

BEFORE THE ARBITRATOR

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

and

MILWAUKEE COUNTY

Case 576
No. 65062
MA-13106

(Sharon Greer Suspension Grievance)

Appearances:

Mr. Timothy J. Walther, Eggert & Cermele, S.C., Attorneys at Law, 1840 North Farwell Avenue, Suite 303, Milwaukee, Wisconsin 53202, appearing on behalf of the Milwaukee Deputy Sheriff's Association.

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

ARBITRATION AWARD

The Milwaukee Deputy Sheriff's Association and Milwaukee County are parties to a collective bargaining agreement which 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 designate a member of its staff to hear and decide a grievance over the interpretation and application of the terms of the agreement relating to discipline. The Commission appointed Stuart D. Levitan to serve as the impartial arbitrator. Hearing in the matter was held in Milwaukee, Wisconsin on November 1, 2005; it was not transcribed. The parties submitted written arguments, the last of which was received on January 25, 2006.

ISSUE

The Association states the issue as:

“Did ‘just cause’ support the rule violation as charged? If yes, Did ‘just cause’ support a five day suspension, and if not, what is the appropriate remedy?”

The County states the issue as:

“Was there just cause to suspend Greer for five days without pay? If not, what remedy should result?”

I state the issue as:

“Did the employer violate the collective bargaining agreement when it imposed a five-day suspension on Deputy Sharon Greer? If so, what is the appropriate remedy?”

RELEVANT CONTRACTUAL LANGUAGE

1.02 MANAGEMENT RIGHTS

The County of Milwaukee retains and reserves the sole right to manage its affairs in accordance with all applicable laws, ordinances, regulations and executive orders. Included in this responsibility, but not limited thereto is:

...

- The right, subject to civil service procedures and secs. 63.01 top 63.17, Stats., and the terms of this Agreement related thereto, to suspend, discharge, demote or take other disciplinary action;

...

5.04 DISCIPLINARY SUSPENSIONS NOT APPEALABLE UNDER S. 63.10, STATS.

In cases where an employee is suspended for a period of ten (10) days or less by his (sic) department head, pursuant to the provisions of s. 63.10, Stats., the Association shall have the right to refer such disciplinary suspension to arbitration. Such reference shall in all cases be made within 10 working days from the effective date of such suspension.

OTHER RELEVANT PROVISIONS

MILWAUKEE COUNTY SHERIFF’S OFFICE POLICY AND PROCEDURE AND/OR RULES AND REGULATIONS:

1.05.03 Violation of Policy

Members shall not commit any acts or omit any acts which constitute a violation of any of the policies, rules, procedures or orders of the department whether stated in this section or elsewhere. Comment: This rule includes not only all unlawful acts by members, but also all acts, which although not unlawful in themselves, would degrade or bring discredit upon the member or the department.

1.05.14 Efficiency and Competency

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.

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

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

...

- (u) Substandard or careless job performance.

...

BACKGROUND

Deputy Sheriff Sharon Greer is a Jail Records Deputy at the Milwaukee County Criminal Justice Facility in downtown Milwaukee. As of the summer of 2005, Greer had been a member of the Milwaukee County Sheriff's Office for just over nine years, holding various assignments in the Detention Service Bureau during that time. The basic job function of a Jail Records Deputy is to process bail forms as part of the procedure by which a detainee is released from custody. This grievance concerns the five-day unpaid suspension Sheriff David A. Clarke imposed on Greer for her role in the improper release of a convicted murderer, Cesar Lira. This was Greer's first suspension from work.

The events which preceded the discipline are summarized in internal reports and memoranda. On June 17, 2005, Greer submitted the following Matter of Report to Captain R. Brett Richards:

DATE: June 17, 2005
TO: Captain R. Brett Richards
FROM: Deputy Sharon Greer
SUBJECT: Release

Sir/Ma'am:

On Monday, June 15, 2005 I Deputy Sharon Greer was in full duty uniform, assigned as a Jail Records Deputy at the Criminal Justice Facility, 949 North 9th Street. At approximately 1400 hours, a cash bail was placed in the release basket for Lira/Cesar, M/W 01/17/71 who was being housed at the Milwaukee House of Correction. I pulled the 10-47's for case #04CM001010 and 04CF002092 to confirm the bail amount and court date. There was a note pertaining to an Oklahoma hold which was written by Deputy Cooper, so I called him in Intake Court, ext. 7227 to get a clearer understanding of the note because there was nothing in the inmate packet confirming or relating to the note. I gave him the information on the subject and he stated to me that he didn't know why he wrote the note and to disregard the note. I repeated his statement back to him letting him that I will disregard his note and make note of his statement on the bottom of the 10-47 with Dawn Kreilkamp, the Disposition Clerk as my witness to his statement. I documented his statement, dated and initialed the bottom of the 10-47. I then called Sgt. Wolf in the Detective Bureau, notifying him that I had two bails for \$5000 and \$10,000 which was not drug related and being paid with several cashier's checks and money orders and I was told to let it go. Copies of the money orders, cashier's checks and driver's license were placed in the packet for reference. I printed up the bonds and sent the packet to the cashier.

On Friday, June 17, 2005 at approximately 1125 hours I received a telephone call from Sgt. Burlingame stating that the Sheriff needed to see me regarding a bad release. I called the Sheriff's Office requesting more information as I was preparing to leave town and I was told that he needed to see me. I told Dawn, his assistant that I would need approximately one hour.

I arrived in the Sheriff's Office at approximately 1200 hours, explained the above incident and instructed to write a report by the Sheriff and submit it to Capt. Richards.

Respectfully submitted,

Deputy Sharon Greer #798 /s/
Deputy Sharon Greer #798

As Greer related, there are several lines of handwritten text at the bottom of the 1047 Data Entry Worksheet for Cesar Lira. The top two lines read:

Per DA's file – has Oklahoma DOC hold – serving sentence
Absconded WI probation/Parole – revoked, serving WI sentence

Below that are three additional lines:

Per Dep. Cooper – disregard note – Not
Certain why he wrote note
Sharon Greer SOG798 (6/15/05)

In the right corner, there is a stamp reading “Dawn Kreilkamp,” and the hand-written date, 5-23-05. Given the chronology, this appears to related to Lira's booking, not the Cooper/Greer conversation or Lira's subsequent release.

As a Jail Records Deputy, Greer does not have the authority or ability to obtain files from the District Attorney's office. Jail Records Deputies regard the bailiffs as the relevant resource for questions about files being processed.

On or about July 1, 2005, Capt. Mark A. Strachota submitted the following Investigative Summary, which was incorporated as an attachment to Greer's Notice of Suspension:

On May 19, 2005 at 11:30 a.m., Cesar Lira, M/W, DOB: 01/17/71, was extradited to the Criminal Justice Facility from the Dick Conner Correctional in Hominy, Oklahoma by “Transcor America.” Inmate Lira was extradited because of Milwaukee County Sheriff's Office warrants “Criminal Escape” and “Endangering Safety by Use of Dangerous Weapon.” Inmate Lira was beginning to serve a 20-year sentence for Second Degree Murder, Child Abuse/Neglect/Eluding a Police Officer, and Running a Road Block in Oklahoma. The Milwaukee County District Attorney's Office requested this extradition through the State of Wisconsin Department of Corrections. When Inmate Lira arrived at the Criminal Justice Facility, Transcor did not present any paperwork to the Milwaukee County Sheriff's Office from Dick Conner Correctional stating that there were holds on Inmate Lira. In addition, a receipt for prisoner/documents/detainer from the Oklahoma Department of Corrections

has a box check stating “out witness prisoner released by Department of Corrections” which was an incorrect check off. The proper box that should have been checked is “a detainer has been filed against him, etc.” Also, a detainer was not entered by the Oklahoma Department of Corrections into the “Enforcer TIME System.” The Wisconsin Department of Corrections did not notify the Milwaukee County Sheriff’s Office of a hold. An “Order to Produce and Return” was not created by the Wisconsin Department of Corrections.

At 10:21 a.m., on May 19, 2005, the Milwaukee County Sheriff’s Office fingerprint deputy, Jeffrey Cross, ran a “Fast ID” on Inmate Lira which stated no matches on the SID#. The attempt by Deputy Cross was verified by Curt Bauer of the Department of Justice who stated through email, that accuracy is fairly high but not 100%

On May 23, 2005, Inmate Lira’s initial appearance was held. During the hearing, A.D.A. Benbow Cheeseman spoke about the hold in Oklahoma and that he needs to go back, serve his time and then return to Wisconsin to complete the sentence here. A fifteen thousand dollar (\$15,000.00) bail was placed on Inmate Lira for the 2 charges. The bailiff, Deputy Jefferson Cooper, heard A.D.A. Cheeseman speak, saw that there were no holds on the Form 1047 and wrote “Per D.A.’s file has Oklahoma DOC hold – serving sentence.” Deputy Cooper did not call a release deputy or sergeant.

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MILWAUKEE COUNTY SHERIFF’S OFFICE
INVESTIGATIVE SUMMARY
INTERNAL AFFAIRS CASE 05-155

On May 24, 2005, Inmate Lira was transferred to the House of Correction. On June 15, 2005, relatives of Inmate Lira brought \$15,000 in cashiers checks and money orders to the Criminal Justice Facility for the purpose of bailing Inmate Lira out of jail. Clerical Assistant 2 Dawn Kreilkamp retrieved the packet and placed it in the “release basket.” Deputy Sharon Greer “pulled” the 1047 and read Deputy Cooper’s note. Deputy Greer stated that she called Deputy Cooper about the note; and Deputy Cooper responded that he didn’t remember why he wrote the note and it must be an error if she finds no holds and to disregard it. Deputy Greer contacted Sergeant Steven Wolf regarding the bail money. Sergeant Wolf told her to let it go through and she processed the bail and notified the House of Correction that bail was received. Deputy Greer was satisfied that there were no holds because the CC25 and Transcor’s receipt showed no holds. Inmate Lira was consequently released on bail. Deputy Greer stated that she did not contact a sergeant and did not call Oklahoma or D.O.C. because Deputy Cooper had stated that he wrote the note in error.

In his interview, Deputy Cooper acknowledged writing the note because of what he had heard about in the courtroom and that there were no holds on the 1047. When Deputy Greer called him about the note, he didn't remember writing it or the reason for it. Deputy Cooper stated that Deputy Greer insisted that there were no holds. Deputy Cooper felt that the "Jail Records people are the people who determine who has holds and what those holds are." Deputy Cooper was unaware of anything else he should do.

On June 28, 2005, I interviewed Deputy Laurel Lirette who was formally a Jail Records deputy and is regarded by most people as extremely competent. He describes himself as "anal." He began the interview by describing Transcor as being very disorganized; he was often missing paperwork from them. Deputy Greer also stated that she was aware of problems with Transcor. Deputy Lirette stated that he probably would have called somebody in Oklahoma.

CONCLUSION

Deputy Cooper learned of a major difference between the 1047 and at the court hearing. Therefore he properly wrote it on the 1047 but he should have gone further such as calling a Jail Records deputy or sergeants for the purpose of looking into it.

Deputy Greer did call Deputy Cooper, but because Deputy Cooper wasn't clear and didn't remember, she should have gone further by making a phone call to D.O.C. or Oklahoma and/or notified a sergeant. Apparently it is common knowledge that Transcor is not without its problems and their paperwork should have been questioned, especially because of Deputy Cooper's note.

In addition to this breakdown in a procedure it was learned through this investigation that the "Escape Risk" field on the 1047 is rarely used. The date (sic) is driven by date (sic) in the CJIS table called "Potential Hazard." In that table, there are medical alert codes which can be associated to inmates in custody. If the medical alert code "274" is on an inmate's record, then the escape risk value on the 1047 is set to "Y". If code "113" exists, it is for suicide, and then it is set to "Y". Apparently it doesn't have anything to do with escape of a prisoner. This was learned through an interview with Dawn Gelhoff of IMSD who was the CJIS liaison as a deputy.

Based on the facts as detailed in Strachota's report, Sheriff Clarke found deputies Cooper and Greer to have violated Sections 1.05.03 (Violation of Policy) and 1.05.14 (Efficiency and Competence) of the Milwaukee County Sheriff's Office Policy and Procedure and/or Rules and Regulations, and Milwaukee County Civil Service Rule VII(4)(1) (l) and (u). The Sheriff on July 19 imposed a five-day suspension on Deputy Greer and, on or about the same date, imposed a thirty-day suspension on Deputy Cooper. The county Personnel Review

Board unanimously rescinded Cooper's discipline, leaving Greer the only County employee disciplined in this matter. Cooper was present for the Greer arbitration hearing, but was not called as a witness.

Prior to imposing the discipline on Greer and Cooper, Sheriff Clarke publicly stated that Lira's release was due to errors by TrascCor and corrections officials in Oklahoma and Wisconsin, rather than County employees. As reported by the *Milwaukee Journal-Sentinel* on June 17, 2005:

Clarke said he will investigate but after reviewing the paperwork Oklahoma sent with Lira, he said a 'reasonable person' would conclude he had finished his sentence. Clarke released the Oklahoma form, titled "receipt for prisoner/documents/detainer."

The line marked says, "out (sic) witness prisoner released by Oklahoma Department of Corrections." Another line that says, "a detainer has been filed against him/her in your favor..." is not marked.

In contrast, Clarke released the form his office uses to hold prisoners. At the top are the words, "ORDER TO DETAIN" in large letters.

The county cannot legally hold someone without a signed order, he said.

"We checked their form, and it doesn't say they want him back. It's not our job to call them" and ask whether they want the prisoner returned, Clarke said. "We learned something from it, but not that we did anything, quote, wrong."

Lira also should have had a hold on him for a drug distribution charge. It was not clear Friday night how many years he got in that 1999 case. Clarke said he couldn't explain why Wisconsin didn't have a hold on him. State officials were not available late Friday.

Clarke also questioned the paperwork completed by TransCor, a private prisoner transport company that brought Lira to Wisconsin from Oklahoma.

...

Clarke said jailers in the past have mistakenly released prisoners who were supposed to be held longer, but he wasn't aware of Milwaukee County ever releasing a prisoner that another state wanted held.

He said he will continue to review the procedures, but he doesn't see fault on his jailers' part.

“We have a process we go through so there are no other holes,” he said.

Because he was testifying in a simultaneous matter in federal court, Capt. Strachota was not available to testify at the arbitration hearing. Captain Zauner, a veteran member of the Internal Affairs Division, testified on behalf of the Sheriff. Zauner testified that the Sheriff’s Office never interviewed personnel from the Oklahoma Department of Corrections, the Wisconsin Department of Justice or TransCor company, even though “it may have been useful to call the other agencies” in trying to analyze what went wrong to ensure that it didn’t happen again. Zauner also testified that Cooper and Greer did “the minimal amount” their jobs required, but that Sheriff Clarke “expects deputies to perform at a higher level, to take the extra step.” Zauner also testified that an inmate with Lira’s underlying status should “absolutely not” have been sent to the Milwaukee House of Corrections; as Greer testified, an inmate with a “state hold” is supposed to be “put in a state pod,” which was not done with Lira. “He definitely shouldn’t have been at that House of Corrections,” Greer told Strachota during her investigative interview, “a convicted murderer wouldn’t have been there, out there, especially one that’s already sentenced.” Indeed, as Greer told Strachota, one of the unanswered questions in this matter is why Lira – a convicted murderer who *had already escaped from Wisconsin authorities once before* – was granted bail at all.

POSITIONS OF THE PARTIES

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

Just cause did not support the department and County rule violations as charged when Deputy Greer followed all rules and procedures associated with her assignment. As Captain Zauner testified, Greer did exactly what she was trained to do, yet she was disciplined because Sheriff Clarke expects his deputies to go beyond their normal training. While it is admirable to have deputies proactive in their duties, it is inappropriate to discipline deputies who meet their stated duties but fail to meet unknown and subjective standards of the Sheriff. As the Sheriff himself stated, “It is not our job to call them and ask whether they want the prisoner returned,” yet Greer was punished for failing to make such a phone call.

Given Deputy Greer’s limited role in the release of Cesar Lira, there was no just cause for a five day suspension. Despite identifying numerous errors, no interviews were ever conducted of other agencies or personnel to get to the root of the problem shown in this occurrence. With the discipline of Deputy Cooper being rescinded in its entirety, Deputy Greer now stands as the only person being punished. A model for other deputies, she has been unfairly targeted as the department’s scapegoat.

Greer did not violate any departmental or County rule and the charges should be rescinded in their entirety. In the alternative, if she is found to have violated any rule, the punishment should be reduced to a level more appropriate to her behavior.

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

Greer bore the responsibility for the inappropriate release of Cesar Lira. At best, she did only the minimal her job required; given the facts known about the level of peril which Lisa posed, she should have done more, and better. That there is a great deal of blame to spread around does not excuse the sloth and neglect of Greer.

Holding deputies responsible for their actions and inactions when adverse results occur is what this case is all about.

Greer had access or opportunity to get the correct information to prevent the release of Lira. She needed to do more than the minimum. She had the time and records to do more than the court bailiff. She could have examined jail records, checked with the appropriate records custodians or the authorities in Oklahoma. Instead, she did nothing.

Greer knew the private inmate transfer firm had record problems, which should have raised an alarm; but she did not question the paperwork. Even the assumption that others did not do their jobs as well as they should have does not somehow immunize Greer from being held responsible for her sloth and neglect of duty.

Greer was part of the system that failed and allowed an escaped killer to be let loose. She did not perform at the level expected of her. Her suspension should be sustained and the grievance denied.

In its reply, the Association posits further as follows:

Contrary to the County's assertion, Greer was not the officer who bore the responsibility for ultimately releasing Lira; that responsibility fell upon personnel at the House of Corrections. What Greer did was process the bail submitted by Lira's family members, which is exactly what her job required.

Alerted by Deputy Cooper's handwritten note in the file, Greer took the appropriate action of contacting Cooper and understandably relied on his recollections and decisions when he directed her to ignore his note.

Despite the County's claimed interest in a full investigation, numerous agencies and department personnel were never contacted or interviewed, as the County's chief witness testified they should have been. To punish Greer based upon such an inadequate investigation seems arbitrary and cannot justifiably stand given he numerous other culpable department members who sustained no punishment or even investigation.

Accordingly, the grievance should be sustained.

In its reply, the County posits further as follows:

Contrary to her assertions, it was Greer and only Greer who had the time and ability to secure information to make an accurate assessment of whether Lira should be released.

It seems improbable that Greer and her union would argue that deputies need only perform their duties at a minimum level; it seems that since time immemorial apologists for Greer and her ilk claim that law enforcement officers are somehow ordained with a grant of immunity for exercising discretion in the execution of their duties, and would postulate that this supposed divine grant of discretion precludes them from ever being held responsible for their conduct.

But here, the only discretion Greer exercised was to not follow up on conflicting information that raised all kinds of red flags warning of danger. A reasonable deputy ought to have done more.

Greer cites a public pronouncement of the Sheriff. However, that statement was made before the investigation was complete; at the time he spoke, the Sheriff did not, and could not, know of the extent of the culpability of either Greer or Cooper.

Also contrary to Greer's assertion, there is no documentation to support her claim that the discipline against Deputy Cooper was unfounded. Moreover, it is flat out wrong, and the Milwaukee County Personnel Review Board never made such a finding. That board did not exonerate Cooper, but did say that there was insufficient evidence to sustain a thirty day suspension.

Because Greer did not perform at the level expected of her, the Sheriff's discretion in suspending her should be sustained.

DISCUSSION

As Jail Records Deputy Greer began to process the bail payment for Oscar Lira, a detainee at the Milwaukee House of Corrections, she reviewed the relevant file. None of the

paperwork in that file – not the transmittal documents from the company which transported Lira, not the documentation from the state where he had been serving his sentence, not any correspondence or documentation from the Wisconsin Department of Justice or the Milwaukee County District Attorney’s Office – indicated any reason not to process his bail.

There was, however, a handwritten note in the file, by which intake court bailiff Deputy Jefferson Cooper indicated a possible hold. Deputy Greer promptly called Deputy Cooper, who told her the note was written in error, and that she could safely ignore it. Greer repeated Cooper’s statement back to him for confirmation, with a witness, and noted their conversation on the “1047” Data Entry Worksheet.

Accepting Deputy Cooper’s disavowal of the note, Greer continued to process Lira’s bail. She did not seek confirmation of Lira’s status from state authorities in Oklahoma or Wisconsin, or consult with supervisors or officials in the Milwaukee County District Attorney’s office. She did speak with a sergeant concerning the amount of bail, and that this was not a drug-related matter, but did not discuss Cooper’s note.

It turned out, however, that Lira should *not* have been released on bail, but instead should have been returned to Oklahoma to finish serving his sentence there, and then brought back to Wisconsin for further incarceration.

For their role in Lira’s release, Cooper and Greer were both suspended without pay. Cooper’s thirty-day suspension was later rescinded by the county Personnel Review Board, leaving Greer – suspended without pay for five days -- the only employee of the Milwaukee County Sheriff’s Office to have been disciplined in the matter.

The County asserts that it has disciplined Greer for violating four rules – two specific to the Sheriff’s Office, two county-wide. The first internal policy and procedure and/or rule and regulation makes it an offense for an employee to violate “any of the policies, rules, procedures or orders of the department,” including committing acts which “would degrade or bring discredit upon the member of the department.” The second internal rule mandates that employees “shall adequately perform reasonable aspects of police work.” The first civil service rule proscribes “refusing or failing to comply with department work rules, policies or procedures.” The second civil service rule proscribes “substandard or careless job performance.”

The County has not cited any other, specific work rule, policy or procedure which it alleges Greer violated. It implicitly rests its case on the notion that Greer performed in a “substandard or careless” manner, in such a way as to “bring discredit” upon herself and the department. As the County declared in its brief, it contends that Greer’s failure to call state or County officials or the private company prior to releasing Lira showed her “sloth and neglect of duty.”

Greer's conduct, of course, did not occur in a vacuum, and so it must be considered in light of both what she knew and what others did.

The department's internal investigation determined that:

- TransCor, which is widely known to have "problems" with its performance, did not present any paperwork stating there were holds on inmate Lira;
- The Oklahoma Department of Corrections used an incorrect check-off on Lira's release form;
- The Oklahoma Department of Corrections did not enter a detainer notice into the "Enforcer TIME System";
- The Wisconsin Department of Corrections did not notify Milwaukee officials of a hold;
- Wisconsin DOC did not create an "Order to Produce an Return";
- The Milwaukee County Sheriff's Office use of the "Fast ID" failed to produce a fingerprint match for Lira;
- Lira was not held in a manner appropriate for someone on a "state hold."

That is, there were no fewer than seven separate errors of omission or commission by no fewer than four different agencies. Yet rather than investigate why those failures occurred and take steps to protect the public by insuring they are not repeated, Sheriff Clarke simply chose to discipline the deputy who relied on the information she was given.

The only information Greer had that cast any doubt at all on whether Lira was to be released on bail was the note that Deputy Cooper wrote. So she called him and spoke to him directly in a conversation in which he said he wrote the note in error, and that Lira could be released. To make sure there was no confusion, Greer repeated the message back to Cooper, with Dispositions Clerk Kreilkamp as a witness.

Cooper was present at the hearing, and was available for the County to call as a witness. The County did not do so. Greer's testimony thus stands un rebutted – she called Cooper to investigate the meaning of his note, and he told her to disregard it.

Despite this disavowal of the note by its author, the County now says Greer should have taken the initiative to conduct her own, independent investigation, including making inquiries with the Oklahoma authorities. That is, the County has suspended Greer for not checking with the agency whose incompetence started the entire disturbing chain of events.

Moreover, Greer's conduct was in complete conformity with Sheriff Clarke's public statements. A "reasonable person" reviewing the paperwork would indeed conclude Lira had finished her sentence, he stated publicly, adding, "we checked their form, and it doesn't say they want him back. It's not our job to call them."

Now, however, Clarke changes his tune, and declares it *was* the office's job to call Oklahoma. Actually, Clarke does not accept any *departmental* responsibility – only that *Greer* had such a duty.

According to published reports which he has not disavowed, Clarke publicly pledged to investigate the mistake. But although he has rightfully criticized the actions of TransCor and the Oklahoma Department of Corrections, the record is bereft of any actual inquiry or investigation by Clarke or his subordinates in this matter, other than for disciplinary purposes. It is hard to take seriously the Sheriff's statements when he never even bothers to question the officials directly responsible for this unfortunate situation.

One would think the Sheriff would be concerned, even outraged, at the chain of events that led to Lira being placed in the wrong facility, without any paperwork attesting to his true status. But other than the discipline of Cooper and Greer, there is no evidence that Sheriff Clarke is even bothered by this incident, or taken any significant steps to prevent its reoccurrence.

The Sheriff's failure to investigate is all the more disturbing given the testimony and commentary about TransCor. According to a former Jail Records deputy, described by Capt. Strachota as "regarded by most people as extremely competent," TransCor is "very disorganized," and often presents prisoners without full and proper accompanying documentation. As Capt. Strachota concluded, "it is common knowledge that TransCor is not without its problems..." Yet the record shows no action by Clarke to cancel TransCor's contract, hold the company accountable, or even investigate its performance.

In a disciplinary proceeding, "just cause" requires, at a minimum, that the employer show that an employee engaged in conduct s/he knew to be prohibited, and that the discipline imposed is commensurate with the offense and the employee's overall record.

Certainly, Greer knew that inefficiency and/or incompetence can legitimately subject a represented employee to discipline. Had Greer ignored Cooper's handwritten note and processed Lira's bail without any inquiry, a five-day discipline would have been just. But Greer didn't ignore Cooper's note – she called Cooper, who told her he wrote the note in error. On the basis of Cooper's statement, and the complete lack of any indication in the file to the contrary, Greer then continued to process Lira's bail.

With hindsight, it is clear that Greer was wrong to rely on Cooper's assurance. But hindsight is 20/20; at the time, Cooper was the departmental employee with direct knowledge of the situation – after all, he was the one who wrote the note. When the deputy who wrote

the note says to disregard it, what basis would Greer have to continue to pursue it? When there is not a single indication in the file that Lira should not be released on bail, why would Greer not continue to process his release?

According to Capt. Zauner, Sheriff Clarke expects his deputies to operate on a “higher level,” and to “take the extra step” in the performance of their duties. Indeed, we would all like all employees, supervisors and subordinates alike, both public as well as private sector, to go beyond their normal duties and operate on a higher level. But falling short of being exceptional is not the same as being incompetent – and incompetence is what Greer was suspended for.

Greer did her job. Given the circumstances of this case, the fact that she might have done it better – by asking a sergeant for guidance, for example -- does not legitimately subject her to the five-day suspension Sheriff Clarke has imposed.

Accordingly, on the basis of the collective bargaining agreement, the relevant rules and procedures of Milwaukee County and the Milwaukee County Sheriff’s Office, the record evidence and the arguments of the parties, it is my

AWARD

That the grievance is sustained. The County shall make Deputy Sharon Greer whole in all respects, and shall expunge from its records all references to the suspension.

Dated at Madison, Wisconsin, this 19th day of April, 2006.

Stuart D. Levitan /s/

Stuart D. Levitan, Arbitrator

