BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LABOR ASSOCIATION OF WISCONSIN, LOCAL 108

and

ST. CROIX COUNTY

Case 175
No. 58875
MA-11089

Appearances:

Mr. Thomas A. Bauer, Labor Consultant, Labor Association of Wisconsin, Inc., 206 South Arlington Street, Appleton, Wisconsin 54915, appearing on behalf of Labor Association of Wisconsin, Local 108, referred to below as the Union, or as the Association.

Mr. Brian K. Oppeneer, Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of St. Croix County, referred to below as the County, or as the Employer.

ARBITRATION AWARD

The Union and the County are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The parties jointly requested that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve a grievance filed on behalf of Richard Meyer, who is referred to below as the Grievant. The Commission appointed Richard B. McLaughlin, a member of its staff. Hearing on the matter was held on August 17, 2000, in Hudson, Wisconsin. No transcript was made of that hearing. The parties filed briefs and a reply brief or a waiver of a reply brief by October 30, 2000.

ISSUES

The parties stipulated the following issues for decision:

Did the County have just cause to suspend the Grievant for one day on January 10, 2000?

If not, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 3 – MANAGEMENT RIGHTS

Section 1: The County possesses the sole right to operate County government and all management rights repose in it. The County agrees that in exercising any of these rights it shall not violate any provisions of this Agreement. These rights include, but are not limited to, the following:

1. To direct all operations of County government.

2. To establish reasonable work rules, providing that same are distributed to each member of the bargaining unit at least thirty (30) days prior to implementation.

. . .

4. To suspend, discharge, or take other disciplinary action against employees for just cause as hereinafter provided.

. . .

ARTICLE 7 – DISCHARGE-SUSPENSION

Section 1: No employee covered by this Agreement shall be disciplined without just cause. (The question as to what conduct constitutes "just cause" is a proper subject for the grievance and arbitration provisions of this Agreement.)

BACKGROUND

The grievance challenges a one-day suspension. The letter of suspension is headed "Improper Conduct", and was issued to the Grievant by Captain Bob Klanderman. The letter states:

> On Monday, January 3, 2000 a medical dispatch was given out of a male, unconscious, not breathing, along with the location. Dispatch was giving CPR instructions over the phone. Two other deputies were responding along with you . . . One other deputy had arrived. You . . . stated you were 10-60 (in area) then went 10-23 (at the scene). When in fact you were NOT at the scene. You did arrive approx. 2 minutes later. However, by stating you were there, this caused the other deputy that was coming to slow and assume you were on scene. Which was not correct. Giving an on scene to the dispatcher, when you are not on scene is improper and unacceptable as a police professional. Giving an on scene in a medical incident and not being there is also improper and unacceptable, and possibly life threat(en)ing. Therefore, you are suspended without pay for one day. . . .

The Grievant responded to this letter by filing a grievance, dated January 9, 2000 (references to dates are to 2000, unless otherwise noted).

> The grievance form includes the following under the heading "Facts":
>
> . . .
>
> 3. That on January 9, 2000, the Employer issued a letter of suspension to the Grievant, effective January 10, 2000, alleging that the Grievant allegedly g(a)ve an "on scene" in a medical incident and not being on the scene.
>
> 4. That the allegation is false, and erroneous.
>
> . . .
>
> 6. That the Employer actions violated the terms and conditions of the collective bargaining agreement . . . in that the actions of the Employer lacked just cause, and were . . . unreasonable, arbitrary and capricious.
>
> . . .

Sheriff Dennis D. Hillstead responded to the grievance in a letter, dated January 24, which states:

> The above mentioned grievance is denied.
>
> At issue is (the Grievant's) claim that the employer did not have just cause to suspend him for one day without pay.

Grievant states that the reason the employer suspended him is false and erroneous.

* Reports officially filed by Deputy Klatt and kept by the St. Croix County Communication Center show that in fact (the Grievant) was not on scene when he said he was. That in fact he was still enroute and did not arrive on scene until 1 minute, 51 seconds after he said he had arrived. That misstatement by (the Grievant) caused Deputy Klatt to terminate his response to the scene, having heard (the Grievant) go 10-23 on the radio. This could have resulted in death or serious injury to the person calling for aid.

Grievant further states that the actions of the Employer were unreasonably arbitrary and capricious.

* Employer has the right under Article 3 – Management Rights, Section 1, Paragraph D to suspend, discharge or take other disciplinary actions against employees for just cause.

* In this case, (the Grievant's) one-day suspension is justified based on his misconduct.

* (The Grievant's) one day suspension is not unreasonable, arbitrary, nor is it capricious based on his past conduct. Employee discipline is dispensed on an escalating scale. Its purpose is to alter actions or conduct by the employee that is improper and/or unacceptable. (The Grievant) has in his official file, seven verbal and written reprimands, along with two previous suspensions. Based on his previous disciplinary record, one day off is justified.

The report by Deputy Klatt, which is referred to Hillstead's letter, is a memo dated January 3 that states:

On Monday January 3, 2000 at 12:46pm., dispatch advised of a male subject unconscious, not breathing at 1332 CTH N. They were giving CPR instructions over the phone. I was in River Falls and responded. Deputy Knudson was at STH 35 and CTH N and also responded.

> Deputy Knudson arrived as I was on Cemetery Rd. approaching the stop sign at CTH N. I asked him if he was east or west of Cemetery Rd. and he replied east. I turned east and discovered that I should have turned west onto CTH N. As I was about to turn around in the middle of the road, (the Grievant) advised that he was 10-60 and then 10-23. So I advised dispatch that I was going to cancel on the call. I drove to the next intersection and turned around. As I was going west on CTH N I saw a set of red and blue lights, flashing, going east on CTH N. Just as I was about to go by the driveway at 1332 CTH N, (the Grievant) pulled into the driveway.
>
> I called dispatch to confirm that (the Grievant) had (gone) 10-23 at the scene and that I had not misunderstood what he had said, and I was told he had (gone) 10-23 a couple of minutes ago.
>
> I have no further information.

The County has distributed to all employees a "Personnel Policies and Procedures Handbook" (the Handbook) that includes the following:

> Section 2 Notification of Work Rules. Employees are informed of County and departmental work rules and standards of conduct and performance. The Personnel Handbook and union contracts also note rules of conduct and expected job performance. Since no work rules or disciplinary regulations can cover all possible areas of concern, employees are expected to conduct themselves in a manner that is consistent with reasonable and commonly-accepted standards of behavior. . . .

The Sheriff's Department maintains a written document entitled "Policy and Procedures", which includes the following:

> D. Verification of emergency: It is the duty of Officers on the scene and dispatchers to verify the degree of emergency that exists and, if stabilized, to advise back-up units to modify the response to a NON-emergency status. Examples include:
>
> 1. An Officer on the scene determines the emergency is unfounded or no longer exists.
> 2. Accidents where the injured are cared for and the scene is protected and under control.
> 3. Crime scenes where first responders have the situation secured and stabilized and no emergency assistance is required.

The documentation set forth above establishes the undisputed core of the grievance. The balance of the background is best set forth as an overview of witness testimony.

Karen Humphrey

Humphrey has served as a Captain in the Jail Division of the Sheriff's Department since 1988. She noted that the bargaining unit of which the Grievant is a member includes Deputies and Correctional Officers. As a Captain, Humphrey has the authority to discipline unit employes. Typically she consults with the Sheriff on disciplinary matters, particularly if a suspension is involved. In March of 1999, she imposed suspensions on two Correctional Officers. In that case, four Correctional Officers were aware that a door to the jail facility had been left unlocked to permit Correctional Officers to smoke outside the building. One of the four Correctional Officers was a probationary employee. Of the non-probationary employees, one received a written reprimand, one received a one-day suspension and one received a six-day suspension. She testified that she issued a written reprimand to the Correctional Officer who reported the incident, but had not left the building. She issued a one-day suspension to an officer who left the building. That officer had received, prior to this incident, a written reprimand. She issued the six-day suspension to a Correctional Officer whom she perceived to be the key player in the incident and who had left the building most often. That officer did not have a prior history of discipline. She effectively recommended the termination of the probationary employee involved in this incident. The parties agree that the security breach prompting this discipline violated departmental and Department Of Correction policy.

Humphrey acknowledged she was unaware of any written departmental policy governing the use of 10-23 or 10-60 codes during a medical emergency.

Debra Kathan

Kathan has served as the County's Personnel Director since 1981. She testified that the Grievant did not have a clean disciplinary record at the time of the incident at issue here. Included in the Grievant's personnel file is a six-day suspension, in June of 1995, for failing to file a report regarding a burglary. The Grievant grieved the suspension, and the parties ultimately agreed, in May of 1996, to the imposition of a three-day suspension.

Kathan also testified regarding the County's imposition, in the fall of 1993, of a thirty-day suspension. In that case a deputy had been observed driving his child to school in a county squad car. Subsequently, the deputy's squad car had been observed, on two occasions, standing unattended in his driveway. In each case, the deputy had reported, by radio, that he was 10-41, meaning that he was on duty, and available for assignment by dispatch. Kathan stated that she was not aware of any written departmental policy defining the use of the 10-41 code.

Jeffrey Klatt

Klatt has served as a Patrol Deputy since June of 1997. He also serves as the President of the Association. He stated that the 10-60 code communicates that an officer is "in the area" of a dispatch call. This could cover a deputy nearing a site known to have prompted a dispatch call, or a deputy reporting to a general area prompting a dispatch call, in which the specific site was not yet known. The 10-23 code means "at the scene." To Klatt, "on the scene" means in the driveway of a residence or at the scene of an accident prompting a dispatch call. To the extent an officer could exercise discretion with the use of the 10-23 code, Klatt stated he did not feel the 10-23 code could be meaningfully used by an officer who was any more than ten to fifteen seconds from the site prompting the dispatch call. He further stated he was not familiar with any deputy who would use the 10-23 code when more than one minute from a site prompting a dispatch call. He noted his testimony reflected his "personal preference," and that he could not speak for all deputies on the point. He acknowledged the County maintains no written policy regarding the use of the 10-23 or 10-60 codes.

Klatt testified that his written statement, set forth above, accurately set forth the events of January 3. He did add that he thought he would have arrived at the scene prior to the Grievant, if he had not broken off his response on hearing the Grievant report in the 10-23 code.

Bob Klanderman

Klanderman testified that he understood the 10-23 code to connote that a deputy had arrived at the site of the call. Regarding a call to a residence, 10-23 means a deputy is entering the driveway, or getting out of the squad. He acknowledged that the County does not maintain written policies on the use of "10" codes, but also noted his belief that deputies understood the 10-23 code should not be used to designate anything other than "on scene." He was unaware of any other incident in which a deputy had called in a 10-23 code, when not physically present at the site prompting the call. The Grievant's conduct was, in his opinion, sufficiently egregious to warrant a three-day suspension, which he recommended to Hillstead. Hillstead, however, chose to impose a one-day suspension.

The County maintains audio-tapes recording all calls to and from the dispatch center. In addition to this, dispatchers maintain computer assisted (CAD) records to document calls and responses. He did not review the audio-tape prior to recommending the suspension. He noted that the "10" codes are falling out of favor as technology advances. It is now easier for officers to speak freely to dispatchers without the use of code.

The Grievant

The Grievant has served the County as a Deputy for roughly eighteen years. On January 3, he was at the sheriff's department when the emergency call came in. This put him roughly fourteen miles from the source of the call. He set off, using lights and siren, to the scene. He was able to travel roughly sixty-five miles per hour on Interstate 90, in spite of the slush and snow on the road. As he first left the interstate, the roads were in fairly good driving condition. He heard Knudson call in to the dispatch center that Knudson had arrived, and the stricken man was breathing, but not responsive. He was, at this point, roughly four miles from the residence. He knew the way, and the residence he was heading for, so he called dispatch to advise them he was 10-60. He also knew that between him and the residence was a sharp curve, posted for twenty-five miles per hour. The roads were becoming increasingly icier as he continued toward the residence.

As he approached the sharp curve, the dispatcher called back to determine whether the Grievant was 10-60 or 10-23. He was, at this point, roughly three-tenths of a mile from the residence. He did not want to repeat his 10-60 response, and he wanted to pay attention to the icy roads around him. Thus, he decided to report that he was 10-23. As he approached the driveway to the residence, he had difficulty breaking, and overshot the driveway by approximately one hundred feet. He had to bring the squad to a halt, back it up, and then enter the driveway. He estimated this took perhaps thirty seconds. At no time until he entered the driveway did he see Klatt's squad car.

The County's CAD records are generated by the computer and by the dispatcher. The CAD Operations Report for January 3 states that the call for assistance came to the dispatch center at 12:46:26 p.m. The computer generated this record. The dispatcher entered the following in the "Narrative" section of the CAD Operations Report:

12:53:58 8849 ARRIVING
12:54:30 8830 ARRIVING
12:54:34 8841 IN SERVICE
12:56:21 8830 PULLING INTO DRIVEWAY
Cross Streets: KINNIC RD/CEMETERY RD
72 YOA MALE UNCONSCIOUS NOT BREATHING. BEGAN BREATHING AT THE TIME OF THE CALL

"8830" denotes the Grievant, "8841" denotes Klatt, and "8849" denotes Knudson. The computer generates a section of the CAD Operations Report headed "Call Log", which states the following:

Unit	Status	Date – Time	. . .
6501	DIS	1/3/2000 12:46:30	. . .
8841	DIS	1/3/2000 12:46:47	. . .
8830	DIS	1/3/2000 12:46:50	. . .
8849	DIS	1/3/2000 12:46:52	. . .
8849	ENR	1/3/2000 12:47:08	. . .
8841	ENR	1/3/2000 12:47:09	. . .
8830	ENR	1/3/2000 12:47:12	. . .
6501	ENR	1/3/2000 12:49:46	. . .
8849	ONS	1/3/2000 12:54:40	. . .
8830	ONS	1/3/2000 12:55:12	. . .
8841	REM	1/3/2000 12:55:22	. . .

. . .

The Grievant attempted, without success, to get the audio tape of January 3. The County recorded over the tape before he could get it. He noted that the time entries on the "Narrative" and "Call Log" sections of the CAD Operations Report are not identical.

He acknowledged that the 10-23 code "normally" means pulling into the driveway or having the squad on the scene at a dead stop. In normal conditions, he would not have used the code on January 3. However, conditions were not normal on January 3. The roads were slushy and snow covered, and a wet snow was falling. The roads he was travelling demanded his full attention, and there was no purpose to an extended dialogue with the dispatcher. He believed he could not have been more than seventy-five seconds from the residence when he called in the 10-23, including the time spent in overshooting the driveway. He acknowledged that the 10 codes continue to be used for ease of reporting and for their strictness of meaning.

Further facts will be set forth in the **DISCUSSION** section below.

THE PARTIES' POSITIONS

The County's Brief

The County notes that Article 7, Section 1 requires it to have just cause to discipline, but does not define "just cause". Arbitral authority does, however, demonstrate that "just cause" is established when "an employer, acting in good faith, has a fair reason for disciplining an employee, which reason is supported by the evidence." Here, the Grievant, as any other employee, received the County's Personnel Manual. The Manual is consistent with the labor agreement, and governs areas of conduct not otherwise governed by the labor

agreement. Even though the County maintains no specific policy defining the precise point at which a Deputy can report by radio that he is "on scene", the Manual demands that employees act "consistent with reasonable and commonly-accepted standards of behavior."

The evidence will not, the County contends, support the Grievant's position that he acted consistent with commonly-accepted standards of behavior. Initially, the County notes that the Grievant's "substantial self-interest" in avoiding discipline must be weighed in assessing his credibility. That the Grievant failed to consistently account for his conduct further undercuts his credibility. Even if it could reasonably be asserted that Klanderman is biased, no such assertion can be persuasively made regarding Klatt's testimony. That no one but the Grievant testified that he acted properly establishes the weakness of his testimony.

A review of the circumstances surrounding the incident establishes that the one-day suspension was appropriate "if not overly lenient". The incident prompting the call was "a medical emergency" in which "it is critical to be precise when radioing to dispatch regarding one's position." That the medical emergency did not result in death or injury has no bearing on the discipline posed here. Properly focused, the discipline concerns improper conduct "that needs to be changed", not an individual patient's condition. Klanderman sought the imposition of a three-day suspension. The Grievant's conduct standing alone could warrant either, but the existence of prior discipline underscores the lenience of the County's reduction of the discipline from three days to a single day. That Klatt broke off his own response based on the Grievant's statement that he was "on scene", underscores how dire the implications of the Grievant's conduct were. That the Grievant's car slid beyond the driveway of the residence to which he was responding further underscores the need not to report being "on scene" until actually on scene. Beyond this, setting aside the suspension could only encourage sloppy radio reporting between deputies and the dispatch center.

Arbitral authority establishes that "the arbitrator should not substitute his/her judgment for that of management unless the arbitrator finds that the penalty is excessive, unreasonable, or that management has abused its discretion." The evidence establishes that the one-day suspension "was reasonably related to the seriousness of the grievant's proven misconduct." Beyond this, a review of relevant arbitration decisions "involving similar situations suppprts the County's decision to suspend the Grievant."

Viewing the record as a whole, the County concludes that "the grievance should be dismissed."

The Association's Brief

After a review of the evidence, the Association notes that Article 7, Section 1 does not specifically define "just cause". The Association asserts that to meet this standard the County must show that the Grievant is guilty of misconduct and that the one-day suspension reasonably reflects its disciplinary interest.

Arbitral authority establishes the importance of "reasonable rules or standards, consistently applied and enforced and widely disseminated by the Employer to the employees." Here, the County failed to establish the existence of any "specific rule requiring that deputies advise the dispatch center that they are 10-23 (on scene) when the deputy is physically in front of the location." None of the testifying witnesses could establish that the 10-23 code has a commonly understood meaning. At most, Klatt's testimony establishes that this code reflects an individual deputy's exercise of judgment. That the County is moving away from the use of numerical codes underscores that "the significance of the 10-codes is simply not a department priority anymore."

County arguments gloss over the absence of a specific policy by citing "a vague and overbroad statement" from the Manual. In the absence of a "clear rule" governing the use of the 10-23 code, the County must rely on the individual discretion of its deputies. Any other conclusion would turn the general statement from the Manual into an unreasonable work rule.

A review of the evidence cannot support the County's assertion that the Grievant's conduct was "so egregious as to have been life threatening". A more balanced review must recognize the adverse weather conditions, and that compliance with the County's view of the 10-23 code "would require the Grievant violate safety factors in responding to an emergency call." More specifically, the Association argues that the Grievant used the 10-23 code to avoid unnecessary contact between himself and dispatch, and to permit him to concentrate on driving through winding and icy roads. The Grievant did no more than follow commonly understood policy and procedure in arriving "at the scene in the most expeditious manner possible."

Klatt's oral and written account of the incident placed the Grievant roughly two minutes from the scene when he called in 10-23. A detailed view of the dispatcher and computer generated entries on the CAD Operations Report will not, however, support this view. Rather, the evidence establishes that Klatt's account represents no more than a guess. The evidence fails to undercut Meyer's testimony that, even allowing for his sliding past the driveway, the time between his report of 10-23 and his arrival at the scene was minimal. That the Grievant heard Knudson's report that "the patient was breathing, but unconscious" underscores that the Grievant did nothing wrong.

Because the County has failed to prove the existence of misconduct, "the discipline meted out to the Girevant must be considered unreasonable, arbitrary and capricious." That Klatt broke off his response to the scene reflects not misconduct by the Grievant, but Klatt's exercise of the same judgment exercised by the Grievant. If the Grievant's judgment is considered misconduct, then Klatt's failure to inform the dispatch center that he had broken off his response must also be considered misconduct. A more balanced review of the record establishes that the County "is nit-picking in its attempt to justify improper conduct by the Grievant. Even if the Grievant's exercise of discretion could be considered misconduct, the prior discipline meted to the Grievant has no bearing on the incident posed here.

The Association concludes by requesting "that the Arbitrator:

1. Order that the Employer expunge the letter of suspension from the Grievant's personnel files, as well as all other related documents and correspondence.

2. Order that the Employer make the Grievant whole for all lost wages and benefits resulting from the Grievant being suspended for one-day without pay on January 10, 2000.

3. Order that the Employer cease and desist from further violations of the Agreement."

The County's Reply Brief

The County contends that the Grievant "violated not only a written policy in the County's Personnel Handbook, but also common sense rules of conduct." The evidence establishes no basis to doubt this beyond Klatt's reservation that he cannot speak for every deputy regarding the use of the 10-23 code. The fact remains that the Grievant's testimony is the only evidence that his use of the "10" codes was proper. The Association's conjecture cannot gloss over the lack of evidence corroborating the Grievant's testimony.

The Association's arguments establish no basis to doubt the County's disciplinary interest in enforcing accurate reports to dispatch. That the evidence is unclear on whether it took the Grievant one or two minutes to arrive at the scene cannot obscure that "he failed to follow proper procedure which must be followed for the safety of citizens and officers alike." The one-day suspension must be seen as lenient in light of the evidence and arbitral authority. Nor can the declining use of "10" codes offer any support for the Association. The plain fact remains that the Grievant "is a police officer responding to an emergency situation and strict radio protocol must be maintained." The County concludes that "the grievance in this matter should be denied."

The Association's Reply Brief

The Association determined not to file a reply brief.

DISCUSSION

The stipulated issue questions whether the County had just cause under Articles 3 and 7 to suspend the Grievant. Where the parties have not stipulated the standards defining just cause, the analysis must, in my opinion, address two elements. First, the County must establish the existence of conduct by the Grievant in which it has a disciplinary interest. Second, the County must establish that the discipline imposed reasonably reflects that interest. This does not state a definitive analysis to be imposed on contracting parties. It does state a skeletal outline of the elements to be addressed and relies on the parties' arguments to flesh out that outline.

The evidence regarding the first element focuses on the soundness of the Grievant's use of the 10-23 code on January 3. The evidence does not pose a significant issue regarding the general understanding on use of the code. The Grievant testified that he believed the 10-23 code should not normally be used unless a deputy is pulling into the driveway of a residence or is at a dead stop on the scene. There is little variance in all of the testimony on this point. None of the testifying witnesses felt that, under normal circumstances, the 10-23 code could be extended to one to two minutes from the source of a dispatch call. Thus, the absence of a County work rule governing the use of the "10" codes, or the presence of a Handbook reference providing that employees should conduct themselves consistent with "reasonable and commonly-accepted standards of behavior" has only a peripheral bearing on the application of the just cause analysis. The issue on the merits focuses on the Grievant's judgement in using the 10-23 code before he had arrived at the residence.

The exercise of sound judgement is the core of the competent performance of law-enforcement duties. Statute, work rule and training function as the necessary guides to judgement, but the exercise of individual discretion in applying these guides to specific situations is the base on which rests the quality of an individual officer's conduct or an employer's disciplinary interest in that conduct. That a deputy exercises judgement "in real time", while an employer or arbitrator uses hindsight to review that judgment must temper the after-the-fact review of third parties. However, that review is inevitable if experience is to guide the future exercise of judgement. Striking the appropriate balance can be difficult. The most difficult review of the exercise of judgment turns on cases in which an officer has selected among a variety of arguably equally valid or invalid choices.

This grievance is not, however, within that class. In this case, the Grievant chose an unnecessary and invalid response to the situation he faced. His inaccurate use of the 10-23 code was unwarranted under any view of the facts.

That a deputy's response to dispatch must be accurate is the cornerstone of the dispatch system. The intelligent exercise of discretion by an individual officer demands strict accuracy in communication to and from the dispatch center. Here, there is no dispute the Grievant was not on the scene when he used the 10-23 code. On this basis alone, the County has a demonstrated disciplinary interest in the Grievant's conduct.

The force of the Association's arguments must be acknowledged, but affords no persuasive defense to the disciplinary interest asserted by the County. The Association's detailed review of the computer and dispatcher-generated CAD Operations Report does cast doubt on whether there was a two-minute delay between the Grievant's call-in of the 10-23 code and his arrival at the residence. This fails, however, to address the underlying flaw in the Grievant's use of the code. Under any view of the facts, there was a one-minute delay. Without regard to the actual timing of the call-ins, it is undisputed that Klatt relied on the Grievant's use of the 10-23 code in deciding to break off his response. This is true whether that report came at 12:55:12 p.m. or at 12:54:30 p.m. Beyond this, it is undisputed that Klatt had sufficient time, after the Grievant's call-in of 10-23, to turn around and drive back toward the residence before the Grievant actually entered the driveway.

Even if these facts could be considered in dispute, the Grievant acknowledged that he reported 10-23 well before he overshot the driveway of the residence. Standing alone, this fact underscores the flaw in his use of the code. He testified that the adverse weather conditions demanded he pay full attention to his driving. In his view, this justified the use of 10-23 rather than 10-60. He acknowledged that he had three-tenths of a mile to cover before reaching the residence. At best, this establishes that he used the 10-23 code to secure himself sufficient time to safely negotiate the distance between himself and the source of the dispatch call. Standing alone, this exercise of judgment is flawed. As noted above, it is inevitably flawed because it was inaccurate. More practically, it was flawed because its use could not be expected to produce any desirable result. It is undisputed that each responding deputy was trained in CPR, and that having two deputies on scene would have been desirable. The Grievant's use of the 10-23 code did nothing to promote this end, and in fact acted to delay or prevent it. The report of 10-23 did nothing to enhance the Grievant's ability to respond to the adverse weather conditions. If the weather demanded his entire attention, not immediately responding to the dispatcher would have been preferable to a report. Having chosen to report, the Grievant's inaccurate use of the 10-23 code did nothing to assist his driving. Reporting 10-23 took no longer than reporting 10-60 would have.

More significantly, the Grievant's choice to use the 10-23 code unnecessarily altered the response to the residence. Whether Klatt should have broken off his response or not, the Grievant's use of 10-23 prompted it. Even ignoring Klatt's response, the Grievant's use of 10-23 during adverse weather conditions put the arrival of a second deputy at the residence at risk of delay or worse. That the Grievant slid by the driveway underscores how unreliable the roads were. This cannot, however, justify the Grievant's conduct. Rather, this underscores how important the accurate use of the 10-23 code is. Had the Grievant simply reported 10-60, or said nothing at all, he and Klatt would have continued their response. This would have offered the stricken resident the greatest probability of the quickest possible response of a second deputy. The Grievant's use of the 10-23 code altered this for no apparent benefit. After he reported 10-23, the response of a second deputy was needlessly focused solely on him.

In sum, the County has a disciplinary interest in enforcing the accuracy of responses between dispatchers and road deputies. In this case, the Grievant's use of 10-23 when he was at least a minute from the site of a medical emergency was improper. That weather conditions were adverse affords no defense to the inaccurate use of the 10-23 code. The Grievant, by using the code, did not select among arguably valid choices. Rather, he determined to cut-off dialogue between himself and dispatch by using 10-23 instead of 10-60. This choice, however, served no useful purpose in assisting him and acted to cause another deputy to vary his response to the call. Thus, the County has met the first element to the cause analysis.

It is undisputed that the County uses a system of progressive discipline, and that the Grievant's disciplinary history includes a prior suspension. The record regarding the severity of the one-day suspension in light of the Grievant's past record is, however, somewhat mixed. The precise extent of his prior disciplinary record is not clear. His most recent suspension was imposed in May of 1995, but not resolved until May of 1996. It is thus somewhat dated. The failure to file the report that prompted the 1995 suspension would appear to have involved negligence on the Grievant's part as opposed to the flawed judgement posed here. In any event, the one-day suspension posed here is a less severe sanction than the prior discipline.

Most significant to the application of the second element is the Grievant's response to the discipline. The grievance alleges the County's assertion that the Grievant had improperly used the 10-23 code is "false, and erroneous." Although the Grievant's testimony was more measured than the written grievance, there is no indication the Grievant perceived any merit to the County's action. The evidence establishes, however, that his exercise of judgement was flawed. Against this background, and given whatever ambiguity the Grievant's past record may pose, there is no persuasive reason to believe the County could have communicated the significance of its disciplinary interest with a lesser degree of discipline than the one-day suspension it imposed. Thus, the County has met the second element of the cause analysis, and has demonstrated that the one-day suspension did not violate Article 3 or 7.

Before closing, it is appropriate to tie this conclusion more closely to the parties' arguments. The force of the Association's arguments concerning the absence of formal policies governing the use of the "10" codes, and the factual basis for the County's discipline should not be ignored. The evidence, however, will not support them. As noted above, the Grievant acknowledged that he would not, in normal circumstances, use the 10-23 code as he did on January 3. Thus, the grievance must turn less on the clarity of the notice regarding the impropriety of his conduct than on the soundness of his discretion to use the 10-23 code as he did on January 3. As noted above, that judgement was flawed. Limiting the time between his report of 10-23 and his arrival at the residence does nothing to obscure that his report altered the nature of the response to the scene for no apparent reason. His use of 10-23 did nothing to enhance his concentration on his driving. It did, however, alter Klatt's response to the call.

Nor can branding Klatt's response as inappropriate alter the flaw in the Grievant's use of the 10-23 code. Whether Klatt broke off his response or not, the Grievant was no closer than three-tenths of a mile, in poor driving conditions, from the residence. Nor can the significance of that three-tenths of a mile be diminished under the conditions present on January 3. By the Grievant's own account, he had to negotiate a tight turn before entering the "home stretch" to the residence. Even having done so, he slid well past the driveway. He had, for that period, little control over his response. This cannot be squared with any persuasive use of the 10-23 code. That he chose to inaccurately apply the 10-23 code is the ultimate, and proven, flaw in his exercise of judgement.

County evidence concerning other examples of discipline affords limited guidance here. None of the examples bear directly on the type of judgement posed here. That the Sheriff reduced the suspension from the three days recommended by Klanderman offers no guidance. Arbitral review of discipline concerns the discipline actually imposed. The Sheriff and Klanderman apparently disagreed on the significance of the underlying conduct. Evidence concerning the reasons for that difference could afford some guidance, but the presence of a disagreement, standing alone, does nothing to establish whether the discipline imposed reasonably reflects the County's disciplinary interest in the Grievant's conduct.

Ultimately, the grievance questions an individual act of judgement. The record poses no substantial issue of witness credibility. The grievance poses no issues regarding the self-interest of any testifying witness. Rather, the Grievant and his supervisors disagree on the soundness of the judgement he exercised in responding to dispatch on January 3. The evidence supports the County's conclusion that the Grievant exercised flawed judgement in using the 10-23 code on January 3.

AWARD

The County did have cause to suspend the Grievant for one day on January 10, 2000.

The grievance is, therefore, denied.

Dated at Madison, Wisconsin, this 15th day of November, 2000.

Richard B. McLaughlin /s/
Richard B. McLaughlin, Arbitrator

RBM/gjc
6155.doc