

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**VILLAGE OF TWIN LAKES**

and

**TWIN LAKES AND POLICE OFFICERS' ASSOCIATION  
LOCAL 322**

Case 16  
No. 65248  
MA-13163

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**Appearances:**

**Messieurs Thomas A. Bauer and Ben Barth**, Consultants, Labor Association of Wisconsin, N116 W16033 Main Street, Germantown, Wisconsin 53022, on behalf of the Association.

**Mr. Rodney Carter**, Village Attorney, 108 E. Main Street, P.O. Box 1024, Twin Lakes, Wisconsin 53181, on behalf of the Village.

**ARBITRATION AWARD**

According to the terms of the 2003-05 labor agreement between the captioned parties, the parties jointly requested that Arbitrator Sharon A. Gallagher hear and resolve a dispute between them regarding the issuance of a written reprimand to Officer Joseph Balog. Hearing was held at Twin Lakes, Wisconsin on March 9, 2006 at which the parties presented five witnesses, documentary evidence and opening statements. No stenographic transcript of the proceedings was made. At the close of the hearing, the parties agreed to submit their briefs postmarked April 10, 2006 to be sent directly to each other with a copy to the Arbitrator. The parties also agreed to waive the right to file reply briefs. The Arbitrator received the last document in the case on May 9, 2006, whereupon the record was closed.

**ISSUES**

The parties stipulated that the following issues should be determined herein:

- 1) Was the written reprimand issued to Officer Balog issued without just cause?
- 2) If so, what is the appropriate remedy?

**RELEVANT CONTRACT PROVISION:**

**ARTICLE VI – DISCIPLINE**

**Section 6.01 – Discipline:** The Village may discipline, suspend, demote or dismiss employees for just cause. Any such action taken by the Village during an employee's probationary period shall not be subject to the grievance procedure. Any employee who is disciplined shall be given written notice of the reasons for such action. A copy of such notice shall be made a part of the employee's personnel record. Any oral or written discipline shall be removed from an employees personnel file after two (2) years of such discipline if no other similar incident occurs.

**Section 6.02:** Any discipline action taken by the Police Commission pursuant to Wisconsin Statute 62.13(5) may only be appealed pursuant to the Wisconsin Statute 62.13(5) and shall not be appealable to the grievance procedure.

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**BACKGROUND**

The Twin Lakes Police Department (Department) employs 12 full-time sworn officers and approximately 8 part-time officers as well as three Sergeants (one per shift as shift commanders), all of whom are in the Association's bargaining unit. The Department has three regular shifts, as follows:

1<sup>st</sup> Shift: 5:45 a.m. to 2 p.m.  
2<sup>nd</sup> Shift: 1:45 p.m. to 10 p.m.  
3<sup>rd</sup> or Night Shift: 9:45 p.m. to 6 a.m.

Three employees (including the Sergeant) are permanently assigned to the Night Shift and two regularly work that shift. During all times relevant the Grievant, Joseph Balog, has been assigned to the Night Shift and since January, 2004, Sergeant Randy Ebert has been the Sergeant in command of the Night Shift.

The Department maintains policies in its Training Manual regarding the service of criminal arrest warrants (Jt. Exh. 6). However, no written separate policies exist regarding the proper methods of serving writs of civil commitment. Such writs are different from arrest warrants as the former are issued in civil cases only where the party charged has failed to pay a forfeiture (a fine). Civil writs do not involve imprisonment and are not criminal as are arrest warrants.

The portions of the Training Manual relied upon in this case by the Chief read as follows:

**SEC. 4-1-1                      ARREST POLICY.**

**Policy:**

The basic authority for police officers to make arrests is derived from Sec. 62.09(13), Wis. Stats., which makes it a duty of a peace officer to arrest, with or without a warrant and with reasonable diligence, and to take before the court every person found engaged in any disturbance of the peace or violating any law of the state or local ordinance.

This authority to arrest is further broadened by Sec. 968.07, Wis. Stats., which states as follows:

- (a)     “A law enforcement officer may arrest a person when:
  - (1)     He has a warrant commanding that such person be arrested; or
  - (2)     He believes, on reasonable grounds, \* that a warrant for the person’s arrest has been issued in this state; or
  - (3)     He believes, on reasonable grounds, that a felony warrant for the person’s arrest has been issued in another state; or
  - (4)     There are reasonable grounds to believe that the person is committing or has committed a crime.\*\*
- (b)     A law enforcement officer making a lawful arrest may command the aid of any person, and such person shall have the same power as that of the law enforcement officer.”

\*        The terms “probable cause” and “reasonable grounds” are used interchangeably. Mere “suspicion” alone is never sufficient to authorize an arrest without a warrant. Where an officer, in good faith, believes that a crime has been committed and the person in question committed it, and his belief is based on such grounds as would induce an ordinary prudent and cautious officer, under these circumstances, to believe likewise, then the officer has such probable cause for his belief as will justify him in arresting without a warrant.

\*\*        Section 939.12 Wis. Stats., defines a crime as conduct which is prohibited by state law and punishable by fine or imprisonment or both. Conduct punishable only by forfeiture is not a crime.

**Procedures:**

- (a) Arrest shall be made primarily for the protection and preservation of life, liberty and property.
- (b) Officers shall be duty-bound to facilitate arrests when proper and appropriate under the guidelines of this policy and the Constitution of the United States.
- (c) Alternatives to arrest shall be considered whenever the employment of an acceptable alternative would facilitate a department objective or community need and remain within the confines and requirements of the law. . . .
- (d) The Police Department shall view arrest as a serious action that may have severe repercussions throughout an individual's life, even if he is later found not guilty or never brought to trial. Officers shall bear in mind that arrest is the most severe sanction that society can exercise against those suspected of engaging in socially defiant conduct.

. . .

**Definition:**

**Arrest.** The taking or detaining of a person by word or action into custody, so as to subject his liberty to the actual control and will of the person making the arrest, the arresting person having the intention of instituting or furthering criminal proceedings against the arrested individual.

**Commentary:**

- (a) An arrest shall be considered the initial stage of a criminal prosecution. Terry v. Ohio. An arrest occurs whenever the will of an officer is imposed over the freedom of a person. Hueber v. State of Wisconsin.
- (b) Absent extenuating circumstances, officers shall obtain a signed stipulation and release from out-of-state violators.

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SEC. 4-1-10                      **ARREST TECHNIQUES.**

**Policy:**

There is no such thing as a routine arrest. People do not react similarly when faced with the prospect of losing their freedom. Common sense demands that the arresting officers remain alert to this fact at all times. In all arrest

situations, the arresting officers have a responsibility to themselves, fellow officers and innocent bystanders as well as the person being arrested. That responsibility is to plan and control the arrest by using the safest and most effective techniques available under the circumstances.

- (a) **Effecting the Arrest.** There are several elements essential to effect a valid arrest. These are authority, intent, control by the officer and understanding by the arrested person.
- (b) **Officer Identification.** Nonuniformed employees shall always verbally identify themselves and exhibit their badge and credential s(sic) to prevent any unnecessary resistance.
- (c) **Planning the Arrest.** This can range from a few seconds to hours, as circumstances permit. Factors to be given consideration are:
  - (1) Time
  - (2) Location.
  - (3) Proximity of other members of the public.
  - (4) Superiority of manpower.
  - (5) Known characteristics of the person being arrested.
- (d) **Use of Force to Effect Entry into Dwellings.** Since a person's home is to be regarded as his castle, every effort should be made to make other arrangements to effect an arrest for misdemeanors or other crimes of a less serious nature. Force may be used only for felonies. . . .
- (e) **Positioning for Arrest.** Always attempt to approach a subject, vehicle or premise so that you have the tactical advantage. Never stand directly in front of doors or windows of dwellings or buildings. Always eliminate positioning that may cause cross-fire problems. Remain far enough away from a fellow officer to eliminate the possibility of the subject attacking both officers simultaneously.

An officer arresting with or without a warrant shall act in a way most likely to protect the safety of the officer, bystanders, victims, other officers and/or apparent offenders. Whenever possible, officers shall attempt to make potentially volatile arrests away from the bystanders and/or victims.

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**SEC. 4-1-11 ARREST WITH A WARRANT.**

**Policy:**

A valid arrest warrant eliminates the officer's discretion to employ alternatives to arrest; the person named must be arrested. A teletype from another agency (hard copy) naming the suspect may be considered a valid arrest warrant.

**SEC. 4-1-12 WISCONSIN ARREST WARRANT IN OFFICER'S POSSESSION.**

**Policy:**

If a Wisconsin arrest warrant valid on its face is in the possession of an officer, the officer shall arrest the person named in the warrant with due regard to the safety of any bystanders and victims, the safety of any peace officer at the scene, the safety of the apparent offender and the danger of future bodily harm.

No mention is made in any part of the Departmental Training Manual to writs of civil commitment. In addition, the Department has offered no training regarding the service of such writs either before or after the hire (in early August, 2003) of Chief O'Hallen. The last Departmental trainings on "arrests and control techniques" occurred in October, 1996 and November, 1997 and training was given on "warrant service" in 2002.

It is undisputed that there are no Departmental documents showing how officers are expected to serve writs of commitment, but that all Departmental employees have always assumed that such writs should be served in the same manner as arrest warrants; that officers have traditionally served writs using the same methods and procedures as they use to serve warrants and that they have served both at all hours of the day and night. Officers have never been told by management not to serve writs and warrants on the Night Shift or not to serve them after a certain hour of the night.

In early May, 2005, Chief O'Hallen issued statistics to all employees of the Department, showing that Departmental arrest totals/service of writs and warrants were down from a total of 434 in April, 2004 to 377 in April, 2005. The Chief wrote the following note (which he signed) on the issued statistical document:

AS YOU CAN SEE OUR ARREST RATES ARE DOWN. THIS NOT ONLY REFLECTS BADLY ON ME, BUT ALSO YOU OFFICERS. . . . IN THE YEAR YOUR (SIC) GOING INTO CONTRACT NEGOTIATIONS! PLEASE MAKE A BETTER EFFORT.

The following City ordinances list legal requirements for displaying house numbers on City residences:

**6.04 BUILDING NUMBERING.**

- (1) A uniform system of building numbering for all residences (year-round or seasonal), places of business, farms and public buildings in the unincorporated areas of the County is hereby established.

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**6.05 BUILDING NUMBERING SIGNS.**

- (1) General Requirements. Building numbering signs shall consist of a plate of identical numbers with the numbers being not less than 3 inches high, mounted so as to be horizontal to the streets or road abutting. The signs may be attached to a building when that building is within 100 feet of the road right-of-way. In all other instances, the signs shall be mounted on posts set at the right-of-way line of the road at a point not more than three feet to the right or left of the private driveway or walkway leading from the road to the building or property. The signs shall be far enough above the ground to be readily visible. As new buildings are constructed, the county surveyor shall assign numbers prior to the issuance of a building permit.
- (2) Restrictions. No other signs except those specified above shall be erected or used under the building numbering plan established by this chapter.

The Chief admitted herein that he was unaware of the above-quoted ordinances when he issued the written reprimand to Officer Balog; he also admitted that he was unaware that officers had a practice of sometimes going late in the evening to serve writs and warrants.

**FACTS**

On the Night Shift on May 12, 2005, Officer Balog decided to try to serve several writs of commitment, which had been issued by Municipal Judge Goodnough on May 3, 2005. Sergeant Ebert agreed to this plan and he went with Balog as back-up on the trip to serve the writs on the evening of May 12<sup>th</sup>. One of these writs (in the amount of \$164) had been issued against Marcy Miller for the non-payment of a fine for a conviction for making annoying phone calls. Ms. Miller was known to Officer Balog as she had been involved in prior criminal cases, and had a criminal record involving

drugs, but Balog and Ebert had never been to her residence. Ms. Miller was at this time residing with Mrs. Tanya Keenan's brother-in-law at a rural address, 40500--119<sup>th</sup> Street, Genoa City, WI. Mrs. Keenan, her husband and two daughters (8 and 10 years old) reside at 40410--119<sup>th</sup> Street.

The houses located at 40410 and 40500 119<sup>th</sup> Street are accessed by means of a common driveway leading from 119<sup>th</sup> Street; the house at 40500 is farther off the street and its own circular drive comes off the common driveway. There are no lights on the common driveway; there is a telephone pole about 10 feet from the private driveway leading to the Keenan home on which the house number (40410) is displayed vertically but no family name is shown on this pole. Although mailboxes are located together just off 119<sup>th</sup> Street for all homes on the common driveway, the Keenan name is not listed on the box for 40410 - 119<sup>th</sup> Street, although "Keenan-Miller" is on the box for 40500, indicating a lower level residence. There is no light to illuminate the boxes. Mrs. Keenan's house at 40410 did not have the house number on the house and it has no light on the front of the house. There is a solar stone light in the rear of the house, however, which has Mrs. Keenan's address printed thereon.

The Arbitrator has accepted for the sake of argument, Mrs. Keenan's account of what occurred even though it is hearsay as it was reported to Mrs. Keenan by her daughters and Mrs. Keenan did not witness any of Balog's actions personally. In her complaint filed with the Department on May 23, 2005, Mrs. Keenan described what occurred on May 12<sup>th</sup> as follows:

. . .

#### Details of Complaint:

Around 12:15 <sup>am</sup> both of my daughters came up in my bedroom and woke my husband and I up very upset. They said they saw flash lights in the windows, knocking on all the doors and someone turning the door handles tring(sic) to get in. They said they heard them knock on all the doors and then turn all the handles to see if they were open. Taylor said she could see out of her window that the flash lights went next door. The girls said they saw the lights come back and then heard a car leave. The girls said they waited about 15 min. before they came up to tell us because they were so scared. The girls were very upset and were shaking. My husband and I tried to tell them if it was a burglar they would not knock on the doors. Taylor said but why were they turning the door handles tring(sic) to get in.

The next morning I called Kenosha Co police, Twin Lakes police and Walworth Co Sheriff and Twin Lakes and Walworth Co said they had no record of being there. Kenosha Co did some investigating and called me back on 5/18/05 and told me they know someone was out here, but they are not sure which dept it was. On 5/19/05 I spoke to my brother in law and he confirmed that Twin Lakes police were here looking for Marcy Miller.



I'm upset because my girls were terrified because they heard someone turning our door handles tring (sic) to get in their house and I had to explain to them that it was police officers. This is not a situation my girls should have experienced.<sup>1</sup>

On the morning of May 13, 2005, the Chief arrived at work to find that three individuals had complained about Balog and Ebert's attempts to serve writs on the previous Night Shift. The Village Clerk spoke to one caller and the Chief spoke to another caller and to Mrs. Tanya Keenan about their complaints; the Chief urged both Mrs. Keenan and the other caller to file citizen's complaints if they wished the Department to take further action. Only Mrs. Keenan filed the above-quoted citizen's complaint on May 23, 2005.

After receiving Mrs. Keenan's complaint, the Chief drove out to the Keenan's house during the daytime to view the premises and take pictures. The Chief then assigned Sergeant Santelli to investigate the complaint and on June 4, 2005, the Sergeant sent the following notice to Balog along with a set of written questions:

1. The Chief of Police is presently investigating an incident (2) and/or complaint involving your conduct and performance.
2. This investigation could lead to disciplinary action, or dismissal.
3. The nature of this investigation includes allegations of: a citizen's complaint involving an attempted warrant pick-up at an unreasonable time of night and the circumstances involving your conduct while completing your search.

. . .

7. YOU ARE HEREBY ORDERED TO ANSWER THE ATTACHED QUESTIONS AND SUBMIT TO ANY REQUIRED STATEMENT OR REPORTS. REFUSAL TO RESPOND DURING THE INTERROGATION, OR ANY RESPONSE, WHICH IS UNTRUTHFUL, COULD RESULT IN DISCIPLINARY ACTIONS UP TO AND INCLUDING TERMINATION OF EMPLOYMENT(sic).

. . .

Santelli's questions relevant hereto and Balog's answers were as follows:

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<sup>1</sup> The Keenan daughters' bedroom is on the ground floor and Mr. and Mrs. Keenan's bedroom is upstairs in the house at 40410-119<sup>th</sup> Street.

8. Did you attempt to notify the suspect by telephone (or attempt to serve the writ on 5-13-06)?  
No due to lengthy criminal record and felony drug offender status.
9. Did the suspect have a history of warrant entries?  
Yes. The suspect has a history of warrants.
10. Did you verify the addresses by checking tax rolls, telephone directory, DOT, Criminal History, other agencies, our computer or any other means? If so, what did you check?  
DOT records appeared to be the most accurate record of suspects last known address VS. Address listed on warrant, which is the in house address.
11. Did you go to a home to check for the suspect? Where? What time?  
On 5-12-06 I went to the last know (sic) address for the suspect, 40500 119<sup>th</sup> st at 23:54 hrs w/Sgt. Ebert to attempt to locate the wanted subject. I arrived at 00:06 hrs at the 119<sup>th</sup> st address, which is a long driveway with multiple mailboxes on same. One mail box had the name of the suspect along w/a subject last name Keenan on the same mail box. At least one other mail box had the last name Keenan on it. I proceed to the end of the driveway and located one large farm type house. I observed no address posted on the exterior of the residence. The residence was large enough to have been divided up into several apartments.
12. Did you locate an address on the property? Where?  
No address was posed on the property that I could see at the time of my arrival. I checked by illuminating the most logical locations on the side of the house w/negative results.
13. Did you check other area on the property for an address?  
Yes.
14. Who was present with you at the address?  
Sgt. Ebert was present with me while attempting to serve the warrant. Kenosha Co was notified prior to our arrival that an attempt would be made to serve a warrant at this location.
15. Were there in(sic) cars in the driveway?  
Yes.

16. Did you or do you have ant(sic) knowledge of anyone else knocking on doors, windows or the house?  
I knocked on all three doors attempting to make contact with occupants at this address, mainly because I could see a television on in the third story window as well as a small light. I did not knock on any windows.
17. Did you or do you have any knowledge of anyone shaking the door knobs or handles on any door?  
No. opening (sic) the storm door (for sure the basement) to knock on the inside door.
18. Did you or do you have any knowledge of anyone shining a flashlight, spot light or squad lights in the windows?  
I attempted to get the attention of the person(s) watching television by flashing my flash light towards the third story window.
19. Did you or do you have any knowledge of anyone attempting to open any window or door.  
I did not attempt to open any doors or windows, nor did I observe Sgt. Ebert attempt to open any doors or windows. I did open at least one storm door to knock on the interior door.
20. While on the property what areas of the yard were you in?  
To the East of this house is a small building that appeared to possible (sic) be a guest house. I checked this building and it appeared to be being remodeled or used for storage.
21. Did you walk around the house?  
Yes looking for an address, door with a doorbell ECT.
22. Did you locate the suspect at the residence?  
No suspect was located at this residence, nor did anyone answer my knocks at the door.
23. Did you speak to anyone while at the residence?  
No.
24. Did you check any other residence in the area? If so where?  
As I was leaving, Sgt. Ebert located a drive that was attached to the main driveway to this residence that went off to the west. Initially this drive appeared to go to a barn or storage shed. I

followed Sgt. Ebert and this drive forked again to the left. I took the left fork and as I got closer to the building, it appeared to be, again, a large residence, broken into multiple rental units. I observed no address posted on this address as well. I knocked and made contact with a male subject. He identified himself as Marcy Miller's boyfriend. (I do not recall his name at his time, but it did match the name on the mail box) The male subject stated Marcy was up north at this time. I advised him that Marcy had a warrant issued and advised him of the bond and how to take care of the warrant. The male subject thanked me and we cleared.<sup>2</sup>

After he had issued his notice and questions to Balog, Sergeant Santelli met with the Keenan's and their daughters at their home. Santelli did not have a copy of Mrs. Keenan's complaint with him when he interviewed the Keenan daughters; Santelli did not take any notes of his interview with the girls, nor did he take any formal statements from them or their parents. Santelli stated herein that when he interviewed the Keenan daughters they did not appear to be upset or agitated about the incident; they told him what they had heard the night of May 12<sup>th</sup> and they did not report seeing doorknobs jiggled that night. Neither of the Keenan daughters testified herein.

After receiving Balog's answers to Santelli's questions, the Chief decided to issue Balog the following written reprimand:

. . .

Upon review of your answers submitted in reference to the Citizen Complaint filed by Tanya Keenan regarding your attempted service of a Municipal Commitment warrant to Marcy Miller on early morning hours of May 13, 2005, I have issues with a couple of your responses. One issue is your response to question #8 "Did you attempt to notify the suspect by telephone?" your replied "No due to lengthy criminal record and felony drug offender status". I have been advised, you attempted other Municipal Commitment warrants that night without first attempting notification at least on some of the individuals and they did not have a felony drug offender status. This is a conflict of your method of service and is inconsistent to your answer.

A second issue I have is establishing the proper identification of the residence of the wanted person in question. I visited the site of the residence involved in the

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<sup>2</sup> I find that Officer Balog testified credibly herein regarding what occurred on the evening of May 12<sup>th</sup>. I note that Balog's testimony was corroborated by Sergeant Ebert, and that the Keenan daughters did not testify.

Citizens Complaint, and found very clearly the numbered address 40410 (not 40500 the offender's address) on the pole in front of the complainant's address. Your confusion of the correct address was apparently due to the poor visibility of the nighttime, apparently due to your method on (sic) service of Municipal warrants.

The main complaint of the citizen was the frightening of the two young daughters that night because of the late hour, flash lights in the windows, the knocking and shacking of door knobs.

Municipal forfeiture violations and warrants are not considered crimes, and such should be a consideration in the service of Municipal Commitment warrants (Title 4 Sec 4-1-1(b) second paragraph). Title 4, section 4-1-1 under commentary (e) see attached states "Also, crimes that the community legitimately considers minor should not be rigorously and relentlessly enforced" and section 4-1-10 Arrest Techniques under Policy (see attached) addresses the responsibility of officers to plan and control the arrest by using the safest and most effective techniques under the circumstances for the protection of innocent bystanders. It should be noted here that I received information from two other citizens who verbally complained about the late hours of service of Municipal warrants on the same night in question, but I did not proceed with those complaints because the complainants did not come in and file a written Citizen's Complaint.

This whole issue could have been avoided if reasonable tactics would have been employed. The time of night was an obvious part. Service during late afternoon or early evening hours before dusk would have helped identify the proper residence. If you had a concern about safety or escape of the subject, wouldn't it be better to at least plan the arrest by observing the location during day light hours? An attempt to contact the subject by phone to pay the \$164.00 may have avoided this complaint. If after that time the subject does not comply and arrest does follow, at least we were fair and reasonable in our enforcement action on a non-criminal warrant. It is my responsibly (sic) to encourage and promote enforcement by our officers, but it is also my responsibility that they do it in a reasonable and professional manner. In the future please consider all these mentioned elements in your service of Municipal Commitment Warrants.

Consider this a written reprimand.

. . .

It is significant that the Chief did not reprimand Sergeant Ebert, that he verbally counseled Ebert and put nothing in Ebert's personnel file regarding the incident. After issuance of the June 11, 2005 reprimand, the Association filed the instant grievance and brought it forward to arbitration.

## **POSITIONS OF THE PARTIES**

### **The Association**

The Association argued that Grievant Balog did not violate any Department rules or regulations while attempting to serve the Miller writ of commitment on the evening of May 12<sup>th</sup>. Although the Chief attempted to distinguish a writ from a warrant, the Association noted that the writ issued by Judge Goodnough for Miller commanded that she be taken into custody and delivered to jail (V. Exh. 4); that non-criminal writs are not specifically addressed in Departmental rules or regulations; and that in any event Title 4 thereof is vague and overbroad, referring to “crimes that the community legitimately considers minor should not be rigorously and relentlessly enforced ....” The Association also urged that the Chief’s reliance on Title 4, Section 4-1-10 in disciplining Balog was misplaced as the Village provided no evidence that innocent bystanders were not protected, or that Balog failed to use the safest and most effective techniques in trying to arrest Miller who had a prior criminal record. The Association urged that Balog made a tactical decision within his discretion by choosing, in the circumstances, not to call Miller’s residence before attempting to serve the writ upon her.

In addition, the evidence undisputedly showed that writs and warrants have been traditionally served at all hours of the day and night using the same methods/techniques as used for warrant service and that officers have never been notified this is incorrect. Indeed, the Departmental training module (Assoc. Exh.1) refers only to “warrant/writs;” that just prior to May 12<sup>th</sup> the Chief posted a memo stating that officers should make more arrests as arrests were down from the prior year. Also, the Association noted that the Chief/Department had held no training, nor had they amended vague Village policies to address writs, particularly writs served during evening hours, since May 12, 2005.

Finally, the Association argued that for the following additional reasons, the Village did not have just cause to issue Balog a reprimand: 1) There were no rules or policies prohibiting Balog’s conduct; 2) the Chief’s investigation was not fair, reasonable or objective as the Chief’s photos of the Keenan residence were not taken at night, the Keenan children were not formally interviewed by Sergeant Santelli, they did not testify herein and the Keenan residence was not properly marked as required by Village ordinance; 3) the Chief’s failure to discipline Sergeant Ebert for his part in the May 13<sup>th</sup> activities showed disparate and unfair treatment of Balog by the Village. The Association therefore sought an Award setting aside and expunging all documentation concerning the discipline from Balog’s record and an order that the Village cease and desist from violating the collective bargaining agreement in this fashion in the future.

### **The Village**

The Village argued that Balog used “unnecessary, unreasonable and excessive means” to serve a non-criminal writ and that Balog was “not truthful in his responses during the investigation of his conduct and only revealed the truth when confronted about his

inconsistencies. . .” (ER Br., p.1). In this regard, the Village noted that Balog failed to follow Departmental Rules/Regulations contained in Title 4, Sections 4-1-1 and 1(b) and 4-1-10, when he failed to plan the arrest of Marcy Miller pursuant to the writ, to use the safest and most effective techniques in attempting to serve the writ, and when he vigorously/relentlessly attempted to enforce the non-criminal writ against Miller on May 13, 2005. On these points, the Village noted that Balog’s choice not to call Miller in advance and to attempt service after dark showed that Balog acted unreasonably when he banged on the windows, jiggled the doorknobs and shined his flashlight into the Keenan house, thereby creating “a public disturbance” and frightening the two young Keenan daughters. The Village observed that the methods of service Balog used on May 13<sup>th</sup> also elicited two informal, verbal complaints from citizens. Under any view of the facts, the Village urged that Balog violated Departmental Rules/Regulations 4-1-1, 1(b) and 4-1-10.

The Village also contended that despite advance written warning to Balog to answer all investigatory questions truthfully, Balog initially lied in answering question 8 regarding why he did not attempt to call Miller before trying to serve the writ on her - - stating at first that it was because of Miller’s prior criminal record and later stating that he did not call Miller because he had gotten grief on the phone from another person before he attempted to service on May 13<sup>th</sup>. This untruth, the Village asserted, provides further support for the conclusion that the Village had just cause to issue Balog a written warning and it therefore urged that the grievance be denied and dismissed in its entirety.

### DISCUSSION

Several initial observations must be made. The effective labor agreement does not address warrants or writs or their service and the Village has no work rules covering the service of writs and warrants. The Departmental arrest policies and procedures are contained in Title 4, but this document does not address or mention writs of civil commitment in any way. Rather, Title 4 is limited to a description of how arrest warrants in criminal cases shall be served/processed. Indeed, Title 4, Section 4-1-1 specifically states that “conduct punishable only by a forfeiture is not a crime,” which effectively requires a conclusion that any civil case is not intended to be covered by Title 4, as civil cases involve fines or forfeitures, not imprisonment. The only record document which mentioned writs in any way was Association Exhibit 1, an outline of procedures for “Warrant Service,” which stated without elaboration that individuals taken into custody should be “transported to jail with copy of warrant/writ.”

Here, Balog had only a writ of civil commitment for Marcy Miller as she had been convicted of making harassing phone calls, a non-criminal offense. The writ in Miller’s case commanded that the Twin Lakes Police take Miller into custody for up to six days only if she refused to pay a fine (forfeiture) of \$164.00. In this Arbitrator’s view, on its face, Title 4 did not cover how Balog should have acted when he attempted to serve the writ upon Miller on the

evening of May 12-13<sup>th</sup>. In this regard, I note that during the timeframe relevant to this case, the Twin Lakes Police were not seeking to take Miller into custody for interrogation and no warrant for her arrest in a criminal matter had been issued.

However, it was also undisputed on this record that Twin Lakes officers have served writs of civil commitment using the same techniques/methods used in serving arrest warrants and that Twin Lakes officers have served both writs and warrants at all hours of the day and night, never having been notified otherwise by management. The testimony of all officers and their Sergeants in this case confirmed these facts.

Even, assuming, arguendo, that the techniques/ methods of service stated in Title 4 were applicable to Balog, I can find no evidence that Balog violated Title 4 by the manner in which he attempted to serve the writ on Miller on May 12-13<sup>th</sup>. In this regard, I note that the timing of service is left up to the officer's discretion under Title 4 and there is no reference in Title 4 to service at any particular time of the day or night. Title 4 does not prohibit officers from shining lights into homes, jiggling doorknobs and knocking on doors and windows, although it does prohibit forced entry of a home except in extreme circumstances (Section 4-1-10). The facts proven in this case failed to show that Balog attempted to force entry into Mrs. Keenan's home on May 12-13<sup>th</sup> by his conduct.

In addition, the Village failed to prove that Balog in any way endangered the safety of any bystanders, including the Keenan daughters, or that he failed to use the safest most effective techniques to complete service on Miller on May 12-13<sup>th</sup>. On these points, I note that Title 4 does not mandate that officers call the involved individuals before they attempt service. In addition, Balog stated during the Departmental investigation of his actions, in his written answers to Sergeant Santelli's questions and at the instant hearing that because Miller had an extensive criminal record relating to drugs he decided not to call her before going to her residence to attempt service. Balog's consideration of this factor was within his discretion and was implicitly approved by Title 4, Section 4-1-10 (c) (5), as that section refers to the "known characteristics of the person being arrested" one of which must be their prior arrest/conviction record and the type of crimes involved.

The Village argued that Balog was untruthful during his interview with the Chief when he admitted that he decided not to call Miller because he had been yelled at by another person (Geyer) he called prior to his attempting to serve them on May 12-13<sup>th</sup>. In the circumstances of this case, I find that the Village failed to prove that Balog lied in his written answers to Santelli's questions by making the above verbal admission of an additional reason why he did not call Miller prior to trying to serve the writ on her on May 12-13<sup>th</sup>.<sup>3</sup> In this regard, I note that at no time did Balog indicate he wished to change his written answer to question 8; he merely gave the Chief an additional reason why he had chosen not to call Miller on May 12-13<sup>th</sup>. In these circumstances, I find that the Village was unjustified in concluding that Balog had been untruthful in answering question 8.

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3 It is significant that question 8 does not ask for a reason why no call was made to Miller—only whether an attempt was made to call her that evening. Rather, Balog volunteered a reason why he had not called Miller in his answer; and he did not state therein that that was his only reason.



Having found that Balog was truthful in his responses during the investigation of his actions and having found him to be a completely credible witness herein and that the Village failed to prove that Balog had violated Title 4 in any way, there remains the question what if any discipline should Balog have received for having attempted to serve Miller at the wrong address. In this regard, I note that Balog checked Miller's address and had the correct address when he went to serve the writ. Balog and Ebert approached the residence they believed to be 40500—119<sup>th</sup> Street without their squad car lights on in order to approach without being seen as police officers, a procedure acknowledged by Title 4 as appropriate.

As the mailboxes for all residences were in the same unlighted location and as the Keenan-Miller box listed their residence as being on a lower level, Balog reasonably assumed that Miller would be found on the ground floor of the only residence he could see, Mrs. Keenan's at 40410. It is significant that Mrs. Keenan's house was not lit up, that there was no house number on Mrs. Keenan's house and that there was no name on the mailbox for 40410—119<sup>th</sup> Street. In the circumstances, and given that such listings violate Village ordinances (Assoc. Exh. 3, Section 6.04), it was unreasonable for the Village to hold Officer Balog responsible for knowing that Mrs. Keenan's house number was listed on a solar stone in her yard, that it was listed on an unlit telephone pole 10 feet from her private driveway and that the house at 40500 was actually down a separate, unlit and unmarked driveway.<sup>4</sup>

Furthermore, Balog could not have known that there were minor children asleep in the lower level of the house at 40410--119<sup>th</sup> Street, whose parents would not be able to hear and answer his knocking because the parents were asleep upstairs. Balog was honestly mistaken when he attempted to serve Marcy Miller with a writ at Mrs. Keenan's address at 40410--119<sup>th</sup> Street. Balog never intended that the Keenan daughters (or any one else) would allegedly become upset by his actions on May 12-13<sup>th</sup>.<sup>5</sup> Indeed, when Balog later spoke to Mrs. Keenan's brother-in-law, (Miller's roommate), that night, at the house at 40500—119<sup>th</sup> Street, Balog simply informed Mr. Keenan how Miller could satisfy the writ. I note that Mr. Keenan made no complaint to the Village regarding Balog's conduct.

Also, it is significant that just prior to Balog's decision to serve the writ on Miller, the Chief had issued a memo urging all officers to serve more warrants/writs—without notifying officers that they were restricted to daytime hours for service. In addition, it is very significant to this Arbitrator that Sergeant Ebert was given no formal discipline regarding his part in the actions of May 12-13<sup>th</sup>. Ebert was the officer in charge of the shift and he should have had overall responsibility for the conduct of that shift and for Officer Balog. And yet, only Officer Balog received a written warning for the activities of May 12-13<sup>th</sup> while Ebert

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4 The Chief took the photos of the Keenan residence submitted into the record herein during daylight hours. I therefore must credit Balog and Ebert regarding how the premises looked to them in the dark on May 12-13<sup>th</sup>.

5 The Village failed to prove by any non-hearsay evidence that the Keenan daughters were upset by Balog's conduct on May 12-13<sup>th</sup>. Even Sergeant Santelli did not report them to be so when he interviewed them after Mrs. Keenan filed her complaint.

received no discipline whatever.<sup>6</sup> Finally, the fact that other citizens complained verbally to the Chief or the Village Clerk can have no bearing on the outcome of this case as those complaints were never formalized, never investigated and they were supported only by hearsay evidence.<sup>7</sup>

In all of the circumstances of this case, and based upon the fact that I have found that Balog committed no violation of Title 4, that he was never untruthful and that he did not otherwise violate any policy, rule or regulation of the Department and that there were no other grounds upon which he deserved to be disciplined for his actions on May 12-13, 2005, I issue the following

### **AWARD**

The grievance is sustained. The written reprimand issued to Officer Joseph Balog was without just cause and it shall therefore be expunged from his record along with any other documentation referring to said written warning.

Dated at Oshkosh, Wisconsin, this 6<sup>th</sup> day of June, 2006.

Sharon A. Gallagher /s/

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Sharon A. Gallagher, Arbitrator

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6 The Chief's verbal counseling of Ebert without placing anything commemorating the counseling in Ebert's file requires this conclusion.

7 In its brief, the Village asserted that Balog had created a public disturbance on May 12-13, 2005. No evidence was submitted that this was the case and Balog was never charged with or disciplined therefore. This assertion has therefore been disregarded herein.