

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
MILWAUKEE DEPUTY SHERIFF'S ASSOCIATION

and

MILWAUKEE COUNTY

Case 531
No. 62292
MA-12223

Appearances:

Eggert & Cermele, S.C., by **Attorney Jonathan Cermele**, 1840 North Farwell Avenue, Suite 303, Milwaukee, Wisconsin 53202, appearing for the Association.

Timothy R. Schoewe, Deputy Corporation Counsel, Milwaukee County, Milwaukee County Courthouse, Room 303, 901 North Ninth Street, Milwaukee, Wisconsin 53233, appearing for the County.

BENCH ARBITRATION AWARD

The above-captioned parties, herein "Association" and "County", are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Milwaukee, Wisconsin, on February 18, 2004, at which time the parties agreed that I should issue, on an expedited basis, a written Bench Arbitration Award with limited rationale explaining my decision. The hearing was not transcribed and the parties made oral arguments at the close of the hearing.

Based upon the entire record and arguments of the parties, I issue the following Award.

STIPULATED ISSUES

1. Was the five (5) day, unpaid suspension, for just cause?
2. If not, what is the appropriate remedy?

DISCUSSION

At issue is whether there was just cause to suspend the Grievant for five (5) days.

Standard

There are two fundamental, but separate, questions in any case involving just cause. The first is whether the employee is guilty of the actions complained of which the County herein has the duty of so proving by clear and satisfactory preponderance of the evidence. If the answer to the first question is affirmative, the second question is whether the punishment is contractually appropriate, given the offense.

Basis for Discipline

Applying the above standard to the instant case, the Arbitrator first turns his attention to the question of whether the Grievant is guilty of the actions complained of.

The dispute revolves around an incident that occurred on Monday, September 30, 2002, at General Mitchell International Airport, on the baggage drive, 5300 South Howell Avenue, Milwaukee, Wisconsin. The complainant, Ms. Monica Lawrence, alleged that Deputy Keith Villwock ("Grievant") spoke to her in an unprofessional manner and she felt an "intimation of underlying prejudices" because she is African-American. Specifically, Lawrence alleged that the Grievant referred to her as "lazy" for her failure to move a car that was parked in a no parking area and treated her in a disrespectful manner.

The County's rules provide as follows:

Milwaukee County Sheriff's Office Rules and Regulations

1.05.15 – 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.

(Emphasis added).

Milwaukee County Civil Service Rule VII, Section 4 (1)

- (ff) Offensive conduct or language toward the public or toward county officers or employees. (Emphasis added).

On February 25, 2003, Captain Chris J. Luedke, Captain, Police Services Bureau – Patrol Division “sustained” the allegations finding “All accounts of her [complainant] complaint are constantly the same.”

On March 17, 2003, Captain Luedke conducted a meeting for considering the Imposition of Discipline, with the Grievant and his Union Representative, Sergeant Carol Curfman. Captain Luedke again concluded: “The complainant, Ms. M. Lawrence, called two people and wrote a letter about this. All very consistent accounts and credible.”

There is no basis in the record for questioning the accuracy of Captain Luedke’s conclusions.

This is particularly true where here the Grievant has no recollection of the incident and his testimony is not credible based on his record of untruthfulness. (County Exhibit No. 2). The Arbitrator agrees with Captain Luedke’s statement of February 25, 2003: “A sergeant and two deputies who had contact with the complainant recalled their contact, so therefore I find it unbelievable to think Villwock did not recall the incident.”

County rules require civility and courtesy toward the public when deputies carry out their duties. The record supports a finding that the Grievant has violated these rules by his conduct.

Therefore, based on all of the above, the Arbitrator finds that the County has proven that the Grievant is guilty of the actions complained. A question remains to whether the punishment is contractually appropriate.

Appropriateness of the Suspension

The parties stipulated that the five (5) day unpaid suspension must be for just cause.

The County argues that the suspension was an appropriate penalty for the Grievant’s conduct in light of his prior discipline.

The Union argues that the County violated due process by taking too long to interview the Grievant after the incident, that the discipline was excessive and that it was inappropriate to consider the Grievant’s prior disciplinary record.

The Arbitrator agrees that it took too long to interview the Grievant about the September 30, 2002 incident. The Department waited until November 20, 2002 to question the Grievant about the incident, over seven (7) weeks after the incident took place. The Grievant had no recollection of the incident. Perhaps, if the Department had talked to the Grievant earlier about the incident, as it did with Deputy Joseph Mazurczak, he might have recalled something about the incident. Sergeant Sarah Byers, who conducted an investigation into the matter, agrees: "Without giving Deputy Villwock a more timely opportunity to recollect and explain his side of the situation, I have no choice but to recommend that OPS file #02-329 be not sustained." Unreasonable delay in alerting the Grievant of possible discipline, and giving him an opportunity to tell his side of the story, impedes his and the Association's ability to give his best response to the charges, during the grievance procedure and at arbitration. The County's failure to conduct a timely investigation into the matter will be considered along with the other factors which have traditionally gone into assessing whether "the penalty fits the crime," e.g., an employee's longevity and work record, and the severity of the discipline.

The Association also argues that the discipline imposed was excessive. However, it is clear from the above County rules that the County and the Sheriff's Department believe it is very important for deputies to treat citizens with courtesy and civility at all times while carrying out their duties. The Sheriff made that clear when he imposed the five (5) day unpaid suspension. There is no basis in the record for questioning that judgment.

Finally, the Association argues that it was inappropriate to consider the Grievant's entire disciplinary record when imposing discipline. However, it is generally accepted that an employee's entire work record may be considered for mitigation purposes. That may work to an employee's advantage or disadvantage depending on the work record. In the instant case, the Grievant's work record since 1997 does not help his case. This is particularly true since, as noted above, he had a prior charge of "Truthfulness" sustained against him.

The Association argues that there would be no reason for the Grievant to lie and to claim that he had no recollection of the incident. That is not true. The Grievant has every reason to forget the incident as he faces possible "removal from the Police Services Bureau" for either this incident or any further complaints.

Based on all of the above, the Arbitrator finds that the County's failure to give the Grievant due process by failing to interview him about the September 30, 2002 incident on a timely basis is a reason for reducing what would otherwise be appropriate discipline.

It is my

AWARD

1. The County did not have just cause to suspend the Grievant for five (5) days without pay.

2. The five (5) day unpaid suspension of Grievant is reduced to a two (2) day unpaid suspension.

3. The Arbitrator will retain jurisdiction over the application of the remedy portion of the Award for at least thirty (30) days to address any issues over remedy that the parties are unable to resolve.

Dated at Madison, Wisconsin, this 23rd day of February, 2004.

Dennis P. McGilligan /s/

Dennis P. McGilligan, Arbitrator