BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

MILWAUKEE DEPUTY SHERIFFS' ASSOCIATION

and

MILWAUKEE COUNTY (SHERIFF'S DEPARTMENT)

Case 463
No. 56851
MA-10435

(Willie Taylor Suspension Grievance)

Appearances:

Gimbel, Reilly, Guerin & Brown by **Mr. Franklyn Gimbel** and **Aaron Hurvitz**, on behalf of the Milwaukee Deputy Sheriffs' Association.

Mr. Timothy Schoewe, Deputy Corporation Counsel, Milwaukee County, on behalf of Milwaukee County.

ARBITRATION AWARD

The Milwaukee Deputy Sheriffs' Association, hereinafter referred to as the Association, and Milwaukee County, hereinafter referred to as the County or the Employer, are parties to a collective bargaining agreement which provides for final and binding arbitration of grievances arising thereunder. The Association made a request, with the concurrence of the County, that the Wisconsin Employment Relations Commission designate a member of its staff to hear and decide a grievance filed by the Association. The undersigned was so designated. A hearing was held in Milwaukee, Wisconsin on February 2, 1999. The hearing was not transcribed. Afterwards, the parties filed post-hearing briefs. The County subsequently filed a reply brief while the Association elected not to file a reply brief. The record was closed on March 17, 1999. Based on the entire record, the undersigned issues the following Award.

ISSUES

The parties stipulated to the following issues: 1/

1. Did Deputy Taylor, in fact, violate departmental rules?

2. In the event he did, was the disciplinary disposition reasonable?

1/ In their initial briefs, both sides worded the issue(s) differently from that noted here. The wording of the issues referenced here reflect what is contained in the arbitrator's notes from the hearing.

PERTINENT CONTRACT PROVISION

The parties' 1998-2000 collective bargaining agreement contains the following pertinent provision:

1.02 MANAGEMENT RIGHTS

The County of Milwaukee retains and reserves the sole right to manage its affairs in accordance with applicable laws, ordinances, regulations and executive orders. Included in this responsibility, but not limited thereto, is the right to determine the number, structure and location of departments and divisions; the kinds and number of services to be performed; the right to determine the number of positions and classifications thereof to perform such service; the right to direct the work force; the right to establish qualifications for hire, to test and to hire, promote and retain employes; the right to transfer and assign employes, subject to existing practices and terms of this Agreement; the right, subject to civil service procedures and ss. 63.01 to 63.17, Stats., and the terms of the Agreement related thereto, to suspend, discharge, demote or take other disciplinary action; the right to maintain efficiency of operations by determining the method, the means and the personnel by which such operations are conducted and to take whatever actions are reasonable and necessary to carry out the duties of the various departments and divisions.

In addition to the foregoing, the County reserves the right to make reasonable rules and regulations relating to personnel policy procedures and practices and matters relating to working conditions giving due regard to the obligations imposed by this Agreement.

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PERTINENT DEPARTMENTAL WORK RULE

1.05.15 RULE 15 – COURTESY AND CIVILITY

Members of the department shall answer all inquiries from citizens in a courteous manner and, if requested, shall give their name and badge number. Courtesy and civility toward the public is demanded of all members of the department, and conduct to the contrary will not be tolerated. Members in their conduct shall be civil and orderly, and shall at all times exercise the utmost patience and discretion.

FACTS

The County operates a Sheriff's Department. The Association is the exclusive collective bargaining representative for the Department's deputy sheriffs. Grievant Willie Taylor is a deputy sheriff who has been with the Department since 1989. This case involves the discipline meted out to Taylor following two separate complaints by private citizens about Taylor's work conduct.

The April 22, 1998 Incident

On April 22, 1998, Deputy Taylor, who was then assigned to the Parks Unit, was dispatched to McGovern Park to answer a disturbance call at a baseball diamond at the park. He responded to the call. Upon arriving at the park, Taylor spoke with the umpire at the baseball game. The umpire told Taylor that a group of about half a dozen spectators was being so disruptive that he (the umpire) wanted them removed from the stands. Taylor then spoke to the people whom the umpire had identified as the disruptive spectators and told them to leave the park or he would arrest them. One of the spectators, who was later identified as Deloris Trice, argued with Taylor about being ejected from the park and a verbal exchange between the two ensued. During the course of their verbal exchange, Trice asked Taylor for his name and badge number. Taylor gave Trice his badge number, but not his name. Taylor then asked Trice for her name, but she refused. Trice then left the park.

After Trice left, she called the Sheriff's Department and asked, among other things, whether deputies are to give their name and badge number upon request. The Department supervisor who answered Trice's phone call responded that deputies are to give their name and badge number upon request.

Following this phone call, Trice returned to the park where she approached Taylor and told him she was going to file a complaint against him. She also told Taylor that a supervisor in the Sheriff's department had told her that deputies were supposed to supply their name and badge number upon request. Trice then demanded to know his name. Taylor responded by telling Trice that if she wanted to know his name, she should come over to his squad so they could exchange information. Trice refused Taylor's offer and walked away.

The June 29, 1998 Incident

On June 29, 1998, Susan Sellin's car was hit by another car while she was driving in Milwaukee. The striking car fled the scene and Sellin gave chase in an attempt to get its license plate number. While Sellin was pursuing the hit and run car, she used her car phone to call 9-1-1 and report the hit and run accident.

During the course of her 9-1-1 call, Sellin drove past Deputy Taylor who was sitting in a marked squad car in Lincoln Park clocking cars with radar. Taylor's radar clocked Sellin going 48 miles per hour in a 25 miles per hour zone. Sellin was preoccupied with chasing the car that had hit her and her still ongoing 9-1-1 call, and was unaware that she had just driven past Taylor's marked squad and been clocked going about 25 miles an hour over the speed limit. Taylor then pulled out into traffic, turned on his flashing overhead lights, and attempted to pull Sellin over. At the time, Taylor was unaware that Sellin had been hit by another driver and that Sellin was pursuing that (hit and run) driver.

Sellin, who was still preoccupied with chasing the car that had hit her and her still ongoing 9-1-1 call, did not pull over even though Taylor's marked squad was behind her with its flashing lights activated. Other cars in the area pulled over, but Sellin did not. Instead, she drove for about 3/4 of a mile without pulling over. This frustrated and irritated Taylor, who eventually activated the squad's siren. Taylor first used "manual" blasts from the siren, and then he put the siren on "full wail". Taylor then activated the squad's public address system and ordered the driver to immediately pull over, which she did. After stopping, Sellin jumped out of her car and ran back to Taylor's squad. In doing so, she thought that Taylor was the police officer who had been dispatched, via her 9-1-1 call, to give chase to the hit and run driver she was pursuing. She was wrong in this regard because Taylor, at that point, did not know anything about her hit and run accident, or her 9-1-1 call; just that he had tried to stop this driver for speeding and she had not pulled over for 3/4 of a mile even though his flashing lights and siren were activated. When Sellin ran back to Taylor's squad, she attempted to explain her situation to Taylor and show him the location of the hit and run vehicle. Sellin wanted Taylor to give chase to the car that had hit her. Taylor declined to do so, and told Sellin to return to her car, which she did. Taylor then called the dispatch center and a dispatcher confirmed that Sellin had previously reported a hit and run accident.

Taylor's failure to pursue the hit and run car made Sellin irate.

When Taylor walked up to Sellin's car, a verbal exchange ensued between the two. For her part, Sellin berated Taylor for not pursuing the hit and run car. For his part, Taylor berated Sellin for speeding, driving recklessly, and not pulling over. During this verbal exchange, Taylor told Sellin he was going to give her traffic tickets for speeding and failing to stop for an emergency vehicle. This news made Sellin even more irate.

After Taylor went back to his squad to write the tickets, Sellin called her husband with her car phone and told him what was happening. While Sellin was talking with her husband on the phone, two more police cars from different jurisdictions drove up and parked.

When Taylor returned to Sellin's car with the completed tickets, Sellin was still on the phone with her husband. Sellin's husband therefore heard part of what happened next. Sellin told Taylor he was being mean to her and was not helping her as he was supposed to. She then twice asked Taylor for his name and badge number. Taylor did not verbally respond with his name and badge number either time. The first time he told Sellin that his name and badge number were on the tickets. The second time Sellin asked for this information Taylor responded thus: "My name is here" (pointing to one side of his chest) "and my badge number is here" (pointing to the other side of his chest).

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Following the incidents referenced above, Trice and Sellin filed citizen complaints with the Sheriff's Department concerning Taylor's work conduct. The Department's Office of Professional Standards investigated the complaints and, after doing so, referred them to the Police Services Bureau. Captain Randy Tilke of that Bureau recommended to his supervisor that Taylor be given an "Employe Documentation" for the Trice matter, but that no discipline be imposed for same. In the Sellin matter, Tilke recommended that Taylor be given a one-day suspension, stayed for six months. Inspector Willie McFarland did not follow Tilke's disciplinary recommendations. After reviewing the matter, McFarland decided to suspend Taylor for three days: one day for the Trice matter and two days for the Sellin matter. Taylor was subsequently suspended for September 30, October 1 and 2, 1998. He grieved his suspension, and the grievance was ultimately appealed to arbitration.

The record indicates that the Department's Inspector makes the decision whether to impose discipline, and if so, how much. Captains can make recommendations to him, but the Inspector is under no obligation to follow them.

The record also indicates that other complaints of incivility have been filed against Taylor by citizens. The complaints involved here are the first two which have been "sustained" by the Department's Office of Professional Standards.

POSITIONS OF THE PARTIES

The Association first contends that Taylor did not violate Department Rule 1.05.15 in the two instances involved here. The Association focuses its attention at the outset on the portion of that rule which provides: "shall give their name and badge number." According to the Association, the phrase just referenced is ambiguous because it does not explicitly specify how deputies are to respond to citizens who request their name and badge number. The Association asks the arbitrator to interpret same and construe any ambiguity against the drafter of the language (i.e. the County). Next, the Association argues that Taylor made a good faith effort to provide his name and badge number to Trice and Sellin. To support this premise, it notes that Taylor did tell Trice his badge number, and that he listed both his name and badge number on the citations which he issued to Sellin. In the Association's view, these acts were sufficient to comply with Rule 1.05.15. Finally, the Association contends that the level of discipline which was imposed here (i.e. a three-day suspension) was unreasonable under the circumstances and should be reversed. The Association therefore asks that the grievance be sustained, the suspension overturned and Taylor made whole.

The County first contends that Taylor violated a department rule when he failed to give his name and badge number to Trice and Sellin. For background purposes, the County avers that Department Rule 1.05.15 has historically been interpreted to mean that officers are to verbally give their name and badge number when requested. The County asserts that Taylor failed to do that with the two citizens here, so he violated that rule. In the Trice matter, the County notes that Taylor admits he told Trice he would only give her his name if she (Trice) would accompany him to his squad. The County argues Taylor should not have conditioned his response (on giving his name and badge number) as he did. According to the Employer, Taylor's statement to Trice can reasonably be viewed as an effort to "cow her" into not pushing her complaint against him further. In the Sellin matter, the County notes that Taylor admits he never verbally responded to Sellin's request for his name and badge number. According to the Employer, he should have; since he did not, he violated the rule. Next, with regard to the level of discipline which was imposed, the Employer believes that a three-day suspension was measured, not excessive, progressive and reasonable under the circumstances. It submits that the arbitrator should grant deference to the level of discipline which was imposed here, and should not substitute his own judgment for that of the Sheriff. The County therefore contends that the grievance should be denied and the discipline upheld.

DISCUSSION

At issue herein is whether the discipline which the County imposed on the grievant was reasonable. The County contends that it was while the Association disputes that assertion.

I begin my analysis with a discussion of the standard which will be utilized to make this call. The standard which is set forth in many labor contracts is that there be just cause for discipline. When the term "just cause" is found in labor contracts, it ordinarily is not defined. Be that as it may, a widely-understood and applied analytical framework for determining just cause has been developed through the common law of labor arbitration. That analytical framework consists of two basic elements: the first is whether the employer proved the employe's misconduct, and the second, assuming this showing of wrongdoing is made, is whether the employer established that the discipline which it imposed was justified under all the relevant facts and circumstances. The relevant facts and circumstances which are usually considered are the notions of progressive discipline, due process protections and disparate treatment. Here, though, this particular labor agreement does not contain a just cause standard. In fact, insofar as the undersigned can tell, no standard at all for reviewing discipline is included in the labor agreement. Notwithstanding the foregoing, what the parties did here was stipulate in issue number (2) to a reasonableness standard. While the term "just cause" is a term of art in labor relations with a universally accepted meaning or analytical framework, that is not the case with the term "reasonable". The term "reasonable" is not a term of art in labor relations because it does not have a universally accepted meaning or analytical framework. That being the case, it is left to the undersigned to define "reasonableness". The undersigned has decided to utilize the following dictionary definition of "reasonable": not arbitrary, excessive or extreme. After comparing the definition of reasonable just noted with the previously-referenced notions of just cause, it is apparent that a reasonableness standard gives employes less protection than does a just cause standard. An employer's decision to impose discipline on an employe can be reasonable even if it does not comport with the notions of just cause referenced above.

Taylor's suspension notice indicates he was suspended for violating Department Rule 1.05.15. That rule provides as follows:

> Members of the department shall answer all inquiries from citizens in a courteous manner and, if requested, shall give their name and badge number. Courtesy and civility toward the public is demanded of all members of the department, and conduct to the contrary will not be tolerated. Members in their conduct shall be civil and orderly, and shall at all times exercise the utmost patience and discretion.

Certainly the Department has a legitimate and justifiable interest with ensuring that members of the Department are courteous and civil to members of the public. Police departments that fail to prevent their employes from being discourteous and uncivil to members of the public are at risk for failing to do so.

In their brief, the Association focuses its attention on the portion of the above-referenced rule which provides: "shall give their name and badge number". The undersigned will do likewise. According to the Association, that phrase is ambiguous because it does not explicitly specify how deputies are to respond to citizens who request their name and badge number. The Association asks the arbitrator to interpret same.

Arbitrators routinely interpret ambiguous language; it is their bread and butter so to speak. Generally speaking, the language which arbitrators interpret is contract language. The language referenced above is not contract language. Specifically, it is not part of the collective bargaining agreement between the County and the Association. Instead, it is a work rule that was unilaterally adopted by the County. The second paragraph of Sec. 1.02 of the labor agreement expressly gives the Employer the right to make reasonable rules and regulations relating to personnel policy procedures. I read this same sentence to also implicitly give the Association the right to challenge the reasonableness of any such unilaterally adopted (work) rule. The (work) rule involved here (Rule 1.05.15) indicates on its face that it was issued and became effective in 1984. Insofar as the record shows, the Association has not challenged the reasonableness of this rule in the 15 years that have elapsed since then. Also, the Association does not expressly challenge the reasonableness or its application in this instance either.

When work rules are unilaterally adopted by the employer, the employer usually gets the first crack at interpreting them. Such is the case here. In this case, there was testimony from the Employer's sole witness, Captain Mascari, about how the last portion of the first sentence of Rule 1.05.15 (i.e. the phrase "shall give their name and badge number") has historically been interpreted and applied in the Department. He testified that when a citizen asks for a deputy's name and badge number, the deputy is supposed to immediately verbally respond by telling the citizen their name and badge number. Mascari's testimony is important for two reasons. First, his testimony addressed the very point which the Association says is lacking in the last portion of the first sentence of Rule 1.05.15, namely how deputies are supposed to respond to citizens who request their name and badge number. Specifically, when a citizen asks a deputy for their name and badge number, the deputy is to immediately verbally respond by saying their name and badge number. The deputy is not permitted to withhold this information; providing it is mandatory, not optional. Second, Mascari's testimony of how this portion of Rule 1.05.15 has been interpreted and applied in the Department was not contradicted or disputed by any witness testimony or record evidence. That being so, an established interpretation of that portion of Rule 1.05.15 already exists. Since an established

interpretation of that portion of Rule 1.05.15 already exists, the undersigned sees no need to independently interpret same. Instead, I will apply that existing interpretation to the instant facts.

When Taylor was asked his name and badge number in the two instances in issue here, he did not respond verbally and immediately with his name and badge number as he should have. The following shows this. In the Trice matter, Taylor's own written statement of the incident provides thus: "I advised this lady that I would gladly give her my name if she would step over to my squad so we could exchange information." Taylor's statement to Trice does not comport with the last portion of the first sentence of Rule 1.05.15. He should not have conditioned his telling Trice his name on her coming to his squad to exchange information. His statement to Trice can easily be construed as an effort to intimidate her into not pushing her complaint against him further. In their reply brief, the County puts it thus:

> Taylor wanted to use his identity as a chip to barter with the citizen who asked his name in order to file a complaint with the Sheriff. He said he would only give his name and badge number if she went to his squad. The implication is clear. The only conclusion that can be drawn here is that if the citizen wanted to subject herself to Taylor's possible retribution then she would get the information. If she dropped the quest to complain about him, no official action would befall her.

The undersigned agrees with this characterization. Turning now to the Sellin matter, the record indicates that Sellin twice asked Taylor for his name and badge number. He never verbally gave either. The first time Sellin asked for his name and badge number, Taylor responded that they were on the tickets which he had just given her. The second time Sellin asked for this same information, Taylor snidely responded: "My name is here" (pointing to one side of his chest) "and my badge number is here" (pointing to the other side of his chest)." Suffice it to say he should not have done so. In both instances, Taylor should have responded to the citizen's request for his name and badge number by simply immediately verbally giving them same. Since he did not do so on the two occasions at issue herein, Taylor violated that portion of Rule 1.05.15 which mandates that deputies "shall give their name and badge number" to citizens upon request. Violating a portion of Rule 1.05.15 constitutes a violation of the entire rule. Taylor therefore violated Rule 1.05.15 by his conduct herein. His misconduct constituted inappropriate workplace conduct which warranted discipline.

Having so held, the next question is whether the discipline imposed on Taylor for his misconduct (a three-day suspension) was reasonable. I find that it was. The Employer's decision to impose this suspension has not been shown to be arbitrary, excessive or extreme. It therefore passes muster. In so finding, it is expressly noted that nothing in this labor

agreement requires that a lesser form of discipline had to be issued in this particular case. Many labor agreements specify a particular sequence which must be followed by the employer when it imposes discipline. For example, some labor agreements provide that a verbal warning must be imposed first, then a written warning, then a suspension, etc. This particular labor agreement does not contain such language. That being so, the undersigned finds no basis for overturning the Employer's discipline.

Based on the foregoing and the record as a whole, the undersigned enters the following

AWARD

1. That Deputy Taylor did, in fact, violate Department Rule 1.05.15;

2. That the discipline which was imposed on him for violating that rule was reasonable. Therefore, the grievance is denied.

Dated at Madison, Wisconsin this 30th day of April, 1999.

Raleigh Jones /s/
Raleigh Jones, Arbitrator

REJ/gjc
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