BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
BROWN COUNTY SHERIFF'S DEPARTMENT NON-SUPERVISORY LABOR ASSOCIATION	Case 477 No. 48029 MA-7484
and	
BROWN COUNTY (SHERIFF'S DEPARTMENT)	

Appearances:
Mr. Frederick J. Mohr, Attorney at Law, on behalf of the Brown County Sherif
Mr. Kenneth J. Bukowski, Corporation Counsel, on behalf of Brown County.

ARBITRATION AWARD

Brown County Sheriff's Department Non-Supervisory Labor Association, hereinafter the Association, requested that the Wisconsin Employment Relations Commission designate a staff arbitrator to hear and decide the instant dispute between the Association and Brown County, hereinafter the County, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The County subsequently concurred in the request and the undersigned, David E. Shaw, was designated to arbitrate in the dispute. The parties waived a hearing in the matter and submitted a "Stipulation of Facts" to the undersigned. The parties filed briefs in the matter by February 15, 1993. Based upon the stipulated facts and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUE

The issue to be decided may be stated as follows:

> Was the Grievant, Don Stewart, "vindicated" in WERC Case 456 (arbitration of his suspension grievance) within the meaning of Article 15, Overtime, of the parties' Collective Bargaining Agreement?

STIPULATED FACTS

The parties' respective representatives entered into the following stipulation regarding the relevant facts in this case:

> 1. At all times material herein, Donald Stewart was employed as a Deputy Sheriff by the Brown County Sheriff's Department.
>
> 2. On January 10, 1991, Sheriff Leon Pieschek imposed a five (5) day suspension on Donald Stewart for insubordination. Stewart grieved this suspension which resulted in an arbitration hearing, namely WERC Case 456 No. 45336 MA-6562. That as a result of said arbitration hearing, Arbitrator Raleigh Jones found the appropriate measure of discipline to be a written reprimand and not the five (5) days suspension initially issued by the Sheriff. A copy of said Decision is attached hereto and made a part hereof by reference as Exhibit A.
>
> 3. That Don Stewart attended a hearing in

front of Sheriff Leon Pieschek on January 3, 1991. That Don Stewart attended an appeal of the Pieschek hearing on February 5, 1991 administered by then Personnel Director Gerald Lang. That Don Stewart attended a hearing before a staff arbitrator of the WERC on May 7, 1991.

4. That at all times during the three (3) above hearings, Donald Stewart was on his off hours.

5. That the labor contract at Article 15 contains the following language:

> "Minimum Call-In Time. A call-in is defined as any time an employee is required to work outside his/her normal work shift schedule. However, a call-in does not include the following: . . .
>
> (3) Disciplinary procedures where the officer is not vindicated through the grievance procedure."

6. That in the event that the arbitration decision above-named is construed as vindicating Donald Stewart, Donald Stewart is entitled to three (3) hours pay for each of the above hearings.

Dated this 27 day of January, 1993.

BROWN COUNTY SHERIFF'S DEPARTMENT NON-SUPERVISORY LABOR ASSOCIATION:

Frederick J. Mohr

BROWN COUNTY:

Kenneth Bukowski

POSITIONS OF THE PARTIES

Association

The Association notes that on January 10, 1991 Sheriff Pieschek imposed a five-day suspension on the Grievant for insubordination. That discipline arose out of a situation where the Grievant was requested to work beyond his normally scheduled shift, but claimed he was too tired to do so and when ordered to do so by his commanding officer, he refused to continue based upon his physical condition. Reviewing the arbitration award concerning the Grievant's five-day suspension, the Association notes that the arbitrator found that the five-day suspension was excessive and that the Sheriff and Captain Craig had animus toward the Grievant which resulted in the excessive discipline. The discipline was reduced to a written reprimand by the arbitrator. After receiving the award, the Grievant submitted a request for call-in pay for the three grievance hearings on his suspension grievance, including the arbitration hearing, that he attended. His request was denied by the County on the basis that he was not "vindicated", as required by the contract.

The Association asserts that the method of contractual construction in Wisconsin requires application of the "plain meaning" principle. It cites the decision of the Wisconsin Court of Appeals in Eden Stone Company v. Oakfield Stone Company, 166 Wis. 2d 105, 115 (1991), where the Court stated:

> . . .When the terms of a contract are plain and unambiguous, we will construe the contract as it stands. Borchardt v. Wilk, 156 Wis. 2d 420, 427, 456 N.W. 2d 653, 656 (Ct. App. 1990).

The Association contends that the sole issue in this case goes to the plain meaning of the word "vindicate". It cites the definition of "vindicate" in Webster's Ninth New Collegiate Dictionary as follows:

> **vindicate: 1:** obs: to set free: DELIVER **2:** AVENGE **3 a:** EXONERATE, ABSOLVE **b** (1): CONFIRM, SUBSTANTIATE (2): to provide justification or defense for: JUSTIFY **c:** to protect from attack or encroachment: DEFEND **4:** to maintain a right to **syn** see EXCULPATE, MAINTAIN

It then contends that a more enlightening explanation of the intent of the meaning of "vindicate" is provided by referring to the definition of the word "exculpate", which is defined as follows:

> **exculpate:** . . .**syn** EXCULPATE, ABSOLVE, EXONERATE, ACQUIT, VINDICATE mean to free from a charge. EXCULPATE implies a clearing from blame or fault often in a matter of small importance; ABSOLVE implies a release either from an obligation that binds the conscience or from the consequences of disobeying the law or committing a sin; EXONERATE implies a complete clearance from an accusation or charge and from any attendant suspicion of blame or guilt; ACQUIT implies a formal decision in one's favor with respect to a definite charge; VINDICATE may refer to things as well as persons that have been subjected to critical attack or imputation of guilt, weakness or folly, and implies a clearing effected by proving the unfairness of such criticism or blame. (emphasis added)

Thus, the word "vindicate" connotes a "clearing effected by proving the unfairness of such criticism or blame." Arbitrator Jones' award does precisely that by reducing the five-day suspension to a written reprimand with a specific

admonition that the Sheriff's actions were unduly harsh and unfair, i.e., the arbitrator vindicated the Grievant. To find that the Grievant was not vindicated within the meaning of the Agreement would be contrary to the intent of the plain language of the Agreement. The Grievant was required on three occasions during his off-hours to attend hearings and that required him to expend substantial amounts of his personal time in order to vindicate his unjust discipline.

The Association asserts that if the County is not required to pay an individual who is "overcharged" with an offense, it can turn the disciplinary process into a "farce with impunity" by merely overcharging an individual and requiring him to respond on numerous off hours to punish him. The clear language of Article 15 is intended to act as a safeguard against unwarranted or excessive discipline. Deciding that the Grievant was not vindicated by prevailing in his argument that he was excessively disciplined would make the language of Article 15 nearly meaningless. Thus the word "vindicate" applies in this case and the Grievant should be granted call-in pay for the three instances he was required to appear in the grievance or arbitration procedures.

County

The County takes the position that the Grievant was not "vindicated" in the prior disciplinary proceeding. The issues in the arbitration involving the prior discipline were as follows: 1) Was there just cause for discipline? 2) If so, was this discipline appropriate? The County notes that in the award it was concluded that there was just cause for disciplining the Grievant, since he refused a direct work order on December 16, 1990. Because just cause for discipline was found, the arbitrator authorized a written reprimand. The County asserts that the key question is whether or not just cause existed for the discipline, and Arbitrator Jones ruled in the affirmative on that issue. Hence, the Grievant was not in any way vindicated from having violated work standards for which the discipline was appropriate. Since just cause was found by Arbitrator Jones, the grievance in this case should be denied.

DISCUSSION

The Association is correct that clear contract language is to be given its plain meaning. In this case the wording to be given its plain meaning is the following from Article 15, "Disciplinary procedures where the officer is not vindicated through the grievance procedure." Hence, the issue is whether the Grievant was "vindicated" in his grievance involving his five-day suspension for insubordination. For the following reasons it is concluded that he was not.

The Association offers dictionary definitions of the word "vindicated", which is an appropriate method of determining the plain meaning of contract wording where there is no other indicator of the parties' intended meaning. The grievance on the Grievant's suspension culminated in the award from Arbitrator Jones, and the result in that award did not vindicate the Grievant under any of the definitions offered by the Association. The Grievant was charged with insubordination for refusing a direct order to stay over on his shift and was given a five-day suspension. A review of the award indicates that the Grievant took the position that there was no just cause for the discipline, since he was not given a direct order to stay over, and that even if he had been given such an order, he was justified in refusing to stay over on his shift. Both of those contentions were rejected by Arbitrator Jones who went on to conclude, "That being the case, it is held that the grievant's refusal to obey a direct order to stay over constitutes misconduct warranting discipline." (Jones Award, p. 5). Thus, the Grievant was not "exonerated", "absolved", or "exculpated" 1/ of the wrongdoing with which he was charged, nor

1/ Definition of "vindicate", Webster's Ninth New Collegiate Dictionary.

was he cleared of the balance of the charge, 2/ nor can it be said that his position that he was not guilty of the alleged misconduct was "substantiated", 3/ so as to support a conclusion that he was "vindicated".

The Association's argument that to not find that the Grievant was vindicated when the discipline has been reduced would allow the County to "overcharge" an officer in a disciplinary case has some merit. However, it is not clear that safeguarding against such an event is necessarily the purpose of the wording in question. The provision could just as well have been intended to provide some relief to an officer who was found to have been wrongly charged with misconduct. No proof of the parties' intent as to either was offered. Regardless, the fact remains that the most that can be said of the outcome of the suspension grievance was that the Grievant's alternative contention that, if just cause for discipline were found, the punishment was too severe, was substantiated, i.e., his position in the grievance was at most only partially "vindicated". That is not sufficient to find that the Grievant was "vindicated" within the meaning of that provision of Article 15.

Based upon the foregoing, the Stipulation of Facts and the arguments of the parties, the undersigned makes and issues the following

AWARD

The grievance is denied.

Dated at Madison, Wisconsin this 12th day of April, 1993.

By David E. Shaw /s/
David E. Shaw, Arbitrator

2/ See definition of "exculpate", Ibid.

3/ Ibid., footnote 1.