BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

MARINETTE COUNTY (COURTHOUSE)

and

MARINETTE COUNTY COURTHOUSE
EMPLOYES, LOCAL 1752, AFSCME, AFL-CIO

Case 152
No. 53071
MA-9218

Appearances:

Mr. David Campshure, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1566 Lynwood Lane, Green Bay, Wisconsin 54311, appearing on behalf of the Union.

Mr. Chester C. Stauffacher, Corporation Counsel, Marinette County, 1926 Hall Avenue, Marinette, Wisconsin 54143-0320, appearing on behalf of the County.

ARBITRATION AWARD

Marinette County (Courthouse), hereinafter referred to as the County, and Marinette County Courthouse Employes, Local 1752, AFSCME, AFL-CIO, hereinafter referred to as the Union, are parties to a collective bargaining agreement which provides for final and binding arbitration of grievances. Pursuant to the parties joint request the Wisconsin Employment Relations Commission appointed Edmond J. Bielarczyk, Jr., to arbitrate a dispute over the discharge of an employe. Hearing in the matter was held in Marinette, Wisconsin on January 18, 1996. A transcript of the proceedings was received by the undersigned on February 5, 1996. Post hearing arguments and reply briefs were received by the undersigned by March 28, 1996. Full consideration has been given to the testimony, evidence and arguments presented in rendering this award.

ISSUE

During the course of the hearing the parties agreed upon the following issue:

"Was the grievant discharged for just cause?"

"If not, what is the appropriate remedy?"

PERTINENT CONTRACTUAL PROVISIONS

. . .

ARTICLE 24

DISCIPLINARY ACTION

24.01 Disciplinary Action. No Employee shall be reprimanded, suspended or discharged except for just cause.

24.02 Dismissal. No Employee may be discharged for the following offenses without warning or notice:

A) Failure to carry out the valid orders of a supervisor;

B) Use of abusive language toward another person while on Courthouse premises.

C) Intoxication while on duty;

D) Unauthorized possession or use of narcotics;

E) Dishonesty;

F) While on duty, deliberate misconduct which results in damage to any person or property;

G) Failure to notify supervisor of absence from work on three (3) separate occasions during any one (1) year period.

Any Employee who is discharged, except probationary, shall be given a written notice of the reasons for the action, and a copy of the notice shall be made a part of the Employee's personal history record, and a copy shall be sent to the Union secretary. Any Employee who has been discharged may appeal by giving written notice to h/er supervisor within fourteen (14) days after dismissal. Such appeal shall go directly to arbitration.

24.03 Disciplinary Progression. For all other offenses, the progression of disciplinary action will be:

A) Written reprimand;

B) Suspension, not to exceed five (5) working days.

C) Dismissal.

An Employee shall not be subject to disciplinary suspension unless s/he had been given a written reprimand on a prior occasion, and no Employee shall be subject to discharge under this paragraph from employment unless s/he had previously been suspended for cause. The Employee shall have the right to have any matter under this paragraph arbitrated as set forth in 23.02. Any disciplinary action taken by the County against an individual Employee shall be reduced to writing, stating therein the reason for the disciplinary action. The individual Employee and the Union shall be given copies of the said writing and a copy shall be placed in the Employee's personnel file. All disciplinary action taken under this paragraph shall be removed from the individual Employee's record after passage of two (2) years.

24.04 Grievance Procedure. Any dispute as to whether an Employee was disciplined for just cause will be subject to the grievance procedure, provided it is presented within five (5) working days from the date of the disciplinary action. If it is determined that the Employee was not disciplined for just cause, the County will reinstate the Employee with seniority credit and back pay for actual time lost.

24.05 Union Representative. An Employee, if s/he so requests, may have a Union representative present during any conference regarding disciplinary action. The County will advise the Employee of h/er right to have a Union steward present during any conference regarding disciplinary action.

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BACKGROUND

Amongst its various governmental operations the County operates a radio dispatch center. Telephone calls and radio traffic are recorded and maintained by the County. The County had employed Karen Dinse, hereinafter referred to as the grievant, since February of 1991, first as a part-time Dispatcher and then, commencing in February 1992, as a full-time Dispatcher. The grievant is also a driver for the Crivitz Rescue Squad, an advisor for an Explorer's Post and a member of the Marinette County Sheriff's Auxiliary. On August 9, 1995 the grievant reported for duty at her regular 10:30 p.m. starting time. At approximately 11:50 p.m. Deputy Rick Berlin contacted the Grievant by radio and informed her two (2) occupants of a vehicle he had been pursuing ran from their vehicle on foot. Berlin informed the Grievant he was going to pursue the two individuals on foot and gave her a "hold traffic" command, i.e. do not use the radio, so that the individuals Berlin was pursuing would not be alerted to his being near because of noise on his radio. At 11:58 p.m. he got the first individual into custody and at 12:19 a.m. on August 10th, he got the second individual into custody.

At 12:12 a.m. on August 10th the grievant received a call from Donna Perkins informing the grievant an alarm was ringing at the Little River Country Club. Perkins' stated… "Yeah, I mean I'm lying in bed and its going. You know…I know over the years they've had problems with it but..they said a mouse can walk on the floor and set it off." 1/ Upon the conclusion of this telephone call a second caller, Donna Anderson, contacted the grievant to inform her she lived by the County Club and was hearing the alarm. Anderson then called back after approximately ten (10) minutes and informed the grievant the alarm had stopped ringing. Perkins also called back, however she talked to the other Dispatcher on duty, Michelle Hudson. Perkins informed Hudson she had called about the Country Club alarm and also told her the alarm had stopped ringing. Hudson testified at the hearing that at the conclusion of the Perkins phone call she asked the grievant about the Country Club alarm and that the grievant responded she was taking care of it.

The grievant did not dispatch a deputy to look into the matter nor did she inform any supervisor of the matter. At approximately 6:00 a.m. the Little River Country Club contacted the Marinette Sheriff's Department and reported it had been broken into. Deputy Stephen Bouche reported a rock had been used to break open a window, that perpetrator(s) had attempted to break into the cash register and that the door to the manager's office had been broken into.

On August 10, 1995 at 6:30 p.m. met with Chief Deputy Michael Waugus to discuss the Little River Country Club alarm. Thereafter Waugus wrote the following report:

> THURSDAY 8-10-95
>
> 6:30 PM

1/ Transcript of dictaphone tape recording of 911 telephone line.

I MET WITH KAREN DINSE IN MY OFFICE IN RESPONSE TO MY PHONE CALL TO HER TO DISCUSS THE LITTLE RIVER COMPLAINT INCIDENT.

I ASKED KAREN WHAT HAD HAPPENED WITH THE ALARM COMPLAINT, WHY NO OFFICERS WERE SENT TO LITTLE RIVER. SHE SAID THAT THEY WERE VERY BUSY AND SHE HAD TRIED TO CALL THE KEYHOLDERS AT LITTLE RIVER, A JIM, AND SHE WASN'T ABLE TO GET ANYONE. SHE STATED THAT SHE USED THE 732-7608 LINE, WHICH IS NOT A TAPED LINE. SHE SAID THIS IN RESPONSE TO ME SAYING THAT I LISTENED TO THE TAPED LINED AND THERE WEREN'T ANY OUT-GOING CALLS ABOUT THE ALARM.

I ASKED HER WHY SHE DIDN'T CONTACT SGT SAUVE, THE SHIFT SUPERVISOR, OR THE MARINETTE POLICE DEPT TO RESPOND TO THE ALARM. SHE SAID, "**I HAD A GUT FEELING, THERE WASN'T ANYTHING TO IT.**"

THE DOOR TO MY OFFICE WAS OPEN DURING THIS TIME. THERE WAS A MEETING OF THE SHERIFF'S DEPT AUXILIARY IN THE SQUAD ROOM. AMBER LYNWOOD, AN A.F.S.C.M.E. UNION STEWARD WAS PRESENT AT THE MEETING AND I ASKED HER TO STEP INTO MY OFFICE WITH KAREN AND MYSELF. I BRIEFLY EXPLAINED THAT I WAS TALKING TO KAREN ABOUT LITTLE RIVER COUNTRY CLUB AND THE FACT THAT SHE DIDN'T SEND AN OFFICER TO THE COMPLAINT. I ASKED KAREN TO REPEAT THE REASON FOR NOT SENDING AN OFFICER AND SHE AGAIN STATED, "**I HAD A GUT FEELING, THERE WASN'T ANYTHING TO IT. I GUESS THERE WILL BE TIME OFF FOR THIS.**" I ASKED KAREN TO GIVE ME A STATEMENT IN WRITING ABOUT THE INCIDENT. SHE STATED SHE WOULD AND LEFT MY OFFICE.

On August 12, 1995 the grievant wrote the following statement concerning the matter:

On Thursday, August 10th 1995, at approximately 00:07 a.m. a person by the last name of Perkins had called stating the alarm had gone off at Little River Country Club then about a minute or so later

Donna Anderson called reporting the same thing. In the meantime I was trying to call Mr. Birch and Mr. Marineau just to verify that it could be their alarm but no one answered at either residence. Then at about 00:20 both parties called and said the Alarm was not on anymore. One minute the Alarm was on and then it was off, did not send an officer because of that. All Deputies were on complaints.

On August 14, 1995 Waugus sent the following letter to the grievant:

DATE: AUGUST 14, 1995

TO: MS. KAREN DINSE
CTH GG
CRIVITZ, WI 54114

DISPATCHER KAREN DINSE,

THIS LETTER IS TO INFORM YOU THAT YOU ARE REQUIRED TO BE IN SHERIFF KANIKULA'S OFFICE ON THURSDAY, AUGUST 17, 1995, AT 7:00 AM. THE PURPOSE OF THIS MEETING IS TO DISCUSS YOUR FAILING TO NOTIFY PATROL OFFICERS OF THE RECEIPT OF TELEPHONE CALLS REPORTING THE ACTIVATION OF THE LITTLE RIVER COUNTRY CLUB BURGLAR ALARM, ON THURSDAY, AUGUST 10, 1995. AS A RESULT, THE LITTLE RIVER COUNTRY CLUB REPORTED A BURGLARY TO THEIR BUILDING. THIS IS AN APPARENT VIOLATION OF SECTION 24.02 (F) OF THE A.F.S.C.M.E. LOCAL 1752 CONTRACT WITH MARINETTE COUNTY. A POTENTIAL RESULT OF THIS MEETING MAY RESULT IN YOUR TERMINATION, AND, AS SUCH, YOU ARE ENTITLED TO HAVE A UNION REPRESENTATIVE PRESENT, IF YOU SO WISH.

SINCERELY,

MICHAEL WAUGUS
CHIEF DEPUTY

On August 17, 1995 Marinette County Sheriff James Kanikula met with the grievant and the following notes were made by the County:

8-17-95

7:04 AM
CONFERENCE ROOM

PRESENT: AMBER LYNWOOD
PAT CHEMELA
KAREN DINSE
SHERIFF KANIKULA
CHIEF DEPUTY WAUGUS

SHERIFF KANIKULA BEGAN TO DISCUSS HIS CONCERNS RELATING TO THIS MEETING AND THE INFORMATION THAT HE HAD RECEIVED.

KAREN DINSE STATED THAT SHE WANTED TO ADD A MAJOR POINT, THAT BEFORE MIDNIGHT, RICK BERLIN HAD ASKED FOR RADIO SILENCE. THIS WAS NOT MENTIONED PRIOR TO THIS TIME BY KAREN. SHE FELT THIS IS VERY IMPORTANT.

SHERIFF KANIKULA ASKED KAREN WHY SHE DID NOT GIVE THE INFORMATION ON THE ALARM TO THE PATROL DIVISION? SHE REPLIED THAT EVERYONE WAS TIED UP. SHERIFF KANIKULA ASKED WHY THE ALARM WAS NOT GIVEN TO SGT. SAUVE? KAREN STATED THAT SHE WAS TRYING TO CALL THE KEYHOLDERS, VIA TELEPHONE. SHERIFF KANIKULA ASKED ABOUT CALLING SGT. SAUVE BY TELEPHONE. SHERIFF KANIKULA ASKED WHY NOT CONTACT THE MARINETTE POLICE DEPT. VIA THE INTERCOM?

PAT CHEMELA STATED THAT "OTHER DISPATCHERS CAN GET AWAY WITH ANYTHING!"

CHIEF DEPUTY WAUGUS STATED TO KAREN, "ON THE EVENING OF AUGUST 10TH, IN MY OFFICE, WITH AMBER LYNWOOD PRESENT, DID YOU MAKE THE STATEMENT, "**I HAD A GUT FEELING, THERE WAS NOTHING TO IT.**"

? KAREN STATED THAT SHE DID MAKE THAT STATEMENT.

SHERIFF KANIKULA GAVE AN OFFER TO RESIGN TO KAREN AND IT WAS READ BY PAT CHEMELA. PAT CHEMELA SAID THAT KAREN DOESN'T WANT IT. KAREN, THEN, READ THE OFFER TO RESIGN. KAREN WAS ADVISED BY AMBER LYNWOOD NOT TO RESIGN. KAREN STATED THAT SHE DID NOT WANT TO RESIGN. SHERIFF KANIKULA STATED THAT WITH REGRET, HE WAS TERMINATING KAREN'S EMPLOYMENT WITH THE MARINETTE COUNTY SHERIFF'S DEPT. HE STATED THAT THIS IS BECAUSE OF HER FAILURE TO EFFECTIVELY HANDLE THE DISPATCH OF OFFICERS TO THE LITTLE RIVER COUNTRY CLUB BURGLAR ALARM.

PAT CHEMELA STATED THAT THEY WANTED A TERMINATION WITH PAY, EFFECTIVE 8-17-95, EVEN THOUGH IT'S NOT A PROVISION IN THE CONTRACT, PENDING AN ARBITRATOR'S DECISION. SHE INDICATED THAT THEY WILL FILE A WRITTEN APPEAL AND SPECIFY THE REQUEST FOR TERMINATION WITH PAY.

SHERIFF KANIKULA STATED THE TERMINATION WAS WITHOUT PAY AND EFFECTIVE IMMEDIATELY.

On August 17, 1995 Waugus gave the following document to Sheriff Kanikula:

TO: SHERIFF KANIKULA

DATE: AUGUST 17, 1995

SUBJECT: INFORMATION ON DINSE TERMINATION

BASIS: AT APPROXIMATELY 12:07 A.M., THURSDAY, AUGUST 10, 1995, WHILE ON DUTY AS A DISPATCHER FOR THE MARINETTE COUNTY SHERIFF'S DEPARTMENT, YOU ANSWERED TWO TELEPHONE CALLS REPORTING AN AUDIBLE BURGLAR ALARM AT THE LITTLE RIVER COUNTRY CLUB, IN THE TOWN OF PESHTIGO. A SHORT TIME LATER, ONE OF THE CALLERS CALLED BACK AND

SPOKE TO YOU AND INDICATED THAT THE AUDIBLE ALARM WAS NO LONGER OPERATING. YOU STATED TO THE FIRST CALLER, DONNA PERKINS, THAT "I WILL CHECK AND GIVE THEM A CALL." YOU STATED TO THE SECOND CALLER, DONNA ANDERSON, THAT "IF THE ALARM COMES BACK ON, GIVE ME A CALL." THE INFORMATION YOU RECEIVED ON THE TELEPHONE CALLS WAS NOT REPORTED TO DISPATCHER MICHELLE HUTSON, YOUR CO-WORKER, WHO TOOK A FOURTH TELEPHONE CALL FROM DONNA PERKINS, WHO REPORTED THE ALARM WAS NO LONGER OPERATING. AT APPROXIMATELY 12:15 A.M., DISPATCHER HUTSON TOLD YOU WHAT PERKINS HAD STATED TO HER AND YOU RESPONDED TO DISPATCHER HUTSON, "IT'S ALL TAKEN CARE OF." DISPATCHER HUTSON STATES THAT SHE HAD NO REASON TO DOUBT YOU OR TO QUESTION YOU FURTHER.

AT NO TIME DURING THE MORNING HOURS OF AUGUST 10, 1995, DID YOU NOTIFY ANY POLICE OFFICER TO RESPOND TO THE ALARM. YOU HAD THE ABILITY AND THE OPPORTUNITY TO CONTACT THE SHIFT SUPERVISOR, SGT. SAUVE, BY RADIO OR BY HIS CELLULAR TELEPHONE AND FAILED TO DO SO. YOU HAD THE ABILITY TO CONTACT THE MARINETTE POLICE DEPARTMENT BY TELEPHONE OR DIRECT INTERCOM OR RADIO AND REQUEST THEIR OFFICERS RESPOND TO THE ALARM, AS THEY HAVE DONE IN THE PAST, AND YOU FAILED TO DO SO. YOU HAD THE ABILITY AND OPPORTUNITY TO CALL LT. KESSLER AT HIS HOME IN MARINETTE AND REQUEST HIS ASSISTANCE TO CALL OUT ADDITIONAL OFFICERS OR FOR HIM TO RESPOND TO THE ALARM AND YOU FAILED TO DO SO. YOU FAILED TO MAKE ANY WRITTEN RECORD OF THE ALARM CALLS ON A DEPARTMENT COMPLAINT FORM.

UNTIL YOU TOOK A COMPLAINT FROM LITTLE RIVER COUNTRY CLUB AT 5:46 A.M., AUGUST 10, 1995, WHEN THEY STATED THAT THEY HAD BEEN BURGLARIZED. YOU THEN DISPATCHED DEPUTY BOUCHE TO RESPOND TO THE COMPLAINT.

ON THURSDAY EVENING, AUGUST 10, 1995, AT APPROXIMATELY 6:30 P.M., YOU MET WITH CHIEF DEPUTY WAUGUS, AND WERE LATER JOINED BY AMBER LYNWOOD, AN A.F.S.C.M.E. UNION STEWARD. YOU WERE ASKED TO DESCRIBE WHAT HAD HAPPENED REGARDING THE LITTLE RIVER ALARM COMPLAINT. YOU STATED THAT YOU HAD TRIED TO CALL THE KEYHOLDERS FOR LITTLE RIVER COUNTRY CLUB ON THE UNTAPED 732-7608 PHONE LINE. YOU WERE THEN ASKED BY CHIEF DEPUTY WAUGUS WHY YOU HAD NOT CALLED SGT. SAUVE, OR THE MARINETTE POLICE DEPARTMENT, TO RESPOND TO THE ALARM. YOU RESPONDED TO CHIEF DEPUTY WAUGUS, "I HAD A GUT FEELING THERE WASN'T ANYTHING TO IT." YOU MADE THE STATEMENT, "I GUESS THERE WILL BE TIME OFF FOR THIS."

DURING THE MEETING THIS MORNING, AUGUST 17, 1995, AT 7:00 A.M., YOU WERE PRESENT ALONG WITH AMBER LYNWOOD, AND PATTI CHEMELA, A.F.S.C.M.E. UNION STEWARDS, CHIEF DEPUTY WAUGUS, AND SHERIFF KANIKULA. YOU STATED THAT YOU WANTED EVERYONE TO KNOW THAT BEFORE MIDNIGHT, ON AUGUST 10, 1995, DEPUTY BERLIN BEGAN TO CHASE TWO SUBJECTS THRU A WOODED AREA OF THE TOWN OF PESHTIGO, AND HAD REQUESTED RADIO SILENCE. THIS WAS THE REASON THAT YOU DID NOT CONTACT ANYONE ABOUT THE ALARM. YOU STATED THAT "EVERYONE WAS TIED UP" IN RESPONSE TO SHERIFF KANIKULA'S QUESTION OF WHY YOU DID NOT CONTACT ANYONE ABOUT THE ALARM. YOU WERE ASKED BY CHIEF DEPUTY WAUGUS ABOUT THE STATEMENT MADE TO HIM ON AUGUST 10, 1995, "I HAD A GUT FEELING, THERE WASN'T ANYTHING TO IT." HE ASKED IF THIS STATEMENT WAS CORRECT AND YOU REPLIED THAT IT WAS.

YOUR FAILURE TO RESPOND TO THE TELEPHONE CALLS ABOUT THE LITTLE RIVER COUNTRY CLUB ALARM CONTRIBUTED TO A FELONY CRIME BEING COMMITTED IN MARINETTE COUNTY.

On August 17, 1995 the following letter was sent to the grievant:

> DATE: AUGUST 17, 1995
>
> TO: DISPATCHER KAREN DINSE
>
> SUBJECT: LETTER OF TERMINATION
>
> EFFECTIVE 7:30 A.M., AUGUST 17, 1995, YOU ARE HEREBY TERMINATED FROM YOUR EMPLOYMENT WITH THE MARINETTE COUNTY SHERIFF'S DEPARTMENT.
>
> THE TERMINATION IS A RESULT OF YOUR FAILURE TO EFFECTIVELY RESPOND TO TELEPHONE CALLS OF A BURGLAR ALARM AT THE LITTLE RIVER COUNTRY CLUB ON AUGUST 10, 1995.
>
> SINCERELY,
>
> James J. Kanikula /s/
> JAMES J. KANIKULA
> SHERIFF

On August 25, 1995 the grievant filed the following grievance:

> August 25, 1995
>
> Sheriff James Kanikula
> Marinette County Sheriff
> 1925 Ella Court
> Marinette, WI 54143
>
> Subject: Request for Arbitration
>
> Dear Sheriff:
>
> I, Karen Dinse, am hereby appealing my termination from the Marinette County Sheriff's Department. I did not deliberately cause damage to any person or property. I pray that the arbitration will commence as soon as possible and that it will be based on the

violation cited in Chief Deputy Michael Waugus's letter of August 14, 1995. Specifically, section 24.02 (F) of the Marinette County Courthouse Employee, Local 1752, AFL-CIO AGREEMENT with Marinette County, WI.

The remedy I am seeking is to be reinstated with my job. I will also seek back Wages, no loss in seniority rights, and other benefits that are provided for in our AGREEMENT.

Sincerely,

Karen Dinse /s/
Karen Dinse
W6175 CTH GG, Crivitz, WI 54114

On August 30, 1995 the following letter was sent to the grievant:

DATE: AUGUST 30, 1995

TO: MS. KAREN DINSE
CTH GG
CRIVITZ, WI 54114

RE: AMENDED LETTER OF TERMINATION

DEAR MS. DINSE,

THIS IS AN AMENDED LETTER OF TERMINATION TO CLARIFY THE REASON FOR YOUR DISMISSAL FROM THE MARINETTE COUNTY SHERIFF DEPARTMENT ON AUGUST 17, 1995.

YOU WERE ALSO DISMISSED FROM THE SHERIFF'S DEPARTMENT IN ACCORDANCE WITH SECTION 24.03 OF THE CURRENT A.F.S.C.M.E. CONTRACT WITH MARINETTE COUNTY.

SINCERELY,

James J. Kanikula /s/
JAMES J. KANIKULA
SHERIFF

The matter was processed to arbitration in accordance with the parties grievance procedure. At the commencement of the hearing the Union pointed out it had requested several documents and tapes from the County and had not received them.

The grievant has received the following discipline for the following actions: August 28, 1993, Oral Warning, failure to place warrant hit confirmation in the hit file; September 2, 1993, Oral Warning, failure to place warrant hit confirmation in the hit file; January 1, 1994, Written Reprimand, not sending officer to traffic accident complaint, holding complaint for next shift; June 3, 1994, Five (5) Day Suspension, Changed patrol duty schedule without authorization to allow vacation day for Deputy Dinse, denied doing so to Sgt. Sauve, and later admitted the act; and, September 15, 1994, Written Warning, Requested to notify Sheriff of complaint by Shift Sgt. and failed to do so. None of the preceding discipline was grieved by the grievant.

County's Position

The County contends it did have just cause to discharge the grievant. The County argues the grievant was discharged because she deliberately committed a misconduct which did result in damage to property as contemplated by Section 24.02 of the collective bargaining agreement and because she failed to perform her duty properly after a history of progressive discipline as contemplated by Section 24.03 of the collective bargaining agreement.

The County points out that two citizens called the grievant to report hearing the alarm at the Little River Country Club. The County asserts the grievant deliberately elected to not dispatch officers to investigate. The County points out the grievant testified she forgot about the alarm. 2/ The County contends she later reported to Chief Deputy Waugus that she did not dispatch an officer to investigate the matter because she had a gut feeling there was nothing to the call. 3/ The County also points out when Dispatcher Hudson questioned her about the matter the grievant informed her she was taking care of the matter which resulted in the other dispatcher taking no action. The County contends the grievant's testimony at the hearing that she intended to put the matter on the back burner until it had quieted down and that the matter was forgotten because of everything else that was going on would of been cause for immediate discharge. 4/ The County stresses a burglary was committed and it was not discovered until Country Club staff reported the matter several hours after reports of the alarm had been received by the County.

The County also asserts that the grievant had been trained to dispatch an officer to the scene of a security alarm if it was reported going off. The County further points out the grievant has done so in the past, including sending officers to the County Club on previous occasions. The County contends the record is clear that the grievant knew what her duty as a dispatcher was when she received a report of an activated alarm. The County argues the grievant's testimony at the hearing that she exercised good judgement is evidence of lack of remorse and failure to acknowledge she committed an error. 5/

The County also contends the grievant's later proffered explanation that she did not dispatch an officer because of the requested "hold traffic" command fails because the grievant was aware of other modes of communication to contact law enforcement personnel. The County concludes the grievant just forgot the whole thing and points out that four other officers were in the general area and could of responded had the grievant taken action.

2/ Transcript, pp. 144-147.

3/ Transcript, p. 149.

4/ Transcript pp. 147-148.

5/ Transcript, p. 152.

The County argues the grievant's inaction resulted in damage to property as contemplated by Section 24.02(F) of the collective bargaining agreement. The County also asserts that had the grievant done her job properly there would have been no misconduct dereliction of duty even if there had been damage to property. The County also argues that the grievant's termination is in accord with Section 24.03 of the collective bargaining agreement. The County asserts the grievant has received a verbal warning, a written warning and a suspension all with the required two (2) year period. The County also points out the grievant did not grieve any of the previous disciplinary actions. The County concludes it thus had just cause to terminate the grievant's employment.

Union's Position

The Union contends the County has the burden to demonstrate it had just cause to terminate the grievant's employment for violation of Section 24.02(F) of the collective bargaining agreement. The Union argues the August 17th letter to the grievant establishes the County's basis for terminating the grievant as an apparent violation of Section 24.02(F). Further, that Waugus' memo to the Sheriff on August 17th sets forth the County's factual basis for terminating the grievant. That memo addresses the grievant's failure to dispatch officers to the Little River Country Club. Finally, the August 17th termination letter cites as the cause for termination the grievant's failure to dispatch officers in response to telephone calls concerning a burglar alarm. The Union acknowledges that Section 24.02(F) allows for dismissal without warning or notice for "… while on duty, deliberate misconduct which results in damage to any person or property." The Union asserts the actions of the Sheriff in issuing an amended letter of termination on August 30th, 1995, after the grievant filed the instant grievance, which stated she was also dismissed in accordance with the progressive discipline procedure of Section 24.03 of the collective bargaining agreement, was made because the County realized it did not have the just cause to summarily dismiss the grievant for the stated reason of deliberate misconduct.

The Union asserts that under Section 24 of the collective bargaining agreement any disciplinary action taken must be reduced to writing and state the reasons for the action. The Union argues complete and immediate disclosure of reasons for administering disciplinary action is of even greater importance in discharge cases. The Union points out that employes discharged under Section 24.02 do not have a four step grievance procedure but appeal their dismissal immediately to arbitration. The Union asserts it is therefore critical that the County apprise such employes of the grounds for their dismissal during pre-discharge meetings or, at the very least, in the official notice of dismissal. The Union suggests that the timing of the clarification given to the grievant by the letter dated August 30th, is a recognition by the County that the grievant's actions did not constitute deliberate misconduct and the County is therefore grasping at straws. The Union concludes arbitral precedent calls for the Arbitrator to ignore post-discharge rationalization and rule on the sole issue of whether the County had just cause to dismiss the grievant for the reason given at the time of discharge, deliberate misconduct which resulted in damage to any

person or property.

The Union also contends the County's amended letter of termination is tantamount to double jeopardy. The Union argues the Sheriff's second letter essentially resulted in the grievant being discharged for a second time for the same offense. The Union asserts the County is attempting to discipline the grievant with two punishments for one wrongdoing. The Union concludes that the County contention that should the Arbitrator find just cause did not exist to warrant summary discharge under Section 24.02(F), that the Arbitrator is bound to find cause did exist for progressive discipline under Section 24.03 is faulty logic and makes a mockery of the principle of due process.

The Union also contends if the Arbitrator determines the Grievant's prior disciplinary record is relevant to this proceeding that Section 24.03 of the agreement clearly limits any review to incidents occurring after August 10, 1993. The Union points out the collective bargaining agreement clearly states all disciplinary actions shall be removed from an employe's record after two (2) years. The Union asserts this language is clear and unambiguous.

The Union further contends the County fails several of the tests of just cause. The Union asserts the grievant was not adequately informed of what consequences would occur. The Union argues the County has acknowledged through the testimony of Chief Deputy Waugus that it did not have a written policy concerning the immediate dispatch of officers to alarms and he acknowledged there were situations in which a delay in the dispatch could occur. 6/ The Union concludes how can the grievant be dismissed for failure to abide by a rule which was previously unknown.

The Union asserts the investigation of the matter was flawed. The Union points out Deputy Berlin's statement was obtained eight (8) days after the incident and one (1) day after the discharge. The statement from the highest ranking officer on duty, Sergeant Jerry Sauve, was not obtained until twenty (20) days after the incident. The Union also argues its attempts to investigate the matter was seriously compromised because the County failed to turn over to the Union until the day of the hearing any written statements, information, or documents obtained, uncovered or used by the County during the investigation. These documents were: Statement of Donna Anderson (Reported Alarm), Statement of Donna Perkins (Reported Alarm), Typed Memo of Chief Deputy Meeting with the grievant (handwritten pages), Complainant memorandum of another Little River alarm, City of Marinette assists on alarm calls, Grievant's disciplinary record, Record of all security alarm responses in 1995, and Record of all security alarms taken by the grievant in 1995. The Union argues the County's failure to provide requested information is a prohibited practice, violates the just cause standard on procedural grounds, and the County's

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6/ Transcript, pp. 117-18.

failure to reference progressive discipline during the pre-discharge portion of the investigation requires the Arbitrator to reject the post-discharge justifications.

The Union asserts the grievant is not guilty as charged. The Union argues the grievant's actions were not deliberate and did not constitute misconduct. The Union points out Chief Deputy Waugus testified there was no evidence that the break-in at the Little River Country Club occurred at the time the alarm went off. 7/ The Union asserts the grievant exercised her judgement not to immediately dispatch any officers to the Country Club. That she intended to do so but that the matter was forgotten. The Union concludes the County has not met its burden of proving the County had just cause to summarily discharge the grievant for deliberate misconduct.

The Union also contends the punishment was discriminatory. In support of this position the Union argues that errors in judgement by other dispatchers were treated far differently. The Union stresses that when Dispatcher Schoen dispatched the wrong fire department to a fire, which as a result the house burned down, no discipline was meted out. When Dispatcher Paasch failed to timely respond to a request for a warrant check on a driver, which resulted in driver with warrant being let go and a complaint being filed by the officer who made the stop, no discipline was meted out. The Union also points out the Chief Deputy Waugus testified that delays sometimes occur. 8/ The Union concludes the grievant has been held to a higher standard than other dispatchers.

The Union contends the punishment of summary discharge is excessive. The Union argues the grievant exercised her own judgement and decided not to immediately dispatch and officer to the Little River Country Club. The Union acknowledges she made a bad decision, however, the Union avers the punishment was unreasonable in light of mitigating circumstances that factored into the grievant's decision. The Union argues it was reasonable for the grievant to conclude based upon Perkins and Anderson's statements that it was a false alarm. Thus the statement much emphasized by the County that, "I had a gut feeling there was nothing to it."
Second, the grievant had been directed to hold traffic. Third, it was the County's practice to try to not to have all County officers converge in one section of the County. The Union asserts the instant matter is not so serious as to warrant a permanent dismissal. Especially in view of the fact the grievant is not guilty of deliberate misconduct and the fact the County continued her employment for a week after the incident occurred.

County's Reply Brief

7/ Transcript, p. 128.

8/ Transcript, pp. 118-120.

In its reply brief the County contends an argument based upon double jeopardy is not relevant. The County argues the concept of double jeopardy is a criminal law concept and points out the grievant is not being prosecuted for any crime. The County asserts the grievant was fired once for an unacceptable performance of duty after a history of disciplinary actions. The County argues the grievant was not fired twice for the same event. The County also argues the collective bargaining agreement does not prescribe the timing or content of the notice of reasons for the termination. The County points out the notice of termination recites the termination is because of her failure to respond to calls concerning an alarm. The County argues this notice does not specify a specific section of the collective bargaining agreement nor is such a specific citation required by the collective bargaining agreement. The County also asserts the amended August 30th, notice to the grievant did not prejudice the grievant and clarified the issues for her so that she had a complete possibility to prosecute her appeal.

The County acknowledges it is not necessary to consider the grievant's discipline record prior to the two (2) years preceding her termination. The County asserts the progressive discipline requirements are more than satisfied by the verbal warning on August 28, 1993, a second verbal warning on September 2, 1993, the written reprimand on January 13, 1994, a five (5) day suspension on June 3, 1994 and another written warning on September 15, 1994.

The County also contends the Union argument it was not supplied with documentation it had requested is a blatant misrepresentation. The County points out that except for the first two documents listed by the Union in their claim of surprise, the remainder were not products of the investigation. The County also points out that if it failed to turn over the Perkins or Anderson statements, these in no way prejudiced the Unions case as it was already aware of the names of the callers.

The County also asserts that the grievant, contrary to the Union's claims, did fail to perform her duties as she had been trained to perform. The County also argues the grievant's testimony at the hearing that she forgot about the activated alarm gives the Sheriff's decision to terminate her even more credibility.

The County also argues the two scenarios provided by the Union concerning other dispatchers who where not disciplined, sending the wrong fire department to a fire and a delay concerning a search for warrants, do not constitute sufficient evidence of discrimination.
The County also argues that the grievant deliberately ignored her training, knowledge and experience when she allowed comments from a citizen to cause her to not dispatch a deputy to the scene of the alarm.

The County points out that had nothing happened at the County Club, the Union's argument of excessive discipline might have some merit. However, the County asserts, the grievant acknowledged she had other alternatives she could have used and had used in the past. The County stresses the matter is made more deliberate when the other dispatcher on duty

questioned the grievant about the matter the grievant responded it was taken care of. The County contends this was another indication of the grievant's deliberate action in the matter.

The County concludes it had more than sufficient just cause to terminate the grievant's employment.

Reply Brief of the Union

In its reply brief the Union argues that the statement made by the grievant to the other dispatcher on duty that the "situation was handled" supports the grievant's position that she intended to dispatch an officer to the alarm. Here the Union points out the record is unclear as to whether the grievant's attempts to contact the Country Club took place before, during or after the question by the other dispatcher.

The Union also argues that the grievant's actions not to send an officer can not be construed as deliberate. The Union defines deliberate as "willful rather then merely intentional" and "careful in considering the consequences of a step". 9/ The Union argues that the grievant's actions were not willful and was not after a careful weighing of the facts and circumstances at hand.

The Union again points out that Chief Deputy Waugus testified there is no way of knowing exactly when the break-in occurred and if the grievant had dispatched an officer the break-in still could of occurred. The Union argues the damage to property had to result from misconduct. The Union avers misconduct is a transgression of some established and definite rule of action, willful in character and is not negligence or carelessness. 10/ The Union stresses there was no written rule or policy, and, at most, it may be negligent it was not deliberate.

The Union concludes the County's after the fact attempt to amend the discharge to include progressive discipline is merely an after the fact rationalization and should be rejected by the Arbitrator.

The Union would have the Arbitrator sustain the grievance, order the grievant reinstated and order the grievant be made whole for all lost wages and benefits.

DISCUSSION

9/ Black's Law Dictionary (6th ed., 1990).

10/ Black's Law Dictionary, supra.

The record demonstrates that the grievant was discharged because of her failure to dispatch an officer to the scene where an alarm had been reported. There is no dispute that the grievant failed to dispatch an officer. There is no dispute the grievant received two telephone calls reporting the alarm was going off at the Little River Country Club and one telephone call reporting the alarm had stopped. There is no dispute that when the other dispatcher assigned to duty asked the grievant about an alarm at the Country Club she responded the matter was taken care of. There is no dispute that when Chief Deputy Waugus questioned the grievant about the matter that during the questioning she responded… "I had a gut feeling there wasn't anything to it." There is also no dispute that at the time of the telephone calls the grievant had been directed to "hold traffic" by an officer who was in foot pursuit of two (2) individuals. However, there are several other alternative methods the grievant could have used to dispatch an officer and there is no dispute that the grievant did not attempt to use any of the alternatives.

The record also demonstrates, as the Union has pointed out, there are no written policies concerning dispatch duties. However Dispatcher Michael Hutson testified that as she had been trained you always dispatch an officer to the scene when an alarm is called in. 11/ Dispatcher Luann Pickl, who filled the grievant's position after she was terminated, testified you always dispatch an officer to the scene of an alarm and that this had also been the way to handle the matter when she had worked for the City of Marinette as a dispatcher. 12/ Dispatcher Diane Paasch also testified that you always send an officer to the scene and you do not substitute your own judgement. 13/ Chief Deputy Waugus testified that sending an officer to the scene of an alarm comes from training and that the Sheriff has emphasized he wants an officer to proceed to an alarm even when it has been determined to be a false alarm. 14/ Thus, even though there is no written policy concerning the dispatch of officers to the scene of an alarm, it is clear from the record the grievant knew her responsibility was to send an officer. It is also clear the grievant has never been given any authority to determine not to send an officer to the scene of an alarm.

The Union has argued the grievant was unaware of what consequences would occur if she failed to dispatch an officer to an alarm. The undersigned finds no merit in this argument. The

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11/ Transcript, pp. 26, 30-32.

12/ Transcript, pp. 35-40.

13/ Transcript, pp. 42-42, 45.

14/ Transcript, pp. 91-92.

grievant had been disciplined in the past when she failed to perform her duties, failure to file hit warrants and failure to dispatch officers to a traffic accident complaint, holding the complaint for the next shift. The grievant has also been disciplined for exercising authority she did not possess, the changing of the duty schedule. Clearly the grievant had been trained to dispatch officers to the scene of an alarm and just as clearly the grievant was aware that if she did not perform her duties as trained she would be disciplined.

The Union has argued the investigation in this matter was flawed. The undersigned finds no merit in this argument. The County clearly based its decision to discipline the grievant on the basis that she did not have an acceptable reason for not dispatching an officer to the scene of the alarm. The undersigned notes here that at no time during her meetings with the Sheriff or the Chief Deputy did the grievant allege she had the discretion not to send an officer to an alarm call. While the grievant had a rational for not using the radio, the "hold traffic" command, she did not offer an acceptable response to the County as to why she failed to use the available other forms of communications to officers. Nor did she contend she was unaware of these other forms of communicating to officers. The undersigned also finds no merit in the Union contention that the County's failure to turn over certain documents seriously compromised the Union's ability to investigate the matter. Both the Anderson and Perkins statements merely supported the telephone tape of their telephone calls, information the Union clearly knew about. The typed memo from the Chief Deputy to the Sheriff concerning the Chief Deputy's meeting with the grievant was a meeting attended to by the Union and there have been no factual disputes concerning this meeting. The memo of another Little River Country Club alarm, the assists by the City of Marinette on alarm calls, record of all security alarms in 1995, and record of all security alarms taken by the grievant in 1995 are clearly documents which support the County's position that the grievant at the time of her discharge was aware of the proper method to dispatch an officer to the scene of an alarm. The undersigned finds nothing in these documents which compromised the Union's ability to investigate the instant matter. The summary of the grievant's discipline history, while containing dates and matters which preceded the two year time frame in the collective bargaining agreement, is just that, a summary of the grievant's discipline history. The undersigned finds that, as the County has argued, this document was prepared for the hearing and the County's failure to provide this document to the Union in no way compromised the Union's ability to investigate the instant matter. Particularly when the grievant's entire personnel file was available to the Union.

The Union has argued the grievant is not guilty as charged. The Undersign finds no merit in this argument. The grievant was disciplined because of her failure to dispatch an officer to an alarm at the Little River Country Club. There is no dispute she failed to dispatch an officer. The Union has argued she exercised her judgement in not immediately dispatching an officer. The undersigned notes here the grievant had already been disciplined for delaying the dispatch of an officer to a traffic accident complaint. Thus the grievant was aware that intentional delay in the dispatch of an officer was grounds for discipline. Herein another employe asked her about the matter and the grievant informed her it was taken care of. The grievant did not dispatch an officer to the scene of the alarm even though she had available to her forms of communications other than

the radio. Clearly the grievant failed to perform the duties she had been trained to perform.

The Union has argued the discipline was discriminatory. The undersigned finds no merit in this argument. The other two matters raised by the Union, alerting the wrong fire department and failing to timely provide warrant information, are distinguishable from the instant matter. The first by the fact that changing jurisdictional lines may have caused the problem the second because the delay was beyond the dispatcher's control. While delays, as the Union has pointed out, do sometime occur, there is no evidence in the record as to why the grievant failed to use one of the other methods of communicating with officers to dispatch one to the scene of the alarm.

The Union has also argued the punishment of summary discharge is excessive. The undersigned notes here that the Union has argued that the County's amended discipline letter of August 30, 1995, informing the grievant that her discharge is in conformance with the progressive discipline procedure is a form of double jeopardy, particularly when it came on the heels of her filing her grievance. The undersigned finds the letter at most tells the grievant that even if the act of failing to dispatch an officer to an alarm is not grounds by itself for discharge, the act she failed to perform is grounds for discipline and given the grievant's disciplinary record, she is still terminated. At most it is a defense that even if the County were to reconsider the matter, because of the failure of the progressive discipline to correct her job performance, she is terminated. The Union has consistently argued that the County's actions in discharging the grievant are on the basis of a violation of Section 24.02(F), deliberate misconduct which resulted in immediate dismissal. However, the record demonstrates the grievant was not immediately dismissed. The County first investigated the matter to determine whether there was a basis the grievant had for not dispatching an officer. Chief Deputy Waugus met with the grievant and then reported to the Sheriff. The Sheriff then met with the grievant on the morning of August 17th. While the August 14th letter to the grievant directing her to meet with the Sheriff on August 17th did state that a violation of Section 24.02(F) would be discussed, the Sheriff terminated the grievant at this meeting for her failure to dispatch officers to the Little River Country Club, clearly a job duty she had been trained to perform, one she had performed on many occasions in the past, one she had performed for that particular location in the past and for which there was no plausible reason offered by the grievant as to why she did not dispatch an officer. While the grievant's August 25th appeal avows she did not violate Section 24.02(F), neither the August 17th or August 30th letter from the Sheriff to the grievant identify as a basis for her termination a violation of this provision of the agreement. The Sheriff's August 30th letter to the grievant therefore is at most a clarification to the grievant as to why she was terminated. The undersigned finds there was nothing in the collective bargaining agreement which required the Sheriff to do this nor is there anything in the collective bargaining agreement which barred the Sheriff from amending his termination letter. Thus the undersigned finds no merit in the Union contention that the August 30th letter somehow placed the grievant in double jeopardy.

The undersigned also finds that contrary to the Union's arguments, the fact the grievant made the statement she had a gut feeling there was nothing to the alarm calls and the fact she made

the statement the situation was being handled reasonably lead to a conclusion that she did deliberate the matter and determined not to use alternative communication sources to dispatch an officer to the location of the alarm. The grievant did aver she attempted to contact Little River Country Club personnel on an untaped telephone line but was unsuccessful. However, the grievant offered no rational as to why when this proved unsuccessful she did not dispatch an officer through other communication methods other than the matter was forgotten. The undersigned notes here there is no evidence that the dispatchers had a greater than average workload at the times in question. There is nothing at all in the record which would demonstrate that the grievant was diverted from the task of dispatching an officer to the alarm scene. There is evidence in the record that the grievant was clearly aware she was to dispatch an officer whenever an alarm was reported, even if it was a false alarm.

Based upon the above and foregoing and the arguments, evidence and testimony presented the undersigned concludes the County did have just cause to discipline the grievant. The undersigned finds that the grievant was aware that her job duty required her to dispatch an officer to a reported alarm and that she did not have discretion to determine not to send an officer to an alarm. The record demonstrates the grievant made such a determination and did not dispatch an officer to a reported alarm at the Little River Country Club. Here, even if the undersigned were to conclude that discharge was an excessive discipline for her inaction the undersigned can not ignore the fact the grievant has been progressively disciplined. Therefore, the undersigned concludes the County had just cause to discharge the grievant. The grievance is denied.

AWARD

The County had just cause to discharge the grievant.

Dated at Madison, Wisconsin, this 18th day of July, 1996.

By Edmond J. Bielarczyk, Jr. /s/
Edmond J. Bielarczyk, Jr., Arbitrator