrective action whenever appropriate, nor to prevent the Sheriff from filing formal charges against an employee, irrespective of any complaint.

7.Information on matters of suspension or termination may be released to the news media at the discretion of the Sheriff.

BACKGROUND

This dispute concerns the procedures which Outagamie County Sheriff Bradley Gehring followed in investigating a citizen complaint -- ultimately proved to be unfounded -- of criminal misconduct brought against the grievant, Investigative Sergeant Gene Sipple.

Prequel

In May, 1990, controversy rocked the Outagamie County Sheriff's Department, as various allegations were lodged against Sergeant Thomas Drootsan. In the period May 3, 1990 to May 20, 1990, articles or editorials appeared in the Appleton Post-Crescent with the following headlines: "Sheriff Denies Misuse of Office"; "Why Do We Keep Sheriffs On the Ballot?"; "Supervisor to Drootsan: Think About Quitting"; "Drootsan Meeting Closed to Public"; "Allegations Against Drootsan Dropped"; "A Funny Thing Happened on Way to Drootsan Investigation"; "Reversing Plans, Drootsan Will Retire"; "Sheriff's Top Assistant Wants His Job"; "Deputies Divided Over Drootsan"; "Drootsan Will Serve Out His Term"; "Department Denies New Allegations"; "Drootsan Frustrated By Endless Barrage of Hazy Charges". On August 1, Drootsan and two deputies filed $50,000 slander and libel claims against a County Supervisor who had been especially critical of departmental activities.

On September 11, 1990, five candidates contested for the Republican Party nomination to succeed Drootsan: Brad Gehring, deputy investigator in the Department's youth aid bureau; Dennis Jansen, Kimberly Police Chief; Undersheriff Ron Olm; Nathan Smith, used-car salesman and part-time bus driver, and Sgt. Gene Sipple, the grievant. Gehring won the primary, and, in November, was elected to a two-year term as Sheriff.

FACTS

On January 11, 1991, there was a burglary at the Grand Chute residence of Eileen Benyo and Scott Palmer. Sipple and Sergeant David Spaeth investigated the burglary, which involved a substantial amount of jewelry and leather coats.

Authorities subsequently apprehended three (3) alleged perpetrators, all of whom plead guilty. Some, but not all, of the jewelry was recovered.

The Benyo/Palmer complaint against Sipple centered on their concerns that he had somehow come into possession of certain items taken in the burglary. Specifically, they believed he had, in effect, stolen a diamond tennis bracelet and a men's gold wedding band.

Benyo first raised her concerns in a loud, almost abusive encounter in the Office of the Outagamie County District Attorney, on Friday, March 8, 1991. Catherine Woerishofer, the Victim/Witness Coordinator, tried to calm Benyo down and have her bring her concerns directly to the Sheriff's Department, but Benyo resisted this counsel.

After Woerishofer reported this incident to Undersheriff Leo Bosch on Monday, March 11, Bosch relayed the matter to Sheriff Gehring, who was out of town. Gehring told Bosch to investigate.

Also on March 11, Bosch called the Benyo-Palmer residence, and left a message on the answering machine. The next day, Palmer expressed to Bosch skepticism about a complete and honest investigation, contending that he had been told by a friend in the Department that Sipple was crooked. When Bosch told Palmer that another agency could be brought in if necessary, Palmer showed distinct unease at the prospects of the FBI becoming involved. Palmer told

Bosch that Benyo would be out of the state for another fortnight; when Bosch told Palmer that the investigation could not be put on hold that long, Palmer reluctantly agreed to meet with Bosch the following evening.

On March 13, at the appointed hour, Bosch and Lt. Leatherbury went to the Palmer residence, but there was no one home. The next day, when Bosch contacted Palmer at his place of employment (Kimberly-Clark), Palmer, after explaining why he missed the previous evening's appointment, related two aspects of Sipple's behavior he felt odd: that Sipple had found the gold men's wedding band shortly after Palmer told him that he didn't care about the other jewelry, but the wedding band was of high concern; and that Sipple knew the exact number of diamonds in the tennis bracelet even while claiming that the item had been pawned in Chicago. Bosch asked Palmer to file a formal complaint; Palmer demurred, saying Benyo should be the complainant. Palmer also indicated he did not want to file a complaint due to his concerns of how the matter would be handled within the Sheriff's Department.

On March 21, Bosch left a message for Palmer on his home answering machine. Bosch also sought to contact Palmer at work, but was told by a supervisor not to call anymore unless it was an emergency.

On March 22, Bosch called the residence, leaving a message on the answering machine. There was no return call. On March 25, Bosch left similar messages, with similar results, on the home answering machine and at Kimberly-Clark. Bosch called home and workplace on March 26 and 27 as well; none of these calls were returned.

During this time period, Bosch became aware that Sipple's wife, also a County employe, was wearing a tennis bracelet which she had indicated came from the grievant.

On May 10, Bosch recommended to Sheriff Gehring that "any further investigation into this matter be done outside" the Sheriff's Department. In the introductory section in a memo on that date, Bosch wrote as follows:

> This memo will summarize the actions taken by this department in this letter. As you will see, after Benyo initially complained loudly to the district attorney's office that a "crooked cop" stole some of their jewelry after it was recovered from a burglary, the complainants fiance became quite evasive. He did not return our phone calls, broke scheduled appointments and, when pressed for details, wanted assurances that the FBI would not become involved "in the jewelry". This latter comment from Palmer was in response to my attempt to assure him that a thorough investigation into this matter would be made, even if it involved bringing in another agency.

On May 14, Gehring sent to Appleton Police Chief David Gorski the following letter:

> Dear Dave:
>
> Enclosed, you will find a summary of allegations that have been made against one of my deputies. I have also included a copy of the burglary report which precipitated these allegations.
>
> Inasmuch as the complainants have shown a reluctance to

> contact us (and given Mr. Sipple's unsuccessful candidacy in 1990) I ask that this matter be thoroughly investigated by your department. Your contact persons here should be only Tim Leatherbury or Leo Bosch.

Gorski assigned the investigation to Lt. Robert Kavanaugh, who met with Bosch on the morning of May 20. Bosch explained the allegations, related that Benyo doubted that the Sheriff's Department would conduct a fair investigation, and noted that Benyo had ignored several of his attempts to contact her. At no time prior to the referral of this matter to the Appleton Police Department had either Benyo or Palmer filed a formal, written statement.

Kavanaugh then succeeded in contacting Benyo, explaining that the Appleton Police Department would now be conducting the investigation. Benyo agreed to meet with Kavanaugh that afternoon, following a hearing on restitution. Benyo was unable to meet with Kavanaugh at length, however, because the duration of the hearing did not leave much time until her next appointment, with the dentist.

In a conversation while being walked to her car, Benyo explained to Kavanaugh the bases for her suspicions against Sipple, to wit: various non-verbal expressions, i.e., nervousness, which he displayed while talking to her about the tennis bracelet; the fact that Sipple knew the tennis bracelet had 39 diamonds, even though she had never related that information; and the sudden discovery of the men's wedding band the day after Benyo told Sipple she would report her suspicions to his supervisors if the band were not returned.

Kavanaugh told Benyo he hoped to hear from her after her dentist's appointment. When he had not heard from her by 3:00 p.m., he phoned her; Benyo said she had had a root canal, and would be unable to meet further that day. Benyo agreed to meet with Kavanaugh the following morning.

Benyo cancelled that meeting, however, having her fiance, Palmer, call Kavanaugh and relate her concerns about retaliation by Sipple, especially if she were in fact overreacting in her allegations. When Palmer told Kavanaugh that Benyo would not continue with the investigation, Kavanaugh asked if she would participate in a John Doe proceeding; Palmer said she would. Kavanaugh told Palmer that he would be continuing the investigation without a written statement, based on Benyo's statements of May 20, and that it would not be necessary for Benyo and he to talk further at that time.

Between May 21 and May 30, Kavanaugh continued the investigation, interviewing the alleged perpetrators, pawn shop operators, and law enforcement personnel from other jurisdictions.

On May 21, one of the alleged perpetrators told Kavanaugh that she had pawned the tennis bracelet at a particular Chicago pawn shop, and that it was the jeweler who related that the bracelet had 39 diamonds. This was confirmed by the owner and operator of Crown Jewelry and Pawn the following day.

Shortly before noon on May 30, Kavanaugh met with Sipple. Kavanaugh later reported on this meeting as follows:

> INTERVIEW WITH SGT. GENE SIPPLE:
>
> On May 30, 1991 at 1150 hours I met Sgt. Gene Sipple at the APD in the interview room directly off the lobby of the department. At that time I explained to Sipple that I was investigating this complaint at the request of the Sheriff, Brad Gehring, concerning allegations made by

Eileen Benyo, that not all of the recovered jewelry had been returned to her.

Sipple was visibly upset about the allegations and repeatedly stated that she had been accusing him and others of not returning jewelry quick enough after it had been recovered. Sipple stated that he explained to her that without the District Attorney's permission, he could not return the recovered jewelry. Sipple stated that throughout the investigation, he consistently worked with Sgt. David Spaeth, and also probation and parole agent Steve Langlois. Sipple believes that throughout the investigation, Benyo was very difficult to work with and always worked with a partner to verify everything he did. Sipple recalled an incident where he was speaking with Benyo over the phone, after the jewelry had been returned to her, and that she was making round-about accusations that he did not return all the jewelry. Sipple then stated to her, "If you're insinuating that I, my partner, or the probation agent are thieves, then this conversation is over." He then recalled that she made certain references to getting an attorney, particularly MaryLou Robinson. Benyo persistently asked Sipple to look through the property room again to see if he could not recover the man's wedding ring that had not been returned to her.

After that conversation, Sipple then went to Dave Spaeth and informed him of the persistence of Benyo in thinking the man's wedding band ring was still in the leather coats. Sipple then advised Spaeth that he was going to remove the packaged leather coats from the evidence locker and go through each coat once again. Spaeth then offered his assistance in going through the coats.

Sipple removed the coats from evidence and signed for them through Sgt. Heenan. He seemed to recall that there were between three and four boxes of leather coats. While he was going through one of the boxes, Sgt. Spaeth came into his office and offered to give him a hand. Sipple recalls that while he was on the telephone, Spaeth reached into an inside pocket and pulled out a man's wedding ring. He states that the ring was found in a short leather coat, inside pocket.

Sipple explained that he recently purchased an "X and O" bracelet for his wife for under $1000.00 from Sue Chein. Sue Chein is a jewelry dealer who works out of her home on Briarcliff Drive in Appleton; phone 733-6892. Sipple states that he is a friend to the Chein family and has been for some time. He further explained that he has not yet paid for the X and O bracelet, but that it was a normal sales transaction. He denies that he himself is a jewelry broker. He explained that an X and O bracelet is a bracelet that has an X configuration of gold and then a diamond between the next X configuration. It is not like a tennis bracelet where there is a continuous row of diamonds around the bracelet. This officer did see the X and O bracelet worn by his wife.

The interview with Sgt. Gene Sipple ended at 1315 hours.

Kavanaugh met again with Sipple on June 3, reporting on that meeting as follows:

> On June 3, 1991, at 1245 hours, I again met with Sgt. Sipple at the APD, in the interview room off the main lobby. At that time, Sipple seemed to be highly agitated and was complaining about the internal procedural handling of the investigation. I explained to Sgt. Sipple that I was not involved in any internal investigation into this case, but rather my investigation was strictly from a criminal point of view. Sipple then stated that according to the Outagamie County Sheriff's Policy, the procedure is the same for internal investigations and criminal investigations against police officers. Once again, I informed him that I was not a part of that decision process and that I was asked to investigate the possibility of jewelry not being returned to the CO, Eileen Benyo. I did thank Sgt. Sipple for voluntarily coming to the APD to talk with me concerning the allegations. I thanked him and reminded him that he did not have to talk to me about this and this was strictly voluntary. He acknowledged that he knew that he did not have to talk to me and that he wants to cooperate because he had nothing to hide.
>
> I explained to Sgt. Sipple that I wanted to get a better idea of what jewelry had been recovered and what items were still missing. Attached to the complaint are drawings of jewelry made by Eileen Benyo, which is what we used for reference.
>
> On the side margins of the renderings are various X's, O's, '-' (minus signs), and check marks. I asked Sgt. Sipple what the various marks meant to him as he put them there. He stated that he did not recall exactly what each one meant because he made these marks as he was talking to various jurisdictions about the jewelry. He stated that he sat down with Dawn Woodward and went through the various renderings and asked her where she thought each item went to. He began with Page 1 and Dawn explained that the various pieces were either not sold or they were pawned in Milwaukee or Chicago. After talking with Dawn Woodward, Sipple had learned that the woman's cocktail ring with diamond baggetts (sic), the matching woman's earrings with diamond baggetts (sic) around the outside and ruby stones in the center, and the woman's cocktail ring with multi-diamond stones and emerald sets, and the woman's diamond bracelet described as a tennis bracelet, were all sold in Chicago by Dawn. Dawn had also identified to Sipple, the antique diamond earrings, earrings with two diamonds on each earring, one larger diamond and one smaller diamond, were lost in a Milwaukee hotel. Sipple stated that Dawn was wearing these earrings while in Milwaukee and left the earrings on the vanity in the room at a Best Western Motel in Milwaukee. Sipple informed Woodward that because she was in possession of the stolen property

and because she had lost the earrings, that more than likely she would be responsible for the restitution of those missing items.

While Sipple went through the renderings with Dawn Woodward, her attorney Mr. Ronald Colwell, was present.

This interview ended at 1400 hours.

Kavanaugh also met with Sgt. David Spaeth on May 31, reporting on that meeting as follows:

INTERVIEW WITH SGT. DAVE SPAETH:

On May 31, 1991, I met with Sgt. Dave Spaeth at the APD in the interview room adjacent to the front lobby. I then gave Sgt. Spaeth a brief explanation as to the scope of my investigation and had a few questions I wanted to ask of him. Spaeth recalled that the specific incident of locating the man's wedding ring occurred around or about January 24th. He recalled that Sipple came to him and said, "She keeps insisting we missed the ring." At that point, Sipple told Spaeth that he was going to take all of the coats from the property bay and search each pocket once again.

Spaeth informed me that he did not specifically search each pocket the first time, but rather padded and squeezed the pocket outside in searching for jewelry.

Sipple then removed the boxes from evidence and at that time Spaeth assisted him in searching through each pocket. Spaeth took a box of leather coats and then found the ring in the inside pocket of the woman's black leather coat. Spaeth states he recalls the black leather had a sort of design in the leather.

Spaeth was with Sgt. Sipple through most of the investigation and the times he wasn't with Sipple, he believes that Probation Agent Langlois was with him. He did not suspect Sipple of ever removing any jewelry without property documenting the jewelry and inventorying the item. Spaeth admitted that the fact that the man's ring had not been recovered the first time was due to his error as he was the one that searched the coats originally.

END OF REPORT

On June 7, Sipple orally presented a grievance to his immediate supervisor, alleging violation of Article IV, Section 4.01, and of the policies cited above, and requesting relief including, but not limited to, a cessation of the internal investigation and a joint conference. The grievance, denied at Step 1, was presented to the Sheriff on June 10.

On June 11, Kavanaugh submitted his report, as follows:

SUPPLEMENTAL REPORT

RECRUITING OFFICER: CAPT. KAVANAUGH #117

REPORTING DATE: 06/11/91

SUMMARY OF INVESTIGATION:

The concerns of Eileen Benyo involve the impression that she had not received all of the recovered jewelry from the investigative officer, Sgt. Gene Sipple. The scope of this investigation is threefold:

First, attempt to locate the missing tennis bracelet.

Second, to satisfy the question asked by Benyo, "How did Sipple know there were 39 diamonds in the tennis bracelet when I never told him the exact number."

Third, to inquire into the concern that Benyo expressed when she insisted that Sipple locate the man's wedding band or she would report her suspicions, that he was in possession of the ring, to his supervisors.

Documentation does exist that proves Dawn Woodward sold the tennis bracelet to Crown Jewelry & Pawn Shop, Oak Park, IL. Woodward admits to pawning the tennis bracelet, along with matching earrings and a ring at the jewelry store. This information is further corroborated by Mr. Ross, who owns and operates Crown Jewelry & Pawn. Further, the conversation with Det. Dave Richter, from the Chicago Police Dept., confirms that Woodward sold the items to the pawn shop and after 30 days, the pawn shop did resell the items. Det. Richter states that it was not possible to trace the cash transaction to the customer who purchased the tennis bracelet. However, this information does refute the allegation that Sgt. Sipple did, in fact, retain the tennis bracelet. The allegation that Sipple gave his wife a tennis bracelet proved to be false as her bracelet is an 'X and O' bracelet, purchased in the Appleton area.

The issue relating to how Sipple knew there were 39 diamonds in the tennis bracelet, was satisfied when interviewing Dawn Woodward, Jamie Boshers, and Nathan Wilz, when they explained the jeweler who purchased the tennis bracelet, counted each diamond and informed them there were 39 diamonds. They had informed Sgt. Sipple that the tennis bracelet contained 39 diamonds.

Finally, the issue that Benyo suspected Sipple of retaining a man's wedding band, and that she would not have received the wedding band back from him had she not threatened to go to his supervisors, was addressed when interviewing both Sgts. Sipple and Spaeth. Sgt. Sipple informed me that after a telephone conversation with Benyo, where she testified that he still had the man's wedding band, he informed Sgt. Spaeth that he was going

to look a second time through the leather jackets in an effort to locate the wedding band. Sipple explained that he took the leather jackets from the property room and began searching through each pocket of the jackets. Sgt. Spaeth then assisted Sgt. Sipple, and at that time, located the wedding band in an inside pocket of a short woman's leather jacket. Sgt. Sipple then contacted Benyo and told her that the ring had been located, which created more suspicion in Benyo's mind.

Sgt. Spaeth explained that it was his error in not locating the ring in the first search of the jackets. He said that he initially padded and squeezed the pockets of each coat rather than place his hand into each pocket, searching for jewelry. The issue appears to be that of an oversight, and not any deliberate effort to deprive Benyo of any jewelry. Furthermore, the ring would have ultimately been returned to Benyo when the leather coats were returned to her, and she would have found the ring herself when inspecting the coats, as did Sgt. Spaeth.

As a result of this investigation, I feel that the jewelry that had been pawned in Milwaukee and Chicago are no longer recoverable. Most of the defendants in the burglary investigation, were unable to identify exactly what pieces of jewelry that they sold in Milwaukee and in Chicago, with the exception of Dawn Woodward. The other principles involved were generally very vague in describing jewelry. When they were shown the restitution form completed by Benyo, the defendants did not recall seeing any ivory carved container or children's jewelry. All of the defendants agree that there was not a man's gold watch with a black leather band among the pawned items.

CASE STATUS & DISPOSITION:

The status of this investigation is unfounded as there is no information that would indicate that Sgt. Sipple, Dave Spaeth, or any other members of the Outagamie County Sheriff's Dept. had retained any of the recovered jewelry or other property items belonging to Eileen Benyo.

END OF INVESTIGATION

On June 13, Kavanaugh wrote to Benyo, as follows:

Eileen Benyo
N 2331 US HWY 45
Hortonville, Wisconsin 54944

Dear Ms. Benyo:

Regarding the investigation involving Sgt. Eugene Sipple,

Outagamie County Sheriff's Department, the case has been brought to a conclusion and a summary of the findings is provided below for your review.

Portions of the information provided herein have already been provided to you per telephone conversations; however, I will cover those points again for the sake of review.

First, as you know, I did talk with the investigator from the Chicago Police Department, who confirmed that the tennis bracelet, earrings, and a ring were sold to Crown Jewelry & Pawn Shop, Oak Park, Illinois. The jewelry was not recovered by the Chicago police because the business, after holding it for 30 days, resold the items; no further records were kept of the sales transaction.

During one of our conversations, you asked how Sgt. Sipple knew of the exact number of diamonds in the tennis bracelet, when you never provided him with that information. After interviewing all of the defendants in the burglary incident, I learned that the pawnee in Oak Park, Illinois, counted the diamonds in the bracelet and informed the pawner, Dawn Woodward, of the exact number of diamonds. Therefore, the number of diamonds in the bracelet was known to the burglary defendants and ultimately, Sgt. Sipple.

Finally, regarding the issue involving the men's wedding ring, I interviewed both Sergeant's Sipple and Spaeth concerning the ring. Sgt. Sipple, after a conversation with you, told Spaeth that he was going to look through the leather jackets once again, in an effort to locate the ring. Sgt. Spaeth originally inspected the jackets for jewelry; not Sipple.

Sgt. Sipple removed the jackets from the property section and with the help of Spaeth, went through each pocket. At that point, Spaeth found the ring in an inside jacket pocket. Subsequently, Spaeth contacted you concerning the found ring. Spaeth stated he did not put his hand in each jacket pocket during the first inspection; hence, he inadvertently missed the ring. Therefore, the ring was not initially recovered through oversight, rather than any intentional act.

In conclusion, after interviewing all of the parties involved in this burglary investigation, I have concluded that there is nothing to suggest any intentional wrong doing by Sgt. Sipple or any other members of the Outagamie County Sheriff's Department. If you wish to talk to me further about this matter, please contact me at 832-5540.

Sincerely yours,

Robert Kavanaugh
Captain
Investigative Services Unit

On June 14, Kavanaugh wrote to Sheriff Gehring, as follows:

Sheriff Brad Gehring
Outagamie County Sheriff's Dept.
410 S. Walnut Street
Appleton, Wisconsin 54911

Dear Sheriff Gehring:

I have recently concluded the investigation concerning various allegations against Sgt. Sipple. Provided herein, is an offense report documenting the investigation.

The end result of the investigation failed to show any wrong doing by Sgt. Sipple or any other members of the sheriff's department.

Recently, Eileen Benyo moved from Grand Chute to Hortonville. Her telephone number is unlisted. I have enclosed a copy of a letter sent to her explaining the results of the investigation. I have also asked her to contact me if she has any questions regarding the conclusions.

If you wish to meet with me after reviewing the enclosed documents, please contact me at 832-5540.

Sincerely yours,

Robert Kavanaugh /s/
Robert Kavanaugh
Captain
Investigative Services Unit

On June 24, Bosch wrote to Sipple, as follows:

June 24, 1991

To:Sgt. Gene Sipple

From:Undersheriff Leo Bosch

Re:As below

This writing is to inform you that on March 8, 1991, Eileen Benyo made a complaint to the Outagamie County District Attorney's Office. She alleged criminal behavior by you during your investigation (#91-128) of a burglary at her residence on 1-11-91.

Eileen Benyo and, to a lesser extent, her fiance, Scott Palmer, claimed that you kept some of the jewelry which had been recovered by you and/or other members of this department.

It was determined that it would be in the best interest of all persons involved in this matter, to have an independent criminal investigation made. Consequently,

> a criminal investigation was conducted by the Appleton Police Department. That investigation has been completed, and has completely exonerated you of any criminal wrong doing.
>
> A copy of the Appleton Police Department report has been sent to the District Attorney's Office. A copy of this report is also available for you if you wish to have it.

Other than a comment by Gehring to Sipple on May 30 that the matter "was not political", neither Gehring nor Bosch ever formally notified Sipple that he was the subject of a criminal investigation. And the first Sipple learned of the conclusion of the investigation was on June 24, when Staff Sergeant Mike Heisler handed him a copy of Bosch's memo of that date, stating that the letter constituted an examination.

POSITIONS OF THE PARTIES

In support of its position that the grievance should be sustained, the Association asserts and avers as follows:

> The Rules and Regulations are incorporated by reference into the collective bargaining agreement. In the manner in which it investigated the grievant, the Department violated those Rules and Regulations; the improper actions, and the sections violated are as follows:
>
> 1. Sipple was not contacted by the division head, (2)(d);
>
> 2. The initial interview and complaint was not made at the department (e)(1);
>
> 3. The division head never took a formal statement, nor did he have the statement signed or notarized (e)(3);
>
> 4. The administration never informed the grievant "as soon as possible", (e)(4);
>
> 5. The bargaining unit was never informed of the investigation, (e)(5);
>
> 6. The department head did not interview the grievant, (f)(1);
>
> 7. The investigation was not completed within 30 days, (f)(2);
>
> 8. The complaint was not kept confidential, (f)(3);
>
> 9. The complaint was placed in the grievant's personnel file, (g)(1).
>
> Unquestionably, the Sheriff and Undersheriff failed to follow the negotiated Rules and Regulations; the Sheriff admitted as much under oath. By their actions, they violated the collective bargaining agreement, and caused the grievant substantial personal embarrassment, inconvenience, worry and permanent harm to his reputation.
>
> Accordingly, there should be a finding of violation on the part of the Sheriff and Undersheriff, and an order entered requiring a public apology for the violation of the contract.

In support of its position that the grievance should be denied, the County asserts and avers as follows:

> It is well-settled that a Sheriff's statutory and constitutional duties and powers to investigate crimes cannot be limited by a collective bargaining agreement. Professional Police Association v. Dane County, 106 Wis. 2d. 303 (1982). Grievance arbitration provisions would be included in this prohibition.

The investigation of a crime is one of "those immemorial principal and important duties that characterized and distinguished the office" of sheriff, and thus is constitutionally reserved to that officer. Indeed, the investigation of crimes has long been the most principal and important duties characterizing the office; any provision in the collective bargaining agreement which restricts the sheriff in these duties is void and unenforceable.

As the Wisconsin Supreme Court instructed, it is possible to harmonize, to a degree, the collective bargaining agreement with the constitutional powers of the sheriff. The process for handling complaints against departmental personnel contemplates two situations -- complaints about job performance or other personnel issues, and complaints alleging criminal conduct. Those policies involving complaints of non-criminal issues can be enforced and given effect in a manner which does not infringe upon the sheriff's constitutional powers. But those policies involving complaints of criminal activity cannot be enforced, as they would deprive the sheriff of constitutionally reserved powers. In the instant case, the policies cited by the grievant all involve investigation of criminal activity, and thus cannot be enforced.

In the alternative, even if the policies could be enforced against the sheriff, there has been no violation of these policies, as the investigation adhered to the flexible requirements of the internal investigation policy. In his allegations of multitudinous violations of the policies, the grievant has referenced only selected portions of the policies, or misunderstood the policies cited. Specifically,:

* Sipple was not contacted by the department head regarding the complaint because that courtesy is owed the complainant (here, Benyo/Palmer), not the grievant.

* The initial interview and complaint were not made at the department because of the existence of unusual circumstances, as contemplated in policy E 1. It was the presence of unusual circumstances, namely the complainants' fears of a cover-up, that caused the investigation to be conducted as it was.

* That the grievant was not notified about the investigation sooner than he was in compliance with policy E 4, which allows a discretionary delay in notification until such time as "it would not interfere with the investigation."

* Because the Association was informed by the grievant of the investigation prior to the

time that the grievant himself was officially informed, there was no violation of policy E 5, which provides for notification to the Association of any investigation at the time when the respondent is so notified.

* Because policy F 1 contains no hard and fast requirements of whether the respondent be interviewed, there was no violation in the fact that the department head did not interview the grievant.

* Because policy F 2 grants the Sheriff the right to grant an extension, and because such extension was granted, there was no violation in the fact that the investigation was not completed in thirty (30) days.

* Because department supervisors kept the matter confidential, and shared knowledge of the investigation solely on a need-to-know basis, there was no violation of the confidentiality provisions of F 3.

* Because there was no credible evidence at hearing that a copy of the complaint was placed in the grievant's personnel file, there was no violation of the policy preventing such placement.

The internal investigation policy directly conflicts with, and interferes with, the Sheriff's statutory and constitutional powers; while the policy can be harmonized with the Sheriff's powers regarding personnel complaints that do not involve criminal allegations, the policy cannot be harmonized, and cannot be allowed to hamper, the investigation of crimes. Here, the investigation was of a criminal case, and the policy cannot be enforced.

Further, in the alternative, if the policy could be enforced, the facts disclose that there were no violations. The Association's allegations center around a selective reading of the policy and a hyper-technical construction. There has been no violation of the flexible provisions of the policy and the grievant has not suffered from the manner in which the investigation was conducted.

In its reply, the Association posits further as follows:

The County's entire argument is premised on an incorrect application of precedent. The collective bargaining agreement does not limit the sheriff's statutory or constitutional powers, but merely requires that rules be established and adopted by reference. The contract leaves to the Sheriff the power to set such rules, and merely requires notice when such rules are changed.

> This is the sort of harmonization the Supreme Court has repeatedly endorsed.
>
> The contract does not transfer any of the Sheriff's responsibility for investigations, but merely eliminates some of that official's discretion in the implementation of a new rule. The rules remain the Sheriff's own rules.
>
> As the undersheriff clearly testified, he is bound by the rules of the department. As the Sheriff clearly testified, he neither changed the rules during his term in office, nor followed the rules regarding this investigation. The Sheriff and undersheriff ignored the rules, committing numerous and egregious violations. In so doing, they thereby violated the collective bargaining agreement.

In its analysis of the relevance of Manitowoc County v. Local 986B, AFSCME, AFL-CIO, the County states as follows:

> The situation in this grievance clearly involves the exercise by the Sheriff of historic duties and powers of "law enforcement and preserving the peace," which the Court held could not be restricted by collective bargaining agreements. By attempting to restrict the Sheriff in the manner in which he investigated a crime, and by asserting that the Sheriff was required to follow existing rules, the Association attempts what the Court said could not be done. It would be an improper limitation on the Sheriff for an arbitrator to hold that the Sheriff neither followed the rule nor had authority to change the rule. The grievance procedure in the collective bargaining agreement cannot be used to such end.
>
> The Sheriff followed the rules, and committed no violation thereof. However, if the old rule were not followed, it was because the Sheriff changed the rule which allowed him to conduct a criminal investigation in the manner in which he conducted it, pursuant to his constitutional rights and powers.
>
> Because any decision which sustains the grievance in any way would be an impermissible restriction on the Sheriff's powers, as recently enunciated by the Court, the grievance must be dismissed and denied.

DISCUSSION

As noted above, there are two levels to this grievance -- the validity of the rules and regulations regarding internal and criminal investigations of unit personnel, and whether the investigation of Sgt. Sipple was in compliance with, or in violation of, those rules. The Association asserts that the rules are valid, but that the investigation was not; the County counters that the rules were essentially voided by the Sheriff's constitutional powers, but that, even if they were valid, the investigation was in compliance therewith.

Arbitrators are split on the question of the degree to which we should take into account external law, be it statutory or constitutional. 2/ The dichotomy which we face is easily expressed: on the one hand, we are selected by the parties to interpret and apply their collective bargaining agreements, and only those agreements. On the other hand, it is a vainglorious act for an arbitrator to issue an award knowing it will be vacated because, in enforcing the terms of the agreement, the award has done violence to statute or constitution.

The need to comply with legal authority is not an idle interest; while arbitration awards are presumptively valid, they may be vacated when an arbitrator exceeds authority by enforcing an illegal provision. Glendale Professional Policemen's Association v. Glendale, 83 Wis. 2d 90, 98 (1978). Because a contract provision that violates the law is void, a dispute arising out of a violation of that provision is not arbitrable. WERC v. Teamsters Local No. 563, 75 Wis. 2d 602, 613 (1977); Professional Police Association v. Dane County, 149 Wis. 2d 699, 704-5 (Ct. App. 1989).

The Wisconsin Supreme Court has spoken recently and emphatically, if not necessarily convincingly, 3/ on this issue, and determined that the assignment of a deputy to undercover narcotics work falls within the constitutionally protected powers of a sheriff and cannot be limited by a collective bargaining agreement. Manitowoc County v. Local 986B, 168 Wis. 2d 819 (1992).

There are aspects of the rules at issue which do seem to implicate the sheriff's historical duties of maintaining law and order and preserving the peace. Specifically, the rules appear to set restrictions on the receipt and processing of criminal complaints, and the investigations thereof. Based on Manitowoc County, it is highly possible that a court would find aspects of these regulations to constitute an unconstitutional infringement of the sheriff's rights and privileges if they were included in a collective bargaining agreement. Similarly, it is highly possible that the Wisconsin Employment Relations Commission would find these provisions to be other than mandatory subjects of bargaining if the Association sought, over County objection, to include them as items in an offer for final and binding interest arbitration.

However, these regulations are not included in a collective bargaining agreement; they exist independently, and are only incorporated by reference. It was the sheriff who was solely responsible for their creation and continuation. That it was a predecessor and not Sheriff Gehring who initially promulgated the rules is immaterial; Gehring could have amended the rules on thirty days' notice to the Association, but, at times material herein, had not done so.

As the County correctly notes, it is well-settled that the constitutionally protected powers of the sheriff may not be limited or abridged by a collective bargaining agreement. Wisconsin Professional Police Association v. Dane County, 106 Wis. 2d 303, 305 (1982). But while the citizenry has empowered the sheriff "to perform certain traditional functions free of other interference," Manitowoc County, supra, at 829, it has not prevented the sheriff from such self-interference. The Outagamie County

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1/ For a comprehensive review of this issue, see, Fairweather, Practice and Procedure in Labor Arbitration, BNA Books 1983, pps. 436-468; Elkouri and Elkouri, How Arbitration Works, BNA Books 1985, pps. 366-379.

3/ That is, the Court did not convince the three Justices who dissented.

Sheriff has chosen to place certain restrictions on the investigation of formal and informal complaints against department personnel; I will not second-guess the wisdom or propriety of the Sheriff's actions in this regard.

It is the collective bargaining agreement which establishes that the rules and regulations of the Sheriff's Department are made a part of the agreement by reference -- but it is not the agreement which establishes what those rules and regulations are. That power is reserved to the Sheriff, who may promulgate new rules and regulations on thirty (30) days notice. But those rules in place are incorporated into the agreement, and subject to the grievance procedure, in that they implicate the interpretation, application or enforcement of the agreement.

The County, seeking harmonization, argues further that the various rules may be applied in non-criminal investigations, but cannot be enforced in the criminal context. Were the rules themselves ambiguous as to their extent, or the product of collective bargaining, this analysis would have persuasive effect. But there is no ambiguity as to the extent of the rules -- they cover both informal and formal complaints, with formal complaints being defined as those which allege "criminal activity, excessive force, violation of Constitutional rights, gross misconduct ...." Thus, the rules explicitly include investigations of alleged criminal activity. And, as noted above, the rules themselves are not the product of collective bargaining, but rather were promulgated by a prior Outagamie County Sheriff.

Thus, I have concluded that I need not address the question of the constitutionality of the rules to resolve the grievance before me.

Turning now to the specific factual allegations, I find as follows:

There was no violation of D.2.; as the County correctly notes, it is the complainant, not the subject of the investigation, with whom the Division Head is to be in contact regarding further steps in the process.

There was no violation of E.1.; as the County convincingly argues, the requisite "unusual circumstances" -- the complainants' loudly stated suspicion as to the integrity of the department -- did exist to justify the taking of a complaint at a location other than the departmental offices.

There was a violation of E.3.; as the Association correctly notes, the department head never took a formal statement, nor a statement that was signed and notarized.

The County contends that the Sheriff could not just ignore the serious allegations; that, forced to choose between his oath of office and his internal rules/regulations, he rightfully chose to investigate an alleged crime, notwithstanding the fact that he had not received a sworn complaint.

There is no question but that Sheriff Gehring was, in this matter, placed between the proverbial rock and a hard place. If he refused to investigate the Benyo/Palmer allegations because the complainants refused to file written, sworn statements, he might be accused of a cover-up; if he ignored the published rules and processed the complaint, he might be accused of a vendetta against a former political opponent.

Certainly, the Sheriff's duty to investigate alleged crimes is high and awesome, and I am very uneasy about a finding that appears to condone malfeasance in office. But my responsibility is only to interpret and apply the collective bargaining agreement and those ancillary aspects incorporated by reference, not to pass judgment on broader issues of an elected official's

performance in office. And I return again to the point made in the jurisdictional discussion, namely, that it was the Sheriff himself (albeit a predecessor incumbent) who adopted these rules. And it was a prior Sheriff who wrote, in the statement of General Policy, that "(p)olice personnel are unusually vulnerable to recriminations for actions they take in carrying out their responsibilities. Recriminations sometimes take the form of false allegations against an employe. It is important that complaints be processed in a manner that protects employees from false and harassing allegations."

The complainants in this matter made a false allegation which served, whether intentionally or not, to harass Sgt. Sipple. The rules indicate that employes are to be protected against such events. That protection was not forthcoming.

There was a violation of E.4.; as the Association correctly notes, the grievant was not notified that he was the subject of a criminal investigation "as soon as possible." The County counters that such a time never came, in that there never came a time when such notification would "not interfere with the investigation." I am not sure when the first day was that it was "possible," in the context of an ongoing criminal investigation, for the County to notify the grievant that he was the subject of a criminal investigation. But I am sure that such a time came no later than May 30, when Sipple was questioned by Appleton Police Lieutenant Kavanaugh. On that date, Kavanaugh explained to Sipple the allegations made and the investigatory procedures being followed. Once he did so, there is no plausible explanation of how having the County also provide notice would interfere with the investigation. The County states that it had no way of knowing the process of the investigation, and thus no way of knowing when it could tell Sipple anything. But whether or not the County chose to remain ignorant of the process of the investigation is not dispositive; consistent with its responsibilities under E.4., the County could easily have ensured that it at least knew when Sipple was questioned, so that it could thereupon provide the required notice. Further, the apparent fact that such notice would be redundant -- in that it would be informing Sipple of something he already knew, namely, that he was under investigation for certain acts related to the Benyo/Palmer investigation -- is beside the point. The Outagamie County Sheriff had, pursuant to rules in force, declared that Division Heads would notify subordinates of investigations into alleged major misconduct. Sipple was entitled to such notification, but did not receive it.

There was a violation of E.5.; as the Association correctly notes, the bargaining unit was never informed of the investigation. The County's defense -- that the bargaining unit already had notice, via the grievant, prior to the time that the County itself notified the grievant -- is clearly inadequate. Just as the County had, pursuant to the rules, an affirmative duty to notify the grievant, so too did it have a duty to inform the bargaining unit.

There was no violation of F.1.; as the County correctly notes, the unusual circumstances which supported its decision to go outside the Department for the investigation also authorized Undersheriff Bosch to forego the interview with Sipple.

There was a violation of F.2., in that the investigation was clearly not completed within thirty (30) days. The County states that, pursuant to authority in the published rule, an extension was granted by the Sheriff for good cause. There may indeed have been good cause; however, there is nothing in the record to establish that the Sheriff in fact gave such an extension. It is not enough to say the sheriff would have granted such an extension if he had been asked for one; the rules do not permit such sub silentio voidance.

There was no violation of F.3., in that there is no direct evidence that the County violated standards of confidentiality. I have no doubt as to the credibility of Lt. Kavanaugh and his testimony about Sgt. Moderson and Investigator Geenen telling him that they learned from Undersheriff Bosch that the investigation had been referred. But, still, Kavanaugh's testimony was hearsay. And without hearing from Moderson and Geenen directly, and without knowing more about the roles these two officers play in the Department, I cannot conclude that the County violated these provision in its rules.

There was no violation of G.1., in that there was no testimony or other evidence that the complaint was placed in the grievant's personnel file.

Having determined that the County did violate certain aspects of the rules which were incorporated by reference into the collective bargaining agreement, I turn now to the question of the remedy.

In its grievance, as presented to the sheriff on June 10, 1991, the Association requested that the sheriff cease and desist from the then-current internal investigation. The investigation now having been completed, and Sgt. Sipple having been completely exonerated, the remedy as initially proposed is now moot.

At hearing, and in its written briefs, the Association has also sought a public apology from Sheriff Gehring for the harm done to Sipple's reputation as a result of the manner in which the investigation was processed and pursued. The County, in addition to the arguments addressed above, contends that Sipple suffered no harm from the manner in which the investigation was conducted, and thus merits no relief.

Sheriff Gehring and Undersheriff Bosch received a complaint and commenced/conducted a criminal investigation of Sgt. Sipple in a manner contrary to the terms of the duly promulgated Rules and Regulations. Sgt. Sipple suffered harm to his reputation and dignity due to this investigation, which harm he would not have suffered had Gehring and Bosch complied with the Rules and Regulations. By his failure to comply with the terms of the Rules and Regulations, made a part of the collective bargaining agreement by reference, Sheriff Gehring violated the terms of the agreement.

Given the specific facts of this case, I find the foregoing declaration of a violation an adequate remedy, and so deny the Association further relief.

Accordingly, on the basis of the record evidence and the arguments of the parties, it is my

AWARD

That the grievance is sustained as to alleged violations of Sections E.3., E.4., E.5., and F.2., and dismissed as to alleged violations of Sections D.2., E.1., F.1., F.3., and G.1.

Dated at Madison, Wisconsin this 18th day of August, 1992.

By Stuart Levitan /s/
Stuart Levitan, Arbitrator