

BEFORE THE ARBITRATOR

In the Matter of the Arbitration Between

MILWAUKEE DEPUTY SHERIFFS' ASSOCIATION

and

MILWAUKEE COUNTY (SHERIFF'S DEPARTMENT)

Case 468
No. 57121
MA-10523

(Karlinsky Grievance)

Appearances:

Attorney Franklyn M. Gimbel, Gimbel, Reilly, Guerin & Brown, 111 East Kilbourn Avenue, Milwaukee Wisconsin, for the Association.

Attorney Timothy R. Schoewe, Deputy Corporation Counsel, 901 North Ninth Street, Milwaukee Wisconsin, for the County.

ARBITRATION AWARD

The Milwaukee Deputy Sheriffs' Association and Milwaukee County are parties to a collective bargaining agreement that provides for final and binding arbitration of disputes arising thereunder. The Association made a request, in which the County concurred, for the Wisconsin Employment Relations Commission to appoint a member of its staff to hear and decide a grievance concerning the application and interpretation of the terms of the agreement relating to discipline. The Commission designated Stuart Levitan to serve as the impartial arbitrator. Hearing in the matter was held in Milwaukee Wisconsin on April 9, 1999; it was not transcribed. The parties submitted written arguments by June 4, 1999.

ISSUE

The parties stipulated to the following statement of the issue:

Did the employe violate work rules as alleged? If so, was the punishment reasonable?

RELEVANT RULES AND REGULATIONS

MILWAUKEE COUNTY CIVIL SERVICE RULE VII (4)(1)

- (l) Refusing or failing to comply with departmental work rules, policies or procedures.

• • •

- (t) Failure or inability to perform the duties of assigned position.

• • •

- (y) Falsification, modification or unauthorized alteration of any county report or record.

MILWAUKEE COUNTY SHERIFF'S DEPARTMENT MANUAL

1.05.14 **RULE 14 – EFFICIENCY AND COMPETENCE**

Members shall adequately perform reasonable aspects of police work. Such expected aspects include, but are not limited to: report writing, physical intervention, testimony, firearms qualifications and knowledge of the criminal law.

“Adequately Perform” shall mean performance consistent with the ability of equivalent trained members of the department.

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.

1.05.18 **RULE 18 – FALSE INFORMATION**

Members of the department shall not make false reports, or enter, or

cause to be entered, or amend any department books, records or reports.

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Comment: This rule shall also apply to making a false oral report.

1.05.35 **RULE 35 – TRUTHFULNESS**

Members are required to relate the truth, whether under oath or otherwise.

1.05.46 **RULE 46 – WRITTEN REPORTS**

Reports must be accurate, complete and must contain all pertinent information.

BACKGROUND

Nicholas J. Karlinsky, 48, has been a Milwaukee County Deputy Sheriff I since 1996, following a few years' law enforcement service in Florida and Arkansas. Assigned to the County Jail, he currently performs significant supervisory responsibilities as a shift leader on the jail's Emergency Response Team. This grievance concerns the four-day unpaid suspension he received for events arising out of an overtime shift he worked at a baseball game between the Chicago Cubs and Milwaukee Brewers.

On July 11, 1998, Karlinsky was providing additional security in the left-field bleachers at Milwaukee County Stadium. During the game – part of the first series in Milwaukee between these teams – a patron, Jack Melville, asked Karlinsky to deal with a drunk Brewers fan who was spewing beer, assaulting Cubs fans, yelling sexual commentary, and generally harassing other patrons. According to a sworn complaint which Melville filed on July 16:

Officer Karlinsky said that it was impossible for him to watch one man in a crowd of 50,000. I pointed out to him that this guy was easily identifiable. He was bare chested, wearing a pink Hawaiian Lei, and was standing ten rows in front of him. I then pointed out the gentlemen to him. He repeated that he could not watch one person in such a large crowd. There was another Milwaukee Co. sheriff standing next to officer Karlinsky listening to our conversation. I told officer Karlinsky that the gentleman said he was going to get the cub bandana and a fight appeared eminent. He again said there was nothing he could do.

Fed up I left the bleachers and got a coke from the bleacher concession

area. After I left the conflict between my friends and the gentleman wearing the bandana escalated, and one of my friends, Steve Givens, walked down to talk to officer Karlinsky. He told officer Karlinsky that the gentleman behind us was getting out of hand and that he feared a fight could break out. Officer Karlinski

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told Steve that he could not watch one person in a crowd of 50,000. Steve expressed his dissatisfaction and said he was leaving. Officer Karlinski told him to “not let the door hit you in the ass.”

Steve exited the bleachers and we met in the concession area. As we stood there, officer Karlinski and the other Milwaukee CO. officer approached us on their way to the parking lot. I expressed my dissatisfaction in their lack of intervention inside the stadium and that after hearing what was said to Steve that I wanted his name and badge number.

Steve and I left the game leaving our cub friends behind. As we were leaving, Scott Jenkins, vice president of stadium operations approached us and said he was aware of the treatment and that it was unacceptable.

In summation, I do not wish to bring unjustifiable accusations or injustice to any police officer. I felt in this case, for whatever reason, officer Karlinski was rude and negligent in his duty to respond and prevent both physical and verbal abuse.

The complaint form that Melville submitted bore the following notice:

ATTENTION: STATE STATUTE 946.66(2) – FALSE COMPLAINTS OF POLICE MISCONDUCT. WHOEVER KNOWINGLY MAKES A FALSE COMPLAINT REGARDING THE CONDUCT OF A LAW ENFORCEMENT OFFICER IS SUBJECT TO A CLASS A FORFEITURE.

On July 31, Capt. Keith F. Zauner, Police Services Bureau, sent Karlinsky the following memorandum:

Please respond to the attached complaint, pay particular attention to the highlighted areas.

1. What did you observe regarding the behavior of the party they complained about? Was there any corroboration of the behavior by an usher?

2. Why didn't you take action, when you have a complainant?
3. Was there a reason that you felt Mr. Melville didn't have a legitimate complaint (was he intoxicated or was he the antagonist)?

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4. Did you talk to the other party?
5. Did you make the comment, "don't to let the door hit you in the ass on the way out"?

On August 3, Karlinsky responded with the following typed statement:

ON SATURDAY, 07/11/1998, WHILE IN FULL UNIFORM, AND ASSIGNED TO WORK THE BLEACHER AREA DURING THE BASEBALL GAME BETWEEN THE MILWAUKEE BREWERS AND THE CHICAGO CUBS, I WAS APPROACHED BY AN ELDERLY WHITE MALE WHO TOLD ME THAT HIS "BUDDY" WAS BEING HARASSED BY ANOTHER INDIVIDUAL. THE ELDERLY MALE POINTED OUT A WHITE MALE WHO WAS WEARING A BANDANNA ON HIS HEAD AND IDENTIFIED HIM AS THE PERSON BEING HARASSED. THE MALE WHO FIRST APPROACHED ME ORDERED ME TO KEEP AN EYE ON HIS FRIEND. THIS INDIVIDUAL THEN POINTED TO A GROUP OF MEN WHO WERE SITTING IN SECTION "B" OF THE BLEACHERS. THIS INDIVIDUAL THEN LEFT THE BLEACHER AREA. I DID NOT OBSERVE ANYONE HARASSING THE MAN WITH THE BANDANNA NOR DID THE INDIVIDUAL MAKE A COMPLAINT TO ME. THERE WERE SEVERAL MILWAUKEE BREWER USHERS PRESENT OBSERVING THE BLEACHER CROWD AND THEY DID NOT MAKE A COMPLAINT TO ME.

A SHORT TIME LATER, AS I WAS WALKING DOWN THE BLEACHER RAMP BY SECTION A THE SAME ELDERLY W/M APPROACHED ME AND STARTED YELLING AT ME "I TOLD YOU TO WATCH MY FRIEND. THEY TOOK HIS BANDANNA AGAIN. DO YOUR JOB. I TOLD YOU TO WATCH MY FRIEND." I TRIED TO CALM THE SUBJECT DOWN AND EXPLAINED THAT THERE WAS A LOT OF PEOPLE IN THE BLEACHERS AND

THAT I COULD NOT JUST WATCH ONE INDIVIDUAL. I ALSO TOLD THIS SUBJECT THAT JUST AFTER HE FIRST APPROACHED ME I RESPONDED TO A FIGHT IN SECTION "D" OF THE BLEACHERS. THE W/M WHO WAS YELLING AT ME CONTINUE TO YELL AT ME STATING "I'M A YOUTH COUNSELOR AND I WORK WITH PEOPLE TO, ALL YOU HAD TO DO WAS TAKE THE GUY OUT." THIS INDIVIDUAL THEN STARTED TO POKE ME IN THE UPPER LEFT CHEST AREA YELLING "I WANT YOUR NAME AND BADGE NUMBER." I TOLD THE SUBJECT THAT

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MY BADGE NUMBER WAS 688 AND I ALSO TOLD HIM HOW TO SPELL MY NAME. I ALSO TOLD THE SUBJECT THAT I WAS GOING TO DO MY BEST TO KEEP AN EYE ON HIS FRIEND BUT THAT I RESPONSIBLE FOR RESPONDING TO OTHER INCIDENTS IN THE BLEACHERS.

IT SHOULD BE NOTED THAT ON THIS DATE, 07/11/1998 THE ATTENDANCE AT THE STADIUM WAS 52,000+ AND THAT THE BLEACHER AREAS WERE VERY FULL. IT SHOULD BE NOTED THAT THERE WERE NUMEROUS INCIDENTS OF FANS THROWING BEER AT EACH OTHER AS WELL AS NUMEROUS ARGUMENTS AND SEVERAL FIGHTS IN THE BLEACHERS.

AS WE WERE TALKING WE WERE JOINED BY A SECOND YOUNGER MAN W/M WHO ALSO STARTED YELLING "ALL YOU HAVE TO DO IS WATCH OUR FRIEND, THEY KEEP TAKING HIS BANDANNA, DO YOUR JOB OR YOU'LL BE SORRY." BOTH OF THESE INDIVIDUALS APPEARED TO BE INTOXICATED. THEY WERE BOTH SLURRING THEIR WORDS, THEY APPEARED TO BE UNSTEADY ON THEIR FEET, AND THEIR EYES WERE GLASSY AND BLOODSHOT. I TRIED TO CALM BOTH OF THE SUBJECTS, WHO REFUSED TO IDENTIFY THEMSELVES, AND AGAIN TOLD THEM THAT IT WAS VERY DIFFICULT TO KEEP AN EYE ON ONE PERSON WHEN THE ENTIRE BLEACHER AREA WAS VERY FULL. PRESENT DURING THIS CONVERSATION WAS MY TEMPORARY PARTNER DEPUTY T. MALECKI. I THEN TOLD THE TWO INDIVIDUALS THAT I WAS GOING BACK TO THE BLEACHERS AND THAT I WOULD TRY TO KEEP AN EXTRA EYE ON THEIR FRIEND. AT NO TIME DID I RAISE MY VOICE, ACT IN A

DISRESPECTFUL MANNER OR STATE "DON'T LET THE DOOR HIT YOU IN THE ASS ON THE WAY OUT."

I ASKED THE TWO MEN THAT IF THEY WERE NOT SATISFIED WITH THE WAY I WAS HANDLING THE SITUATION I COULD AND WOULD CONTACT A SUPERVISOR FOR THEM. THEY STATED "NO, WE'LL HANDLE IT OUR OWN WAY, WE'VE GOT YOUR NAME AND BADGE NUMBER." I THEN WENT BACK TO THE BLEACHERS AND SAW THAT THE GROUP OF MEN THAT THE ELDERLY MALE HAD POINTED OUT WERE NO LONGER IN THAT SECTION OF THE BLEACHERS. I ALSO SAW THAT THE W/M WITH THE BANDANNA WAS STILL IN THE BLEACHER AREA THAT HE HAD BEEN SITTING

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IN. I CALLED UP TO THE MAN WEARING THE BANDANNA AND ASKED HIM IF EVERYTHING WAS ALRIGHT. HE CALLED DOWN "YEAH, IT'S O.K."

I IMMEDIATELY TOLD SGT. KIPP LEOPOLD WHAT HAD HAPPENED AND POINTED OUT THAT THE YOUNGER OF THE TWO WHITE MALES HAD YELLED AT ME. THE YOUNGER OF THE TWO MALES HAD RETURNED TO THE BLEACHERS AND TRIED TO GET THE MAN WITH THE BANDANNA TO LEAVE. I COULD HEAR THE YOUNGER MALE STATE "COME ON, LET'S GO." THE MAN WITH THE BANDANNA CONTINUED TO WATCH THE GAME. THE W/M WITH THE BANDANNA NEVER COMPLAINED TO ME OR, TO THE BEST OF MY KNOWLEDGE, TO A MEMBER OF THE BREWERS STAFF. I THEN TRIED TO KEEP AN EYE ON THE PERSON WITH THE BANDANNA BUT WAS CALLED AWAY BY A BREWERS USHER WHO HAD A COMPLAINT OF A SPECTATOR WHO WAS "MOONING" THE BLEACHER CROWD.

On August 17, Deputy Sheriff Thomas Malecki submitted the following handwritten statement:

NAME: Deputy Sheriff I Thomas M. Malecki IA # 98-275

DATE OF REPORT: August 17, 1998 BADGE NO:

552

My best recollections of the described events are as follows:

Dep. Lanowsky was my assigned partner on the day in question, I think, (I worked all 4 games of that particular series and all were high attendance affairs). Dep. Landowsky was assigned to the traffic circle so I remained w/out a partner for a good portion of the game. At some point I was in fact with Dep. Karlinski, complaint about the 5th or 6th inning. Sgt. Leopold told Landowsky and I to keep an “eye” on Section A of the bleachers as there seemed to be some “tension” arising there. Sometime thereafter Karlinski joined us. The usual things were going on in the crowd and some persons (about 20-30 males) in Section C were yelling “show your tits!”; the female at which this attention was directed was amused at this and even “played” to the attention directed at her and was not offended.

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At some point Karlinski left us. I noticed him at the end of a bleacher ramp near Section “C” talking with an individual who appeared to be somewhat irate; I walked down there and this gentleman was demanding that Karlinski take action for some perceived offense. Karlinski was calmly explaining that there were 50,000+ in attendance and that we (deputies) could not devote all our attention to one person. This did not satisfy the gentleman at which time I intervened that I and Dep. Karlinski were specifically assigned to Section A because of impending problems there, but if he would point out the individual we would advise him his alleged behavior, (we had not observed any of his allegations personally), was unacceptable and if it continued he would have to either leave or be subject to arrest. This did not satisfy the gentleman. He demanded that Dep. Karlinski arrest and/or specifically watch the alleged offensive person. Again Karlinski explained that would be impossible. At this point the already irate individual became even more angry and stormed off saying he was leaving because he could not stand it any longer; he demanded Karlinski’s name and badge # which Karlinski provided. As the gentleman was leaving he said under his breath, “This is fuckin’ bullshit, I’m gonna get you, I’m outta here!” at which point Karlinski did say “Don’t let the door hit you in the ass on the way out!”

That’s the best, clearest, and truest recollection I have of this incident. I don’t know how long Karlinski inter-acted with the subject,

but I was there at the most 10-15 seconds when the above transpired.

On August 26, Capt. Zauner sent the following memorandum to the Office of Professional Standards:

DATE: August 26, 1998

TO: Office of Professional Standards

FROM: Keith F. Zauner, Captain

SUBJECT: Complaint 98-275 Nicholas Karlinsky

I began my investigation into this complaint by having Dep. Karlinsky respond in writing to the complaint of Mr. Melville on 7/31/98. Dep. Karlinsky responded as requested in writing. On page 2 of the complaint Mr. Melville referenced a remark allegedly made by Dep. Karlinsky to his friend Steve Givens, "Officer Karlinsky told him to "not let the door hit him in the ass."

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Karlinsky was asked as part of his response to address this alleged remark. Karlinsky in his report said, "At no time did I raise my voice, act in a disrespectful manner or state "don't let the door hit you in the ass on the way out."

Dep. Karlinsky indicated that Dep. Thomas Malecki was his partner during this incident, so I had Dep. Malecki respond to the complaint. I received Malecki's response dated 8/17/98. Dep. Malecki's response to the above referenced remark, contradicted Dep. Karlinsky's, "At which point Karlinsky said don't let the door hit you on the ass on the way out." Dep. Malecki had no motivation to respond in anything but a truthful manner.

Dep. Karlinsky did not respond in a truthful manner as required by department policy. I am therefore adding the additional charges to the file:

1.05.35 Rule 35 – Truthfulness

Members are required to relate the truth, whether under oath or otherwise.

1.05.46 Rule 46 – Written Records

Reports must be accurate, complete and must contain all pertinent information.

On September 29, Karlinsky submitted the following handwritten statement:

NAME: Karlinsky, Nicholas James IA #
DATE OF REPORT: 09/28/98 BADGE NO: 688

On Saturday 09/26/98 at approx. 2030 hrs. I, Deputy Nicholas Karlinsky Badge No. 688, while in full uniform and assigned to work release in the Milwaukee County Jail had an unsolicited conversation with Deputy Tom Malecki. Deputy Malecki told me that he had written a "green bar" report for the Office of Professional Standards regarding an incident at a Milwaukee Brewers baseball game on 07/11/98. Deputy Malecki told me that he wrote what he remembered of the incident including the fact that I told a civilian who was attending the game, "Don't let the door hit you in the ass on the way out." I asked Dep. Malecki "Did I really say that" and he said, "Yes, I heard you say it." I told Dep. Malecki that that I really don't remember saying that to the civilian. I immediately reported to Sgt. M. Schallau, who was the operations sgt. at the above time, and requested permission to speak with Capt. J. Feiten. Sgt. Scharlau asked me why I needed to talk with Capt. Feiten and I told him that it involved some information I had put in a "green bar" report I had written to the Office of Professional Standards. Sgt. Scharlau then called Capt. Feiten

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and relayed my request to speak with her. The reasons I wished to speak with Capt. Feiten are 1. She is my shift commander and 2. Capt. Feiten was the officer who relayed my original "green bar" report to Capt. Zauner.

I told Capt. Feiten that I had spoken with Deputy Malecki and that, while I did not remember making the statement to the civilian, Deputy Malecki remembered the statement being made. I also told Capt. Feiten that I had put in my original green bar report that I had not made the statement. I also told Capt. Feiten that I honestly do not remember making the statement. Capt. Feiten told me that since it was the weekend, and there was no one in the OPS office, that I should remind her on Monday 09/28/98 and that she would relay the information I had given her to the OPS office.

On Monday, 09/28/98 at approx. 1600 hrs. Capt. Feiten told me

that I should write another green bar report and forward it to Capt. Carr.

It should be noted that the conversation and the information I received from Deputy Malecki was totally unsolicited and it should also be noted that I still do not remember making the statement to the civilian at the Brewers game. I asked to speak with Capt. Feiten, and relay the information to her, because I believe it to be the right thing to do.

The report form on which Karlinsky wrote bore the following notes:

- (A) The purpose of the report is to solicit response that will assist in determining whether disciplinary action is warranted, and the answers furnished may be use in disciplinary proceedings that could result in administrative action against you, including dismissal.
- (B) All information relating to the performance of official duties must be answered fully and truthfully, and disciplinary action, including dismissal, may be undertaken if you refuse to respond fully and truthfully.
- (C) Information gained by reason of this report, as a matter of constitutional law, is not admissible against you in any criminal proceeding.

On September 30, Deputy Malecki submitted the following handwritten statement:

NAME: Deputy Sheriff I Thomas M. Malecki

IA #

DATE OF REPORT: September 3, 1998
552

BADGE NO:

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On Sat. 9/26/98 while working overtime on 5E of the C.J.P. at around 2030 hour, I escorted a prisoner from 5E to release for a T.D.T. Racine County. On arrival at release, I had two conversations, one with the Racine County Detective as to how a friend of mine was doing, he's a detective for Racine County, and another brief conversation with Deputy Karlinsky.

In regards to my conversation with Karlinsky, I off-handedly remarked to him if anything had come about as to that stadium thing, only inquiring as to a resolution, and he stated he had not heard

anything. I then stated I wrote on it when I returned from vacation in August and that I had confirmed that he (Karlinsky) did say what the complainant had accused him of saying because I heard it. At that point we both agreed that since no resolution had been determined we would not talk about the incident further. Total duration of conversation was 5-10 seconds at the most. I then returned to 5E to finish my shift.

On October 6, Police Services Bureau Captain Randy J. Tylke convened a hearing for the purpose of imposing discipline. He prepared a written summary as follows:

**SUMMARY
MEETING FOR THE PURPOSE OF IMPOSING DISCIPLINE**

Hearing Date: Tuesday, October 40, 6 1998
Time: 2:00 p.m.

Present: Employee: **Nicholas J. Karlinsky, Deputy Sheriff I**

Union Representation: Jeff Stevens

Sheriff's Office Staff: Captain Randy Tylke

Reference: OPS Case #98-275

Hearing By: Randy J. Tylke, Captain

On Tuesday, October 6, 1998, I convened a hearing into the above captioned matter. I explained the issue that was the subject of the hearing. Deputy Karlinsky is accused of violation of several rules, those to include *Courtesy and Civility, Efficiency and Competence, False Information, Truthfulness and Written Reports.*

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Following a review of the pertinent facts, I asked Deputy Karlinsky if he had any explanation for the facts in this case, and the fact that after he found out that his partner wrote a report contrary to his, he then wrote a second report that is included in this file that says that he may not have been courteous, but still does not remember saying the statement in question.

Several times during the meeting, Deputy Karlinsky insisted that he could not remember making a derogatory remark to a citizen, however he continued to say that he used bad judgment if he said it so that a citizen could hear it. He also stated that after talking to Deputy Malecki and being assured that he said it, it must have occurred.

I suggested to Deputy Karlinsky that it seemed strange that he could remember all the details of this incident, except telling the citizen "don't let the door hit you in the ass on the way out." It also seemed strange that he felt a need to write a second report, only after talking to Deputy Malecki about the contents of Deputy Malecki's report. I explained to Deputy Karlinsky that the charges of *Untruthfulness* and *False Information* are serious allegations. Deputy Karlinsky continued to profess that he now believes that the incident happened, but he could not remember it.

I asked him if he had anything to add for his alleged behavior and the reports written. He stated that to the best of his knowledge, they were true and accurate at the time they were written. I explained to him the necessity that all reports be truthful and that this hearing was to make a recommendation for discipline; that the discipline could in fact include discharge.

The meeting was concluded at 2:20 p.m.

On October 8, Tylke sent to Sheriff Leverett Baldwin the following memorandum:

MILWAUKEE COUNTY
OFFICE OF THE SHERIFF
POLICE SERVICES BUREAU

Date: October 8, 1998

To: Leverett Baldwin, Sheriff

From: Randy J. Tylke, Captain

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Subject: **RECOMMENDATION FOR DISCIPLINE**
OPS CASE #98-275, DEPUTY SHERIFF I NICHOLAS
J. KARLINSKY

After review of the enclosed file, and having a meeting with Deputy Karlinsky and Association Representative Jeff Stevens, I have determined the following:

Deputy Karlinsky did in fact make a comment to a citizen at *Milwaukee County Stadium* which was not civil or courteous. Deputy Karlinsky claims not to remember making the statement, however, his partner does and wrote a report stating that fact. Deputy Karlinsky wrote a second report after having a conversation with his partner in an attempt to clarify that he could not remember the circumstances. Deputy Karlinsky made a statement during the meeting that he would not lie, however admitted that if his partner said it happened, then it must have occurred. I find that Deputy Karlinsky was less than truthful in his first report and may have violated Rule 18 - *False Information* and Rule 35 - *Truthfulness*.

One must however take into consideration the difficulty of dealing with fifty thousand intoxicated fans at a *Brewers/Cubs* game, and the difficulty of dealing with those individuals in the bleacher area. That however does not exonerate Deputy Karlinsky from telling the truth and not remembering what he said and when he said it. Deputy Karlinsky has an excellent work record and as a member of the CERT team in the jail, deals with difficult people all the time.

I recommend that Deputy Karlinsky receive an official written reprimand for violation of Rules 15, 18 and 35; that the reprimand be placed in his file for a period of one year to be removed if no other sustained cases of this nature occur.

Randy J. Tylke /s/
RANDY J. TYLKE, CAPTAIN
Police Services Bureau

On November 9, Police Services Bureau Deputy Inspector Jeff Zens sent to Inspector Willie McFarland the following memorandum:

DATE: **November 9, 1998**

TO: **Inspector Willie McFarland**

**FROM: Jeff Zens, Deputy Inspector
Police Services Bureau**

**SUBJECT: Office of Professional Standards Case 98-275
Karlinsky/Nicholas/J.**

After reviewing all of the facts presented in this case, including Captain Tylke's discipline recommendation, I offer an alternate recommendation.

There are two separate issues in this case. The first is the substance of the original complaint: Deputy Karlinsky's conduct and language at the stadium. The second issue arises during the investigation, where he was not truthful in responding to the allegations raised by the complaint. I believe each should be considered and acted upon separately.

A written reprimand would be an appropriate disposition for the first issue. Working at the stadium, especially in the bleachers with a large crowd, is a difficult and occasionally stressful assignment. While professional conduct is always expected, all deputies are human and occasionally make mistakes.

However, the issue of truthfulness is much more serious. Nothing in Karlinsky's original reports suggests that he forgot anything: he flat out denied the complainant's allegation. Only after his conversation with Deputy Malecki did he suggest that he may have "forgotten" important details of the incident. This new-found memory is, at best, hard to believe.

I recommend that when you consider discipline for this case, your imposition should be commensurate with that handed out in other, similar cases where truthfulness was the main issue. I do not know the entire range of sanctions which have been handed down in these cases. However, I understand that there have been recent suspensions in the 5-8 day range for similar circumstances. Such a disposition is appropriate in this case for the truthfulness issue.

On December 9, McFarland, on behalf of Baldwin, approved a four-day suspension without pay. The Investigative Summary stated, in part, as follows:

**MILWAUKEE COUNTY SHERIFF'S DEPARTMENT
INVESTIGATIVE SUMMARY**

COMPLAINANT(S): Jack Melville	OPS CASE NUMBER: 98-275
	EMPLOYEE(S): Nicholas Karlinsky

This case was initiated by a complaint from Mr. Melville that Dep. Karlinsky repeatedly refused to address the concerns of Mr. Melville and his friends, relating to an unruly fan in the bleachers. The fan continued harassing them throughout the game. Mr. Melville admitted to me that he and his friends (all Cubs' fans) had been drinking. Scott Jenkins, Brewers V.P., told me that Mr. Melville did not appear to be intoxicated and was quite disturbed by Karlinsky's actions when he spoke to him as they were leaving the Stadium. Mr. Melville stated that Karlinsky repeatedly told him that there was nothing he could do, unless he saw the violation and he could not watch one fan out of 50,000. Mr. Melville felt Karlinsky should have done more. Mr. Melville stated in his complaint that his friend Steve Givens spoke to Karlinsky before they left the Stadium, to relay their dissatisfaction with his handling of the situation in the bleachers. Melville went on to state that Karlinsky said, to Mr. Givens, "don't let the door hit you in the ass", as they were leaving.

Dep. Karlinsky in his report justified his inaction due to the crowd size and the number of rowdy fans in the bleachers. This was an extremely large crowd and Chicago fans can be disruptive. However, Karlinsky could have at least talked to the subject they were complaining about, even if he didn't personally see the violation. He could have talked to the ushers himself, rather than wait for them to come to him.

Karlinsky's handling could have been better, but it was based on his judgement at the time.

More disturbing is the fact that Karlinsky specifically and vehemently denied being discourteous or to saying "don't let the door hit you in the ass" to Mr. Givens. However, on the report of his partner Dep. Thomas Malecki and my interview with Scott Jenkins, Brewers V.P. (who spoke to Melville as he left the Stadium and verified the remark with an usher that was working in the bleachers); Dep. Karlinsky did in fact make the

remark in question and lied on his report.

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Therefore, based on this information, I feel Karlinsky's credibility in this case is seriously compromised and he is guilty of all violations as listed.

Attached to the Notice of Suspension was a statement of reasons, as follows:

On July 11, 1998, while assigned to security at a Milwaukee Brewer's game, Deputy Nicholas J. Karlinsky engaged in conduct that violated Milwaukee County Sheriff's Department Rules and Regulations pertaining to courtesy civility by stating to a fan at the game, who had requested his assistance, "Don't let the door hit you in the ass." When ordered to write an incident report concerning his involvement with this fan, Deputy Karlinsky denied ever making such a statement. Deputy Karlinsky later learned from his partner, during the time of the incident, that his partner recalled him making that statement. He then admitted that it was possible that he could have made that statement and his initial report was untruthful. Based on the aforementioned, Deputy Nicholas J. Karlinsky was found to be in violation of:

MILWAUKEE CO. SHERIFF'S DEPT. RULES AND REGULATIONS:

- 1.05.15 RULE 15 - COURTESY AND CIVILITY
- 1.05.14 RULE 14 - EFFICIENCY AND COMPETENCE
- 1.05.18 RULE 18 - FALSE INFORMATION
- 1.05.35 RULE 35 - TRUTHFULNESS
- 1.05.46 RULE 46 - WRITTEN REPORTS

MILWAUKEE COUNTY CIVIL SERVICE RULE VII:

SECTION 4:

- (L) REFUSING OR FAILING TO COMPLY WITH DEPARTMENTAL WORK RULES, POLICIES AND PROCEDURES
- (T) FAILURE OR INABILITY TO PERFORM THE DUTIES OF

ASSIGNED POSITION.

(Y) FALSIFICATION, MODIFICATION OR UNAUTHORIZED
ALTERATION OF ANY COUNTY REPORT OR RECORD

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POSITIONS OF THE PARTIES

In support of its position that the grievance should be sustained, the Association asserts and avers as follows:

Deputy Karlinsky's alleged comment was not discourteous or uncivil under the circumstances, which involved the kind of intemperate, unruly and aggressive fans who typically attend baseball games between the Milwaukee Brewers and Chicago Cubs. When a Cubs fan who had been drinking and was already angered by perceived problems with another fan approached Deputy Karlinsky, the grievant reacted calmly even as the citizen stormed off making obscenities and threatening the deputy. It was then that Deputy Karlinsky is alleged to have said, "Don't let the door hit you in the ass."

While Deputy Karlinsky has no memory of this, even if he said it, it cannot be taken out of context. In the entirety of this unique scenario, Deputy Karlinsky's behavior was courteous and civil. Thus, he did not violate departmental rules regarding courteousness and civility. Testimony established that, over the past 30 years, the Department has never considered a comment akin to that attributed to Deputy Karlinsky as sufficient to warrant punishment for incivility and discourteousness.

Further, Deputy Karlinsky was not untruthful when he consistently maintained that he had no memory of making the statement cited above. It is of course not a lie not to disclose something one has no memory of doing. Indeed, because Deputy Karlinsky had no memory of making the statement, it would have been untruthful for him to represent that he, in fact, did.

An arbitration award upholding the discipline will set a precedent under which deputies should write reports after consultation and consensus among other witnesses, when they should be writing reports as they remember events occurring. A difference in reports simply means different memories, not that one of the deputies or the other is lying.

Finally, the punishment is excessive; even if the arbitrator concludes

that punishment is warranted, it should be reduced. Deputy Karlinsky's supervisor believed the appropriate punishment should be an official reprimand, to be removed if Deputy Karlinsky engaged in no similar conduct for a period of a year. If the arbitrator concludes that Deputy Karlinsky violated the rules cited in Order #269, that would be the appropriate punishment.

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In support of its position that the grievance should be denied, the County asserts and avers as follows:

This case is simple and the facts not in dispute. In repeatedly failing to respond to a legitimate request by a citizen for service Karlinsky was neglectful of his duty. Even according to Karlinsky, the conduct of an unruly fan was such that some response was called for. Karlinsky did not respond at all; he neither provided a response himself, nor called another deputy to assist, nor even ask an usher to intervene. Karlinsky was not the object of any fan abuse, and had no other calls for service which prevented him from appropriately dealing with the citizen's complaint. Karlinsky was called upon to take action and did nothing.

Department Rule 14, Efficiency and Competence, requires deputies to perform reasonable aspects of police work. As Karlinsky knew, compliance is mandatory, not optional. He did not comply with the rules.

Further, the dispute language toward the citizen happened. Karlinsky denied it at first, then backtracked when confronted with corroboration by Deputy Malecki. Karlinsky volunteered for duty to get out of the jail and into an environment where he could deal with members of the public. Dealing with the citizen complainant in the fashion he did was wrong, as even Karlinsky belatedly acknowledged.

By his verbal conduct, Karlinsky violated Rule 15, Courtesy and Civility. This rule is also couched in mandatory terms; courtesy and civility are not optional, but are demanded. Karlinsky knew the rule; he violated it.

Finally, untruthfulness is a grave disqualification for service as a law enforcement officer. It is imperative that officers be truthful. The entire system – supervisors, prosecutors, the courts – hinge upon the character and credibility of officers.

Karlinsky lied. While his fib will not upset the balance of nature throughout the universe, its import must not be minimized

Following receipt of the County's brief, the Association wrote to me as follows:

The Association will not submit a reply brief in the above grievance. Although the County's brief mischaracterizes Deputy Karlinsky as a liar despite his testimony, which is all that the Arbitrator should consider on the issue, the Association adequately stated its position in its initial brief.

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DISCUSSION

By their stipulated statement of the issue, the parties have placed two questions before me: Did Deputy Karlinsky violate the work rules as alleged? And if so, was his punishment – a four-day suspension – reasonable?

There are no jurisdictional issues, questions of contract interpretation, or challenges to the work rules themselves. My task is only to understand the facts in the record and apply the stated standard.

That standard is categorized by common sense and sound thinking. The quality of being reasonable, the American Heritage Dictionary explains, is to be “not excessive or extreme; fair; moderate.”

Because reasonableness is also defined by the comparison of one action or condition to another, it is also useful to note at the outset other disciplinary matters involving these parties.

The Association presented testimony from a veteran business agent and former deputy that he had “never seen” discipline as severe as a four-day suspension “for something like this.” The record in this proceeding, of course, does not contain the entirety of the department's disciplinary proceedings, and the parties themselves declined to cite in their briefs any prior examples.

The WERC records do reflect those grievances over discipline which have come before staff arbitrators. 1/ One in particular is of note, a prior suspension which arose out of an

1/ These grievances include MILWAUKEE COUNTY (SHERIFF'S DEPARTMENT) Cases 298, 325, 425, 426 and 463.

encounter between a Milwaukee County Deputy Sheriff and a fan attending a baseball game, MILWAUKEE COUNTY (SHERIFF'S DEPARTMENT), Case 463, No. 56851, MA-10435 (Jones, 1998). In that case, the arbitrator sustained a three-day suspension of a deputy who twice violated department rules on providing name and badge number, including during one encounter at a McGovern Park baseball game.

After an investigation, the Milwaukee Sheriff's Department found that Karlinsky had violated several departmental rules and regulations, including those on efficiency and competence, courtesy and civility, truthfulness and reporting standards. It also determined he violated countywide Civil Service rules relating to failure to perform assigned duties, falsification of a report, and refusing to comply with departmental work rules.

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In its imposition of the discipline, the County gave separate consideration to the two aspects of the incident, namely Karlinsky's conduct at Milwaukee County Stadium and his actions during the investigation.

Here is what the facts in the record establish:

Deputy Karlinsky volunteered for overtime for the sold-out Milwaukee Brewers-Chicago Cubs game at Milwaukee County Stadium on July 11 1998, and was assigned as supplemental security in the outfield bleachers. Sports fans from Wisconsin and Illinois manifest an attitude of antipathy towards each other, and there was a boisterous tension in the stands that summer day. Like many patrons, the situation was further fueled by too much beer, leading to several arguments, fights, and at least one reported occurrence of a spectator showing his buttocks to the crowd.

During the game, one drunk jerk in particular got excessively annoying – shouting sexual come-ons to young women, physically assaulting Cubs fans, throwing beer. A patron whose party the Brewers fan had assaulted finally sought Karlinsky's help in ending the escalating confrontation.

Karlinsky advised the patron, Melville, there was really nothing he, Karlinsky, could do in such a crowd.

Melville and his party expressed to Karlinsky their dissatisfaction that he wouldn't take action, and indicated they'd be seeking support elsewhere. To this, Karlinsky replied: "Don't let the door hit you in the ass," possibly adding, "on the way out."

The citizen filed a formal, written complaint against Karlinsky, which the department promptly investigated. During the investigation, a Police Services Bureau Captain asked Karlinsky to "pay particular attention" to five specific questions,

including whether he made the comment, “don’t let the door hit you in the ass on the way out.”

In a typed statement of more than 800 words, Karlinsky wrote, “at no time did I raise my voice, act in a disrespectful manner or state, ‘don’t let the door hit you in the ass on the way out.’” Contrary to the Association’s position at hearing that Karlinsky “consistently maintained that he had no memory of” making the offending comment, this is an express and explicit denial of making the comment. His formal, written answer wasn’t that he couldn’t remember; it was that he didn’t say it.

A few weeks later, a deputy who was temporarily partnered with Karlinsky during the incident submitted his written statement, in which he quoted Karlinsky as making the disputed comment. The other officer, Deputy Malecki, put the incident in the context of the complaining Cubs fan himself irate, unreasonable and profane.

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Subsequently, believing that Malecki’s statement established that Karlinsky had been untruthful, Capt. Zauner added two new charges against him, relating to truthfulness and official reports.

Precisely a month later, Karlinsky and Malecki encountered each other while on Saturday duty at the Jail. During a brief conversation, Malecki mentioned to Karlinsky that he, Malecki, had confirmed for investigators that Karlinsky did indeed make the disputed comment.

Karlinsky immediately reported this conversation to an appropriate supervisor, who advised him to file a supplemental report, which he did that Monday. In his supplemental statement, Karlinsky maintained he still could not recollect making the comment to Melville, but acknowledged that Malecki says he heard it.

During a disciplinary hearing before Capt. Randy Tylke, Karlinsky again acknowledged he had made the comment, but maintained his written denial was truthful because he honestly did not remember having made the comment at the time he wrote the report. Indeed, as evidence of his truthfulness, Karlinsky cited the fact that he still could not remember having made the comment that Malecki heard him make.

Capt. Tylke found that Karlinsky had made a comment which was “not civil or courteous,” and that his non-recollection established that he had been “less than truthful in his first report and may have violated” rules 18 (false information) and 35 (truthfulness). As discipline, Tylke recommended an official written reprimand, to be removed after one year if no other sustained cases of this nature occur.

Police Services Bureau Deputy Inspector Jeff Zens believed that

recommendation was too lenient. While endorsing a written reprimand for Karlinsky's performance in not responding to Melville's initial complaint, Zens found the issue of Karlinsky's truthfulness to be "much more serious." Believing that there had been recent suspensions in the range of 5-8 days, Zens recommended such a disposition as appropriate for the untruthfulness he felt was at issue here.

The Sheriff's designee, Inspector Willie McFarland, thereafter determined that Karlinsky was guilty of all violations charged, and approved a four-day suspension.

Those, then, are the facts. How do they measure against the standard of "fair, moderate"?

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The first issue is Karlinsky's conduct on July 11, 1998. One would think that a Milwaukee County Deputy Sheriff in full uniform would be seen as a legitimate authority figure, even in the cauldron of beer and sun that is the outfield bleachers on a summer's day. I understand that Brewers/Cubs antagonisms may have increased the intensity at the ballgame, but devotees of the national pastime have not yet started acting like soccer hooligans from the United Kingdom; one would hope and expect that a sworn law-enforcement officer would be effective in preserving peace among patrons.

Such hopes and expectations, however, would only be valid when the office in question took some steps to act in a law enforcement capacity. Yet the Union says the unruly and intemperate crowd cowed Karlinsky, and accounted for any inadequacies in his performance.

I find that defense difficult to accept.

By his own testimony, Karlinsky has "major supervisory responsibilities" as a second-shift supervisor on the emergency response team in the County Jail. A deputy trained to respond to crises in the overcrowded jail - and entrusted with supervisory responsibilities in so doing -- simply should not have felt unduly pressured or stressed by the situation in the Milwaukee County Stadium bleachers that day.

The Department and the public have a right to expect a certain level of professionalism from a deputy sheriff. Karlinsky failed to meet that level. By his failure to perform the duties of his assigned position, he violated Milwaukee County Civil Service Rule VII (4)(1)(t). And by not adequately performing reasonable aspects of police work consistent with the ability of equivalent trained members of the department, he violated the Sheriff's Department Manual Rule 1.05.14, Efficiency and Competence.

The Department and the public also have a right to expect a degree of courtesy and civility from a deputy sheriff. Indeed, the departmental manual states that such attributes are “demanded of all members of the department,” and that “conduct to the contrary will not be tolerated.”

Certainly, the pressures on a law enforcement officer are among the most serious of any profession; each shift holds the likelihood of stress, the threat of danger. It’s a tough and dangerous job, and there are some bad people out there who want to make it tougher and more dangerous. So it is well understood that situations arise, such as a crime or accident scene, or while an officer is in pursuit, when deputies have more important matters to attend to than being ideal conversational partners.

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But the County Stadium bleachers on a summer’s afternoon is not a time when the stress and danger is so high that it could be considered courteous and civil to say to civilian, “don’t let the door hit you in the ass on the way out.” The Association contends that within the “entirety of this unique scenario,” Karlinsky was being courteous and civil when he said this. He wasn’t, and thereby violated Department Manual Rule 1.05.15, Courtesy and Civility.

These violations, though, would not justify the four day unpaid suspension. But far more serious than Karlinsky’s making the statement is the issue of his denial that he did so. The parties do not need a lecture from me on the vital necessity of truthfulness and accuracy on the part of deputy sheriffs; suffice it to say that the legitimacy of the entire criminal justice system depends, in large part, on those attributes.

Details in a deputy’s report can affect the lives and economic standards of countless people; the power of a deputy’s testimony can send a person to prison. A deputy who lies, or even one who files an incomplete report, is as much a threat as any criminal.

The department has charged Karlinsky with making a false report, a lack of truthfulness, and filing a written report that was inaccurate and incomplete. A four-day suspension would be a “not excessive or extreme; fair; moderate” level of discipline for any one of these charges, if proved.

Karlinsky swears he didn’t lie, but honestly can’t remember uttering the phrase which both his partner and the complainant clearly heard. That’s his story, and he’s sticking to it.

To conclude that someone has lied – has intentionally told an untruth -- requires a depth of understanding that I do not possess in the instant case. It is easy, however, to determine whether a report is accurate or not, because such a conclusion does not depend on intent, only content.

Karlinsky told Melville, “don’t let the door hit you in the ass on the way out.” Karlinsky filed an official written statement affirmatively denying he made that statement. I do not know if such a statement constituted the filing of a false report and demonstrated untruthfulness. But I do know that the report was not accurate and complete, and did not contain all pertinent information. By filing such a written report, Karlinsky violated departmental rule 1.05.46.

Such a conclusion is implicit in Karlinsky’s own admission that Malecki’s statement shows that he must have made the comment, even if he couldn’t remember it. And such a conclusion is sufficient to justify a four-day suspension and deny the grievance.

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Accordingly, on the basis of the collective bargaining agreement, the applicable rules and regulations, the record evidence and the arguments of the parties, it is my

AWARD

That the grievance is denied.

Dated at Madison, Wisconsin this 5th day of August, 1999.

Stuart Levitan /s/

Stuart Levitan, Arbitrator

SDL/gjc
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