

BEFORE THE ARBITRATOR

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

Case # 677
No. 68499
MA-14254

Appearances:

Victor Forberger with **Linda S. Vanden Heuvel** on the brief, Vanden Heuvel & Dineen, S.C., W175 N11086 Stonewood Dr., P.O. Box 550, Germantown, WI 53022-0550, appearing on behalf of Milwaukee Deputy Sheriff's Association.

Timothy R. Schoewe, Deputy Corporation Counsel, Office of Corporation Counsel, Room 303, Courthouse, 901 North 9th Street, Milwaukee, WI 53233, appearing on behalf of Milwaukee County.

ARBITRATION AWARD

Milwaukee County, hereinafter County or Employer, and the Milwaukee Deputy Sheriff's Association, hereinafter Association, are parties to a collective bargaining agreement that provides for the final and binding arbitration of grievances. The Association, with the concurrence of the Employer, requested the Wisconsin Employment Relations Commission to assign a Commissioner or staff member to resolve a dispute between them regarding a three-day disciplinary suspension of CB. Commissioner Susan J.M. Bauman was so appointed. Hearing was held on May 13, 2009, in Milwaukee, Wisconsin. The hearing was not recorded. The record was closed on August 4, 2009, upon receipt of all post-hearing written argument.

Having considered the evidence, the arguments of the parties, the relevant contract language, and the record as a whole, the Undersigned makes the following Award.

ISSUE

There are no procedural issues. The parties stipulated to the substantive issue as:

Was there just cause to suspend the Grievant? If not, what is the remedy?

BACKGROUND and FACTS

CB has worked as a deputy sheriff in the Milwaukee County Sheriff's Department for 16½ years. In February 2008¹ she was assigned to the Small Claims Court, Room 400 of the Courthouse. On Thursday, February 21, there were approximately 200 people in the courtroom. While engaged in arranging a new court date for some individuals, CB was advised by people in the courtroom that there was a fight in the hallway. As she made her way towards the door, she could see individuals later identified as Katrina Scott and Tammy Ward with their heads very close to one another, with Scott's head moving back and forth. CB called to them to step away from one another and calm down. Although Scott moved back, Ward raised her arm towards Scott, screamed, swung her arms, and stated that she was going to get Scott.

CB secured Ward to a wall and called for assistance. Scott left the area. Other deputies arrived to provide assistance, including finding Scott and bringing him back to be interviewed. CB interviewed Ward who advised that Scott had head-butted her. CB's supervisor, Sergeant Gary Coleman arrived and asked CB about the situation. Based on CB's verbal report to him that she was not sure if the parties actually engaged in head-butting, Coleman determined that Scott and Ward would be "ordered in" to the D.A.'s office at a later time rather than be arrested on the scene. They were given order in cards, released and escorted from the building.

Coleman told CB and Deputy MS who had reported to the scene and interviewed a number of people to write reports on the incident. By the following day, CB produced a hand written report in which she indicated that she saw a head-butt take place. She gave it to Sergeant Coleman who made corrections based on the fact that on the scene CB had not indicated she had seen a head-butt take place.² That day, Coleman placed the report in CB's mailbox for her to make the corrections. CB contends that she never got the report back from Coleman.

¹ All dates are 2008 unless otherwise indicated.

² Apparently CB decided, based on what Ward told her, and seeing a red mark on Ward's head (which she did not mention during the investigation or in her report), that a head-butt did take place.

CB became seriously ill over the weekend and was out of work, not returning until March 5, about a week and a half later. The order in date occurred during her absence. Upon her return, she found no report in her mailbox, either for corrections or typed and ready for signature. She asked MS about the case and was told that the matter had been dismissed by the DA. CB did not follow up with the missing report, and almost immediately was transferred to the Criminal Justice Facility (CJF).

Sgt. Coleman ordered Deputy MS to go to the D.A.'s office on the order-in date, February 26. At that time, all MS had was her own supplemental report from the February 21 incident generated because of her response to CB's request for assistance and interviews of witnesses Underwood and McClenton which referenced argument but no physical contact. She did not have CB's report and was not aware that Ward claimed she had been head-butted. Both Ward and Scott appeared at the order in.

Deputy MS spoke with Assistant District Attorney Karshin who advised that she could not charge the parties, based on the information that she had. MS then told Ward and Scott that everything was being dismissed and they could go. Ward had an exchange with MS in which Ward requested money for appearing at the DA's office. MS refused and brought Ward to speak with Coleman. Ward was adamant that Scott should have been arrested. Coleman told Ward that since he was not there when the incident happened and the stories conflicted, he did not feel he could make an arrest. Coleman gave Ward a citizen complaint packet.

Ward subsequently filed a citizen's complaint, on or about April 23. Captain Eileen Richards of Internal Affairs interviewed CB, MS, Coleman and others who had reported to the scene. Coleman admitted that the matter had "slipped through the cracks" and that he forgot about it until the citizen complaint was brought to his attention. At that point, Coleman contacted CB at CJF and ordered her to submit her report. As she had kept a copy of her original report, she was able to do so quite readily. CB was subsequently ordered to take the file to the D.A.'s office, whereupon both parties were cited for Disorderly Conduct.

Captain Richards issued a report which concludes:

Both Deputy CB and Sergeant Coleman forgot about this case and its' status. This caused the reports not to be completed in a timely fashion and the case not run through the D.A. Office in a timely fashion.

Sergeant Coleman was issued a written reprimand for inefficiency, competency, and failing to follow through to see that the reports were submitted in a timely fashion.

At the hearing in this matter, Captain Richards testified that Deputy CB's performance was wanting in that she was unable to articulate what she saw with respect to the head-butt and deferred to her Sergeant. Additionally, upon her return to work on March 5 it was her responsibility to follow-up with her supervisor, Coleman, not a fellow officer, MS, to determine the status of the case and what had occurred at the order in.

On November 10, 2008, Sheriff David A. Clarke, Jr., issued a three day suspension to CB. The reasons for the suspension are as stated in the Attachment to the Notice of Suspension as follows:

On Thursday, February 21, 2008 Deputy CB was assigned to Small Claims Court in room 400 of the courthouse. Sergeant Coleman was the supervisor on duty. There was an incident outside room 400 with two parties who had recently left Small Claims Court. Deputy CB heard the arguing and responded. She observed two parties (Ms. Ward and Mr. Scott) arguing in the hallway. They were screaming and yelling at each other and at one point their heads came together.

Deputy CB separated the parties and Mr. Scott went to the elevator to leave. Ms. Ward continued to scream and attempt to get to Mr. Scott. Deputy CB subsequently held Ms. Ward up against the wall and handcuffed her. Ms. Ward was causing a disturbance and was being disorderly. Deputy CB interviewed Ms. Ward. Ms. Ward stated Mr. Scott head-butted her.

Sergeant Coleman arrived on the scene and spoke with Deputy CB. She advised him of what had occurred. She states she told him the parties had head-butted each other; Sergeant Coleman states she told him she was not sure if there was any physical contact between the parties. A decision was made by Sergeant Coleman that the parties be ordered in to the D.A. Office. Deputies CB and MS were ordered to write reports. Deputy CB turned her report in the following day. Her report was hand written as she was not trained in RMS yet. Sergeant Coleman made corrections to Deputy CB's report and returned it to her. She states she never received the report back for corrections.

Deputy CB subsequently went out sick and did not return to work until March 5th. She was out of work for the order in date. Sergeant Coleman ordered Deputy MS to report to the D.A. Office because the parties were going to be there. Deputy MS did report and spoke informally to D.A. Karshin explaining that the parties were there, but they had no offense report. The D.A. advised her based on what was stated they would not charge the parties. Deputy MS advised the parties of such and also wrote a supplemental report and turned it in to Sergeant Coleman. Nothing further was done with this case until the citizen complaint was filed.

Lieutenant Kernan inquired about the case after the complaint was filed, which prompted Sergeant Coleman's memory. He contacted Deputy Bailey, who had subsequently been transferred to the CJF. She was ordered to submit her report on this incident. She was then ordered to take the completed file to the D.A. Office. The parties were subsequently cited for Disorderly Conduct.

All charges in this case are **SUSTAINED**. Deputy CB failed to adequately articulate to Sergeant Coleman at the scene that she had observed a head-butt between the parties. She also lost track of the status of the case and her report. She should have inquired with Sergeant Coleman upon her return to work of the status of the case and advised him that she had not received her report back for either corrections or signature. Her lack of follow-through caused a delay in the case being taken back to the D.A. Office for possible charges.

Based on the aforementioned facts in this case, Deputy CB is in violation of the following:

MILWAUKEE COUNTY SHERIFF'S OFFICE POLICY AND PROCEDURE:

1.05.14 – Efficiency and Competence

MILWAUKEE COUNTY CIVIL SERVICE RULE VII (4) (1):

(u) Substandard or careless job performance.

Additional facts are included in the **Discussion**, below.

DISCUSSION

At issue herein is the question of whether Milwaukee County had just cause to suspend CB for three days for events occurring on and in connection with the February 21, 2008 incident. The County contends that CB's failure to clearly articulate her observation of a head-butt to Sergeant Coleman on that date and her failure to follow-up with regard to her written report constitute deficiencies in job performance significant enough to warrant a three-day suspension. The Association contends that CB did not violate any of the rules charged, resulting in no discipline at all, or alternatively, that if a violation is found, the punishment should be reduced to more appropriately fit the type of action and behavior displayed by CB.

The collective bargaining agreement between the parties does not define just cause. Absent a definition of just cause in the labor agreement, or agreement between the parties as to the standards to be utilized, the undersigned adopts a two prong analysis which requires the Employer to establish the existence of conduct by the Grievant in which it has a disciplinary interest and it must then establish that the discipline imposed for the conduct reflects its disciplinary interest.

The Conduct Alleged

The County has alleged that CB violated Milwaukee County Sheriff's Office Rules and Regulations 1.05.14, Efficiency and Competency, and Milwaukee County Civil Service Rule VII, Section 4(1) (u) Substandard or careless job performance: She "failed to adequately articulate to Sergeant Coleman at the scene that she had observed a head-butt between the parties" and "She also lost track of the status of the case and her report." Additionally, she "should have inquired with Sergeant Coleman upon her return to work of the status of the case and advised him that she had not received her report back for either corrections or signature." The result of her failure to follow up "caused a delay in the case being taken back to the D.A. Office for possible charges." In essence, the County contends that CB was inaccurate in her reporting of the alleged head-butt and that she failed to ensure that her report was filed on a timely basis.

Reporting of the Specifics of the February 21 Event

To paraphrase an old commercial, "Did she see or didn't she?" That is the question. Did CB actually see Ward and Scott engage in head-butting, or didn't she? Was she convinced that what she saw was actual head-butting because Ward said that Scott had head-butted her, or did she actually see head-butting take place? What did CB see? What did CB tell Coleman she saw? What did she include in her written report?

The County alleges that CB told Coleman that she thought she saw a head-butt, but she wasn't sure. In her investigative interview with Captain Richards eight months after the incident, CB described the situation as follows:

. . . Um when I talked to Sergeant Coleman, I told him basically that when I came, they were okay in the courtroom, when I came out this is what I observed, was what I saw were the heads coming together, I wasn't exactly sure what that action was until when I go up to them and I, you know, and I, I'm like, you know, I, I wasn't sure what was going on between 'em until I started talking to ah Ms. ah Ward when I started interviewing her, askin' her what, what, what happened out there. And that's when she said, this guy head-butt me, so just from what I observed and what she was saying' you know, I put it together that I observed an head-butt you know him, hih-hi- ah Mr. Scott hitting her in, in the head with his head.

In her written report, filed the day after the event, CB wrote:

. . . I looked up to see what was happening but all I could see was a small group of people blocking the doorway and yelling to me to come quickly for a fight. I ran out into the hall and observed Katraile Scott (M/B, 03/26/80) and Tammy Ward (F/B, 08/30/74) butt heads. Both parties then continued to yell into each others faces. . . .

In February, Coleman returned the report to CB for correction because the declaration in her report that she had observed a head-butt contradicted what she had told Coleman at the scene, which is essentially the same as she told Richards during the investigation.

Based on CB's initial statement to Coleman regarding the incident and his observation that Ward did not have any apparent bruising on her head, Coleman determined that Scott and Ward should be ordered in to the DA's office. Had he been aware that there was actual physical contact or observed any indication that physical contact had occurred, he would have supported the arrest of both persons at the time of the incident. CB, apparently, thought both Scott and Ward should have been arrested. Having been told by Coleman to order them in, CB did what she was told and did not question a superior officer.

The County is, appropriately, concerned that CB did not report the situation to Coleman in the same manner as she described it in her written report. If she had observed a head-butt, and advised Coleman of that fact at the time of the incident, both parties would have been arrested at that time.

At the hearing in this matter, CB stated that she was able to discern a red spot on Ward, at the top of her brow. CB testified that after talking to Ward and seeing the red spot, she concluded that what she'd seen was a head-butt. Significantly, CB never mentioned the red spot in her report of the incident or during the investigative interview with Richards. CB conceded at hearing that she probably should have written her report in such a manner as to separate what she had observed from the conclusion that she drew – that a head-butt had occurred.

The County has a disciplinary interest in ensuring that its deputies properly describe what they see during an incident and that they properly distinguish between what they see and what they conclude about an event. Here, CB's oral report to Coleman differed from her written report because she told Coleman what she saw but wrote a report regarding her conclusion. This situation is properly described as substandard or careless job performance, in violation of Milwaukee County Civil Service Rule VII (4)(1).

Ensuring Timely Filing of the Report

It is undisputed that CB turned in her report on a timely basis. She gave it to Sergeant Coleman on Friday, February 22. Coleman acknowledges that he received the report and that he returned it to CB's mailbox so that she would make changes that would reflect what she actually saw, not what she thought she saw, during the February 21 incident. In the normal course of events, CB would either receive the report for corrections or receive a typed copy of the report for signature a short time after submitting the handwritten report.

Undisputed as well is the fact that CB was off work due to illness for a week and a half following the Friday in question. Unlike Sergeant Coleman who forgot about the incident after the order in day and only followed up on CB's report after Ward's citizen complaint was filed, CB followed up with Deputy MS upon her return to work, on or about March 5. MS erroneously told CB that the matter had been dismissed³ when, in fact, the Assistant DA had said that she would not charge based on the information MS had on the order in day, information which did not include CB's report. Having been advised that the matter was dismissed, and being transferred to the CJF a short time thereafter⁴, CB did not follow up on the matter until after Coleman told her he needed the report sometime after Ward filed her citizen's complaint.

CB testified that she had expected to find the report in her mailbox upon her return, either for corrections or for signature after the report had been typed. When she was transferred to the CJF after 12 years in the Courts, she forgot about the report. Inasmuch as CB had retained a copy of her original report, she was able to immediately provide it to Coleman when he requested a report of the incident in May.

The County, of course, has a disciplinary interest in ensuring that reports of incidents are filed on a timely basis. Here, CB filed her report on February 22, the day following the incident. Coleman made changes to it, and contends that he returned it to CB for those changes to be incorporated before the report was typed. CB never got the modified report from Coleman. She never got any form of the report back until months later, after providing Coleman with a copy of the original report that she had written. After completing the initial report, CB was seriously ill and away from work. Upon her return, she queried a co-worker on the situation. It is the County's contention that she should have asked her supervisor, Coleman, as to the status of the matter. The record is silent with regard to whether others have relied on co-workers in like

³ MS was not disciplined for providing incorrect information to CB and to Scott and Ward. The matter was not dismissed on the order in date. The Assistant DA determined that there was insufficient information to charge at that time, but was fully aware that all the reports were not presented to her on that date.

⁴ The transfer took place on or about March 30.

circumstances. Had Coleman not forgotten about the situation, CB would not be facing discipline for not following up, as he would certainly have checked into the situation. Coleman was issued a written reprimand for his failure to follow through, a violation of Milwaukee County Sheriff's Office Policy and Procedure 1.05.14 requiring efficiency and competence. Any disciplinary action taken against CB for the untimeliness of the report filing and follow up cannot be greater than that taken against Coleman, a written reprimand.

The Appropriate Level of Discipline

As indicated above, the County has a disciplinary interest in both the accuracy of CB's report and ensuring that the report is filed on a timely basis and not delayed in being processed. Here, CB's actions did not meet the County's expectations and discipline is appropriate.

CB is a 16 ½ year employee of the Sheriff's department. The record evidence includes no indication that she has previously been disciplined for any infractions. In fact, with the exception of the written reprimand of Sergeant Coleman⁵, the record provides no evidence of disciplinary action taken by the County in similar or related situations. Accordingly, the undersigned must determine whether the three-day suspension issued to CB is appropriate or excessive.

Given CB's apparently unblemished record with the County, I find that a three-day suspension is excessive. Both CB and Coleman were at fault for failing to follow-up on the report of the February 21 incident. If that failure warrants a written reprimand, CB should receive discipline in excess of the written reprimand inasmuch as her report of the incident stated that she observed something that she did not, in fact, observe. She acknowledged that her report should have been written more clearly to distinguish between what she saw and what she was told. Additionally, CB failed to include any reference to the red spot she allegedly saw on Ward's head.⁶

Under the totality of the circumstances, a three-day suspension is excessive and I find that a one-day suspension is the appropriate discipline in this case.

⁵ In its brief, the Association contends that Coleman got a written warning. The testimony was that he received a written reprimand.

⁶ This "new" information at the hearing presents a conundrum. If she noticed it at the time, why didn't CB include it in her statement to Coleman (who testified that he looked for such evidence and didn't see any) or include it in her written report? Why was it not mentioned during her interview with Richards? If CB made this up at hearing to support the idea that a head-butt had taken place, it puts into place a greater question of the accuracy of her report. Since neither party argued the point, and it does not affect the outcome of this grievance, I make no finding as to the credibility of the statement.

Accordingly, based upon the above and foregoing and the record as a whole, the undersigned issues the following

AWARD

The grievance is sustained in part and denied in part. The County did have just cause to discipline CB, but it did not have just cause to suspend her for three days. As a remedy, CB shall be made whole, including back pay and benefit contributions for two of the three days, and her personnel file shall be modified to reflect a one-day suspension.

Dated at Madison, Wisconsin, this 1st day of September, 2009.

Susan J.M. Bauman /s/

Susan J.M. Bauman, Arbitrator