BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
MILWAUKEE DEPUTY SHERIFFS' ASSOCIATION	Case 338 No. 47980 MA-7458
and	
MILWAUKEE COUNTY (SHERIFF'S DEPARTMENT)	

Appearances:

Gimbel, Reilly, Guerin & Brown, 2400 Milwaukee Center, 111 East Kilbourn Avenue, Milwaukee, Wisconsin 53202, by Ms. Marna M. Tess-Mattner and Mr. Franklyn M. Gimbel, for the Association.

Mr. Timothy R. Schoewe, Deputy Corporation Counsel, Milwaukee County, Room 303, 901 North 9th Street, Milwaukee, Wisconsin 53233.

ARBITRATION AWARD

Milwaukee County Deputy Sheriffs' Association and Milwaukee County are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant to the parties' request for the appointment of an arbitrator, the Wisconsin Employment Relations Commission appointed Jane B. Buffett, a member of its staff, to hear and decide a dispute regarding the interpretation and application of the agreement. Hearing was held in Milwaukee, Wisconsin on November 25, 1992. No transcript was taken. The parties filed briefs and reply briefs, the last of which was received February 16, 1993.

ISSUE

The parties were unable to stipulate to a statement of the issue.

The Association stated the issued as:

> Is an employe who is on duty but acting in his union capacity subject to the same rules of conduct as if he were not acting in his union capacity?

The County stated the issue as:

> Did the Grievant violate the rule as alleged?

The Arbitrator concludes both issues are presented by the contract, the evidence and the parties' arguments and therefore frames the issues as:

1. Pursuant to the collective bargaining agreement, was Grievant, who was a union officer acting as such while on duty, subject to the same rules and restrictions as if he had not been acting as a union representative?

2. Did Grievant violate the rules as alleged?

BACKGROUND

Charles Coughlin is a Deputy Sheriff employed by Milwaukee County. He is

assigned to tier three of the County jail. He is also Treasurer of the Milwaukee County Deputy Sheriffs' Association. As an Association officer working in the jail, he serves as a liaison with management personnel for union matters.

In 1991, when the building of a new jail resulted in the establishment of a new class of recruit deputies to work in the jail, there was concern among incumbent deputies that their shifts might be changed to accommodate the training needs of these new recruits. Grievant and Administrative Lieutenant of the jail, Stacy Black, held conversations addressing this issue. Grievant and Black had different understandings of the outcome of those conversations. Grievant believed they had a firm agreement and presented it as such to the other employes. On the other hand, Black believed they had merely developed a proposal which he would recommend to Director of the Bureau of Detention Richard Cox.

Bureau Director Cox did not approve of the proposal, but Black did not notify Grievant of that outcome. Grievant first learned the proposal was not going to be implemented when a bargaining unit member complained to him that he was being reassigned away from his shift in order to accommodate recruit training needs.

Upon learning of this, on July 29, 1991, Grievant phoned Black from his work site at tier three. He asked Black what had happened. When Black responded that he had been informed that their agreement had been vetoed by management, Grievant asked at what point would he be informed about this . He told Black that his credibility with his bargaining unit members had been destroyed because he had assured them that the shift rotation problem had been worked out. There is no dispute that he was angry and very loud. Both Grievant and Black described Grievant's language as "intemperate," but neither quoted examples of the intemperate language. After his outburst, Grievant hung up the phone before Black could respond. Black then called Grievant's immediate supervisor, Sergeant Randy Tylke, and told him to bring the Grievant to his office. Bureau Director John Lagowski happened, by coincidence only, to be in Black's office at the time. Grievant and Tylke arrived in short order. The atmosphere was tense but not openly hostile. Black ordered Grievant to write a report of the telephone incident. Grievant refused, saying that since the incident was related to his collective bargaining responsibilities and not to his responsibilities as an employe, it was not appropriate for him to be ordered to write an incident report.

Black reported the incident to Lt. Peter Misko of the Office of Professional Standards. Grievant was then ordered to write the report and answer a questionnaire regarding the incident. Grievant again refused, reiterating his earlier reason for refusal. Misko suggested that Grievant consult with the Association's labor counsel. Ultimately, Grievant wrote the report and answered the questionnaire.

On August 24, 1992 Grievant was issued a three-day suspension. The pertinent portion of the suspension notice read as follows:

> Sheriff Richard E. Artison has sustained a violation of the following Milwaukee County Sheriff's Department Rules and Regulations and Civil Service Rules:
>
> 1.05.02 Rule 2 - Conduct of Members

Members of the department shall not commit any action or conduct which impeded (sic) the department's efforts or efficiency to achieve it's (sic) policies and procedures or brings discredit upon the department.

1.05.10 Rule 10 - Obedience to Orders

Members of the department shall obey all lawful orders or directives, whether written or oral.

1.05.11 Rule 11 - Insubordination

Members of the department shall exhibit respect and courtesy toward all supervisory personnel.

1.05.13 Rule 13 - Treatment of Citizens and Employees

No member of the department shall be disrespectful to or maltreat any person.

Civil Service Rule VII Section (4)(1)(k)

Refusing or failing to obey orders of supervisors whether written or oral.

The suspension notice also offered Grievant an alternative to the suspension. Grievant declined the alternative and served the suspension. The Association referred the matter to arbitration pursuant to Sec. 5.05 of the collective bargaining agreement.

RELEVANT COLLECTIVE BARGAINING AGREEMENT PROVISIONS

PART 5

5.01 GRIEVANCE PROCEDURE

. . .

(3) TIME OF HANDLING. Whenever practical, grievances will be handled during the regularly scheduled working hours of the parties involved. The County agrees to provide at least 24-hour written notice of the time and place of the hearing to the grievant and the Association.

. . .

5.05 DISCIPLINARY SUSPENSIONS NOT APPEALABLE UNDER S. 63.10, STATS.

> In cases where an employe is suspended for a period of 10 days or less by his department head, pursuant to the provisions of s. 63.10, Stats., the Association shall have the right to refer such disciplinary suspension to arbitration. Such reference shall in all cases be made within ten (10) working days from the effective date of such suspension. The decision of the Arbitrator shall be served upon the Department of Labor Relations and the Association. In such proceedings, the provisions of s. 5.02(2)(c) shall apply.

POSITIONS OF THE PARTIES

The Association

The Association argues that Grievant's statement to Black were related to union matters and therefore were protected and could not be the subject of discipline. The Association cites federal and state cases to support this principle and further argues that under the administration of former Deputy Inspector Ronald Bollhoffer, Association representatives were encouraged to discuss labor relations matters as soon as they arose, even while the representative was on duty. There is no evidence the Association has been notified the rules have changed.

In its reply brief, the Association reasserts its position that speech by a union representative is protected. Although it concedes that a balance must be struck between an employe's job duties and union responsibilities, it argues the County's position weighs the balance so heavily in favor of job duties that union activities are impossible. It traces the history of the discussions between Grievant and Black regarding changing shift assignments to support its view that Grievant's anger arose out of his understanding of an earlier agreement. It asks the Arbitrator to take notice that the instant discipline is also the subject of a prohibited practice complaint.

The County

The County asserts the collective bargaining agreement can not support the Association's position since it is silent regarding the conduct of business on County time. The County describes Grievant's conduct towards Black not as the transaction of union business but as a diatribe at Black, Grievant's superior officer. The County cites Grievant's own actions in ultimately completing the requested report and in apologizing to Black as evidence that his actions were improper.

The County maintains an employe is subject to discipline for improper conduct even if the employe is a union officer conducting union business. There must be a delicate balance between the responsibilities of employment and union representation. The County points out the collective bargaining agreement incorporates the Department's code of conduct but is silent regarding the conduct of union business on County time. Referring to Grievant's assertion that his study in labor relations led him to believe that he could not be disciplined for conducting union business, the County points to Grievant's refusal to write an incident report as a violation of the axiom that when employes believe they have been given improper orders they should work now and grieve later.

In its reply brief, the County amplifies its argument that the Association is seeking to create a new contractual right by its assertion that Deputy Grievant cannot be disciplined for his conduct while attending to Association business.

DISCUSSION

The parties do not dispute the facts regarding Grievant's conduct but rather they dispute whether those actions could be found, in light of the contract, to violate Department rules and Civil Service rules.

The Association's theory is that while acting as a union officer, Grievant is exempt from those rules. The Association does not seek to show that his conduct would be acceptable if he were acting only as an employe. In fact, Grievant himself acknowledged in his testimony that his conduct would be subject to discipline were he not a union officer acting on union business. The Association's case, then, must rise or fall on whether this union business immunity exists.

In arguing that the Grievant cannot be disciplined for his outburst on the telephone to Black or his refusal to write a report of the incident, the Association does not point to any contract provision other than Sec. 5.01 (3), which provides for grievances to be handled during working hours, which Grievant referred to in his testimony. While it is undisputed that Association officers have been allowed to confer with management while on County time, and even that prompt attention to labor relations matters has been encouraged, there is no evidence that the parties' practice has expanded that provision to allow conduct such as Grievant's on July 29, 1991. There was no evidence of other instances when an Association officer has acted similarly and enjoyed the County's tolerance by virtue of the employe's Association position. The undersigned cannot find a practice shared by the parties that would establish the protection for a union officer's conduct that the Association claims to exist.

While not citing any contract provisions, the Association seeks to support its argument with cases decided under state and federal labor statutes. This argument must fail. Although in many cases, employes' rights under statutes are co-extensive with their rights under contracts, these two sets of rights are not necessarily identical. The existence of a statutory right does not demonstrate that the employe also enjoys the same right by virtue of the collective bargaining agreement, if the agreement does not explicitly incorporate the statute. An arbitrator has jurisdiction only to vindicate contractual rights.

This is not to say that the fact that a disciplined employe was performing union business is irrelevant to an arbitrator's consideration of the sanctioned conduct, but only to hold that such union status does not confer the kind of categorical immunity advanced by the Association.

Having found that the fact that Grievant's actions involved union business does not give him blanket immunity and that conduct related to union business can be the basis of discipline, and inasmuch as the facts of the incident are not disputed, the undersigned finds that Grievant did violate the rules as alleged. The grievance must be denied.

In the light of the record and the above discussion, this arbitrator issues the following

AWARD

1. Pursuant to the collective bargaining agreement, Grievant, who was a union officer acting as such while on duty, was subject to the same rules and restrictions as if he had not been acting as a union representative.

2. Grievant violated the rules as alleged.

3. The grievance is denied and dismissed in its entirety.

Dated at Madison, Wisconsin this 7th day of May, 1993.

By Jane B. Buffett /s/
Jane B. Buffett, Arbitrator

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