

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 678
No. 68647
MA-14296

(Roy Felber Suspension)

Appearances:

Graham P. Wiemer, Vanden Heuvel and Dineen, S.C., Attorneys at Law, 410 East Washington, Slinger, Wisconsin 53086 for the labor organization.

Timothy Schoewe, Deputy Corporation Counsel, Milwaukee County, Milwaukee County Courthouse, Room 303, 901 North Ninth Street, Milwaukee, Wisconsin 53233, for the municipal employer.

ARBITRATION AWARD

The Milwaukee Deputy Sheriffs' Association and Milwaukee County are parties to a collective bargaining agreement which provides for final and binding arbitration of disputes arising thereunder. On February 10, 2009, the Association made a request, in which the County concurred, for the Wisconsin Employment Relations Commission to appoint a member of its staff to hear and decide a grievance over the application and interpretation of the terms of the agreement relating to discipline. The Commission appointed Stuart D. Levitan to serve as the impartial arbitrator. Hearing in the matter was held on October 15, 2009, consisting exclusively of the submission of a stipulated record. The parties filed written arguments, and on December 30, 2009 informed the arbitrator that they each waived their right to file replies.

ISSUE

The parties stipulated to the following issue:

Was there just cause to suspend Deputy Roy Felber for one (1) day? If not, what is the appropriate remedy?

APPLICABLE RULES PROVISIONS

Milwaukee County Sheriff's Office Rules

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 qualifications and knowledge of the criminal law.

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

1.05.46 Written Reports

Reports must be accurate, complete and must contain all pertinent information.

202.05 Confidential Information

202.05.0 Purpose

The purpose of this policy is to make certain that personnel understand the necessity to maintain the confidentiality of agency business and operations in order to ensure that an accurate dissemination of information is provided to those inquiring about organization business.

202.05.1 Policy

It is the policy of the Milwaukee County Sheriff's Office (MCSO) that all Sheriff's Office employees shall keep official agency business confidential. They shall not impart it to anyone except those for whom it is intended, or as directed by the Sheriff or his designee, or as ordered by law. No member of the agency shall speak on behalf of the organization unless authorized to do so by the Sheriff or his designee.

Members shall not maintain at their residence or any other location outside the Milwaukee County Sheriff's Office any official Milwaukee County Sheriff's Office file, report or memo or duplicate thereof, whether in manual or electronic format without permission of the Sheriff or his designee. Members shall be allowed to keep copies of reports that they have personally authored and their personal performance evaluations; all other Milwaukee County Sheriff's Office records are restricted to official purposes only.

No member shall release information containing any record, teletype, or photograph without prior permission from the Sheriff or his designee or unless required by law.

2.02.05.3 Compliance

Employees are required to comply with the provisions of this policy. Supervisors are responsible for ensuring that employees are in compliance with this policy. Appropriate disciplinary action will be taken against employees who violate this policy.

2.02.17 Conduct of Members

Members shall not engage in any conduct or activity, on or off duty, which discredits or impairs the efficient and effective operation of the Milwaukee County Sheriff's Office or its members.

Milwaukee County Civil Service Rules
Rule VII, Section 4(1)

- (1) Refusing or failing to comply with departmental work rules, policies, or procedures.

OTHER APPLICABLE PROVISIONS

DIRECTIVE NO. 09-03, INTERNAL AFFAIRS DIVISION MANUAL:

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OFF DUTY INCIDENTS

The Internal Affairs Division shall be notified upon receipt of information that any sworn member of the Milwaukee County Sheriff's Office has been implicated in an off-duty incident where an alleged rule violation may have occurred or is personally involved in a criminal investigation being conducted by this agency or any other law enforcement agency.

...

BUREAU PERSONNEL SHALL COMPLETE AND RETURN THE INTERNAL AFFAIRS DIVISION CASE AS SOON AS POSSIBLE. IT SHALL BE THE RESPONSIBILITY OF THE BUREAU DEPUTY INSPECTOR TO MONITOR COMPLETION OF INTERNAL AFFAIRS DIVISION CASES IN A TIMELY MANNER. AT THE FEBRUARY 5, 1997 STAFF MEETING, IT WAS DIRECTED THAT RULE VIOLATION COMPLAINTS SHALL BE COMPLETED WITHIN 45 DAYS AND ALL OTHER INTERNAL AFFAIRS DIVISION CASES SHALL BE COMPLETED WITHIN THIRTY DAYS. (FORMATTING in original)

...

BACKGROUND

This case involves the suspension of a deputy sheriff, president of the Milwaukee Deputy Sheriff's Association, for transcribing the statement of another deputy who the Sheriff knew, or should have known, was physically incapable of writing due to an injury which was the subject of the report.

On Friday, November 30, 2007, Milwaukee County Sheriff's Deputy Andrew Bilda was out with a gang of fellow law enforcement officers at Rosie's Water Works bar in downtown Milwaukee.¹ Bilda, employed by the Sheriff's Office since January, 1999, had worked the 6 a.m. to 2 p.m. shift in the Detention Services Bureau that day. At about 10:00 p.m., a driver, reportedly drunk, ran his car into other cars in the bar parking lot. Alerted to the situation, Bilda and some others went outside, but when Bilda saw there were others dealing with the situation, he went back inside while the Milwaukee Police Department was called. When police officers had not arrived after a lengthy wait, the driver reportedly became belligerent and resistive. Bilda, along with others, went back outside and, after purportedly identifying himself to the driver as a deputy, attempted to subdue and restrain him. In so doing, Bilda fell, hitting his right hand on a railing and breaking two bones. Bilda, who is

¹ Bilda and many of the other officers he was with are members of a group calling themselves the "Renegade Pigs."

right-handed, went to St. Mary's Hospital, where his hand was placed in a cast. After leaving the hospital, Bilda went back to Rosie's, later calling in on his way home to report that he would not be fit for full duty in the morning due to his injury.

Early Saturday, the Sheriff's Office opened an investigation into the activities of Bilda and other personnel Friday night. At 11:41 a.m., Captain Michael Rewolinski of the Internal Affairs Division formally notified Bilda he was the subject of an investigation for possible violation of Sheriff's Office Rules and Regulations and County Civil Service Rules. At 11:43 a.m., Rewolinski began his investigative interview of Bilda, who was represented by Association President Deputy Roy Felber and Association attorney Rachel Pings. The interview lasted for 22 minutes. After giving his statement, Bilda determined that since he had been injured after placing himself on duty, he should submit a formal report.²

Because he could not write the report with his hand in a cast, Bilda asked Felber to physically write the report as dictated by him, which Felber agreed to do. Felber, a Milwaukee County Deputy Sheriff since April, 1997, has been President of the Association since 2004. Felber was not on duty at the time, and did not seek compensation from the county for his activities that morning. The two worked on the statement in the offices the association maintains in the county Safety Building. Prior to Bilda signing and submitting the report, Pings reviewed it and suggested certain sentences be clarified. Bilda and Felber worked out those clarifications, which Felber transcribed after whiting out the original phrases. Bilda reviewed the report in its final form before signing and submitting the report. The report did not note that it had been dictated by Bilda, reviewed by Pings and transcribed by Felber. It read as follows:

On Friday 11/30/07, while relaxing with friends at Rosie's Bar, 1111 N. Water Street, Milwaukee, WI (414)274-7213, I was asked by the bar owner to come outside to help with a situation outside the bar. There was an intoxicated individual who was trying to leave the scene of an auto accident caused by him. The bouncers from Rosie's were trying to detain him, while waiting for the Milwaukee Police Department. They had called 911 asking for police assistance but where (sic) told by the 911 dispatcher it would be awhile before they got there. So I identified myself as a Milwaukee County Deputy Sheriff, thus putting myself on duty, and informed the suspect to remain calm for the arrival of MPD. The suspect then began to fight, causing me to fall down and hit my right hand on a railing, causing pain in my right hand. I then went to St. Mary's Hospital to receive medical attention to my right hand at which time the ER staff informed me that my right hand was broken.

² Both the Association and the County state in their briefs that Bilda was "ordered" to write and submit an incident report. This conclusion follows Felber's testimony that he understood that to have been the case, although he didn't know who had given the order. However, when asked during his Internal Affairs interview on August 25, 2008 if anyone had ordered him to write the report, Bilda replied, "I don't believe so." Also, although Bilda referred to the document in at least one of his investigative interviews as an Injury/Illness Report, the document is identified as an Incident Report.

A photocopy of the report shows it was written in very precise block letters, with an unintelligible scribble for the signature, which Bilda affixed with his left hand on December 2. The areas which had been whited-out and written over are evident.

On December 4, 2007, a Milwaukee County Injury/Illness/Accident Loss Report Form was prepared which stated that Felber had fractured his right hand and gave the following narrative:

On 12/4/07, Deputy Bilda reported an off duty incident to ~~Captain Rewolinski~~ in which he fractured his right hand. Deputy Bilda stated, per his report, that this incident occurred on 11/30/07 at 2200 hours. Deputy Bilda was assisting in effecting an arrest of a suspect who became resistive, resulting in Dep. Bilda fracturing his right hand. (~~strike through~~ in original)

The report noted that it was prepared and signed by Lt. Kerri McKenzie, and that Bilda was “unavailable to sign.”

On December 7, 2007, Rewolinski conducted another investigative interview of Bilda, who was represented at that time by association representative Sgt. Richard Graber. That interview included this colloquy:

Rewolinski: What I’m gonna (do) now, let you view your copy of your injury/illness Report that you submitted to Lieutenant McKenzie. Anything on there that is not factual?

Graber: Did you have somebody write this for you?

Bilda: Yeah.

Graber: Okay.

Rewolinski: Did you dictate the content to that person, because your name’s on the bottom as signin’ it?

Bilda: I read, no they, I wrote it up and they or they wrote it up and I read it and I said, yeah that’s –

Rewolinski: Anything on there that’s not factual?

Bilda: Um –

At that point, Bilda and Rewolinski began a colloquy about the details of the narrative in the report. Rewolinski asked no further questions about the identity or activities of “that person” who physically wrote the report.³

There is nothing further in this record about the investigation into Bilda’s activities in Rosie’s parking lot on November 30, 2007.

On August 19, 2008, the Sheriff’s Internal Affairs division opened an investigation into Felber’s conduct regarding the submission of Bilda’s report. On August 25, 2008, Capt. Eileen Richards formally notified Felber he was being investigated for possible violation of Sheriff’s Office Rules 1.05.14, 1.05.18, 202.17 and two County Civil Service Rules, (4)(1)(l) and (y). On August 25, 2008 and October 29, 2008, Richards conducted formal, tape-recorded interviews of Felber (for 85 minutes and seven minutes, respectively). On August 25, 2008 and October 10, 2008, she also interviewed Bilda as part of her investigation into Felber’s conduct (for 11 minutes and three minutes, respectively).⁴

During the first investigative interview of Felber, it took Richards only a few minutes of questioning to establish that Bilda had asked Felber to take down his statement because he couldn’t write with his broken right hand in a cast. There then occurred this exchange:

Richards: Okay. Anywhere on the report there, does it ever mention that this report was dictated?

Felber: No, it does not.

Richards: And why wasn’t that put on there?

Felber: Probably a lapse on my part.

Richards thereafter continued the investigative interview for about another hour.

On November 11, 2008, Richards issued an Investigative Brief in IA Case #08-290, in which she concluded that Felber had violated the following rules of the Milwaukee County Sheriff’s Department:

1.05.14	Efficiency and competence
1.05.18	False information
1.05.46	Written reports

³ This exchange is somewhat confusing as to which report Rewolinski is referring. The Dec. 4 report, which is an Injury/Illness/Accident Loss Report Form, indicates it was submitted to Lt. McKenzie, but it was not signed by Bilda. The Dec. 2 report, which is an Incident Report concerning “Injury/While on Duty,” does not note any involvement by Lt. McKenzie, but was signed by Bilda. When Rewolinski refers to a report with Bilda’s “name’s on the bottom as signin’ it,” I have to conclude he is referring to the Dec. 2 report.

⁴ For the two August 25 interviews, Richards was accompanied by Capt. Lorraine McCabe.

202.05 Confidentiality
202.17 Conduct of members

By virtue of allegedly violating those provisions, Felber was also deemed to have violated Milwaukee County Civil Service Rule VII, Section 4(1)(l) and (y).

On January 12, 2009, Sheriff David A. Clarke, Jr., determining that Felber had indeed violated all of the above rules except 1.05.18 and Rule VII, Section 4(1)(y), suspended him for one day, without pay. Clarke attached the following Attachment to County of Milwaukee Notice of Suspension:

Deputy Bilda was involved in an off duty incident on November 30, 2007. He subsequently submitted an injury/illness report relative to this incident. Deputy Felber physically wrote the report that was submitted by Deputy Bilda. Deputy Bilda's hand was in a cast and he claims he was unable to physically write the report. Deputy Felber stated he assisted in the completion of this report by writing down what was told to him by Deputy Bilda. It is unclear if this was a word-for-word dictation of a report, or if Deputy Felber wrote a synopsis of what was told by Deputy Bilda. The report contains no statement as to Deputy Felber writing the report as stated by Deputy Bilda.

There are whiteout areas within the context of the report. These changes were made after the report was reviewed by DSA Attorney Pings and prior to the report being signed by Deputy Bilda. Changes were made to the report based on the review by the attorney. Deputy Bilda signed the report and submitted it as factual. Deputy Bilda cannot recall 100% if he was present when the changes were written on the report. There is no notation on the report that it was reviewed by the DSA Attorney prior to submitting it.

Deputy Felber is the president of the Deputy Sheriff's Association. The report was written in the Union office in the Safety Building. Neither Deputy Bilda nor Deputy Felber had permission from the Office of the Sheriff to allow any person outside of the agency to review any official report.

The Workmen's (sic) Compensation forms for this incident were completed by Captain McKenzie. No supervisor was contacted to assist Deputy Bilda with the completion of the injury/illness report.

NOTE: Additional charges of 1.05.46 Written Reports and 202.05 Confidentiality have been added to this case based upon information found during the investigation.

The charges of 1.05.18 False Information and Civil Service Rule VII, (4)(1)(y), "Falsification, modification or unauthorized alteration of any county record or

report” was **NOT SUSTAINED**. There is no evidence to prove that the report filed was not a factual account as stated and signed by Deputy Bilda.

The charges of 1.05.14, Efficiency and competence; 1.05.46, Written reports; 202.17, Conduct of members, 202.05, Confidentiality and Civil Service Rule VII, (4)(1)(l), “refusing or failing to comply with department work rules, policies or procedures” are **SUSTAINED**.

Deputy Felber should have excused himself from assisting Deputy Bilda with any reports relative to (t)his incident at Rosie’s Bar. He had knowledge that the incident was under investigation by Internal Affairs and also the Milwaukee Police Department and as the Deputy Sheriff’s Association President should have maintained a distance from the completion of any reports relative to this incident. There could be a perceived conflict of interest that Deputy Felber should have realized by placing himself in this position. In addition to this, he should not have allowed to DSA Attorney to review any reports relative to this incident without prior approval of the Office of the Sheriff.

Deputy Felber should have contacted a supervisor or had Deputy Bilda contact a supervisor if he required assistance in completing reports. At a minimum, he should have documented in the report the fact that he did assist by physically writing the report and that he had the DSA Attorney review the report prior to Deputy Bilda signing and submitting it.

Based on the aforementioned, Deputy Roy Felber is in violation of the following rules:

MILWAUKEE COUNTY SHERIFF’S OFFICE RULES:

- 1.05.14 - Efficiency and Competence
- 1.05.46 - Written Reports
- 202.05 - Confidentiality
- 202.17 - Conduct of Members

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

- (l) Refusing or failing to comply with departmental work rules, policies or procedures.

Acting under his constitutional and statutory authority, Clarke further directed that notice of Felber’s suspension be read at roll calls on January 12, 2009.

The Association filed a timely grievance, and the matter was advanced to arbitration.

POSITIONS OF THE PARTIES

In support of its position that the grievance should be sustained, the labor organization asserts and avers as follows:

Just cause does not support the rule violations as charged. As to the first charge, the county has offered no evidence that Felber's actions contributed to the inefficient operation of the department in any way, or even that the actions constituted police work at all. As Association President, Felber represented Bilda throughout the internal affairs investigation, including writing the incident report as dictated by Bilda. Even assuming that this constituted police work, the county has offered no evidence to determine whether Felber performed this work consistent with the ability of other equivalently trained deputies.

Rule 1.05.46 requires reports to be accurate, complete, and to contain all pertinent information. The report was signed and submitted by Bilda. Even assuming that there should have been a notation that the report was dictated by Bilda and transcribed by Felber, that was not Felber's responsibility, in that he simply wrote down what Bilda dictated. If anyone violated this rule, it was Bilda.

Felber did keep official agency business confidential. As the Association's attorney, Pings had already participated in the CID investigation of Bilda, and already knew the contents of the report. And, again, even if there was a violation, the department charged the wrong guy, in that the report was signed and submitted by Bilda. If allowing Pings to review the report constituted releasing confidential agency business, it was Bilda who should have been charged, not Felber.

Felber did not discredit or impair the efficient and effective operation of the department, and the county has offered no evidence that he did, making this allegation ludicrous at best.

Even if it is found that Felber violated one or more rules, there is still no just cause for the level of discipline imposed. The department opened its investigation eight months after Bilda submitted his report, contrary to the Sheriff's directive that investigations be completed within 45 days. Further, there is no evidence Felber has been previously suspended, or disciplined for an occurrence such as this. The Department could have addressed this situation through verbal counseling, a verbal warning, or some other way without suspending Felber. To suspend Felber for this incident violates the basic principle of discipline that employees are entitled to know in advance what is expected of them. The county has submitted no evidence proving that this discipline was appropriate given Felber's employment history and the facts of this situation.

The discipline should be rescinded in its entirety, or at least reduced to a more appropriate level.

In support of its position that the grievance should be denied, the county asserts and avers as follows:

In this instance Felber was representing a deputy who was a potential disciplinary target of an internal affairs investigation, and also a potential target of a criminal investigation. During the investigation, the other deputy was ordered to provide a written report documenting the incident. The other deputy claimed he could not write due to a hand injury, and Felber assisted him in the composition of the report, which was actually generated in the union's office. Initially, Felber said he merely wrote down what was told to him by the other deputy; Felber became the actual author of the report. Prior to submission, Felber had the draft report reviewed by the union lawyer; upon submission, the report contained corrections, changes, and areas that were obliterated due to the use of "white out." Based on his training and experience, Felber admitted that any report dictated to another should contain an entry to that effect.

There is nowhere present in the report any sort of notation that the report was reviewed by anyone outside the agency, nor that the author was someone other than the deputy who was ordered to submit the report. This has import in that the report was apparently redrafted or edited by someone outside the agency, and thus the report became someone else's. Felber was also evasive in explaining who made the white out corrections and whether they actually represented the real statement of the other deputy.

Neither the other deputy nor Felber could say whether the report was the verbatim recitation of the other deputy, who could not say with certainty that he was even present when the changes to the report were made. Felber admits that his conduct in writing the report was a lapse on his part. He also stated that his actions were not as a union representative but as a friend to the other deputy, and that he did not have permission to share official reports with anyone outside the agency.

Departmental personnel are familiar with departmental rules. Felber does not deny his familiarity with the rules.

There was no representation that the report was drafted by anyone other than the subject deputy, nor that the report was shared with persons outside the agency. Changes to the report were not made by the putative author or even with his assent. Felber also admitted to amending the report in his own words, which was not noticed in the report. There was no claim that the words were those of the reporting deputy.

Felber first claimed that the report was in fact the exact words of the reporting deputy, but later recanted and admitted that the amended portions were in fact his, Felber's, words and not those of the reporting deputy. Again, this was not signaled anywhere in the report.

The report was not in the words of the person ordered to write it. The facts of the scrivener being other than the reporting deputy was nowhere noted. Nor was it noted that it was, in any fashion, dictated. Further, prior to submission, the report was shared with persons outside the agency. Report accuracy was compromised. Confidentiality was breached. Policies and procedures were not followed by a veteran deputy. The violations were nowhere denied. The imposition of discipline is necessary.

DISCUSSION

Milwaukee County Deputy Sheriff Roy Felber, acting in a personal and representational capacity and while off duty, transcribed an accurate Incident Report statement of Deputy Andy Bilda, which Bilda, who was physically incapable of drafting, signed and submitted.⁵ More than a year later, Clarke, knowing that Bilda had been physically incapable of preparing the report and statement due to an injury which was the subject of the report, violated his own directive on the timeliness of internal investigations and suspended Felber for his role in the preparation of Bilda's report.

Simply noting that narrative should be enough to establish that this discipline was without just cause and must be reversed.

The Sheriff's statement of facts in his attachment is substantially accurate, but his analysis is profoundly wrong. Clarke contends that as Association President, Felber should have declined to help Bilda once he learned that there was consideration of discipline. That just makes no sense – as the association accurately notes, Felber had helped represent Bilda at the initial investigative interview and would of course be involved in representing him in any disciplinary matter. So what could it matter that he also wrote down Bilda's statement? I do not understand how Clarke concludes this “could be a perceived conflict of interest....” Similarly, association attorney Pings had also already been representing Bilda during the investigative interview; Bilda did not need the Sheriff's approval to have Pings review his statement before its submission.

Felber stands convicted of the following charges:

1.05.14 Efficiency and Competence

⁵ In dismissing the charges of 1.05.18 False Information and Civil Service Rule VII, (4)(1)(y), Milwaukee County Sheriff David A. Clarke declared that there was “no evidence to prove that the report filed was not a factual account as stated and signed by Deputy Bilda.”

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

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

As the association correctly notes, just cause requires the county to prove all elements of its case. Here, the county has not even established that Felber was actually performing police work when he helped Bilda prepare his report on December 1, 2007. He was not on duty, he was not paid, and he was not writing a report. Essentially, Clarke has disciplined Felber for Felber’s activities as Bilda’s friend and association representative. Moreover, the county has offered no evidence on what it means for deputies to “adequately perform reasonable police work.”

1.05.46 Written Reports

Reports must be accurate, complete and must contain all pertinent information.

The fact that Bilda’s statement was taken by Felber was certainly pertinent information. A responsible supervisor reviewing the report, knowing that Bilda’s writing hand was in a cast, would be right to wonder how it was drafted. An explanation would have avoided confusion before it began. The failure to note this would constitute a violation of 1.05.46; as Felber acknowledged, the failure to so note was a lapse on his part. However, as the association argues, this was not Felber’s report, it was Bilda’s. I do not understand, and the county has not explained, how Felber can be disciplined for deficiencies in Bilda’s report.

202.05 Confidentiality

202.05.0 The purpose of this policy is to make certain that personnel understand the necessity to maintain the confidentiality of agency business and operations in order to ensure that an accurate dissemination of information is provided to those inquiring about organization business.

First, it appears the intent of this section is more public relations than actual confidentiality. However, even read broadly, there is nothing in this narrative that satisfies this charge.

The county claims that when Felber worked with Pings to review and redraft some sentences in Bilda's statement, he imparted information to someone not authorized to receive it. This charge is wrong on two equally dispositive grounds.

First, as noted above, Pings already knew the information the Sheriff now claims was confidential, by participating in the ongoing investigation. It's hard to keep information confidential from someone who already knows it. As Bilda's representative, and as his attorney, Pings had absolute access to assist in the preparation of Bilda's report and statement, which she did. Having already been providing representation, Pings was already aware of all the salient facts. Moreover, as noted, the report was Bilda's; there is nothing in the record to establish that Felber acted independently of Bilda in letting Pings review Bilda's statement before its submission.

2.02.17 Conduct of Members

Members shall not engage in any conduct or activity, on or off duty, which discredits or impairs the efficient and effective operation of the Milwaukee County Sheriff's Office or its members.

Finally, the Sheriff convicted Felber of engaging in conduct "which discredits or impairs the efficient and effective operation" of the Milwaukee County Sheriff's Office or its members.

It is not Felber who has done that. It is the Sheriff's Office which inexplicably failed to follow its own administrative policies mandating that internal investigations into alleged rule violations be completed in a timely manner.

Bilda submitted his statement about the events of November 30, 2007 on December 2. On that date, his supervisors should have been aware that he could not possibly have drafted the handwritten statement, since his (dominant) right hand was in a cast. Certainly, they knew as of December 7, when Rewolinski learned from Bilda himself that somebody else had physically written down Bilda's statement (a matter Rewolinski did not pursue at the time). Yet the Sheriff's Office showed no interest in how the report came to be drafted until it inexplicably opened a formal internal affairs investigation more than eight months later.

Internal Affairs opened its investigation of Felber on August 19, 2008, 261 days after the Sheriff's Office knew, or should have known, that Bilda did not personally prepare the report he submitted. Even assuming an August 19, 2008 starting date for the 45-day period, that still set an October 3 deadline for Internal Affairs to complete its investigation. Lt. Richards conducted an 85-minute investigative interview with Felber on August 25, followed a few minutes later by an 11-minute interview with Bilda. Those two interviews elicited the salient points – that Bilda had Felber take down his statement and submit a report because he was physically unable to do so; that Pings reviewed the statement, and suggested areas which

needed clarification, which Felber and Bilda then drafted; that Bilda reviewed the completed report before signing; that the report did not note the roles Felber and Pings played in its preparation, and that Felber acknowledged that he should have noted his role. Yet Richards continued her interviews on October 10 (Bilda for three minutes) and October 29 (Felber for seven minutes). Richards did not complete her investigation until she issued her Investigative Brief on November 11, 2008 – 84 days after August 19. The Sheriff then took another 60 days to review and act on Richards' report.

As Directive 09-03 establishes, it has been the adopted policy of the Sheriff's Office since 1997 that Internal Affairs investigations into "rule violation complaints shall be completed within 45 days" Yet the Sheriff's Office did not even begin the investigation until 261 days after the event; it took another 84 days to complete the investigation; and another 60 days for the Sheriff to determine punishment. That's 345 days to complete a process that Internal Affairs was to finish in 45.

The county has offered no explanation, justification or excuse for this total and unambiguous failure to abide by the clear mandate of Directive 09-03. Missing a mandatory deadline by 300 days does not do credit to the efficient and effective operation of the Milwaukee County Sheriff's Office.

The Internal Affairs office in a law enforcement department is of vital importance in maintaining integrity, professionalism and public confidence. An aggressive investigation into an altercation outside a bar in which a deputy who had been drinking is injured is entirely appropriate, and nothing in this award is meant to deter the Sheriff's Office from conducting timely and comprehensive investigations into allegations of misconduct. But an untimely and excessive investigation into an association official who merely transcribed the statement of a deputy who could not physically write is not appropriate, and the disciplinary suspension which resulted from that investigation was without just cause.

Accordingly, on the basis of the collective bargaining agreement, the record evidence and the arguments of the parties, it is my

AWARD

That because the one-day disciplinary suspension of Deputy Roy Felber was without just cause, the grievance is sustained. As remedy, Milwaukee County shall take the following steps:

1. Rescind the discipline issued to Deputy Roy Felber;
2. Make Deputy Felber whole for all wages and benefits lost due to the one-day suspension;

3. Cause the following statement to be read at all roll calls at which the notice of Deputy Felber's suspension was read:

“An impartial arbitrator employed by the Wisconsin Employment Relations Commission has determined that the one-day suspension of Deputy Sheriff Roy Felber, issued January 12, 2009, was without just cause. That suspension has been rescinded, and Deputy Felber is being made whole for all lost wages and benefits. The arbitrator also found that the Sheriff's Office violated its own Internal Affairs Manual by taking 345 days to complete its investigation, contrary to the 45-day deadline mandated by Directive No.09-03.”

Dated at Madison, Wisconsin, this 18th day of March, 2010.

Stuart D. Levitan /s/

Stuart D. Levitan, Arbitrator