

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**LINCOLN COUNTY COURTHOUSE EMPLOYEES
LOCAL 33-A, AFSCME, AFL-CIO**

and

LINCOLN COUNTY

Case 261
No. 68662
MA-14302

(Meister Grievance)

Appearances:

Mr. John Spiegelhoff, Staff Representative, AFSCME, Wisconsin Council 40, AFL-CIO, 1105 East Ninth Street, Merrill, Wisconsin, appearing on behalf of Local 33-A.

Mr. John Mulder, Administrative Coordinator, Lincoln County, 1104 East First Street, Merrill, Wisconsin, appearing on behalf of Lincoln County.

ARBITRATION AWARD

Lincoln County Courthouse Employees Local 33-A hereinafter "Union," and Lincoln County, hereinafter "County," requested that the Wisconsin Employment Relations Commission assign a staff arbitrator to hear and decide the instant dispute in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. Lauri A. Millot, of the Commission's staff, was designated to arbitrate the dispute. The hearing was held before the undersigned on April 17, 2009, in Merrill, Wisconsin. The hearing was not transcribed. At hearing, the parties offered closing arguments and the record was closed. The parties requested an expedited award. Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties stipulated that there were no procedural issues in dispute and framed the substantive issues as:

Did the County have just cause when it issued a written warning to the Grievant on November 3, 2008? If not, what is the appropriate remedy?

DISCUSSION

The Grievant, Jason Meister, was disciplined on November 3, 2008 for his conduct on November 2, 2008 in violation of County Work Rules when he was “traveling in your Lincoln County Correctional Uniform and were stopped by the Wisconsin State Patrol for an infraction of Wisconsin State Law.” The Union challenges the Grievant’s discipline on the basis that it lacked just cause.

The facts establish that the Grievant is a five year employee of the County working in the jail. No evidence was presented indicating that he had a record of poor performance or other discipline, therefore I accept that his work performance is satisfactory or above.

On November 2 the Grievant was en route to work a scheduled overtime shift and was stopped by a state patrol officer for speeding. The officer chose to not issue a citation to the Grievant for excessive speed, instead choosing to impose the less expensive seat belt citation. After learning of the citation, the County initiated an investigation. In the course of the County’s investigation, the state patrol officer acknowledged that the Grievant’s position in law enforcement was a factor he considered when choosing the less expensive option.

This citation was the third issued (one of which was later dismissed) to the Grievant in 2008 and the fifth encounter with law enforcement during that year. On four occasions during May, 2008, the Grievant and law enforcement crossed paths including a stop and warning for speeding; a citizen complaint that he was speeding through the city on a motorcycle; a citation for disorderly conduct that was later dismissed; and a citation for speeding. The Grievant was in uniform during three of these incidents. The Grievant acknowledged that he was warned by his supervisor, Sgt. Fitzke, that his behavior and intervention with law enforcement was unacceptable.

On November 3, 2008 the County issued a written disciplinary warning to the Grievant for his conduct on November 2, noting that the Grievant had a history of “warnings/citations for various violations with no change in behavior.” The Union grieved the discipline.

The County’s decision to discipline the Grievant was appropriate and meets the just cause requirement. The County has an interested in its law enforcement personnel conducting their personal lives free of intervention by other law enforcement officials. Regardless of whether an actual citation was issued, the evidence establishes that the Grievant has a history of disregarding state laws. That disregard has manifested itself on multiple occasions when the Grievant was in uniform. The fact that the Grievant has violated the law and was given multiple opportunities to change his behavior, only to re-offend is troublesome. Either the Grievant does not believe that he will be held accountable for his behavior or does not care.

At this juncture, the Grievant is advised to heed the warning offered by the County and steer clear of unlawful behavior should he desire to retain his job.

The Union argues that this is off duty conduct and there is no workplace nexus between the Grievant's off-duty conduct and the County's interests. The Union specifically argues that the employer's business was not harmed, the Grievant continued to work, and no employee refused to work with the Grievant. The Union's argument fails to acknowledge that the Grievant is employed in a law enforcement profession and the County's has the right and obligation to retain the public trust. When a member of the rank and file publicly disregards the law, it jeopardizes the public trust and adversely affects the reputation and mission of the County Sheriff's Department. The public trust doctrine is a recognized exception to the rule that employers cannot discipline employees for off duty misconduct and it is applicable in this instance.

AWARD

1. The County had just cause to discipline the Grievant on November 3, 2008.
2. The Grievance is dismissed.

Dated at Rhinelander, Wisconsin, this 29th day of April, 2009.

Lauri A. Millot /s/

Lauri A. Millot, Arbitrator