

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

WISCONSIN PROFESSIONAL POLICE
ASSOCIATION/LAW ENFORCEMENT
EMPLOYEE RELATIONS DIVISION

and

DOUGLAS COUNTY

Case 221
No. 53363
MA-9329

Appearances:

Mr. Gary W. Gravesen, Business Agent, on behalf of the Association.

Mr. John Mulder, Personnel Director, on behalf of the County.

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 on March 27, 1996, in Superior, Wisconsin. The hearing was not transcribed and the parties thereafter filed briefs which were received by May 6, 1996.

Based upon the entire record and the arguments of the parties, I issue the following Award.

ISSUE

The parties have agreed to the following issue:

Did the Sheriff have just cause to suspend grievant Christopher D. Hoyt for three days without pay and, if not, what is the appropriate remedy?

DISCUSSION

Grievant Hoyt has been employed in the County's Sheriff's Department for about 4 1/2 years, during which time he was counseled, but never disciplined, about his work on several occasions. He never grieved any of that counseling.

Hoyt was off-duty on the night of September 30, 1995, 1/ when he and several other

1/ Unless otherwise stated, all dates hereinafter refer to 1995.

friends visited numerous bars to celebrate a friend's upcoming wedding. Hoyt then radioed the dispatcher over the non-emergency line and asked that a radio message be sent to the effect that "A mobile home hit a moose at Bridge's [a local tavern]", which was a coded message to Lake Nebagamon Constable Charles D. Miller to let him know that everything was alright and that Hoyt was on his way to visit a bar. Miller testified here that he told Hoyt to make that call so that he, Miller, would know whether Hoyt needed a ride.

Sheriff's Department employes regularly have such personal messages sent over the radio and none have ever been disciplined for doing so. In addition, there is no County written policy prohibiting such personal messages over the radio.

On October 13, Sheriff Marvin H. Arneson received a telephone call at his home at about 4:28 a.m. which asked: "Is this the Sheriff?" When Sheriff Arneson answered, "Yes", the caller on the phone asked: "Is this the fucking Sheriff?" At that point, Sheriff Arneson tried to hang up the telephone and, as he did so, he heard the caller say: "Eddie, Eddie, I called the fucking dumb shit. Shit, he doesn't know anything."

Thereafter, Arneson listened to a tape of Hoyt's voice and concluded that it was the same voice which telephoned him on October 13. Arneson conducted an investigation and discovered that the October 13 telephone call came from the home of Wendy Cronin, a Dispatcher with the City of Superior Police Department and a friend of Hoyt's. Arneson admitted that he obtained information about Cronin's telephone records from Ameritech without following proper procedures.

In this connection, Cronin and Hoyt testified that there was a party at Cronin's house on October 13; and that it was still going on at 4:30 a.m.; that those in attendance had been drinking throughout the day and night; that neither of them made the call to Arneson; and that they do not know who telephoned him. In addition to Cronin and Hoyt, three other individuals were at the party: Brady Smith, who was sleeping at the time of the phone call; Tom Champagne Jr., a member of the Superior Police Department who has never worked for the County; and Chris Moe, a member of the Superior Police Department who had previously worked for the County as a jailer.

The County on November 6 suspended Hoyt for three days and he missed work without pay on November 8, 9 and 10. Hoyt grieved his suspension on November 13, hence leading to the instant proceeding.

Sheriff Arneson on November 15 asked the Superior Police Department to investigate the October 13 phone call to him. It did so and ultimately concluded in a December 5 letter to him that it could not identify the caller.

In support of the grievance, the Association argues that the County has failed to meet its

burden of proving that Hoyt made the October 13 telephone call to Sheriff Arneson and that the County's investigation was tainted because Arneson secured Cronin's telephone records without following proper procedures and because it was not conducted in a full and fair manner. It also contends that Hoyt cannot be disciplined over his moose message because officers regularly radio the dispatcher to relay personal messages and because there is no rule prohibiting such calls. The Association therefore points to Wis. Stats. 59.21(5m)(a-g) and maintains that the County lacked just cause to discipline Hoyt under the criteria spelled out therein and the contract and that he thus should be made whole by expunging the three-day suspension from his record and by reimbursing him for his three-day unpaid suspension.

The County, in turn, asserts that "Hoyt has the best motivation to get back at his supervisor, the Sheriff"; that the facts establish that he did make the call; and that Sheriff Arneson conclusively determined after listening to a tape that Hoyt's voice was the same as the one who telephoned him on October 13. The County further claims that Hoyt's September 30 moose call "was inappropriate and is extremely poor judgement by someone who should be considered a professional police officer." It therefore asserts that it had just cause to discipline him over both incidents.

Turning first to the September 30 moose call, the record shows that there is no written rule prohibiting such personal messages and that, moreover, officers regularly make personal calls without ever being disciplined. As a result, the County failed to properly inform Hoyt that he could be disciplined for making personal messages. It therefore violated the contractual just cause standard and Wis. Stats. 29.21(5m)(a), both of which require an employer to inform employees ahead of time that certain conduct is proscribed and that they can be disciplined if they commit it. Since this particular procedural requirement is one of the linchpins of the contractual just cause standard, it follows that the County lacked just cause to discipline Hoyt over this incident. 2/

The contractual just cause standard and Wis. Stats. 59-21(5m)c also require an employer to conduct a fair investigation before imposing discipline. Here, Sheriff Arneson contacted the City of Superior Police Department to conduct an investigation into the October 13 phone call after Hoyt was suspended. Such an investigation must be made before imposing discipline under the just cause standard and Wis. Stats. 29.21(5m)(c). In addition, Sheriff Arneson admitted that he secured Cronin's personal telephone records without following proper procedures.

These procedural problems, however, must give way to the larger question of whether the County has proven that Hoyt made the October 13 telephone call. If he did, its suspension must

2/ This is not to say that the County is prohibited from adopting such a rule. It can do so if it also puts employees on notice that any such personal calls are forbidden or limited.

stand; if he did not, the suspension must be overturned.

There is some circumstantial evidence that he did make the call because: (1), no one else at Cronin's residence that day had any reason to call the Sheriff; and (2), Sheriff Arneson testified that he recognized Hoyt's voice after he subsequently listened to a tape of Hoyt's voice.

But, there is one major fact cutting the other way: Sheriff Arneson's claim that the caller that day called out to someone named "Eddie". Sheriff Arneson in his October 24 memo also wrote that he heard the caller say, "Hey, Eddie - Eddie, I called the fucking dumb shit." In fact, there was no one at Cronin's residence at that time named "Eddie".

This fact looms large because it shows that Arneson erred on this key point - which is not surprising since he was awakened by the caller at about 4:28 a.m. when he was obviously sleepy. His failure to correctly recollect this part of the telephone call shows that he also may be in error in saying that he recognized Hoyt's voice.

As the Association correctly points out, the County bears the burden of proving that Hoyt made the call. Given Hoyt's denial and the absence of any other direct evidence against him, I find that the County has failed to meet its burden of proof on this issue.

I therefore conclude that the County lacked just cause discipline Hoyt over the moose call or the October 13 telephone call to Sheriff Arneson.

As a remedy, the County shall make Hoyt whole by paying to him the three days pay he missed because of his three day suspension and it shall also expunge any references to the suspension from his personnel file.

In light of the above, it is my

AWARD

1. That the County lacked just cause to suspend Grievant Christopher D. Hoyt.
2. That the County shall take the remedial action stated above.
3. That to resolve any disputes over application of this Award, I shall retain my jurisdiction for thirty (30) days.

Dated at Madison, Wisconsin, this 20th day of May, 1996.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator