

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

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

**MONROE COUNTY**

Case 200  
No. 68204  
MA-14154

(Ron Ebert Grievance)

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**Appearances:**

**Attorney Andrew D. Schauer**, Staff Attorney, Wisconsin Professional Police Association, 660 John Nolen Drive, Ste. 300, Madison, Wisconsin 53713, on behalf of the Union.

**Mr. Kenneth Kittleson**, County Personnel Director, Monroe County, 14345 Co. Hwy. B, Rm. 3, Sparta, Wisconsin 54656, on behalf of the County.

**ARBITRATION AWARD**

The Wisconsin Professional Police Association/Law Enforcement Employee Relations Division (herein the Union) and Monroe County (herein the County) have been parties to a collective bargaining relationship for many years. At the of the events pertinent hereto the parties were operating under a collective bargaining agreement covering the period January 1, 2007 through December 31, 2008 which provided for binding arbitration of certain disputes between the parties. On August 8, 2008, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration over the termination of bargaining unit member Ron Ebert. The undersigned was selected to arbitrate the matter from a panel submitted by the WERC at the parties' request. A hearing was conducted on March 17, 2009. The proceedings were not transcribed. The parties submitted briefs on May 1, 2009, and replies on May 29, 2009, whereupon the record was closed.

**ISSUES**

The parties stipulated to the following statement of the issues:

Was the Grievant discharged for just cause?

If not, what is the appropriate remedy?

**PERTINENT CONTRACT LANGUAGE**

**ARTICLE 1. RECOGNITION AND DUES AGREEMENT**

Section 1. The County recognizes the Association as the sole and exclusive bargaining agent for all regular full-time and regular part-time law enforcement personnel having the powers of arrest in the employ of the Sheriff's Department of Monroe County, including employees classified as Patrol Officer, Sergeants, Jailers, and Investigators, but expressly excluding the Sheriff, Chief Deputy, Lieutenants, clerical personnel, and other managerial, supervisory, confidential and executive employees for the purpose of collective bargaining on matters of wages, hours, and conditions of employment.

**ARTICLE 2. MANAGEMENT RIGHTS**

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:

- A. To direct all operations of the County;
- B. To establish reasonable work rules and scheduled of work;
- C. To hire, train, promote, transfer, schedule and assign employees to positions within the County.
- D. To suspend, demote, discharge and take other disciplinary action against employees for just cause;
- E. To relieve employees from their duties because of lack of work or other legitimate reason;
- F. To maintain efficiency of County government operations;
- G. To take whatever action is necessary to comply with state or federal law;
- H. To introduce new or improved methods or facilities;

- I. To change existing methods or facilities;
- J. To determine the kind and amount of services to be performed as pertains to County government operations; and the number and kinds of classifications to perform each service;
- K. To contract out for goods and services;
- L. To determine the methods, means and personnel by which County operations are to be conducted;
- M. To take whatever action is necessary to carry out the functions of the County in situations of emergency;
- N. No Article or Section of this Agreement shall be interpreted to abridge the duties or powers of the Sheriff as outlined in appropriate State Statutes relative to the operation of the jail, the service of papers, or any other statutory duties or powers of the Sheriff's Office.

The County's exercise of the foregoing functions shall be limited only by the express provisions of this Agreement. If the County exceeds this limitation, the matter shall be processed under the grievance procedure.

The Association in recognizing the above listed Management Rights does not waive any of its rights to negotiate on subjects which are held out to be mandatory subjects of bargaining.

### **BACKGROUND**

The Monroe County Sheriff's Department (herein the Employer), among the various duties and tasks for which it is responsible, maintains and operates a jail in Sparta, Wisconsin. The jail is operated by a Jail Administrator who reports to the Sheriff and among his duties is the supervision of the Jailers, who are members of a bargaining unit represented by the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division (herein the Union). Among the responsibilities of the Jail Administrator is to make sure that the jail facility is secure and in good operating order. Pursuant to Sec. 301.37(3), Wis. Stats., the jail is subject to an annual inspection by the Wisconsin Department of Corrections. If deficiencies are discovered in the facility during the inspection and are not subsequently remedied, the facility may lose eligibility for state aid, or be closed until the remediation order is complied with. One of the requirements, set forth in Wis. Admin. Code § DOC 350.12(5) is that cell and fire escape locks and doors are inspected monthly to make sure they are in good working order and that malfunctioning locks and/or doors are promptly repaired.

Ronald Ebert, the Grievant in this matter, was hired as a part-time Jailer for the Monroe County Sheriff's Department in 1991. He was hired and trained by the then Jail Administrator, Lt. Lee Robarge. In 1995, Ebert went to full-time. Until 2001, monthly jail door lock inspections were performed by Robarge and the reports were submitted to the DOC Jail Inspector. In 2001, Robarge retired and was replaced as Jail Administrator by Lt. Mark Pressler, at which time Pressler directed Ebert to perform the lock inspections. Ebert had learned how to do lock inspection by observing Robarge. Pressler directed him to inspect the locks monthly, although not necessarily on the same day, and to lubricate any locks that were sticky. Ebert thereafter developed an inspection report form, which listed the various doors in the jail that needed to be inspected. He would typically inspect locks over a two or three day period, usually during meal times or while distributing medications. Each month he would submit a dated and signed form to the Jail Administrator certifying that he had on that date inspected all the jail locks and that all locks were in working condition.

In 2005, Pressler was replaced as Jail Administrator by Lt. Robert Conroy and Conroy continued to assign lock inspection duty to Ebert. Conroy did not direct Ebert to change his method of reporting or doing inspections and Ebert continued the lock inspections as he had in the past and continued to submit the monthly inspection reports to the Administrator.

In July 2008 the jail was due for its annual inspection. Thus, on June 24 Conroy spoke to Ebert and told him the lock inspections needed to be up to date. The next day Ebert submitted a report stating that he had inspected all locks on June 25 and that they were all in working order. Conroy was suspicious because the report was submitted within one day and was identical in all respects to the previous reports Ebert had submitted. He was also concerned about the fact that in the past Ebert had sometimes submitted multiple inspection forms at the same time. On July 1, Conroy shared his concerns with Sheriff Dennis Pedersen, who asked if Conroy had evidence of wrongdoing on Ebert's part, to which Conroy replied that he did not. Pedersen then instructed Conroy to review the jail security tapes for June 25 to ascertain if Ebert had, in fact, inspected the locks. On July 1, Conroy reviewed the security tapes as directed and it appeared that Ebert had not inspected several door locks on that day. On July 2, Conroy requested and received from Ebert a memo explaining his method of inspecting and lubricating locks to compare with what he observed on the tapes. Ebert stated that his practice was to spray each door lock with a lubricant and then manipulate it with a key several times to make sure it was working. If the lock did not work properly, he called Monroe Detention Services to effect repairs. Conroy then examined more security tapes from June 25, and again determined that Ebert had failed to inspect several door locks. On July 7, Conroy prepared a report of his findings in which he stated that at no time on June 25 did Ebert lubricate or examine door locks in the manner he described on July 2, that he went through several doors, unlocking and relocking them, on that day, but did so for other purposes than inspection and that a number of doors were not examined or opened at all on that day. Conroy submitted his report to the Sheriff. On July 10, Sheriff Pedersen placed Ebert on administrative suspension pending an internal investigation of the matters contained in Conroy's report.

On July 11, 2008, Ebert was interviewed regarding the allegations about falsification of the Lock Inspection Report by Lt. Conroy and Lt. John Smart and was informed of his Garrity rights by Conroy. Also attending the interview was WPPA representative Joe Durkin. Smart subsequently prepared a report summarizing the interview and containing his findings as to potential department policy violations. In the interview, Ebert stated that he did not recall ever having seen the County's 2003 Jail Policy on lock inspections, but had been directed to do the inspections by Lt. Pressler and developed his own report form with Pressler's knowledge and approval. Ebert stated that on June 25 he did not follow the protocol he described in his July 2 memo to Conroy, but did try all the door locks, except the East and West exit doors, the Huber cell door and the Jail Office lock. He stated that he tries all the locks on the same day unless he is interrupted and believed he was interrupted on June 25. He stated that if all locks check out normally he just photocopies the previous report and changes the date. Upon being told by Conroy that the videotape showed several locks that weren't checked, Ebert stated that he may not have checked the Intox Room and Change Up Room, as well. He stated that he tries to do the inspections during mealtimes and that if he has to unlock and lock a door as part of his other duties he considers that to be a satisfactory inspection. During the interview, Ebert also acknowledged that the Lock Inspection Report is an official report, that he was aware that he had not checked some of the doors that were marked "OK," and that doing so could be considered making a false report. He stated that it was possible that he had filed similarly inaccurate reports in the past. When asked what he thought should happen as a result of the investigation he stated that he should be talked to, have explained to him what he should have done and be told not to do it again. Smart concluded that Ebert's actions constituted possible violations of the following County policies:

## Chapter 09 – Disciplinary Procedures

### Code of Conduct

- A. Members of the Monroe County Sheriff's Department **shall not** commit the following acts:
1. Neglecting job duties or responsibilities.
  - . . .
  5. Falsifying records or giving false information to employees responsible for record keeping.
  - . . .
  29. Conduct himself/herself in a manner that will bring discredit on the Department and/or the Monroe County Board or any law enforcement agency.

...

B. Department members **shall**:

1. Conform to and abide by the regulations of the department and observe the state laws and ordinances of the County Ordinances.
6. Perform all duties that may be required of them by their superiors.
23. Be responsible for the care and preservation of department property.

On July 14, 2008, Conroy filed a separate Incident Report covering the interview between himself, Smart and Ebert. In addition to the information contained in Smart's report, Conroy noted that, when asked, Ebert initially stated that he had examined all the jail door locks on June 25 and only after Conroy told him he had evidence to the contrary did Ebert admit that he had not checked all the locks. Conroy also related the substance of interviews with Sgt. Pat Fish and Deputy Stuart Drinkwine, who had also worked on June 25. Both Fish and Drinkwine stated that they were aware that Ebert did monthly lock inspections in the jail, but were unaware whether he did them on June 25. They both also denied that Ebert had asked them to assist with lock inspections on that day.

On July 20, 2008, Conroy presented a statement of his findings regarding the Ebert investigation to Sheriff Pedersen. Conroy's report indicated that Ebert filed a Lock Inspection Report on June 25, 2008 that he knew to be an official report, that he knew the report to be false, that he had failed to inspect at least five doors in the jail which the report stated had been inspected and found satisfactory and that he was aware of the proper procedure for conducting and reporting lock inspections. Conroy concluded that Ebert's conduct constituted possible violations of five separate departmental policies, including 99.03 – Making False Statements, 99.15 – Conduct, 99.22 – Performance of Duty, 99.41 – Evidence, Reports, and Bookings, and 116 – Locks and Locking Systems. He also summarized the entries in Ebert's personnel file. Relevant entries include the following: On November 17, 2007, Ebert was counseled for failure to properly enter inmate property accurately or completely in the file; on December 8, 2007, Ebert was counseled for failing to secure a door in the jail after having received a written directive from the Chief Deputy; on July 7, 2008, Ebert was counseled for making an improper entry in his payroll records.

On July 21, 2008 Sheriff Pedersen met with Ebert and Union Representative Durkin to discuss Conroy's findings. He told Ebert the issue was his filing a false report stating that he had inspected all the jail locks on June 25 when he had not. Ebert apologized and stated it would not happen again, whereupon Pedersen said he would think about how to address the situation and get back to him. On June 24, Pedersen again met with Ebert and told him he felt

he needed to terminate his employment because he could no longer trust him to be truthful and to do otherwise would set a bad example for the other employees. On July 29, 2008, Pedersen provided Ebert with a written notice of disciplinary action. In the notice, Pedersen summarized the investigation and the resulting findings and concluded as follows:

**Administrative Decision:** After considering the investigative findings and our discussion on July 21<sup>st</sup>, it is my determination that disciplinary action is warranted here. Factors bearing on that determination include, but are not limited to, the following:

- The conduct of lock inspections is an important responsibility that has been entrusted to you for a long time. I have a right to expect that when you certify that inspections have occurred, that said certification is truthful. That is especially true because of the position you hold – Deputy Sheriff/Jailer.
- During the first week of January of 2007, as I began my tenure as Sheriff, I met with you and all other department employees. The purpose of the meeting(s) was to communicate my expectations of employees as well as what they could expect of me. During this meeting, I identified one area of conduct that was of particular importance as we move forward; that of honesty and impacted work product. I specifically informed all employees that they shall not produce a work product – report, statement, etc. – that knowingly contains false information. I further communicated that I have zero-tolerance regarding transgressions in this area and that employees who knowingly include false information in such documents will cease to be employed by this agency.
- The record here is clear, I believe, that on June 25, 2008, you did produce a report, a lock inspection report, that you knew at the time of submission contained false information.
- Your conduct in this matter is conduct that is contrary to a number of rules, regulations, policies and procedures, including, but not limited to:
  - Jail Policy 99.03 – Making False Statements
  - Department Policy, Chapter 9(A)(2) – Neglecting job duties or responsibilities;
  - Department Policy, Chapter 9(A)(29) – Conduct himself/herself in such a manner that they will bring discredit on the department...;
  - Department Policy 9(B)(1) – Conform to and abide by the rules and regulations of the Department...;

- Department Policy 9(A)(5) – Falsifying records or giving false information to employees responsible for record keeping;
  - Monroe County Policy Manual, Section 4.62(2)(b) – Dishonesty...
  - Jail Policy 99.15 – Conduct
  - Jail Policy 99.22 – Performance of Duty
  - Jail Policy 99.41 – Evidence, Reports, and Bookings
  - Jail Policy 116 – Locks and Locking Systems
- Applicable rules, regulations, policies and procedures have previously been disseminated to you and are, as well, readily available for review at any time within the workplace.
  - You knew or should have known that your actions subjected you to termination.
  - The falsifying of information in your June 25<sup>th</sup> report may, in fact, be criminal as was determined prior to commencement of the internal investigation. Certainly there exists probable cause to believe so.

**Disciplinary Sanction:** Having concluded that discipline is warranted, I have reviewed your Personnel File in order to better determine the appropriate sanction in this instance. Said review included appropriate consideration of your tenure with the Department. Moreover, the nature of the instant matter, considering the position you hold and the fact that your honesty/credibility is prospectively suspect in an occupation that cannot afford the same, is determinative. Accordingly, termination of employment is warranted. Therefore, you are hereby terminated from employment with the Monroe County Sheriff's Department.

On July 30, 2008, Attorney Andrew Schauer from the WPPA sent a letter to County Personnel Director Ken Kittleson grieving Ebert's termination, seeking a make whole remedy including restoration of his position with backpay and requesting a waiver of the steps of the grievance procedure and advancement of the grievance to arbitration. On August 5, 2008, Kittleson responded denying the grievance and agreeing to waive the grievance procedure and advance the matter to arbitration. This arbitration then ensued. Additional facts will be referenced, as necessary, in the **DISCUSSION** section of this award.

### **POSITIONS OF THE PARTIES**

#### **The County**

The County argues that it had just cause to terminate Ebert's employment. It asserts that the facts of this case establish that the traditional seven standards employed in determinations of just cause have been met.



Ebert could reasonably have been expected to know the probable consequences of his conduct. He was a Deputy Sheriff and it is universally accepted that such persons are held to higher standards than other employees, including an expectation that they will not make false representations. In addition, numerous County and Department policies make it clear that discharge is a consequence of serious infractions. Also, Sheriff Pedersen told Ebert, and the rest of the Department employees, when he took office in January 2007 that termination was a probable consequence of submitting a false report.

There is also no dispute that the rules under which Ebert was disciplined were reasonable. The Sheriff must be able to rely on the truthfulness of the reports that are prepared and submitted by Department employees. The Sheriff conducted a thorough investigation into the allegations and his efforts throughout the handling of the case were fair and objective, which the Union does not dispute. As a result of the investigation, substantial evidence was discovered that Ebert had in fact falsified the Lock Inspection Report and committed multiple policy and rule violations in so doing. Ebert admitted failing to inspect all locks, but said that he did most inspections during mealtimes and filed his report in the afternoon on June 25. In fact, Department key-logging software determined that, contrary to Ebert's testimony, his report was prepared at 10:14 a.m. on June 25 and that all he did was change the date on a previous report. Further, contrary to Ebert's assertions that he was unusually busy on June 25, the Sheriff conducted a time study that determined that Ebert actually spent 55.4% of his shift that day in the jail office.

It is also clear that the decision to terminate Ebert was not discriminatory. At hearing, the Union questioned the Sheriff about the case of an employee named Raiten, who was not terminated, apparently to draw a comparison to this case. The Raiten case is not comparable. In that matter, Raiten did not submit a false official report. The Sheriff testified that had he done so he, too, would have been terminated. The Union cannot draw comparisons to dissimilar fact situations. Finally, there is no question that falsifying the Lock Inspection Report was a serious infraction. Ebert was in a position of great responsibility and the Sheriff must be entitled to rely on the veracity of his employees. Given Ebert's position, therefore, and the fact that he had been counseled six times in the previous two years, discharge was reasonable under the circumstances.

### **The Union**

The Union maintains that the County did not have just cause to terminate Ebert. In the first place, the Union asserts that Ebert's conduct was not serious enough to justify summary discharge, but warranted progressive discipline. Arbitrators classify workplace misconduct into categories of more and less serious offenses. Where offenses are less serious, discipline is considered excessive if it is disproportionate to the degree of the offense. In this case, Ebert's actions may be characterized as similar to careless workmanship. Ebert created the Lock Inspection report form in response to a direction from Lt. Pressler six years earlier. Over time it failed to fulfill its purpose because it did not indicate the dates on which locks were inspected and it was not updated to reflect changes in technology. Ebert probably bears some

responsibility for creating an insufficient form, but the form was never questioned by his superiors. This is similar to careless workmanship and warranted progressive discipline. Ebert did his job in keeping with how he was trained to do it and stated he would be willing to work with management to improve his performance. It cannot be argued that his reporting procedure would constitute gross dereliction of duty.

The Union further maintains that the Lock Inspection report does not constitute willful untruthfulness. Ebert testified that he did not intend the report to mean that he did all the lock inspections on June 25. The report form, which the County approved, did not require Ebert to indicate the date and time that each lock was inspected. He merely checked each lock and certified at the end that the inspections were done and the locks were functioning. It is a fair interpretation to say that the report indicates that the inspection was done and that all the locks were working. The County does not claim that any of the locks were not working, only that they weren't all inspected on June 25. The County never told Ebert that all locks had to be inspected at the same time and he stated that in performing his duties over the course of the month he was satisfied that all locks were working. There would only be a case for falsification if in fact one or more of the locks was not working and the evidence shows that was not the case. The phrase on the form, "I did lock inspections on \_\_\_ date," is ambiguous and, as such Ebert should be given the benefit of the doubt. Ebert's testimony is supported by that of former Jail Administrator Robarge, who stated that when he worked for the County the date and signature on the Lock Inspection Report was not intended to mean the locks were necessarily checked in that date.

Ebert had engaged in the same inspection routine for six years. It is reasonable to assume that he thought his method was reasonable and proper. It is of no significance that Ebert could not remember at the time of the interview when he had inspected particular locks. Further, his faulty recollection cannot support the discharge, which was based on his allegedly filing a false report. It is clear that during the investigation the County was not trying to get to the truth of the matter, but was only looking for an excuse to terminate Ebert.

It is also clear that the County failed to properly train Ebert. The Jail Administrator and Sheriff could have directed Ebert as to how the inspections were to be done, but failed to do so. An employee cannot be required to adhere to rules which have not been clearly explained and an arbitrator will not sustain discipline for conduct the employee did not know was prohibited. Ebert had performed inspections for six years without ever having his methods questioned and it was never proved that anything on the form was objectively false. It was unreasonable to discharge him on this basis. Just cause requires a specific knowledge of the rules that either proper training or progressive discipline would have provided. Neither occurred here.

It is well within the power of the Arbitrator to reduce the level of discipline. Ebert had not been previously disciplined or warned that his conduct would trigger termination. The WEC has consistently held that an arbitrator may take mitigating factors into account when considering the proper level of discipline. Here, Ebert has been a Deputy Sheriff for 17 years.

His personnel record contains no actual discipline of any kind. He also was described by Robarge as a very dependable employee. These factors should be taken into account in determining whether Ebert should have been terminated.

### County Reply

The County notes the Union's argument that Ebert was given credit for inspecting several locks on June 25. In fact, he never inspected any locks on that day in the manner that he described to Lt. Conroy. The County merely gave him credit for "inspecting" the locks on doors that he had to pass through during the course of the day while performing other duties. He did open and close many doors that day, but at no time was he observed actually purposely inspecting any locks. The County also takes issue with the notion that there is anything ambiguous about the statement, "I did lock inspection on 6/25/08." To argue otherwise is absurd.

The Union attempts to minimize Ebert's offenses by characterizing them as misunderstandings or miscommunication. The public does not regard falsification of records by law enforcement officers to be insignificant. The Sheriff testified to the high standards such employees are held to and, in fact, Ebert's actions might constitute crimes under Wisconsin law. Trivializing Ebert's actions dismisses the notion of public trust and the level of accountability the public has a right to expect from such employees.

The Union points out that Ebert had been submitting reports in the same way for six years in an apparent attempt to show that it was unreasonable to assert that the instant report was problematic. The fact is, in this case evidence was uncovered that Ebert knowingly filed a false inspection report. This was misconduct and should be treated as such. It is irrelevant that in the past the Jail Inspector found no fault with lock inspections. His certification only confirmed the fact that the Sheriff had designated someone to inspect the locks and did not verify the accuracy or truthfulness of the reports. The Inspector and the Sheriff had a right to assume that the reports were accurate.

The Union also incorrectly argues that the Sheriff did not conduct a complete investigation because he did not determine whether the locks were, in fact, working. This fails to note the obvious fact that the discovery occurred several days after the report was filed so it was not possible to determine retroactively the status of the locks on June 25. Further, the point of the investigation was not that the locks weren't functioning, but that Ebert said he had inspected them when he had not.

In summary, Ebert submitted a report on June 25 stating that all jail locks had been inspected on that day, which was false. He knew, at the time he submitted the report, that it contained false information and admitted it was false. He admitted that he was less concerned with the jail inspection and more concerned with just getting the report over and done with and submitted to the Jail Administrator. He claimed he did lock inspection on the 25<sup>th</sup> during mealtimes, but County records proved he prepared the report at 10:00 a.m., before any meals

were served. He claimed he was inordinately busy on June 25, but records proved he spent most of his shift on that day in the jail office. His testimony at the hearing was completely inconsistent with his statements during the investigation and was not credible. He was aware of County rules and policies making falsification of records a serious infraction and was aware that discharge is appropriate for serious infractions. He had also been told by the Sheriff specifically that dishonesty was a dischargeable offense. In short, the record is clear that Ebert committed the offenses with which he was charged and that discharge was the appropriate response.

### **Union Reply**

The Union reiterates that the County never defined for Ebert the meaning of the term “lock inspection” and left it to Ebert to define for himself. The County relies on the testimony of Robarge to the effect that he showed Ebert how to work the locking system, but he never taught Ebert how to inspect the locks. He was given credit for doing some inspections on June 25, but was never shown how to do inspections and the answer to the County’s rhetorical question, “how could he know the locks were operating properly on 6/25 unless he inspected them on 6/25?” is that he knew because he had worked them in the days leading up to and including June 25. The County brought forth no evidence that any locks were not, in fact, operating properly on June 25. If they wanted more detailed assurances, they should have trained him to inspect and certify the locks on the same day and they did not.

It is clear from the County’s brief that it took statements Ebert made during the investigation interview out of context to make it look like Ebert was lying or being evasive when, in fact, his statements were straightforward and true. Further, his testimony regarding the lock inspection is entirely consistent with the statements he made during the interview. Further, flaws in the process were pointed out by Union Representative Durkin during the interview. Conroy stated that they would be taken into consideration, but instead the County appears to suggest that it was Ebert’s responsibility, not the County’s, to review and critique the lock inspection process. The County continues to deny its responsibility for having sound procedures and for training Ebert properly how to execute them. The County asserts that how lock inspections are performed is not at issue. The Union asserts that how Ebert did inspections and whether the County’s expectations were explained to him is at the heart of a just cause case. Further, the Sheriff testified that the physical inspection procedure was appropriate, even though Lt. Conroy stated otherwise. The County left it to Ebert to determine how locks were to be inspected and never provided him with any oversight. In so doing, the County waived any right to tell him later he was doing it wrong. If the County had created the inspection procedure it could determine if Ebert was performing it properly. Because it did not it could not tell Ebert he was doing it wrong. The Union has proven that the words of the certification form were not false and that it was the process, and not, Ebert that was at fault for the problem here.

The process of inspection and the process of reporting are inextricably intertwined. The Sheriff should be concerned that not all locks were noted on the report form and that the date

and time of inspection of each lock did not have to be noted. This, however, was the fault of management, not Ebert, and the County should not be allowed to make him a scapegoat for its own management failures.

### DISCUSSION

In a disciplinary case, such as this one, it is the employer's burden to prove that it had just cause for issuing the discipline to the employee. The standards required to establish the existence of just cause have been characterized by arbitrators in a number of ways, but for the purposes of this case it is sufficient to state that a finding of just cause requires that the employer prove that 1) the employee engaged in conduct for which discipline is warranted and 2) the degree of punishment is commensurate with the seriousness of the offense. Particular scrutiny to the level of discipline is warranted because, in discharging Ronald Ebert, the County departed from the normal progression of discipline, since Ebert did not have any record of prior discipline in his personnel file.

The essence of the County's case is that Ebert, who is responsible for monthly inspections of all locks in the Monroe County jail, filed a false Lock Inspection Report on June 25, 2008. The report form filed by Ebert on that day lists the various door locks to be inspected and after each listed door lock on the report is the notation "OK." The attestation at the bottom of the report states: "I did lock inspection on 06/25/08 and all locks are in working condition. Ron Ebert" The circumstances surrounding the preparation and filing of the report raised suspicions in the mind of Jail Administrator Robert Conroy so, after consultation with the Sheriff, Conroy conducted an investigation, which included viewing security tapes from the jail taken on June 25 and interviews with Ebert and two other deputies on duty that day. As a result of the investigation, Conroy concluded that Ebert had not, in fact, inspected all locks on June 25 and that his failure to do so, while certifying in his report that he had, constituted potential violations of numerous County and Department rules and policies. After receiving Conroy's report and meeting with Ebert, Sheriff Dennis Pedersen terminated Ebert's employment. Pedersen cited the importance of accurate lock inspections, as well as the need to be able to rely on the honesty and credibility of Department employees, as the reasons for his decision.

The Union disputes the existence of just cause for discipline and cites several factors in mitigation of Ebert's conduct. It notes that there is no policy requiring that all locks must be inspected on the same day and that Ebert testified that his practice since 2002 has been to inspect the locks over a period of two or three days, so the fact that he did not examine all the locks on June 25 is immaterial. In this regard, his certification was intended to mean that all locks were functioning on June 25, not that he had inspected them all on that day. It further notes that, while he did not purposely inspect the locks on June 25, he did manipulate several of the locks while going through various doors in the course of his other duties and that the County agreed that this constituted adequate inspection. It argues that Ebert was never given specific training as to how and when inspections were to be done, so he should not be held accountable for not following a procedure he was not given instruction on, and, further, that

the County's lack of oversight as to inspection and reporting procedures are largely to blame for the problems with the June 25 report. It characterizes Ebert's actions as a minor infraction meriting, at most, a lesser degree of progressive discipline, and asserts that his long employment with the County and good work history should warrant some consideration.

As to the first prong of the just cause analysis, I find that Ebert did commit acts for which discipline was warranted. He was the Department employee entrusted with the responsibility for determining that all jail locks were in working order. It is hard to overstate the importance of this function. In a secure facility, such as a jail, which often houses dangerous criminals, it is of paramount importance that the door locks be functional. If they do not lock properly, security is compromised. On the other hand, if they do not open properly, in the event of an emergency it might not be possible to evacuate the facility, potentially endangering all those within. Further, the County has a statutory obligation to certify to the Department of Corrections that the jail locks are regularly inspected and are in good working order, otherwise it faces potential sanctions and penalties. Seen in this light, one cannot contend that a failure to properly inspect and report the status of the jail door locks is an insignificant matter. Further, as noted by the County, there are numerous County policies and rules regarding the need for truthfulness in reporting and adhering to proper procedures, and the disciplinary consequences for failure to comply. This was also underscored by the Sheriff in individual meetings with all Department staff and it is not credible that Ebert would have been unaware of his responsibilities in this regard.

I note Ebert's explanation that he typically does inspections over a period of days and that his certification was not intended to mean that he had actually inspected the locks on June 25, but I find his testimony in this regard to not be credible. Most telling in this regard is the fact that he made no reference to this practice when he was interviewed by Lt. Conroy and Lt. Smart on July 10, 2008. At that time, he initially told Conroy and Smart that he had inspected all locks on June 25, in the manner he described in his July 2 memo to Conroy. When challenged by Conroy, he changed his statement and said that he did not deliberately inspect the doors, but considered them inspected if he opened and closed them while performing other duties. Then, when Conroy told him that a review of the security tapes showed he had not checked some doors at all, he stated that he might have missed a couple. Only after a series of questions and answers indicating that Conroy and Smart were aware of the doors that had not been checked, did Ebert acknowledge that, in fact, several locks had not been checked. At no time did he tell Conroy and Smart that he did inspections over a period of days, or that some of the doors might have been checked on a previous day. I also note that Conroy only told Ebert on June 24 that he needed to do an inspection, so the notion that he had been checking locks for several days leading up to June 25 is also not believable.

Ebert also testified that he checked locks during the dinner meal on June 25 and might have missed some doors due to the busyness in the jail that day and being interrupted while doing the inspections, and that his report was prepared and filed that afternoon. County records established, however, that Ebert spent over 55% of his shift in the jail office on June 25. Further, the County information systems software established that Ebert prepared his report at

10:14 a.m. on that day and that all he did was change the date on a previously filed report. Thus, the report was completed long before dinnertime, when he claimed he checked the locks. Considering the totality of the evidence, one is forced to conclude that Ebert did not, in fact inspect a number of jail locks after being told to do so by Conroy, but certified that he had. Given the importance of the lock inspection protocol, as noted above, his haphazard approach to this duty was tantamount to gross negligence. Further, his evasiveness in his interview with Conroy and Smart supports the perception that he was well aware of the seriousness of his mistakes, and so was unwilling to admit them until confronted with evidence that he could not refute. There is no question in my mind that Ebert did fail to properly inspect the jail locks on June 25 and filed an inaccurate Lock Inspection Report, either of which alone would warrant discipline.

As to the degree of discipline, I also find that under the circumstances of this case discharge was warranted. First, as noted above, I find this to be a most serious lapse on the part of the Grievant, amounting to at least gross negligence. This, in my view, was a most serious offense in the setting of a jail facility and I cannot dispute the County's view that it constituted a "capital offense." I also note the justifiable importance the Sheriff places on the honesty of his employees, the fact that he had previously impressed this point on the Grievant and the fact that on at least three occasions in the recent past Ebert had been counseled for improperly reporting information or failing to properly secure jail doors. The trust factor was a significant consideration in the Sheriff's decision and likewise confirms my view that the Sheriff had justifiable concerns about whether he could count on Ebert to properly perform inspections or file accurate reports going forward. Taking all of this into account, discharge was an appropriate response to Ebert's actions in this case, notwithstanding his years of service in the Department.

In so finding, I do not disregard the Union's argument that Ebert was improperly trained and supervised. Ebert stated that he learned how to do lock inspections from his previous supervisor, Lt. Robarge and Robarge testified that his method of inspecting the locks was substantially the same as Ebert's. The important factor however, was not how Ebert performed the inspections, which the County conceded was adequate, but that he did not perform the inspection in this case and conceded that he might not have performed complete inspections in the past. A further consideration, as previously noted, is the fact that Ebert initially claimed to have done the inspection and only acknowledged his failure to do so, when confronted with evidence of the fact. I also note that there seems to have been minimal oversight and follow-up on the lock inspection process. In the future, the County should incorporate more supervision into the lock inspection protocol and promulgate a reporting mechanism that clearly delineates the dates and time that all locks in the jail are inspected, rather than merely accepting the reports at face value with minimal review. Nevertheless, this function is so central to the purpose of a jail and the duties of a Jailer that Ebert cannot credibly claim that his lack of awareness of the importance of performing thorough lock inspections or of filing accurate reports was due to the failure of his supervisors.

I also note the Union's argument that in discharging Ebert the County engaged in disparate treatment. Its principal argument in this regard centers on a four-day suspension issued to another employee, Laird Raiten, on May 29, 2008. Raiten, a Patrol Deputy, was suspended for failing to promptly respond to a call from Dispatch to answer a domestic abuse incident and improperly reporting his whereabouts while en route to the scene. Little factual information about the Raiten incident, or the employee's previous work history was entered into this record. The Sheriff did testify, however, that an important consideration was the fact that Raiten did not file a false official report and that his misstatements were attributed to a faulty memory. Ebert, on the other hand filed an official report, which he knew to be false, contemporaneous with his actions. To my mind, the Raiten incident is sufficiently distinguishable from that in this case, and the facts surrounding it are so sparse, as to make a meaningful comparison between the two impossible. Furthermore, there is no evidence in this record that there was any underlying desire on the Department's part to target Ebert or treat him differently than any other similarly situated employee.

For the reasons set forth above, and based upon the record as a whole, I hereby enter the following

**AWARD**

The Grievant was discharged for just cause. The grievance is denied.

Dated at Fond du Lac, Wisconsin, this 9th day of September, 2009.

John R. Emery /s/

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John R. Emery, Arbitrator