BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

MILWAUKEE COUNTY DEPUTY SHERIFF'S ASSOCIATION

and

MILWAUKEE COUNTY (SHERIFF'S DEPARTMENT)

Case 494
No. 58871
MA-11087

(William Terry Discipline Grievance)

Appearances:

Gimbel, Reilly, Guerin & Brown, by **Attorney Aaron M. Hurvitz**, 330 East Kilbourn Avenue, Suite 1170, Milwaukee, WI 53202, appearing on behalf of the Union.

Mr. Timothy R. Schoewe, Deputy Corporation Counsel, Milwaukee County Courthouse, Room 303, 901 North Ninth Street, Milwaukee, WI 53233, appearing on behalf of Milwaukee County.

ARBITRATION AWARD

The Milwaukee County Sheriff's Association (hereinafter referred to as either the Association or the Union) requested that the Wisconsin Employment Relations Commission designate a member of its staff to serve as arbitrator of a dispute between the Association and the Milwaukee County Sheriff's Department (hereinafter referred to as either the County or the Department) over the discipline imposed on Deputy William Terry. The undersigned was so designated. A hearing was held on October 18, 2000, at the Milwaukee County Courthouse in Milwaukee, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute. The Union made a closing argument and the City submitted a responsive brief. The Union then submitted a reply brief and the County a sur-reply. The last of these was received on December 2, 2000, whereupon the record was closed. The record was reopened on December 15, 2000, to consider the Union's objection to the County's sur-reply.

Now, having considered the evidence, the arguments of the parties, and the record as a whole, the undersigned makes the following Award.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

ISSUES

The parties were unable to stipulate to the issues before the Arbitrator. The Union believes the issues to be:

1. Whether the County's Sick Leave policy violates the collective bargaining agreement and the Municipal Employment Relations Act?
2. Whether the suspension was unreasonable?
3. Whether the Sheriff failed to comply with the Family and Medical Leave Act?
4. If the answer to any of the foregoing is "yes," what is the appropriate remedy?

The County believes the issues to be:

1. Whether the statutory claims made the Association are arbitrable?
2. Whether the challenge to the reasonableness of the Sick Leave policy is precluded by an earlier arbitration award on the subject?
3. Whether the challenge to the suspension and the challenge to the work rule are timely?
4. Whether the preponderance of the evidence supports the suspension?

On review of the record, the issues may be fairly stated as follows:

1. Are the challenges to the attendance policy under MERA and FMLA arbitrable? If so,
2. Is the Department's attendance policy valid?
3. Was the suspension of Deputy Terry for just cause?

PERTINENT CONTRACT PROVISIONS

The contract contains a Management Rights Clause, reserving to the Department the right to make and enforce reasonable rules and regulations, and to impose discipline upon employees. There is also a provision for arbitral review of suspensions of ten days or less.

PERTINENT DEPARTMENT RULES AND POLICIES

POLICY AND PROCEDURE

DIRECTIVE NO. 24-97

November 21, 1997

NOTE: Directive No. 24-97 replaces Directive No. 9-97 due to a change in the call-in procedure.

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Effective immediately for sworn and civilian personnel.

108.00 SICK LEAVE/ABSENTEEISM

108.01 PURPOSE

Absenteeism and tardiness by a relatively few employees can cause staffing problems. Absenteeism causes employees to be "held over" to work forced overtime after working their assigned shifts.

Some employees may not understand the basic reasons for a paid absence plan and the cost of absenteeism in general. A paid absence plan is meant to insure that employees' pay will continue when they are ill. The plan is not intended to be an additional off duty fringe benefit.

All employees who are absent will be interviewed by their immediate supervisor. This will allow the administration to:

1. Maintain written records of all absences and the reason given for the absences.
2. Identify the chronic absentee or potential abuser.
3. Identify the immediate causes of the absence and any possible underlying causes.
4. Assist the absentee to correct the basic and immediate causes.

108.02 POLICY

The following actions will be taken with any employee who is absent within a one year time frame (year is defined as a twelve month period):

1st through 3rd Absence: Supervisor interview;
4th Absence: Noted on Employee Activity Documentation Record;

5th and Subsequent Absence: Refer documentation to Office of Professional Standards for appropriate disposition. Based on the disposition appropriate disciplinary action, if necessary, will be decided by the Sheriff and may require a doctor's excuse and increment denial.

Only the Sheriff or his/her designee is empowered to deviate from the above procedures because of unusual circumstances.

Time approved under the Family and Medical Leave Law or any excused absence will not be considered for disciplinary purposes nor will time off be taken into account for job evaluation purposes or salary increment decisions.

If you have a problem that is causing you to be absent, please contact the Employee Assistance Program (327-5197). The program is designed to assist employees in solving problems. All interviews are confidential.

108.03 DEFINITION OF TERMS USED IN THE MANUAL

Sick Leave. Sick leave shall include paid absence from duty because of illness; bodily injury not covered by worker's compensation; exposure to contagious disease; and serious illness in the immediate family of the employee and other causes as defined in Chapter 17.18 of the General Ordinances of Milwaukee County.

Incident. Time off, not covered by the Family and Medical Leave Law, or excused absence which involves the use of sick or absent hours whether in increments of 0.1 hour or more or one continuous period of time.

Absenteeism. Continual interruption of attendance.

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108.05 PROCEDURES

1. Employees calling in sick must notify the department at least **One Hour** before the start of their shift in accordance with the Bureau's call-in procedure.
2. Employees who do not report to work and fail to notify the department they are sick will be marked absent without pay until such time as notification is made.

3. The following actions will be taken with employees who fail to comply with the above sick call-in requirements within a one year time frame (a year is defined as a twelve month period):

   1st occurrence: Noted on employee activity documentation record.

   2nd and subsequent occurrences: Referral to the Office of Professional Standards for appropriate disposition as determined by the Sheriff.

4. Health Services Unit employees who sign up for additional shifts must provide notice of cancellation of the shift(s) two weeks prior to the start of the shift.

Only the Sheriff or his/her designee is empowered to deviate from the above procedures because of unusual circumstances.

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MILWAUKEE COUNTY
SHERIFF' S DEPARTMENT

FAMILY AND MEDICAL LEAVE

The State of Wisconsin and Congress have both passed separate legislation authorizing leaves of absences for employees. The purpose of the legislation was to provide employees with unpaid time off from work because of a serious health condition of their immediate family member and their own serious health condition.

All Family and Medical Leaves are subject to the approval of the Sheriff Administration - Human Resources - Rm 107-SB. Appropriate documentation must be received by Sheriff Administration-H.R. before the leave can be approved.

Summary of Family and Medical Leave Act

State of WI Family and Medical Leave Act

In a calendar year:

1. Duration up to:

a.) Two weeks paid or unpaid leave for employee's own serious health condition.
b.) Two weeks paid or unpaid leave for serious health condition of spouse, child, foster child, parent.
c.) Six weeks for birth or adoption of child.

2. Employee selects what type of paid leave to be used. Sick allowance, vacation, accrued overtime, personal days accrued holiday or unpaid time.

Federal Family and Medical Leave Act

In a calendar year:

1. Up to twelve weeks in a calendar year for any of or combination of the following situations:

   a.) Because of an employee's own serious health condition which makes the employee unable to perform the essential functions of the position.
   b.) To care for a child, parent or spouse with a serious health condition.
   c.) Birth or adoption of a child or foster child placement.

2. Sheriff Administration will determine what type of paid or unpaid leave the employee can take in cases not involving an employee's own serious health condition.

Under State and Federal Leave the following will apply:

- Requests for FMLA leave must be submitted as far in advance as possible but no later than ten working days prior to the start of the leave except in emergencies. In case of emergency, you must submit documentation within ten working days after the emergency.

- Any time taken under the State Leave will count toward the Federal twelve week limit.

- A **serious** health condition is defined as a disabling physical or mental illness, injury, impairment, or a physical or mental condition that involves one of the following.

1. **Hospital Care**

   Inpatient care (overnight stay) in a hospital, hospice, or residential medical care facility, including subsequent treatment in connection with such inpatient care.

2. **Outpatient Care**

   Outpatient care that requires continuing treatment or supervision by a health care provider.

3. **Absence plus Treatment**

   A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), **that also involves the following**:

a. Treatment two or more times by a health care provider; **OR**
b. Treatment by a health care provider on at least one occasion which resulted in a regimen of continuing treatment under the supervision of the health care provider.

4. **Pregnancy**

   Any period of incapacity due to pregnancy or for prenatal care.

5. **Chronic Conditions Requiring Treatment**

   Chronic conditions requiring periodic visits for treatments or long term conditions which are incurable or so serious that if not treated it would result in incapacity of more than three days.

- Any other relatives, such as grandparents, brothers, sisters, aunts, uncles, etc., are not covered by the FMLA. Mother/father-in-law are only covered by the State Law.

- Leaves for spouses both working for Milwaukee County is limited to a total of twelve weeks per calendar year under the Federal FMLA.

- The leave **cannot** simply be for care of an ill child or parent. The condition of the child, parent or spouse must qualify as a serious health condition and the employee's presence is necessary or beneficial for the care of the family member.

- Both the Federal and State Laws require an employee to be employed for at least twelve months prior and receive a minimum number of paid hours for the employee to be eligible for a leave. (State - 1,000 hours during preceding 52 weeks; Federal - 1,250 hours during preceding 52 weeks)

When requesting a FMLA the following procedure should be followed:

1. Complete and submit a **Request for Family and Medical Leave Form** as soon as possible when the leave is foreseeable but no later than ten working days prior to the start of the leave except in emergencies. In case of emergency, documentation must be submitted within ten working days after the emergency. Submit the form to your supervisor who will forward the form to Sheriff Administration.

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Employee's own serious health condition

Submit a Certification of Physician or Practitioner Form to Sheriff Administration-H.R. -RN 107,SB. A physician's release stating you are able to return to your job duties must be submitted upon your return to work.

Serious health condition of spouse, child, or parent

Submit a Certification of Physician or Practitioner Form to Sheriff Administration-H.R.-RM 107, SB.

Birth, adoption or foster child placement:

Birth - documentation from your physician should include expected date of birth, the beginning and ending dates of time medically excused off work prior to birth and a 'matter of' stating the beginning and ending dates of the time requested to be off.

Intermittent leave for birth, adoption, or foster child placement -

Intermittent Leave is not a right under the Federal Law and an employer has the option of granting or denying an intermittent leave.

2. Sick allowance or absent time which is not approved as Family or Medical Leave under the FMLA process will be considered in determining discipline.

3. For copies of Family and Medical Leave Forms, contact Sheriff Administration - Room 107-SB.

Under the Milwaukee County Civil Service Rules, Ordinances and/or labor contract agreements, with appropriate approvals, the length of an employee's leave may be longer than the time allocated under the state and federal laws.

BACKGROUND

The County provides general governmental services, including law enforcement, to the people of Milwaukee County, in southeastern Wisconsin. Lev Baldwin was, at all relevant times, the Sheriff. The Grievant, William Terry, is a court officer. Between February of 1999 and November of 1999, he had five occasions of absence as defined by the Department's Directive 24-97 on absenteeism. He was gone from February 16 to 18 and June 21 to 23 for bronchitis. He made no request for FMLA leave for these absences, nor did the Department ask whether he wanted to use FMLA. The lost time was covered by accumulated sick leave. On August 24, he said he had the flu. From October 4 to 6, he cited bronchitis as the reason.

In response to the October absence, the Human Resources Manager twice sent him forms and instructions on applying for FMLA leave, but he did not return them. On November 18, he called in with food poisoning. He called in the absences properly, but since he had a previous verbal warning for absenteeism, he was assessed a one-day suspension. This is the penalty called for in the Directive, which includes no-fault attendance policy.

The suspension was assessed on February 17, 2000, and this grievance was filed on the same date. A Step 2 hearing was held on the grievance by the Human Resources Manager on March 6, 2000, and she denied the grievance in writing on March 20. The grievance cited the sick leave provisions of the contract and the general ordinances governing sick leave. In the course of the grievance procedure, the Association added an allegation that the Management Rights clause had been violated. The grievance asked that the suspension be removed from his record, and that the attendance policy be abolished. No reference was made to the Family and Medical Leave Act during the grievance procedure.

The Grievant testified in his own behalf, and stated that he has suffered from bronchitis since the winter of 1992-93, and that is sometimes incapacitated him. He said had told the dispatcher he was calling in because he had bronchitis in both February and June. In neither instance did the County send him FMLA forms, and no one ever told him to see a doctor or made any inquiries about his condition. He acknowledged that he had told Captain Moore of the Department that his doctor had said he could do anything, that he had self-treated with herbs, and that his doctor had refused his request to certify the bronchitis as a serious medical condition for FMLA purposes. He also acknowledged that he had not responded to the FMLA forms sent by the Department in November, and had never filed a complaint over denial of FMLA or over the validity of Directive 24.97.

Additional facts, as necessary, will be set forth below.

ARGUMENTS OF THE PARTIES

The Position of the Association

At the outset, the Association argues that all of its arguments are properly before the Arbitrator. The Association has pointed out the invalidity of the Sheriff's absenteeism rules

under MERA, and the illegality of his FMLA policy under federal law. The County complains that these arguments were never raised before arbitration, and thus are barred by the contract provision that says that issues not raised in the lower steps of the grievance procedure cannot be presented in arbitration. That view is unrealistic. The parties at the lower steps generally argue about the facts of the case, and the legal arguments are developed at arbitration, once counsel is secured. A finding that the legal theories cannot be fleshed out at the arbitration step would simply insure that the parties would bring their attorneys in at an earlier point, a result which is inconsistent with the step by step procedure negotiated between the parties. The Association also observes that there is no proof that these arguments were not raised at the lower steps.

Turning to the merits, the Association argues that the Sheriff's attendance rules are unilateral and illegal. Attendance rules are a mandatory subject of bargaining, and these were never negotiated with the Association. Moreover, the collective bargaining agreement makes sick leave available for employee illnesses, and the unilateral policy cannot override the negotiated terms of the bilateral agreement. While Arbitrator McGilligan may have found the policy valid in 1997, this arbitrator must proceed under the 1998-2000 contract, and the old award cannot supercede that contract.

The Association notes that the County suspended Deputy Terry for having five occurrences of absence, and that two of these – in February and June – were the result of bronchitis. Deputy Terry testified that he told the dispatcher this when he called. The County took no action in response to this information. As a matter of law under the FMLA, the onus is on the employer to offer FMLA information whenever it becomes aware of a serious medical condition. Bronchitis has been found by the federal courts to be a serious medical condition. Yet the Department's FMLA policy purports to place the onus of the employee. The Sheriff cannot simply rewrite the FMLA. The failure to investigate Deputy Terry's report of a serious illness is, on its face, a violation of the FMLA and whether he would have qualified for leave or not is beside the point. He was never given the chance. Since this condition does qualify for FMLA leave, and since the County's failure to investigate denied Terry the chance to take FMLA leave, and since it is illegal to count FMLA absences against an employee even under a no fault attendance plan, the February and June absences cannot be counted against the Grievant. Thus, even if the absenteeism policy is valid, he is at most guilty of three occurrences of absence, not five as the Department claims.

The Position of the County

The County takes the position that the grievance is procedurally defective and substantively without merit. First, the County notes that the contract specifically forbids raising issues in the upper steps of the grievance procedure that were not presented by the original grievance. The grievance does not mention MERA nor does it mention the FMLA, yet the Association seeks to have the Arbitrator consider both of these external statutes. Those

arguments are clearly foreclosed. Additionally, the Union seeks to challenge the validity of the sick leave policy but such a challenge is several years too late. The policy was adopted, in its amended form, in 1997. In January of 1999, Arbitrator McGilligan determined that the policy was already past the point at which it could be challenged, yet the Union invites this arbitrator to revisit the issue. There is no basis for this, and if the Arbitrator did so, it would authorize either party to simply abandon all past awards and practices every time a new contract was signed. That is completely contrary to the final and binding nature of arbitration, and runs counter to sound labor relations policy.

The Union's FMLA argument is also unsound. The Union asks the Arbitrator to find that the County failed to honor the Grievant's FMLA rights when his own doctor told him his bronchitis was not a serious medical condition, and when he was never absent for more than three days. Both are prerequisites to FMLA benefits. Moreover, Deputy Terry never even responded when the County did send him FMLA forms. The FMLA rule, like the attendance policy, is an attachment to the contract, and the Union has agreed to the substance of each. It cannot now be heard to challenge the validity and reasonableness of policies it has, in effect, signed off on.

Deputy Terry admitted that he knew of the attendance rules, and had been disciplined under them previously without challenge. He admitted he violated the rules. The discipline imposed upon him is progressive and reasonable. The instant grievance is wholly without foundation and must be dismissed.

DISCUSSION

A. The Scope of the Grievance

The County objects to many of the Association's arguments, on the grounds that they were never raised prior to arbitration. Section 5.01 of the contract states, in part:

> (11) At each successive step of the grievance procedure, the subject matter treated and the grievance disposition shall be limited to those issues arising out of the original grievance as filed.

The question here is whether the issues of the validity of the absenteeism policy in general under MERA, and the application of the policy under FMLA, are presented by the original grievance. The grievance generally alleges that the suspension of Deputy Terry was without just cause and that the attendance policy is invalid. Grievance processing is as much an exercise in bargaining as litigation, and the interactions during the processing of the grievance cannot be treated as legal pleadings. Parties are generally accorded considerable latitude to deviate from their prior theories once they have reached arbitration, abandoned settlement efforts, and have the benefit of counsel. 1/ The Association's arguments rely on the same

basic facts raised by the initial grievance filing, and it seeks the same basic remedies. I cannot find that the basic grievance before me – whether there was just cause to suspend Deputy Terry – is a different grievance than that raised below. In recognition of the new theories, however, I have afforded the parties more latitude in supplementing their arguments than would normally be the case.

1/ "Considerable latitude" is not carte blanche, and there are limits to how much the parties may deviate from the case they actually presented in the grievance procedure. Obviously, they may not reinvent the facts or raise a completely new grievance. Moreover, where an argument in support of or opposition to a grievance differs so radically from the theories advanced at earlier stages that it effectively transforms the entire case, it may be the matter should be remanded to the lower steps for reconsideration. In any event, the precise limits of the parties' right to deviate from their prior positions need not be defined in this case.

B. The Validity of the Attendance Rules

The Association argues that the Sheriff's attendance rules are invalid and should be considered null and void. The County points out that the rules were found valid by Arbitrator McGilligan in a 1997 Award. The Association seeks to distinguish the 1997 Award because it was rendered under a different contract. The assertion that the McGilligan Award upholding the validity of the attendance policy does not apply to this case because it was issued under an earlier version of the collective bargaining agreement is simply without merit. The contract provides for final and binding arbitration. The issue of the validity of the attendance rules has been submitted to that process and an answer has been received. The relevant language has not changed since the Award was rendered. If arbitration is a final and binding process, it cannot be the case that all arbitration results are cancelled each time the labor contract expires and a new contract is negotiated, any more than the bargaining history and past practices surrounding a provision are cancelled by the continuation of the language unchanged in a new contract. Indeed, it is generally held that the precedential effect of a prior arbitration award is cemented by the negotiation of a successor agreement which does not change the underlying language, since the parties are presumed to have knowledge of the result when they bargain, and a failure to change the language indicates acceptance of the interpretation. For that reason, I decline the Association's invitation to reconsider Arbitrator McGilligan's result and conclude that the attendance rules are valid.

C. The FMLA

Under the FMLA, employees are entitled to leave for serious medical conditions and such leave may not be held against employees under no-fault attendance plans. Moreover, employers are required to advise employees with serious medical conditions of their right to

seek FMLA leave. The Association argues that two of Deputy Terry's absences were due to bronchitis, and that he told the dispatcher this when he called in sick. Bronchitis may be considered a serious medical condition, and has been so found by at least one Federal District Court. Thus, the Association argues, the County had the obligation to tell Terry that his condition might qualify under the FMLA, and having failed to do so, it cannot hold two of the absences against him for purposes of the attendance policy.

Bronchitis varies in severity, and it may qualify as a serious medical condition, as in the case of OLESON V. KMART CORPORATION, 1996 WL 772604 (D. KAN.), cited by the Association. 2/ Or it may not, as in MPI WISCONSIN MACHINING DIVISION V. DILHR, 159 WIS. 2D 358, 464 N.W.2D 79 (CT. APP. 1990). The Code of Federal Regulations itself uses bronchitis turning into bronchial pneumonia as an example of an ordinary sick leave condition that becomes a serious medical condition. (See 29 C.F.R. 825.208(d)). Deputy Terry's own doctor refused to certify his bronchitis as a serious medical condition, and the two instances of absence where he allegedly told the dispatcher he had bronchitis were each three days in duration. In broad terms, in order to qualify as a serious medical condition requiring FMLA, the absence caused by the illness must exceed three calendar days and require medical care, or if chronic be for the purpose of receiving a course of treatment. Terry did not claim that he received medical care during his absences. Indeed, he admits that he treated himself at home with herbs. Thus, the absences themselves would not have qualified for FMLA.

2/ OLESON was a motion to dismiss under Federal Rule 12(b)6, and the decision there was that the claimant, assuming all of his allegations to be true, could make out a prima facie case. It was not a factual determination by the court after an evidentiary hearing.

The Association argues that the lack of notice or independent investigation, in and of itself, should exempt the days from counting under the no-fault plan because the law requires it. As to the legal requirement that notice be given or the protections of the Act fully apply, the Association cites 29 C.F.R. 825.208(c). That provision speaks to an employer that that has the requisite knowledge that a leave qualifies for FMLA, and fails to designate the leave as FMLA leave. In that case, the employer is prohibited from retroactively designating the time off as FMLA leave and deducting it from the annual allowance. The provision includes the statement that "In such circumstances, the employee is subject to the full protections of the Act. . ." This statement is taken somewhat out of context in the Association's argument. The employer does have an obligation to independently investigate whether a leave qualifies for FMLA if the employee states a qualifying reason or if the employer already has knowledge of the qualifying reason. (See 29 C.F.R. 825.303(b)) This obligation involves obtaining required information through informal means. Bronchitis may or may not be a qualifying reason. The Association points out that Deputy Terry's bronchitis has been a recurring condition since 1993, and has caused him to seek medical treatment and periodically incapacitated him. If the

Sheriff's Department knew all of that, there might have been a reason to further inquire. There is no evidence that they did. There is evidence only that he mentioned the word "bronchitis" to the dispatcher when he called in sick. The FMLA does not require the employer to inquire of every employee who calls in sick whether they will seek to qualify for FMLA leave. Here Deputy Terry called in sick with a condition that is not *per se* a serious medical condition, then returned to duty after three days. He used the ordinary sick leave benefit, in the ordinary manner. He did not request FMLA coverage, and nothing about his request would reasonably give the Department reason to believe that FMLA was applicable. There was no occasion for the inquiry suggested by the Association.

The Association also suggests that Deputy Terry was prejudiced by the failure of the Department to offer FMLA information because, had he known of his FMLA rights, he might have been able to make use of the leave. This does not follow. Terry took off work for the period of time he was too sick to work. The Association's position seems to be that Terry could have somehow manipulated the length of his absence or the course of his medical treatment to make the absences qualify under FMLA, if he had been told of the requirements to qualify. FMLA exists in part to regulate the treatment of absences caused by illness. The absences do not exist to take advantage of the FMLA. Assuming Deputy Terry to be an honest man, as I do, he presumably would not rearrange his health care to make it qualify for the Act.

To the extent that the Department's FMLA policy does not provide for an inquiry into the nature of an illness or condition where circumstances suggest that FMLA may be applicable, it would run afoul of the FMLA. However, the question before the Arbitrator is not whether there might be cases where the attendance policy or the FMLA policy might be applied so as to violate the law. The question before the Arbitrator is whether, in this case, the policy as applied to Deputy Terry violated the statute and thus rendered the February and June absences uncountable for attendance purposes. I conclude that the policies as applied to Terry did not violate FMLA, and that the February and June absences were properly counted under the attendance policy. Since the policy calls for disciplinary review on the fifth occurrence, and since Deputy Terry had five occurrences, I conclude that the County had just cause to discipline him. As to the measure of discipline, there is no evidence that a one-day suspension is inconsistent with the penalties assessed in similar cases, and it is not on its face disproportionately harsh.

On the basis of the foregoing, and the record as a whole, the undersigned make the following

AWARD

1. The challenges to the attendance policy under MERA and FMLA are arbitrable.

2. The attendance policy is valid under MERA and the collective bargaining agreement, by virtue of the 1997 McGilligan Award.

3. The attendance policy as applied in this case is valid under FMLA, as the Grievant did not suffer from a serious medical condition, and as the County had no basis for believing that inquiry into FMLA coverage was necessary when he called in the February and June absences.

4. The suspension of Deputy Terry was for just cause.

5. The grievance is denied.

Dated at Racine, Wisconsin, this 12th day of March, 2001.

Daniel Nielsen /s/
Daniel Nielsen, Arbitrator

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