

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
MILWAUKEE DEPUTY SHERIFFS' ASSOCIATION
and
MILWAUKEE COUNTY (SHERIFF'S DEPARTMENT)

Case 622
No. 67048
MA-13727

Appearances:

Rachel Pings, Cermele & Associates, S.C., Attorneys at Law, 6310 West Bluemound Road, Suite 200, Milwaukee, Wisconsin 53213, appearing on behalf of Milwaukee Deputy Sheriffs' Association.

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

ARBITRATION AWARD

On June 15, 2007, the Milwaukee Deputy Sheriffs' Association ("Association") filed with the Wisconsin Employment Relations Commission a Request to Initiate Grievance Arbitration. That filing requested that the Commission designate a commissioner or staff member to serve as sole arbitrator of a grievance alleging that Milwaukee County ("County") had violated the collective bargaining agreement between the Association and the County by suspending County Deputy Norbert Gedemer without just cause. The undersigned was so designated. A hearing was held on August 29, 2007, in Milwaukee, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, and arguments as were relevant. At the parties' discretion, no stenographic transcript of the proceeding was made. The Association and the County each submitted a post-hearing brief, the last of which was received by the undersigned on September 24, 2007, whereupon the record was closed.

Now, having considered the record as a whole, the Arbitrator makes and issues the following award.

ISSUE

The parties have stipulated that the following issue should be determined herein:

Did the Sheriff have just cause to suspend the grievant for one day? If not, what remedy is appropriate?

BACKGROUND

The grievant in this case, Norbert Gedemer, is a Deputy employed in the Patrol Division of the Milwaukee County Sheriff's Department. On the morning of December 27, 2006, Deputy Gedemer had been assigned to reopen a temporarily closed highway ramp. The task required Deputy Gedemer to remove roadblock barrels from the ramp and, for safety reasons, to exit the newly reopened ramp first, ahead of the vehicles that would line up to do the same.

Ensuring that he would be the first off the ramp, after Deputy Gedemer removed the barrels, he jumped into his squad car, quickly put it in drive, and exited the ramp. From there he began to make his way to the Sheriff's Department headquarters, less than a mile away. During the drive to headquarters, the Sheriff of Milwaukee County, by happenstance, pulled up next to Deputy Gedemer's squad car when it was stopped at an intersection. It was at that moment that the Sheriff observed that Deputy Gedemer was not wearing his seatbelt. The Sheriff honked his horn to get Deputy Gedemer's attention and motioned to him, indicating that he should fasten his seatbelt. Deputy Gedemer did so and continued on his way.

Upon reaching Sheriff's Department headquarters, Deputy Gedemer immediately contacted his supervisor, Sergeant Byers, and reported that he had been observed by the Sheriff operating his squad car without wearing a seatbelt and that she probably would be contacted, through the chain of command, about the incident. Patrol Division Captain Richards indicated, upon hearing about the incident, that he thought it could be handled, as a relatively minor infraction, through employee activity documentation. Captain Richards was directed by the Sheriff, however, to conduct an internal affairs investigation into the matter.

In the course of a transcribed, internal affairs investigation interview, Deputy Gedemer acknowledged having violated the seatbelt rule and described the circumstances under which the incident occurred:

I absolutely, I, I usually wear the seatbelt and in this case, I think the only reason I didn't put it on right away is because of opening up the ramp in traffic backs up and they're waitin' for you to open the ramp and the people start doin' crazy things while they're waitin' for that ramp to open so, my first, I, I got in the car and put it in drive as opposed to puttin' on the seatbelt, so - .

Pursuant to a disciplinary order issued by the Office of the Sheriff, Deputy Gedemer was found to have violated Sheriff's Office Rules and Regulations 1.01.14(3) and 1.05.03, as well as Milwaukee County Civil Service Rule VII, Section 4(1). For the rule violation, Deputy Gedemer was suspended from duty, without pay, for one working day. Deputy Gedemer also was directed to read, at two consecutive days of first- and second-shift roll-calls, an internet publication on seatbelt statistics. It is not common for a Milwaukee County deputy to perform such an act.

Another Milwaukee County deputy who violated the policy was first issued a written warning, which discipline later was reduced to a verbal counseling session.

Until the incident that is the focus of the present case, Deputy Gedemer had never violated the seatbelt policy. Deputy Gedemer was the subject of a previous internal affairs investigation unrelated to the subject matter of the present case. That investigation was sustained, and Deputy Gedemer was removed from a sergeant's position as a result.

DISCUSSION

The facts here are simple and undisputed: Deputy Gedemer operated a squad car without wearing a seatbelt, in violation of Milwaukee County Sheriff's Department rules and regulations, as well as a Milwaukee County civil service rule. What is at issue is whether Deputy Gedemer was appropriately disciplined for the rule violation.

The County accurately points out that, as a general rule, a determination by management imposing a particular level of discipline should be granted deference. The County's brief also recognizes, however, that disciplinary action is subject to disturbance by an arbitrator where the discipline is inconsistent with that imposed in other, like cases. Here, the record points to one other Milwaukee County deputy who was disciplined in the past for having violated the seatbelt rule. That deputy first received a written warning, which later was reduced to a verbal counseling session, an outcome which supports the Association's claim that Deputy Gedemer's one-day suspension was unduly harsh.

The County asserts that the Association presented no evidence corroborating the testimony given by Association president Ray Felber regarding his investigation into comparable incidents involving Sheriff's Department deputies. Although it is true that Mr. Felber's testimony on this point was not corroborated by documentary evidence or additional witness testimony, I find that it was credible and un rebutted.

The County further asserts that the apparent inconsistency was not raised until the arbitration hearing and, therefore, should not be considered. For the sake of the parties' ability to resolve disputes quickly and amicably, such information ideally would be exchanged prior to arbitration. However, the collective bargaining agreement between the County and the Association does not prohibit the introduction of evidence or argument at an arbitration hearing

that was not raised at an earlier stage in the grievance process.¹ Thus, the evidence that Deputy Gedemer's discipline is inconsistent with a discipline previously issued by the County for the same infraction, is not barred from consideration.

Even considering this case in isolation, a one-day suspension seems out of step with Deputy Gedemer's violation. Although the seatbelt rule is undeniably important and absolutely clear, the offense was a relatively minor oversight which was explained, at least in part, by the fact that Deputy Gedemer had just reopened a ramp and only had been driving for a very short period of time when he encountered the Sheriff. Deputy Gedemer also, contrary to the County's assertion, did take responsibility for his actions. He immediately reported the rule violation to his supervisor and was equally forthcoming in the internal affairs investigation interview.

The conclusion is inescapable that the incident at issue here resulted in a one-day suspension – in addition to the unusual exercise of having to read seatbelt statistics in front of peers – because Deputy Gedemer's rule infraction was observed personally by the Sheriff. The happenstance factor of which supervisor discovers a rule infraction simply cannot play a role in the resulting level of discipline.

The County asserts that the disciplinary action was appropriate given the evidence that Deputy Gedemer previously was the subject of a sustained internal affairs investigation. This evidence does not justify the level of discipline, however, because there is no indication that County representatives considered that prior event in imposing the one-day suspension.

Based on the foregoing and the record as a whole, the undersigned enters the following

¹ The collective bargaining agreement does appear, at Section 5.01(11), to limit discussions at various steps of the grievance arbitration procedure to the precise issues arising out of the original grievance:

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

That language does not place a limitation on the type of arguments that can be raised or evidence that can be presented, at various stages, with regard to those issues.

AWARD

The grievance is sustained. The County is directed to expunge the one-day suspension from Deputy Gedemer's personnel file and to make him whole for pay lost due to his having been suspended.

Dated at Madison, Wisconsin, this 1st day of July, 2008.

Danielle L. Carne /s/

Danielle L. Carne, Arbitrator

