

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between  
**MILWAUKEE DEPUTY SHERIFFS' ASSOCIATION**

and

**MILWAUKEE COUNTY  
(SHERIFF'S DEPARTMENT)**

Case 666  
No. 68057  
MA-14109

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**Appearances:**

Eggert & Cermele, S.C., Attorneys at Law, by **Ms. Chelsie Allan**, 1840 North Farwell Avenue, Suite 303, Milwaukee, Wisconsin 53202, appearing on behalf of the Milwaukee Deputy Sheriffs' Association.

**Mr. Timothy R. Schoewe**, Deputy Corporation Counsel, Room 303, Courthouse, 901 North Ninth Street, Milwaukee, Wisconsin 53233, appearing on behalf of Milwaukee County (Sheriff's Department).

**ARBITRATION AWARD**

Milwaukee Deputy Sheriffs' Association, hereinafter the Association, requested that the Wisconsin Employment Relations Commission appoint a member of its staff as Arbitrator to hear and decide a dispute between the Association and Milwaukee County, hereinafter the County or Employer. The Commission subsequently designated Coleen A. Burns as Arbitrator. Pursuant to the agreement of the parties, an arbitration hearing was held on September 24, 2008 in Milwaukee, Wisconsin. The hearing was not transcribed and the record was closed on December 1, 2008, following receipt of the County's confirmation that it would not be filing a reply brief.

**ISSUES**

At hearing, the parties stipulated to the following statement of the issues:

Was there just cause to suspend Sgt. Vasquez for five days?

If not, what is the appropriate remedy?

**APPLICABLE RULE PROVISIONS**

**MILWAUKEE COUNTY SHERIFF'S OFFICE RULES AND REGULATION**

**1.05.14 - Efficiency and Competence**

Members shall adequately perform reasonable aspects of police work; such expected aspects include, but are not limited to; report writing, physical intervention, testimony, firearms qualification and knowledge of criminal law.

“Adequately perform” shall mean performance consistent with the ability of equivalent trained members of the department.

**MILWAUKEE COUNTY CIVIL SERVICE RULE VII, SECTION 4(1)**

...

- (u) Substandard or careless job performance.

**RELEVANT BACKGROUND**

Steven Vasquez, hereafter Grievant, has been a Sergeant in the County's Sheriff's Department since 1997. The Grievant worked a night shift beginning on August 31, 2007 and ending on September 1, 2007. During this shift, the Grievant was assigned to the County Jail as a supervisor.

During this shift, an inmate incarcerated in the Special Needs area of the Jail was found deceased in his cell. Deputy G was the officer in charge of Special Needs at the time that the inmate was found.

Captain Eileen T. Richards of Internal Affairs conducted an investigation into the conduct of the Grievant. In her written “Investigative Summary” of December 3, 2007, Captain Richards sustained the alleged Department rule violation of 1.05.14, Efficiency and Competence, and Civil Service Rule VII (4)(1)(u). This “Investigative Summary” includes the following:

...

Sergeant Vasquez failed to effectively supervise sworn staff in fulfilling the mission of the Milwaukee County Sheriff's Office. He held the responsibility for making certain that the officers under his watch were completing their tasks

per policy and procedure. In order to do this effectively, supervisors cannot depend solely on written documentation and the deputy's "word" that activities are actually being completed.

...

On January 21, 2008, Sheriff Clarke determined the "Final Disposition of Complaint" to be a suspension without pay for five working days. Sheriff Clarke issued "The County of Milwaukee Notice of Suspension" in which the Grievant was notified that he was being suspended for five days and the following Office of the Sheriff

ORDER NO. 1113

January 22, 2008

**TO BE READ AT ROLL CALLS**

**RE: SUSPENSION  
INTERNAL AFFAIRS CASE NO. 07-274**

Effective February 26, 27, 28, 29 and March 1, 2008, Deputy Sheriff Sergeant Steven Vasquez is suspended from duty, without pay, for five (5) working days(s), for violation of:

**MILWAUKEE COUNTY SHERIFF'S OFFICE RULES AND REGULATIONS**

1.05.14 Efficiency and Competence

**MILWAUKEE COUNTY CIVIL SERVICE RULE VII, SECTION 4(1)**

(u) Substandard or careless job performance.

Approved:

David A. Clarke, Jr. /s/  
David A. Clarke, Jr., Sheriff

A grievance on the suspension was subsequently submitted to grievance arbitration.

Charges for discharge were brought against Deputy G by the Sheriff. The Milwaukee County Personnel Review Board (PRB) responded with Findings of Fact and Conclusions of

Law and Order. Among the Findings of Fact was that “The Board noted that (Deputy G) had a long record of 18 years of service to the County. In all that time, he had only a reprimand. A recent performance evaluation showed (Deputy G) to be competent and efficient. The Segeant (sic) who evaluated (Deputy G) described him as precise, neat and well thought out, with excellent attention to detail.” Among the Board’s Conclusions of Law are the following:

. . .

2. The Board concluded that the evidence was not sufficient that (Deputy G) violated Rule VII, Section 4(1) of the Civil Service Rules for Milwaukee County government, paragraphs, “(l) Refusing or failing to comply with departmental work rules, policies or procedures, specifically the Sheriff’s Rules *1.05.03-Violation of Policy*(CJF SC-9); *1.05 14 Efficiency and Competence*; and *1.05.75-Neglect of Duty*; (t) Failure or inability to perform the duties of the assigned position; and (u) Substandard or careless job performance”

3. The Board dismissed the penalty of discharge as not supported by the facts and noted that (Deputy G) was an employee of long service and good conduct who had followed the rules in making his rounds and that the imposition of discharge was not merited or reasonable.

. . .

### **POSITIONS OF THE PARTIES**

#### **County**

When the Grievant appeared at Special Needs, his first concern was to speak with a nurse. The inspection round, which consisted of reviewing the logbook and speaking with the pod deputy, was an afterthought.

According to records, the pod deputy conducted a round at 0100. If performed well, rounds usually take some time. At 0101, the pod deputy’s round was over and the pod deputy was back at his station. To conduct a one-minute round of a pod with 23 inmates was insufficient; but the Grievant saw nothing amiss in this.

The unit is called Special Needs for a reason. The log entry should have sounded an alarm.

Captain Richards had served many years as a supervisor in the Jail. Captain Richards attested to the fact that active supervision is necessary in Wisconsin’s second largest correctional facility; with the Sergeant having a responsibility to not only ensure that work is done, but also to ensure that work is done correctly.

The Grievant's job duty was to supervise; which duty he failed to do. The Grievant took no personal initiative; accepted as gospel everything told to him by a subordinate; with horrific consequences.

The Grievant should have actively inspected the logs and cells. The inmate on suicide watch; who was directly next to the deceased inmate, ought to have been personally checked.

The Grievant knew the rules and procedures of the job he, as well as his subordinate, were supposed to perform. The Grievant's higher the rank comes with a higher performance expectation.

Whether the Grievant was incompetent or slothful is unknown and beside the point. The Department's investigation demonstrated, among other things, that the Grievant had violated both Milwaukee County Civil Service Rule VII, Section 4(1)(u), Substandard or careless job performance, and rules governing the conduct of members of the Department, *i.e.*, Section 1.05.14-Efficiency and Competence. This investigation also determined that a charge of neglect of duty was unfounded. The discipline should be sustained.

### **Association**

The Grievant was the supervisor of G., the Deputy who found the inmate unresponsive in his cell. As the only Sergeant on that night shift, the Grievant was required to perform the duties of both the intake and housing sergeants. These duties include supervision of the pre-booking and booking areas, the eighteen jail housing units, jail records and visiting control.

After discussing an issue with the nursing supervisor, the Grievant decided to check in with the infirmary and Special Needs because they were nearby and it would be efficient. When the Grievant entered Special Needs, he was greeted by Deputy G. who indicated that he had just finished a round of the unit. The Grievant questioned Deputy G. as to any unusual occurrences and checked the logbooks to confirm that Deputy G. was performing rounds on time as expected. After affirming that there were no problems and that Deputy G. was performing his duties as required, the Grievant left the Special Needs unit.

This inspection occurred three to four hours before the inmate was found deceased. This inmate was not under a suicide watch.

Internal Affairs conducted an investigation of the Grievant and Deputy G. regarding the inmate death. The three Sergeants who were interviewed by Internal Affairs each stated that they were trained to perform rounds by checking each unit's logbooks to make sure rounds were being done by the deputies and to speak to the deputy on duty regarding any problems or unusual occurrences. Each Sergeant asserted that they were *not* taught to physically check each cell or sub-pod. As testified to by Captain Richards, none of these Sergeants were ever disciplined for being inefficient, incompetent or having substandard job performance.

The Department argues that the Grievant, as Deputy G's supervisor, had a duty to make sure that Deputy G. was adequately performing his job duties. Deputy G. was cleared of any wrongdoing by District Attorney Chisholm and by the Personnel Review Board (PRB). The PRB found that Deputy G. "followed the standard procedure and did all the things he was supposed to do." If the Deputy in charge of Special Needs has been cleared of all wrongdoing, how can the Grievant be disciplined for failing to adequately supervise this Deputy's actions? Lt. K., the Grievant's supervisor, was not the subject of any investigation; much less discipline.

The Grievant performed his duties efficiently and competently, in accordance with the ability of equivalently trained sergeants. The Department has not met its burden of proof to show that the Grievant violated either of the rules charged.

The Grievant's past disciplinary record consists of a single written reprimand that occurred twenty years ago when he was an unsworn civilian employee. If the Arbitrator were to determine that just cause supports one or more of the rule violations, this disciplinary record, as well as the principles of disparate treatment, would establish that just cause does not support a five day suspension.

### **DISCUSSION**

The Grievant has been assigned as Jail Sergeant on the night shift for more than ten years. In his Internal Affairs interview, the Grievant indicates that, on the night in question and due to the fact that another Sergeant was on vacation, the Grievant was acting Sergeant in both intake and housing; with the effect that the Grievant had to prioritize his tasks and allot his time appropriately. According to the Grievant, while it is not uncommon to have a single third shift Sergeant, the normal staffing is to have one Sergeant for housing and a second Sergeant for intake.

In this interview, the Grievant indicates that, as housing sergeant on third shift, he typically does a random "round" of each floor and that, with respect to housing pods, such as Special Needs, his "round" consists of going to the floor, checking with the deputy in charge to see if he/she has anything to report or needs anything, reviewing the log and checking any paperwork that needs his attention, signing the log and then going on to other duties. The Grievant indicates that he would not go into the sub-pods without a reason. The Grievant indicates that he does not typically go into the housing units to do "rounds" because the Deputies assigned to the floor are responsible for doing "rounds" in the individual pods. According to the Grievant, as Sergeant, he expects the Deputies doing "rounds" to look into each cell to make sure that each inmate is accounted for and all right.

The Grievant indicates that his method of doing "rounds" on third shift is consistent with how he was trained as a Sergeant; that it would be physically impossible for him to actually observe all of the floor Deputies perform their "rounds" of the inmate pods; and that the Grievant is not aware of any other third shift Sergeant that does his/her "rounds" by going to each cell and personally observing inmates.

With respect to the night in question, the Grievant recalls that, in Special Needs, there was one “fifteen minute round” inmate. According to the Grievant, typically he does not go in and observe such inmates, but checks on the Deputy doing the fifteen minute rounds by making sure that all the paper work is done appropriately.

The Grievant recalls that he spoke with Deputy G, who was on duty in the Special Needs area, and that Deputy G did not report any issues or concerns with any of the inmates in the area. The Grievant further recalls that he checked Deputy G’s paperwork for proper documentation; including the documentation pertaining to the fifteen minute suicide watch. According to the Grievant, he saw nothing suspicious in Deputy G’s logbook and he signed this logbook.

The statements of the other three Sergeants interviewed by Internal Affairs, reasonably indicate that, as of the night in question, by training and practice, third shift Sergeants conducted their Sergeant “rounds” in the Special Needs area by going to the floor; checking the log book and other relevant paperwork to confirm appropriate documentation by the officer on duty; and asking the officer on duty if he/she had any problems and/or required any assistance from the Sergeant. The statements of the other three Sergeants interviewed by Internal Affairs, reasonably indicate that, as of the night in question, third shift Sergeants had not been trained to routinely conduct their Sergeant “rounds” by entering the Special Needs area and personally inspecting each cell and inmate and did not have such a practice.

Sergeant J indicates that he would not enter the Special Needs sub-pod unless there were special circumstances, such as doing a follow-up on an inmate who just been brought in and had been acting out of the ordinary or someone had to be removed from the restraint bed. Sergeant W indicates that he would not enter the Special Needs sub-pod unless he had a reason to do so; such as to speak with an inmate. Sergeant K indicates that he does not normally enter the Special Needs sub-pod, but that, if there were a suicide watch in Special Needs, then he would enter the sub-pod to check on the inmate who was on suicide watch. Of the four Sergeants interviewed, including the Grievant, Sergeant K was the only one to indicate that he routinely entered the sub-pod to check on inmates who are on suicide watch.

Sergeant K indicates that he checks the log book for anything unusual, but generally relies upon what the Deputy tells him. Sergeant W indicates that he would not have the time to personally verify that Deputies under his supervision are making rounds and that, normally, it would be disruptive for a supervisor to enter the Special Needs sub-pod because it would agitate the inmates; and that, on third shift, it is desirable to have the inmates quiet and sleeping.

In her “Investigative Summary,” Captain Richards states: “(Deputy G’s) last round prior to Sergeant Vasquez entering the sub-pod was documented at 0100 hours. Sergeant Vasquez documented that he entered the sub-pod at 0101 hours. He stated he met (Deputy G) at the workstation and was advised that he had just completed a round. Sergeant Vasquez did not question the short time period between the documented start of the round and the end of the

round.” Captain Richards confirms that, on the night in question, there was not a written policy that definitively stated that a Sergeant, such as the Grievant, had a duty to personally inspect the inmate cells in the Special Needs area.

Captain Richards maintains that Deputy G’s log should have alerted the Grievant that Deputy G had performed his “rounds” pretty quickly; thus causing the Grievant to question whether or not Deputy G had performed his “rounds” and then to personally inspect the cells to make sure that everything was all right. According to the Grievant, he saw Deputy G by the logbook; he noticed that Deputy G had signed the logbook one minute previously; he did not consider this to be unusual because Deputy G had stated that Deputy G had just finished a round; and that the Grievant concluded that Deputy G had signed the log after he had completed his round.

The Internal Affairs investigation included an interview with Deputy G that contained the following exchange:

Richards: When you do your rounds, do you document in the log book first and then do your round, or do you do your round and then document it into the log book?

Deputy G: It varies. Um sometimes before, sometimes after.

Deputy G subsequently clarified his above answer as follows:

Yes. When you asked me whether I mark the log book before or after I do a round, um the clarification is that there are times where I mark the time, go and perform the round, and then complete the entry with “nothing unusual observed” or anything that I may have observed at during the round itself. I don’t complete the round until the round is, ah complete the entry for the round until the round itself is done.

The Grievant indicates that, when he enters documentation on a log, or other paperwork, he relies upon his personal watch to note the time. Deputy G indicates that, when he enters documentation on the log, he relies upon his personal watch to note the time.

### **Conclusion**

Deputy G’s log was not entered into the record. Apparently, the fact that Deputy G had documented his last round at 0100 and the Grievant documented that he entered the subpod at 0101 lead Captain Richards to conclude that Deputy G had performed his round pretty quickly. In Captain Richards’ view, the information on Deputy G’s log should have caused the Grievant to (1) question whether or not Deputy G had completed his round as required by the Department and (2) verify that Deputy G had performed his job by entering the cell area and personally checking the cells to make sure that the everything was all right.



As Deputy G's immediate supervisor on the night in question, the Grievant had a responsibility to oversee Deputy G's work. The nature of this oversight is dependent on the circumstances.

Given the number and kind of job responsibilities assigned to the Grievant that night, the Grievant was not able to physically observe the Deputies under his supervision as they performed their assigned tasks. Inasmuch as the Grievant could not verify by personal observation that the Deputies under his supervision had performed their assigned work as required by the Department, the Grievant had to exercise his supervisory judgment to determine when to trust a Deputy to perform his/her assigned task and when to question whether or not a Deputy was performing his/her assigned task as required by the Department.

With respect to Deputy G, the record provides no evidence that the Grievant knew, or should have known, that Deputy G could not be trusted to perform his assigned work as required by the Department. Indeed, the evidence regarding Deputy G's work history with the Department reasonably indicates that Deputy G may be trusted to perform his assigned work as required by the Department.

Notwithstanding any County assertion to the contrary, it is not evident that the log in the Special Needs area reasonably indicated that Deputy G conducted his round in less than one minute or provided the Grievant with any reasonable basis to question whether or not Deputy G had completed his round as reported by Deputy G or to verify that Deputy G had performed his job by entering the cell area and personally checking the cells to make sure that everything was all right. Based upon the circumstances of this record, the Grievant's performance of his duties as third shift Sergeant in the Jail was consistent with the ability of equivalent trained members of the Department.

In supervising Deputy G, the Grievant performed his Sergeant duties in an efficient and competent manner and did not engage in substandard or careless job performance. The County has not established that the Grievant has violated Milwaukee County Sheriff's Office Rules and Regulations 1.05.14- Efficiency and Competence or Milwaukee County Civil Service Rule VII, Section 4 (1) (u) as charged in Office of the Sheriff Order No. 1113 dated January 22, 2008. The discipline imposed by the Sheriff and the County is without just cause.

Based upon the foregoing, and the record as a whole, the undersigned makes and issues the following

**AWARD**

1. There was not just cause to suspend Sergeant Vasquez for five (5) days.
2. The appropriate remedy for Sergeant Vasquez' unjust discipline is for the County and the Office of the Sheriff to immediately:

- a) Rescind Office of the Sheriff Order No. 1113 dated January 22, 2008 and the related "Notice of Suspension;
- b) Expunge all reference to the Sheriff Order No. 1113 dated January 22, 2008, the related "Notice of Suspension" and the suspension effectuated by Sheriff Order No. 1113 dated January 22, 2008 from Sergeant Vasquez' personnel files;
- c) Make Sergeant Vasquez whole by restoring to Sergeant Vasquez all wages and benefits lost as a result of his unjust suspension of five working days effectuated by Office of the Sheriff Order No. 1113 dated January 22, 2008.

Dated at Madison, Wisconsin, this 13th day of March, 2009.

Coleen A. Burns /s/

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Coleen A. Burns, Arbitrator