

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**WISCONSIN PROFESSIONAL POLICE ASSOCIATION /
LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION**

and

MONROE COUNTY

Case 198
No. 67950
MA-14060

Appearances:

Andrew Schauer, Staff Attorney, Wisconsin Professional Police Association/LEER Division, 340 Coyier Lane, Madison, WI 53713, appearing on behalf of WPPA/LEER Division.

Ken Kittleson, Personnel Director, Monroe County, 14345 County Highway B, Room 3, Sparta, Wisconsin 54656-4509, appearing on behalf of Monroe County.

ARBITRATION AWARD

On April 21, 2008, the Wisconsin Professional Police Association / Law Enforcement Employee Relations Division (hereafter "WPPA") 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 Monroe County (hereafter "County") had violated the collective bargaining agreement between WPPA and the County by terminating the employment of Deputy Addam Martinson without just cause. The undersigned was so designated. A hearing was held on July 23, 2008, in Sparta, Wisconsin, at which time WPPA and the County 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 WPPA and the County each submitted a post-hearing brief, both of which were received by the undersigned on October 6, 2008, whereupon the record was closed.

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

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ISSUE

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

Was the grievant discharged for just cause? If not, what is the appropriate remedy?

BACKGROUND

At all relevant times, Addam Martinson was employed as a deputy jailer with the Monroe County Sheriff's Department. On January 25, 2008, Deputy Martinson worked a twelve hour shift, starting at 3:00 p.m. At a few minutes after 4:00 p.m. on that day, all of the jailers on duty, including Deputy Martinson, were busy with activities and not present in an area of the jail which housed the secured jail office, a holding cell, a telephone for inmate use, and a receiving door leading to the jail sallyport. Prior to leaving the area, Deputy Martinson had released an inmate, Schultz, from the holding cell, because Schultz had requested that he be allowed to make a telephone call. It was standard operating procedure for Deputy Martinson to have allowed Schultz to be out of his cell and unattended for that purpose. Observing at this time that there were no jailers present in the area and that he was not being watched, Schultz used a previously discovered code to unlock and enter the jail office.¹ Schultz grabbed a set of jail keys from the office counter where they were routinely kept, left the office, and proceeded to the receiving door, where he had intended to unlock the door and escape from the jail. While Schultz stood secluded in the small hallway leading to the receiving door, Deputy Martinson returned to the area. At that point, a trustee inmate who had been observing Schultz caught Deputy Martinson's attention and gestured toward the receiving door. In short order, Deputy Martinson discovered Schultz standing at the door with the set of keys. Deputy Martinson took the keys, had a brief exchange with Schultz in which he asked Schultz what he was doing and whether he wanted to be charged with another felony, and then locked Schultz in the holding cell.

Immediately after this incident, Deputy Martinson entered the jail office. Camera footage shows him pacing back and forth in the office. He later recounted that, at that moment, he was contemplating what had just occurred and trying to pull himself together. He then sat down and observed Schultz, on camera, in the holding cell. After only about one minute, however, Deputy Martinson received a telephone call regarding an unrelated matter, and he proceeded, from that point on, to attend to his regular duties.

¹ It was later determined that Schultz had obtained the code, on the previous day, when he had been sitting on a bench near the jail office and had observed a member of the jail staff enter the code to gain admittance to the office.

For the remainder of his shift, Deputy Martinson did nothing in relation to the incident that had occurred with Schultz. He did not make any effort to search Schultz or his holding cell. He did not take any steps to determine how Schultz had obtained a set of jail keys. He never mentioned the incident to any of the other four jailers working on that shift, one of whom joined Deputy Martinson in the jail office minutes after the incident. Nor did he mention the incident to a law enforcement team that transported Schultz, later that same evening, to the Vernon County Jail. Nor did he mention the incident during a conversation with Jail Administrator Robert Conroy, when he reported for work near the end of Deputy Martinson's shift. Further, Deputy Martinson did not make any written documentation regarding the incident. He did not make an entry on the jail log, write an incident report, draft an inmate disciplinary document, or make an entry on Schultz' booking/classification record. The incident only came to the attention of other jail personnel because another inmate asked a day-shift jailer, the next morning, about what had happened to Schultz in relation to his attempted escape.

Just weeks before, Deputy Martinson had been present at a training meeting held by Monroe County Sheriff Dennis Pedersen, the purpose of which was to review the policies regarding the reporting of serious incidents that occur at the jail. The meeting had been prompted by an incident in which Monroe County jailers had failed to properly follow-up on the hospitalization of a Monroe County inmate who had been administered improper medication. Sheriff Pedersen emphasized, at the training meeting, that any serious incident that occurred at the jail should be reported to Jail Administrator Conroy, entered into the jail log, and documented in an incident report. This policy also had been discussed in two e-mail messages sent by Jail Administrator Conroy to jail staff, including Deputy Martinson. The message of November 20, 2007, read as follows:

Starting immediately any staff member involved in an incident (i.e. suicide attempt, use of force, escape, fire, etc.) needs to write a report. The report needs to encompass everything that you did as an individual or participated in as part of a team. If you were in the office opening doors for those responding, or just called dispatch to request an ambulance, you should write a report.

In the Sheriff's presentation regarding reports it was stated that reports need to be done in a timely manner. In such cases as an escape (to include huber law walk away), suicide attempts, fire, or any other major incident, the reports need to be completed and forwarded to me before you leave for the day.

Lastly, for any major incident such as a suicide attempt, fire, escape, or anyone that is sent to the hospital I need to be notified as soon as possible by phone.

The message of January 11, 2008, read as follows:

On November 20, 2007, I had sent out a procedure regarding reports. The first part of the procedure states "Starting immediately any staff member involved in an incident (i.e., suicide attempt, use of force, escape, fire, etc.) needs to write a report." In addition to the examples written in this procedure, a report must also be written when staff responds or participates in any way involving an incident where an inmate needs immediate medical attention or is transported for emergency care.

Lastly, for any major incident such as a suicide attempt, fire, escape, or anyone that is sent to the hospital, I need to be notified as soon as possible by phone.

After learning about the incident involving Schultz, Sheriff Pedersen ordered Chief Deputy Lisa Josvai to conduct an internal investigation into what had occurred. Deputy Martinson cooperated fully with the investigation. When questioned, Deputy Martinson consistently acknowledged that he should have followed-up on the Schultz incident by conducting the proper searches, putting the proper individuals on notice, and completing the proper documentation. Indeed, he asserted that he had intended to undertake such tasks, but simply had become busy with his other duties and had forgotten. When asked how he would rate the seriousness of the escape attempt on a scale of one-to-ten, Deputy Martinson indicated that he would give the incident a ten, the most serious rating, stating "it's a security issue, an escape attempt, a guy tried to get out of our jail, and anything of that nature is a serious situation". At the conclusion of the investigation, Deputy Martinson's employment with the Monroe County Sheriff's Department was terminated.

Deputy Martinson had become employed with the Monroe County Sheriff's Department on November 30, 2005. In October of 2006, he was issued a letter of reprimand for having written, with a paint marker, on the window of a fellow employee's vehicle, the words "I have a warrant". In March of 2007, he was issued a letter of recognition for exceptional work performance during a high stress situation involving an inmate suicide attempt. In November of 2007, he was issued a counseling statement for having failed to lock the door of the jail intoxicilizer room.

The collective bargaining agreement in effect at all relevant times between WPPA and the County provides, in pertinent part, as follows:

The County possesses the sole right to operate County government and all management rights repose in it, subject only to the provisions of this Agreement and applicable law.

These rights include, but are not limited to the following:

...

D. To suspend, demote, discharge and take other disciplinary action against employees for just cause;

...

DISCUSSION

There is no dispute that Deputy Martinson failed to follow the proper procedures with regard to the incident involving Schultz. WPPA's position in this case is that, given the circumstances involved here, the procedural violation should have resulted in some lesser consequence than discharge.

As to the question of whether Deputy Martinson's discharge was warranted, the parties have made much of exactly what prompted him not to follow-up on the incident involving Schultz. From the County's perspective, Deputy Martinson's procedural failure must have been the product of a deliberate decision to attempt to cover-up the incident. The County believes that Deputy Martinson, conscious of having been disciplined two months before for failing to lock the jail intoxiciler room, was fearful that he would get in trouble for the fact that Schultz had obtained a set of keys and attempted to escape², so he decided to act as if the event had never occurred. According to the County, this rationale explains how Deputy Martinson could fail to complete any of the numerous required actions after the incident, including following the reporting protocol that recently had been the subject of a meeting with Sheriff Pedersen and two e-mails from Jail Administrator Conroy. Further, the County argues that this rationale is the only one that explains the fact that Deputy Martinson never mentioned to his co-workers an event that was so significant for him that it had caused him to pace, anxiously, back and forth in the jail office immediately after it occurred, trying to pull himself together – an incident that he later assigned the highest rating of ten on the scale of seriousness.

Less believably, Deputy Martinson asserts that his procedural failure was the result of sheer forgetfulness. According to Deputy Martinson, within minutes of having discovered Schultz standing at the receiving door with a set of jail keys in his hand, he "got sidetracked" by a telephone call and other, routine activities and "dropped the ball" on his obligation to follow-up on the incident as he had intended.

² In reality, Deputy Martinson was not culpable for any of Schultz's actions.

In either case, I have concluded that the County had just cause for terminating Deputy Martinson's employment. He failed to perform duties that were absolutely essential to his core obligation as a jailer – to maintain the safety and security of the jail. Moreover, the failure was not, as WPPA characterizes it, a singular moment of poor decision-making. On the contrary, though there was only one incident involving Schultz, Deputy Martinson had multiple opportunities to respond appropriately to it – searches he should have undertaken, people he should have notified, documents he should have completed – and he repeatedly failed to fulfill his obligations.

It is these factors that break against WPPA's argument that principles of progressive discipline should have resulted in some consequence less than termination of employment. Under any account, Deputy Martinson's repeated failure to perform the essential duties of his job amounts to more than a momentary lapse in judgment, carelessness, or a mere accident. His actions demonstrate either a remarkable willingness to flaunt his obligations and threaten the safety of others to save his own hide or an alarming lack of the presence of mind necessary to do the work of a jailer.

WPPA tries to diminish the seriousness of Deputy Martinson's errors by suggesting that the Schultz incident was not an honest-to-goodness escape attempt and Deputy Martinson's procedural failures, therefore, were not so egregious. I do not find this argument persuasive. While Schultz apparently had decided not to follow through with his escape plan and never actually put a key into the lock of the receiving door, he did not reveal these facts until he was questioned in the course of the internal investigation into the incident. Deputy Martinson could not have used that information to decide, on the day the incident occurred, that it was not to be taken seriously. Further, even if Schultz likely would not have been able to use the keys he had to open the receiving door, as WPPA points out, this knowledge did not justify Deputy Martinson's failure to follow-up on the incident. Though Schultz's efforts to leave the jail were feeble, he had successfully managed to obtain a set of jail keys, an act which, standing alone, would have struck anyone as a serious breach of security.

WPPA argues that Deputy Martinson's willingness to recognize the seriousness of the Schultz incident, in the context of the internal investigation, should be appreciated as an attempt to be appropriately repentant, not as an admission that his error warranted discharge. Along those same lines, WPPA also argues that simply because the Monroe County Sheriff's Department apparently believes that an escape attempt is a serious matter, that characterization should not automatically be applied to Deputy Martinson's failure to report the incident. My determination that Deputy Martinson's procedural failure was sufficiently serious to provide cause for discharge, however, is one that was drawn independent of these factors.

WPPA also quibbles with the significance of the training session with Sheriff Pedersen. First, WPPA argues that, although Sheriff Pedersen perhaps identified an escape as a serious incident that would trigger the reporting protocol, he did not identify an *attempted* escape as

such. Though it is impossible to ascertain exactly what was said at the training session, it is clear that the e-mail message that Deputy Martinson and other jailers received from Jail Administrator Conroy, on November 20, 2007, provided that “any staff member involved in an incident (i.e. suicide attempt, use of force, escape, fire, etc.) needs to write a report”. The “etc.” at the end of the parenthetical statement indicates that the list of incidents that were to trigger the reporting protocol was not finite. It implied that jailers were expected to use their judgment to determine which incidents would be worthy of reporting. Here, Deputy Martinson should have been able to infer, based on the nature of the other events listed, that a breach of security that resulted in an inmate possessing a set of jail keys counted as an incident that required reporting. WPPA also argues that Deputy Martinson should not be discharged because Sheriff Pedersen did not state that the failure to follow the reporting requirements could result in a termination of employment. Again, however, Deputy Martinson could have inferred that the repeated failure to perform highly essential job duties could result in such severe consequences.

WPPA also argues that the fact that the keys were kept on the counter in the jail office – and the fact that Monroe County has since changed their location – should be viewed as a mitigating circumstance. I believe this evidence highlights the importance of the procedures Deputy Martinson failed to follow. Had the County not inadvertently learned about the incident involving Schultz, it would have continued to store the jail keys in a vulnerable location. Beyond that, I see no relationship at all between the County's previous key storage location and Martinson's procedural violations.

Deputy Martinson's two and one-half year tenure with the Monroe County Sheriff's Department, the contents of his personnel file, and his reportedly good work ethic do not persuade me that some result short of discharge would be more appropriate. Further, the outcomes of the circuit court criminal case against Schultz, wherein the felony escape charge resulted (for unknown reasons) in an ordinance violation, and the unemployment compensation case, the standard for which is not applicable here, have no bearing on the outcome of this matter.

CONCLUSION

The Grievant was discharged for just cause, and the grievance is therefore denied.

Dated at Madison, Wisconsin, this 2nd day of January, 2009.

Danielle Carne /s/

Danielle Carne, Arbitrator

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