

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :  
 of a Dispute Between :  
 : Case 48  
 MENOMINEE COUNTY DEPUTY SHERIFFS : No. 50847  
 : MA-8402  
 and :  
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 MENOMINEE COUNTY :  
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Appearances:

Mr. Thomas A. Bauer, Labor Consultant, on behalf of Labor Association of  
 Lindner & Marsack, S.C., by Mr. James S. Clay, on behalf of the County.

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ARBITRATION AWARD

The above-entitled parties, herein "Association" and "County", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Keshena, Wisconsin, on July 14, 1994. The hearing was not transcribed and both parties filed briefs which were received by September 6, 1994.

Based on the entire record, I issue the following Award.

ISSUE

The parties have agreed to the following issue:

Whether the County violated the contract when it terminated Deputy Sheriff Nathalyn Waupoose and, if so, what is the appropriate remedy?

DISCUSSION

Grievant Waupoose was employed by the County as a full-time Deputy Sheriff for about six and a half years.

On March 10, 1993, she received a verbal disciplinary warning for failing to perform certain assigned duties. Via a memorandum dated March 16, 1993, Sheriff Richard Moses informed her:

As you are aware that when you call in sick on the first or last day of your shift you need a doctor's excuse. Since you will not be at work on March 17, 1993 which is the last day of your shift you will need a doctor's excuse for that day when you return to work. I tried to reach you at home all day March 16, 1993, to advise you of this, but were unable to and was told you were not home.

Waupoose subsequently reported to work that day rather than providing a doctor's excuse.

Thereafter, Association Representative Patrick J. Coraggio questioned the need for such sick leave verification and the matter was ultimately resolved via an April 8, 1993, letter from the County's attorney, James S. Clay, to Coraggio which in essence reiterated the County's policy on that score, and explained that it had been agreed to in prior negotiations. 1/

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1/ The parties subsequently codified the County's policy in Section 14.03 of

Testifying about her past work performance, Chief Deputy Louis Moses - who served as Acting Sheriff between October, 1993 and July, 1994 - said that Waupoose was "inefficient in everything that she did in being a deputy"; that he spoke to Waupoose about her prior work performance "many times"; and that he specifically told her "more than once" in 1993 that "if she did not clean up her act", she would be terminated. He also testified that he did not know why he did not reduce to writing such complaints about Waupoose's work.

Near the end of 1993, Waupoose's mother became very ill and died. In addition, Waupoose at around that time became sick and missed several days of work. Waupoose testified here that she was going through menopause; that that is what caused her to become ill and to miss work; and that she was seeing a doctor over this situation.

In July, 1993, Waupoose issued a traffic citation to Jeff Kenjesky for driving under the influence of alcohol, but she did not fill out a timely Incident Report as she was required to do under departmental policy.

In November, 1993, Waupoose issued a traffic citation to Robin Stowe for driving too fast and Chief Deputy Moses subsequently asked Waupoose for the Incident Report which could not be located.

In December 1993, Waupoose was slated to testify as the arresting officer against Kenjesky, but his trial was postponed because of Waupoose's unavailability caused by her mother's death. Thereafter, the Menominee County District Attorney's office repeatedly telephoned to tell Waupoose that she had to testify at Kenjesky's rescheduled January 12, 1994, trial 2/ and it served two subpoenas on her by leaving them at the Sheriff Department's office. One of those subpoenas involved Kenjesky's rescheduled January 12 trial and the other involved Stowe's scheduled January 18 trial.

Chief Deputy Moses said that he personally placed the two subpoenas in Waupoose's mailbox and on or about January 4 and directed former secretary Sherry Waupoose (no relation) to telephone Waupoose to tell her that the two subpoenas were in her mailbox. Sherry Waupoose testified that she unsuccessfully placed "many phone calls" to Waupoose to tell her of the subpoenas; that she finally contacted her on an unspecified date and told her about the two subpoenas; and that she is not sure if she told Waupoose of the subpoena dates. Chief Deputy Moses testified that he overheard Sherry Waupoose on January 4 tell Waupoose that two subpoenas were in her mailbox.

Menominee County Assistant District Attorney Mary Harper testified here that she needed Waupoose's direct testimony at trial to establish that Kenjesky was driving the car at the time of his accident; that Waupoose never responded to her repeated telephone messages; that that is why she served the two subpoenas on Waupoose; that Kenjesky's January 12 trial had to be rescheduled because of Waupoose's unavailability; that Kenjesky ended up pleading to a lesser charge; and that she, Harper, was "extremely upset" over Waupoose's failure to communicate with her over this matter.

Chief Deputy Moses testified that Waupoose did not initially fill out the back of Kenjesky's Incident Report as she was required to do, and that Waupoose finally did so only after he expressly ordered her to do so in November, 1993.

For her part, Waupoose testified that Sherry Waupoose never told her over the telephone that two subpoenas were in her mailbox; that when she came to

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the 1994-1995 contract.

2/ Unless otherwise stated, all dates hereinafter refer to 1994.

work on January 12, only Kenjesky's subpoena was there; that she did not learn until about 8:30 a.m. on January 12 that she was expected to be in court that day; that she could not immediately do so because she needed someone to pick her up for work; that she telephoned Harper who told her that Kenjesky's trial had been postponed; that Harper told her she would be notified of the new hearing date; that she never received the Stowe subpoena; and that the Stowe Incident Report was attached to the Kenjesky subpoena.

Harper also testified that she needed Robin Stowe's file to help establish that she was driving too fast for conditions. Harper said that that is why she subpoenaed Waupoose for Stowe's January 18 trial; that Stowe's case was dismissed because Waupoose was not present; and that Waupoose subsequently told her that she had received only one subpoena in her mailbox - the one involving Kenjesky. Waupoose testified here that she only received the one subpoena for Kenjesky and that she never received the one relating to Stowe's January 18 trial.

Sherry Waupoose testified that pursuant to requests from the District Attorney's office, she tried, but failed, to locate the Incident Reports relating to Stowe's citation because, "There was no Robin Stowe file" in the office. In addition, Waupoose told Sherry Waupoose that there was no Incident Report on Stowe because no one had requested that one be prepared and because she inadvertently failed to fill it out when she issued the November 12, 1993, citation to Stowe. Sherry Waupoose said that she ultimately discovered Stowe's file in the Sheriff's office long after the District Attorney's office first requested it.

On February 7, Waupoose failed to follow Chief Deputy Moses' direct order that she personally serve process on a person in the Shawano jail, as she passed on that assignment to Sheriff Deputy Guzman. When asked about this, Waupoose told Chief Deputy Moses that she had misunderstood his order.

Waupoose earlier on January 30 missed work and claimed that she was ill that day. Administrative Assistant Beth Moses on January 31 told Sherry Waupoose to telephone Waupoose to tell her that she needed to produce a written doctor's excuse because January 30 was the last day of her four day shift and that such written verification was required under the contract. Sherry Waupoose did so. There is a dispute as to what then took place, with Sherry Waupoose claiming that Waupoose replied that she wanted such a directive to be in writing. Waupoose denies that she ever made such a demand.

Later that day, an excerpt from the parties' collective bargaining agreement dealing with sick leave was hand-delivered to Waupoose's home. It stated that written notification is required when an employe misses the first or last day of a scheduled shift. At the bottom of that excerpt was Beth Moses' handwritten note stating:

Already part of Dept. policy and Union contract which was adopted by the Union. We do not need to provide you with a written request.

Waupoose that day failed to obtain such a doctor's excuse and she subsequently requested 12 hours sick leave for that day.

On February 7 Chief Deputy Moses met with Waupoose and told her that she needed a doctor's excuse for her January 30 absence. Waupoose replied that she would let Moses know whether she would provide such a doctor's note. On February 12 she finally provided a doctor's excuse which was dated February 11 and which stated:

Patient undergoing menopause (may be having Flushing flashes and anxiety attacks at times.

Waupoose's request for sick leave for January 30 was subsequently denied.

Earlier, Waupoose was assigned to handle a telephone harassment complaint filed by Carl Maskewitt in December, 1993. Waupoose spoke to Maskewitt and had him fill out a written statement, but she ultimately concluded that his complaint could not be substantiated and she left the case in that posture. As of the date of the instant hearing, no further action had been taken in that case.

On January 30, Waupoose was dispatched to the tribal casino where she found Dale Edgeton passed out in his car with a bottle of vodka on the seat next to him. Waupoose took him to the hospital and stayed with him for about seven hours. Waupoose that day issued Edgeton a citation for "operating under the influence of an intoxicant", but did not arrest him because she was unsure of what to do.

Chief Deputy Moses by memorandum dated February 3 told her that the District Attorney's office wanted her to fill out an Incident Report and that she should do so by February 4. On February 7, Waupoose issued Edgeton another traffic citation for "operating with a BAC of .10 or greater." Waupoose filled out a partial Incident Report over the episode and subsequently enlarged on it after Chief Deputy Moses told her to write down more information.

By a detailed memorandum dated February 16, Chief Deputy Moses informed Waupoose that she was being immediately dismissed for (1) insubordination and disrespect of commanding officers' orders; (2) willful neglect of duty; (3) willful neglect of department policy, rules, regulations; (4) unexcused absence from duty; (5) general inefficiency and incompetence; and (6) failure to get along and work with commanding officer.

Waupoose on February 21 grieved her termination and a hearing was then conducted by the Menominee County Police and Fire Commission which on April 6 issued a written decision upholding her dismissal, hence leading to the instant proceeding.

In support of Waupoose's grievance, the Association argues that Waupoose in fact did not act improperly in any of the situations in dispute; that she "never received any type of discipline. . . of the consequences regarding the alleged infractions set forth in the. . ." Moses' February 16 termination letter; that the County did not follow the procedural due process requirements embodied in the just cause standard; and that discharge is too harsh a penalty for whatever errors Waupoose did make. The Association therefore requests a traditional make whole remedy which includes backpay and Waupoose's reinstatement.

The County, in turn, contends that "the severity of a number of individual incidents is so great that discharge . . . is warranted without prior discipline" and that Waupoose's denials of wrongdoing should be discredited.

In resolving this issue, it is necessary to first resolve the head-on credibility clashes between Waupoose and almost every single witness who testified against her. Rather than going into a point-by-point rebuttal of such disputed testimony, it suffices to say here that I have credited the testimony of the County's witnesses in almost all such matters. As a result, I find the following:

1. Waupoose deliberately submitted a request for sick leave for her January 30 absence even though she knew that she was required to get a valid doctor's slip pursuant to Beth Moses' directive to that effect, as well as Section

14.03 of the contract which provides:

"14.03 The Employer may require verification, in the form of an acceptable doctor's certificate, from an employee who requests sick leave on either the first and/or the last day of the employee's regularly scheduled four (4) day work period."

2. Waupoose deliberately refused to honor subpoenas calling for her attendance at Kenjesky's January 12 and Stowe's January 18 trials, as I credit the County's witnesses to the effect that these subpoenas were placed in Waupoose's mailbox; that Waupoose was told about them over the telephone; and that telephone messages to that effect were left in her mailbox.
3. Waupoose failed to properly fill out Incident Reports. While there is some dispute as to just how complete some of those reports were, I find that Waupoose failed to properly fill out the Kenjesky incident report at the time. The record is unclear, though, whether she was responsible for misplacing the Stowe file, since files are sometimes misplaced in the office, and since there is no direct evidence showing that she was responsible for the missing file. I further find that she erred in not filing a full report over the Edgeton incident.
4. Waupoose failed to follow Chief Deputy Moses' direct order that she serve a subpoena in the Shawano jail.
5. Waupoose was not at fault in handling the harassing telephone complaint since there appears to be insufficient evidence to pursue that matter any further -- a conclusion buttressed by the fact that no further investigation has been conducted over this issue since the time of Waupoose's termination.
6. While a close question, extenuating circumstances regarding Edgeton's medical condition justified Waupoose's prolonged stay at the hospital.

When viewed together, these first four incidents clearly establish that Waupoose was not properly performing her job and that the County had just cause to impose some kind of discipline. The only remaining question, then, is what is the proper level of discipline following her earlier March 10, 1993, oral warning which still remained in effect.

It is true, as the Association points out, that Waupoose was not subjected to strict progressive discipline because she was never suspended or given a written warning and because the County did not follow all of the procedural safeguards of the just cause standard since its investigation left something to be desired and since the County had been somewhat lax in the way that it has operated its Sheriff's Department.

But, the fact remains that Chief Deputy Moses orally warned her many

times before her termination that her job was in jeopardy even though such warnings are not in writing. As a result, she certainly was put on notice that she could be terminated if she did not improve. Contrary to the Association's claim, I therefore find that the County did give her sufficient time and opportunity to correct her work habits.

Moreover, as an experienced law enforcement officer, Waupoose either knew or should have known that she was guilty of gross dereliction of duty when she refused to respond to the Stowe and Kenjesky subpoenas, just as she either knew or should have known that she had to fill out complete Incident Reports - which is something she repeatedly refused to do. In addition, she was guilty of rank insubordination when she flat out refused to produce a doctor's note for January 30, and when she did not serve the subpoena in the Shawano jail.

If any of these episodes stood alone, and if Waupoose otherwise had a clean work record, the discharge might be overturned and converted to a suspension on the ground that each incident was insufficient to warrant immediate discharge and that the County had to follow strict progressive discipline. When viewed altogether, however, it is patently clear that Waupoose's work performance had deteriorated to such an extent that her continued presence in the department could no longer be tolerated. Moreover, given Waupoose's failure to heed Chief Deputy Moses' earlier warnings to "clean up her act", it is likewise clear that no amount of additional warnings or intermediate discipline short of discharge would have done any good. As a result, the County had just cause to discharge her when it did.

In light of the above, it is my

AWARD

That the County did not violate the contract when it terminated Deputy Sheriff Nathalyn Waupoose; her grievance is therefore denied and dismissed.

Dated at Madison, Wisconsin this 28th day of October, 1994.

By Amedeo Greco /s/  
Amedeo Greco, Arbitrator