

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

RUSK COUNTY

and

RUSK COUNTY DEPUTY SHERIFF'S ASSOCIATION

Case 125

No. 69102

MA-14479

(Peter Jones Discharge Grievance)

Appearances:

Mindy Dale, Attorney, Weld, Riley, Prenn & Ricci, S.C., 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the County.

Andrew Schauer, Staff Attorney, Wisconsin Professional Police Association/LEER Division, 660 John Nolen Drive, Suite 300, Madison, Wisconsin 53713, appearing on behalf of the Association.

ARBITRATION AWARD

The above-captioned parties, hereinafter the County and Association, respectively, are parties to a collective bargaining agreement which provides for final and binding arbitration of grievances. Pursuant to the parties' request, the Wisconsin Employment Relations Commission appointed the undersigned to decide the above-captioned grievance. A hearing was held on January 28, 2010, in Ladysmith, Wisconsin, at which time the parties presented testimony, exhibits and other evidence that was relevant to the grievance. The hearing was transcribed. The parties filed briefs and reply briefs whereupon the record was closed April 22, 2010. Having considered the evidence, the arguments of the parties, the applicable provisions of the agreement and the record as a whole, the undersigned issues the following Award.

ISSUE

The parties stipulated to the following issue:

Was there just cause to terminate the employment of Deputy Jones? If not, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS

The parties' 2009-2011 collective bargaining agreement contains the following pertinent provisions:

ARTICLE III – MANAGEMENT RIGHTS

Section 3.01: Except as expressly modified by other provisions of the contract, the Employer possesses the sole right to operate the County and all management rights repose in it. These rights include, but are not limited to the following:

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- (c) To suspend, discharge, and take other disciplinary action against non-probationary employees for just cause.

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ARTICLE XI – DISCIPLINE AND DISCHARGE

Section 11.01: Non-probationary employees shall not be disciplined or discharged without just cause. Non-probationary employees and the Association shall be notified, in writing, of any discipline, discharge, or suspension and the reasons therefore.

BACKGROUND

The County operates a Sheriff's Department. The Association is the exclusive collective bargaining representative for the Department's deputy sheriffs. Peter Jones was a deputy sheriff with the County from 1999 until his discharge which was effective July 2, 2009. This case involves his discharge.

Members of the Sheriff's Department are subject to the rules and procedures of the Department and are required to abide by these rules and regulations. The job description for a deputy sheriff includes the following essential functions:

2. Conduct criminal investigations, including obtaining search/arrest warrants, gathering and preserving evidence, and apprehending suspects.
3. Gather information in order to prepare clear and concise reports of these investigations and activities.

...

9. Have knowledge of civil process laws and department practices.

...

The Wisconsin Department of Justice (DOJ) oversees the Transaction Information for the Management of Enforcement (TIME) System. The TIME system is used by various law enforcement agencies to communicate with each other and to access information such as criminal histories, driver's license information, vehicle information, etc. DOJ requires that all data received through the TIME system be used only for "valid law enforcement purposes." The County also has a policy governing access to, and use of, the TIME system. Deputy Jones was trained on using the TIME system and knew it was only to be used for valid law enforcement purposes. In Rusk County, dispatchers have access to the TIME system at all times through the communications center. Deputies have access to the internet version of TIME (referred to as eTIME) and to mobile data terminals in certain squad cars.

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While he was a deputy sheriff, Jones received seven letters of commendation. In 2001, he was formally recognized as the Rusk County "Deputy of the Year".

Also while he was a deputy sheriff, Jones received eight counseling letters from different supervisors for a variety of performance-related matters. One of the later counseling letters was for deficiencies and omissions in a stolen car report (October 18, 2007).

The October 18, 2007 counseling letter involved a stolen vehicle investigation where the grievant failed to provide sufficient facts in his report to indicate that a crime had been committed and failed to conduct proper interviews of witnesses and suspects. That case also involved an issue regarding whether certain individuals had permission to drive the vehicle and whether that permission had been subsequently revoked. After the grievant's initial report in the matter was forwarded to the District Attorney, the District Attorney sent it back to Chief Deputy Hahn because of difficulties she was having in deciphering the information for purposes of drafting a criminal complaint. Chief Deputy Hahn reviewed the report and, in a follow-up memo to the grievant, noted the following deficiencies: there was no prosecution request; the report did not state the probable cause for the requested charges and did not provide adequate facts; the report did not state when the vehicle was stolen, where it was stolen from, the circumstances of the theft, or when the last use of the car occurred; the report did not include interviews of various individuals connected with the incident; and as a result of the incident, an individual was arrested and taken into custody, but the report failed to contain any facts indicating that the individual actually committed the crime.

In addition to the counseling letters noted above, the grievant had also received the following formal discipline. On January 18, 2008, Jones received a letter of reprimand for

failing to complete required training in a timely manner. On February 1, 2008, Jones received a letter of reprimand and a four-day suspension for having a subject arrested before obtaining probable cause and conducting a complete investigation. [Note: Additional information concerning this matter is found in the next paragraph.] The record indicates that prior to the filing of a grievance challenging this disciplinary action, the parties met and mutually agreed to hold the four-day suspension in abeyance. As a result, Jones did not serve the four-day suspension, but it still remained in his personnel file. On April 10, 2008, Jones received a letter of reprimand and a one-day suspension for failing to appear for a scheduled court security overtime shift. Jones served this one-day suspension.

The February 1, 2008 discipline referenced above involved a check on the residence of an adult male for a potential bond violation. The adult male was not to have contact with any juvenile females under the age of 18. The grievant's report indicated he had seen a female under the age of 18 at the residence, but his report did not provide the female's name, date of birth or any other identifying information. Although the grievant failed to verify that the female was, indeed, under age 18, he nevertheless had the adult male arrested for violating his bond. The grievant's actions resulted in probable cause and timeline issues for the District Attorney's office because once a person is arrested without a warrant, the individual must appear before a judge or a magistrate within 48 hours. Typically, a person arrested during the week can make an appearance the next day, but if a person is arrested on a Friday night or Saturday, as was the case in this incident, the 48 hours expired before the court opened on Monday. That makes it imperative for the investigating officer's report to adequately state the elements of probable cause because the report is read over the phone to a judge, who then bases his or her determination of whether probable cause was met solely on the officer's documentation. In the February 1, 2008 incident, the required probable cause elements were not substantiated by the grievant's report. The grievant's letter of reprimand provided in pertinent part:

You acknowledged that by not gathering more information about this juvenile, you did not conduct a complete investigation. You also acknowledged that probable cause is to be based upon facts, not mere suspicion. You acknowledged that in recent months, Chief Deputy Hahn had sent you an E-mail pointing out the importance of having the facts to show probably cause before an arrest is made. You acknowledged that you did not have sufficient facts to prove the elements of the crime.

FACTS

Brenda Jones, hereinafter referred to as Brenda, is the wife of Deputy Peter Jones. She lives in Ladysmith, Wisconsin. Brenda's son is Ryan Taylor, hereinafter referred to as Ryan. In April, 2008, Ryan's fiancé was DeAnn Hookstead, hereinafter referred to as DeAnn. Ryan and DeAnn had a child together, Dylan Taylor, who was born in January, 2008.

On April 9, 2008, Brenda co-signed a car loan for DeAnn so that DeAnn could purchase a 2004 Hyundai Sonata. The loan for the 2004 Hyundai was made through Hesser Hyundai of Janesville with Citizen's Auto Finance (CAF) of Sacramento, California, as the lienholder. The vehicle was registered and titled in both Brenda's and DeAnn's names (i.e. both their names were listed on the title). The car title states: "The person, firm or corporation named on this Title is the lawful owner of the vehicle described, subject to any Security Interest (liens) shown." Thus, the car title listed both Brenda and DeAnn as "lawful owners" of the car. The title did not identify one individual as the "primary" owner and the other as the "secondary" owner. It makes no such distinction between them. After the car was purchased, DeAnn possessed it. At that time, she resided in Janesville, Wisconsin.

In September, 2008, DeAnn and Ryan ended their relationship. Custody issues subsequently arose between them concerning their infant son, Dylan.

In October, 2008, Brenda attempted to serve DeAnn with papers to establish custody and visitation of her grandson, Dylan.

On October 23, 2008, while on duty, Deputy Jones ran an eTIME system vehicle query on a vehicle registered to Jason Biegemann. At that time, Biegemann was living with DeAnn. Deputy Jones was not investigating a law enforcement complaint involving Biegemann, so he had no valid law enforcement purpose for running this inquiry.

On January 19, 2009 (all dates hereinafter refer to 2009), CAF notified Brenda that they (CAF) had not received any payments for three months (i.e. November and December, 2008 and January, 2009). Brenda was further advised that the account had been transferred to their collections department and if payment arrangements were not made by January 23, the vehicle would be put up for repossession. Brenda provided CAF with the last contact information she had for DeAnn (which was that DeAnn was living in Jefferson County, Wisconsin with her boyfriend, Jason Biegemann).

On that same day (January 19), while on duty, Deputy Jones ran an eTIME system query on the Hyundai Sonata registered to his wife (Brenda) and DeAnn Hookstead. At that time, Jones was not investigating a law enforcement complaint involving either Hookstead or his wife (Brenda), so he had no valid law enforcement purpose for running this inquiry.

On January 23, Brenda called CAF and was told that the vehicle would be put up for repossession as of January 26. Brenda then attempted to contact DeAnn personally and through DeAnn's known family, but was unsuccessful.

On January 28, 2009, Brenda called the repossession company, Advance Recovery, and discovered that they did not have the correct address for DeAnn. Brenda provided them with the same contact information for DeAnn she had previously provided, namely the address for Jason Biegemann in Jefferson County, Wisconsin. Brenda asked Advance Recovery to contact her when the vehicle was recovered so she could pay all past due loan amounts and make arrangements to take possession of the vehicle.

On January 30, Brenda spoke with someone at Advance Recovery and learned that the only addresses CAF had provided for the vehicle were Brenda's address in Ladysmith and DeAnn's old Janesville address. Brenda then provided them with the same contact information for DeAnn that she had previously provided (namely the address for Jason Biegemann in Jefferson County, Wisconsin).

On February 1, Brenda, Ryan and Dylan traveled to Mauston, Wisconsin to deliver Dylan to DeAnn. During their meeting, Brenda asked DeAnn if the car had been repossessed. DeAnn responded that it had. Brenda then gave DeAnn a Wisconsin Title and License Plate Application (form MV1) to sign. The MV1 form is the form used to apply for a new title. On its face, it states that certain fees must be paid in conjunction with filing. It also states: "Pay title fee if you are changing the owner(s) of the title." Brenda had completed part of the form prior to giving it to DeAnn to sign. The part she had completed listed her (i.e. Brenda) as the sole owner of the 2004 Hyundai Sonata. Both Brenda and DeAnn signed the form. DeAnn then left with Dylan, and Brenda and Ryan returned home to Ladysmith. Brenda kept the MV1 form which DeAnn had signed in her possession and did not file it with the Wisconsin DOT. The reason Brenda did not file the MV1 form with the DOT was because she wanted to have the car in her possession before she filed the form with the DOT. Brenda and her husband (Deputy Jones) believed that since DeAnn had signed the MV1 form, this made Brenda the sole owner of the car.

Over the next several days, Brenda made two phone calls to the repossession company - Advance Recovery. In both calls, she was told that the car had not yet been located and/or repossessed. In the second call, she was also told that the next time she saw DeAnn for a custody exchange involving Dylan, she (Brenda) should get the license plate of whatever vehicle DeAnn arrives in.

On February 15, 2009, Brenda and Ryan traveled to Mauston, Wisconsin to pick up Dylan from DeAnn. DeAnn arrived in a white sport utility vehicle with Wisconsin license plate 309PHR. Brenda gave this information to her husband, Deputy Jones.

On that same day (February 15), while he was off duty, Deputy Jones ran an eTIME system query on the license plate number which Brenda had documented during that day's child custody exchange. The license plate was for a vehicle registered to Denise Mondry of Eagle, Wisconsin. At the time, Jones was not investigating a law enforcement complaint involving either Hookstead or Mondry, so he had no valid law enforcement purpose for running this inquiry.

Over the next several weeks, Brenda made several more phone calls to the repossession company. In these calls, she gave them the license plate for the car that DeAnn arrived in on February 15. Brenda was also told in these calls that the Hyundai Sonata had not yet been located and/or repossessed.

On Sunday, March 1, Brenda and Ryan traveled to Mauston to deliver Dylan to DeAnn. DeAnn arrived in a Dodge Stratus with Wisconsin license plate 707LMD. Brenda asked DeAnn for the location of the Hyundai Sonata. DeAnn said the car had been picked up. Knowing that the vehicle had not been repossessed (based on her last conversation with the repossession company), Brenda asked DeAnn who picked it up. DeAnn stated as she walked away, "Well, somebody picked it up because I don't have it."

Later that day, Brenda called her husband, Deputy Jones, and asked him to assist her in filing a car theft complaint. Jones, who was on duty, then ran a TIME system vehicle inquiry on the Dodge Stratus via mobile data computer. This inquiry showed that the vehicle was registered to Gordon Biegemann, the father of DeAnn's boyfriend Jason Biegemann. Jones then ran a driver's license inquiry on Gordon Biegemann and found an address for him in Grand Marsh, Wisconsin. Grand Marsh is in Adams County, Wisconsin.

About 3:20 p.m. that day, Deputy Jones directed the Rusk County Dispatch Center to send a teletype to Rock, Adams, Walworth and Jefferson Counties asking that they attempt to locate a stolen vehicle. The teletype indicated that the vehicle was to be repossessed and that the co-owner/operator had been hiding it. The teletype provided four addresses where the vehicle might be located: the Grand Marsh (Adams County) address from the driver's license inquiry on Gordon Biegemann; the Janesville (Rock County) address listed on the vehicle title; the Whitewater (Walworth County) address of DeAnn's parents; and the Rome, Wisconsin (Jefferson County) address of DeAnn's boyfriend, Jason Biegemann.

About 8:45 p.m., the Rusk County Dispatch Center received a teletype from the Adams County Sheriff's Department. That teletype advised that the 2004 Hyundai Sonata was found parked at the Grand Marsh address. The Adams County teletype asked: "What are your wishes as the vehicle is not entered as stolen?" Deputy Jones then called the Adams County Dispatch Center and spoke with Dispatchers Laura Laporte and Hal Quarles. Dispatcher Laporte asked what should be done if DeAnn was present at the address where the vehicle was found, since DeAnn was listed as an owner of the vehicle. Jones responded that Brenda was the "primary" owner and that DeAnn was the "secondary" owner. Jones also said that DeAnn had not made any payments on the vehicle for six months and, as a result, Brenda's credit was "being killed." Jones also said that DeAnn "doesn't want to turn the vehicle over." Dispatcher Laporte then put Jones on hold so that she could talk to her partner, Dispatcher Quarles, about the matter.

While Deputy Jones was still on hold, Dispatcher Quarles took Jones' request to his supervisor, Adams County Lieutenant Dave Carlson. It was Carlson's view that this did not involve a stolen car, but rather was an ownership dispute. Nonetheless, he instructed Quarles to act on Jones' request and if any subsequent problems arose regarding ownership issues, Rusk County would have to deal with them. After receiving that directive, Quarles spoke with Jones and asked him if the vehicle had been entered as stolen. Jones responded that it was being entered (as stolen) "as we speak" and that "the lady is just finishing up her report right now." Dispatcher Quarles then told Jones that once the vehicle was entered as stolen, Adams

County would perform a “hit” confirmation, but requested that Rusk County “send back what you want done” via teletype. [NOTE: A “hit” confirmation verifies that a vehicle is entered as stolen and that corresponding action by law enforcement is warranted]. Jones then responded: “We want it [the vehicle] detained.” Quarles responded that once the vehicle was entered as stolen and Adams County received a teletype confirming what Rusk County wanted done, Adams County would have the vehicle towed and let Jones know which towing company took it.

At about the same time, Brenda filed a theft complaint with the Rusk County Sheriff’s Department. After her written statement was filed, the Rusk County Dispatch Center, at Jones’ direction, entered the vehicle into the Crime Information Bureau system as stolen. Jones then directed the Rusk County Dispatch Center to tell Adams County to impound the vehicle. Jones did not request that Adams County conduct any interviews or assist in the investigation in any other manner.

About 9:30 p.m., the Hyundai Sonata was towed from the Grand Marsh address by a towing company (Harper’s Towing). Afterwards, Jones spoke with a Rusk County dispatcher who told him that the Rusk County Dispatch Center had received a teletype from Adams County advising that Harper’s Towing was in possession of the vehicle in their secure holding area.

On March 3, Brenda wired CAF sufficient funds to bring the loan on the 2004 Hyundai Sonata up to date. The next day, Brenda and her daughter traveled to Harper’s Towing and, after paying the requisite towing and storage fees, obtained possession of the vehicle and drove it to Ladysmith.

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Per the Department’s normal procedure, Jones filed an incident report concerning the matter referenced above. A critical part of the proper protocol when conducting a criminal investigation is that probable cause has to exist before an individual is arrested and charged with a crime. In the Narrative portion of that report, Jones alleged that the elements of the crime of theft had been met against both DeAnn Hookstead and Jason Biegemann (meaning there was probable cause to charge the two with the crime of theft and arrest them). In his report, Jones also formally requested that the District Attorney initiate charges of theft of moveable property against both DeAnn Hookstead and Jason Biegemann pursuant to Sec. 943.20(1), Stats.

Sheriff David Kaminski subsequently reviewed that incident report. After doing so, Kaminski could not understand how Jones reached the conclusion he reached (i.e. that a theft had occurred), given the facts contained in the report. Specifically, Kaminski questioned: 1) whether the vehicle was really stolen; 2) whether Rusk County had proper jurisdiction; and 3) whether the required elements of a crime were present. Kaminski directed Jones to revise his report to provide additional details showing how the (statutory) elements of theft had been met.

In response, Jones wrote: “Elements of 943.20(1) have been met and are spelled out in the PC [probable cause] statement.”

On April 23, 2009, Chief Deputy Hahn met with Jones and discussed numerous concerns regarding the manner in which Jones had conducted the investigation involving his wife’s vehicle. The next day, Hahn issued a memo setting forth several potential violations of County policies and indicating that Jones was being suspended, with pay, until such time as an investigation into the matter could be completed. Thereafter, Hahn conducted an investigation which included a review of numerous reports and other documentation as well as interviews with Brenda Jones, Deputy Jones, Jefferson County Sheriff’s Department Sergeant Paul Wallace, Adams County Lieutenant David Carlson and Rusk County Dispatcher Manly Peterson.

The District Attorney (D.A.) subsequently reviewed Deputy Jones’ request to file theft of moveable property charges against DeAnn Hookstead and Jason Biegemann. On April 28, 2009, the D.A. declined to bring charges against them. She explained her decision in the following memo:

...

I don’t see a crime here. Repossession of the car is the problem of the lien holder and the titled owners. A titled owner is entitled to possession of the car absent a court order and as long as that person doesn’t try to sell encumbered property.

Regardless, there is no venue in Rusk County. The car was never here. Why wasn’t this sent to the county in which the car was allegedly taken from?

Finally, just some food for thought. When I review cases, it is always with the understanding the case could go to trial. I would not take this case to trial because the investigating officer has a serious conflict of interest and is a biased witness and investigator. I would prefer that deputies who are closely related to victims find someone else to investigate the cases.

On June 4, 2009, Sheriff Kaminski and Deputy Hahn conducted a follow-up investigatory interview with Jones.

On June 12, 2009, Sheriff Kaminski filed a formal complaint against Jones pursuant to Sec. 59.26(8)(b), Stats. That complaint, which is also known as the charging document, recommended Jones’ discharge based upon four specific charges: 1) “incompetence in performance of duties – failure to conduct proper investigation and complete accurate reports”; 2) “misuse of TIME system and teletype for personal reasons”; 3) “misconduct in public office”; and 4) “prior discipline”. The complaint also included a factual background of the incident involving Brenda’s vehicle, a specific listing of eight Rusk County policies that were

potentially violated by Jones, and a statement that one or more criminal statutes may also have been violated. This complaint was formally filed with Rusk County Personnel Committee Chair Thomas Costello. Costello then formally notified Jones that the Sheriff had filed a complaint against him and was recommending his dismissal.

The parties subsequently agreed to process Jones' termination via the contractual grievance procedure rather than the statutory standards set forth in Chapter 59, Stats., which governs the discipline and termination of deputy sheriffs in the State of Wisconsin. The parties further agreed to waive the lower levels of the grievance procedure and proceed directly to arbitration, and the Association submitted a formal grievance form to the County on July 15, 2009, challenging Jones' discharge. The parties subsequently proceeded to arbitration on the grievance.

POSITIONS OF THE PARTIES

County

The County's position is that it had just cause to discharge the grievant. As the County sees it, the grievant took the law into his own hands and used his position as a deputy sheriff to track down and take possession of a vehicle co-owned by his wife after the repossession company was unable to locate it. This was a civil matter, not a criminal matter. Long before any theft report was filed, the grievant misused the official law enforcement TIME system to track down individuals and addresses that might be connected to the vehicle's other co-owner. Once the vehicle was located and impounded, the grievant's "theft investigation" essentially ceased. From the very beginning, the grievant's intent was simply to get his wife's car back, not to conduct a formal investigation of a stolen vehicle pursuant to Sec. 943.20, Stats. The County believes the grievant's conduct is particularly egregious in light of the counselings he received in both 2007 and 2008 for similar infractions. Putting all the foregoing together, the County contends it was justified in terminating the grievant because of (1) the manner in which he conducted his wife's stolen vehicle investigation; (2) misuse of official TIME and teletype systems for personal reasons; (3) misconduct in public office; and (4) his past disciplinary history. It elaborates on these contentions as follows.

Before it delves into the facts, the County first addresses the standard which the arbitrator should use to review this discipline. It contends that the arbitrator should use the generally accepted two-part analysis for determining just cause (i.e. (1) did the employer demonstrate the misconduct of the employee; and if so, (2) did the employer establish that the discipline imposed was contractually appropriate). The County believes it satisfied both parts of that test.

In addressing the first part of the just cause analysis, the Employer reviews each of the first three charges it made against the grievant. (Note: It deals with the fourth charge in the portion of its brief dealing with the second part of the just cause analysis). The first charge was "incompetence in performing duties – failure to conduct proper investigation and complete

accurate reports.” According to the Employer, the grievant (1) failed to establish sufficient facts to indicate a crime had been committed; (2) failed to establish that Rusk County was the proper jurisdiction; (3) failed to conduct a proper investigation; and (4) failed to complete the required reports. It elaborates as follows.

The County begins its argument on the first allegation by disputing the grievant’s assertion that the car was stolen. According to the County, that premise (i.e. that the car was stolen) was flawed. It notes that at the time, the only evidence Jones had gathered to substantiate that allegation was: (1) a statement from his wife, Brenda; (2) a Wisconsin Certificate of Title showing Brenda Jones and DeAnn Hookstead as co-owners of the vehicle; and (3) a partially completed Wisconsin Title and License Plate Application form (MV1) showing Brenda Jones as the sole owner (i.e. the form which had been signed on February 1, 2009 by Brenda and DeAnn). The Employer emphasizes that this form was not filed with the Wisconsin DOT, and the appropriate fees paid, until several weeks after Brenda obtained possession of the car. It’s the Employer’s view that until that completed form was filed with the DOT, and the appropriate fees paid, legal ownership of the car remained with both Brenda and DeAnn. Thus, DeAnn remained a legal co-owner of the vehicle as of March 1, 2009. While the grievant claims he thought the signed MV1 form was sufficient to transfer ownership of the vehicle to Brenda, he admitted he never made any inquiries into whether signing the form did, in fact, confer sole ownership of the vehicle to Brenda. He further acknowledged that “in hindsight” such an inquiry should “possibly” have been part of his investigation. The Employer maintains that the ownership of a vehicle is a fundamental fact to be established before an officer can pursue a charge of vehicle theft. Here, the MV1 was signed on February 1, 2009, so the grievant had an entire month to verify the sufficiency of the MV1 before the Hyundai was ultimately reported stolen on March 1, 2009. He failed to do so. The Employer also notes that deputies encounter vehicle ownership disputes on a regular basis. It treats them as civil matters – not criminal matters. The Employer maintains that the Department’s standard operating procedure is that deputies determine vehicle ownership by using either (1) the name that is listed on the vehicle title, or (2) the information shown in DOT records. That means that an unfinished, unfiled and unpaid MV1 form is not sufficient proof to establish vehicle ownership. The County asserts that the fact that DeAnn was still a legal co-owner of the car on March 1 was a red flag challenging the grievant’s assertion that the car was stolen. The Employer asks rhetorically, “how can you steal something you already own?” The County also notes that Adams County also expressed concerns regarding the vehicle’s ownership when the grievant asked them to impound the vehicle. It notes that in her telephone conversation with the grievant, Adams County Dispatcher Laporte asked what should be done if DeAnn was present at the address where the vehicle was found, since DOT records listed DeAnn as an owner of the vehicle and it had not been entered as stolen. After the grievant began talking about “primary” and “secondary” owners, Laporte put him on hold so she could have her fellow dispatcher, Hal Quarles, deal with the matter. After Quarles conferred with his supervisor, the supervisor told the dispatcher to deal with Jones’ request, and leave any ownership problems to Rusk County to sort out.

The Employer argues that another “red flag” regarding the grievant’s assertion that he had probable cause to believe the vehicle had been stolen was this: a lack of jurisdiction/improper venue. For the purpose of context, the Employer notes that the grievant asked the District Attorney to charge DeAnn and Jason with theft under Sec. 943.20(1), Stats. The Employer avers that to prove “theft” under that statute, the following elements must be proved beyond a reasonable doubt: (1) the defendant intentionally takes and carries away, uses, transfers, conceals, or retains possession of moveable property of another; (2) the owner of the property did not consent to same; (3) the defendant knew the owner did not consent; and (4) the defendant intended to deprive the owner permanently of the possession of the property. The Employer contends that in this case, these elements simply were not met. Here’s why. With regard to the first element, the Employer notes that DeAnn remained a legal owner of the vehicle. That being so, she cannot take and carry away, use, transfer, conceal or retain possession of moveable property “of another” if she owns the property. As for the Union’s attempt to focus on “concealment”, it’s the Employer’s view that distinction is irrelevant. Inasmuch as DeAnn was a legal co-owner, she could not conceal or take and carry away the property of another. With regard to the second element, the Employer points out that Brenda consented to DeAnn’s removal of the vehicle from Rusk County. In fact, the vehicle was never kept in Rusk County. DeAnn lived in Janesville when the vehicle was originally purchased, and Brenda gave DeAnn permission to license, title and keep the vehicle in Janesville. With regard to the third element, the Employer notes that DeAnn knew that Brenda consented to the removal of the vehicle from Rusk County and her possession of it. The vehicle’s title clearly shows Brenda as a co-owner of the vehicle with the address of the other co-owner, DeAnn, listed as Janesville. With regard to the fourth element, the Employer contends that there is no evidence that DeAnn intended to permanently deprive Brenda of possession of the vehicle. The Employer points out that even when DeAnn told Brenda on March 1, 2009, that “somebody picked up the car because I don’t have it,” neither Brenda nor the grievant made any further inquiry as to when DeAnn last had the vehicle or who else had access to it. Moreover, there is no evidence that the vehicle, which was found at DeAnn’s boyfriend’s father’s home, was kept there without DeAnn’s consent. Next, the Employer points out that Sec. 968.02, Stats., states that a complaint charging a person with a criminal offense “shall be issued only by a district attorney *of the county where the crime is alleged to have been committed.*” (emphasis added). Here, though, no act or element of the alleged crime occurred in Rusk County: the car was not taken or concealed in Rusk County. The Employer acknowledges that where a property owner resides is not without significance, but it contends it does not serve as the determinant of venue. At the hearing, the Union asserted this was a crime of “concealment”. Assuming for the sake of argument this is accurate, the Employer contends that the proper venue in this case was Adams County, where the vehicle was found (i.e. where DeAnn was allegedly “concealing” it from its “primary owner.”) As the Employer sees it, even under the Association’s own theory of the case, then, Rusk County had no jurisdiction in the matter.

Next, the County contends there were major deficiencies in the grievant’s theft investigation. The first is the grievant’s failure to interview anyone besides his wife. The County characterizes that as inexcusable. It notes that the grievant’s entire investigation

consisted of a verbal report from his wife (later documented in a written statement); an unfinished, unfiled MV1 form; a vehicle title showing both his wife and DeAnn as co-owners; and an eTIME inquiry showing the same co-ownership information. It further notes that despite the fact that the grievant recommended theft charges against them, at no point did he ever interview DeAnn Hookstead or Jason Biegemann (or anyone else for that matter) – nor did he ever request Adams County to do so. All the grievant asked Adams County to do was seize and impound the vehicle. That’s it. He never asked Adams County for assistance in interviewing anyone, or asked for copies of any reports which Adams County generated, never spoke with any of the Adams County officers who impounded the vehicle and never followed up with them to determine what actions they may have taken with respect to the matter. As the County sees it, the grievant’s actions were not consistent with conducting a proper investigation. The County also points out that not only did the grievant fail to interview DeAnn Hookstead and Jason Biegemann, he also failed to interview Gordon Biegemann (the owner of the property where the vehicle was found). The County argues these facts support their contention that he really was not concerned about a proper investigation once the car was located and impounded. The County calls the grievant’s failure to interview Jason Biegemann “especially egregious” in light of the fact that the grievant ultimately recommended Biegemann be charged with theft. Next, the County addresses the grievant’s contention that the reason his investigation basically came to a halt once the vehicle was located and his wife was able to take possession of it was because his wife “was satisfied when she got the vehicle back. . .” The County asks rhetorically: “Was this a formal theft investigation or simply a means of obtaining the vehicle?” The County submits that theft investigations must be carried through to completion, regardless of whether the complainants wish to press charges. Here, it was the grievant who initiated a stolen vehicle investigation, and once a vehicle is entered as stolen, the Sheriff’s Department is obligated to treat it as a crime. With regard to the grievant’s assertion that his wife did not wish to press charges, and therefore the case should not have been forwarded to the District Attorney (D.A.) in the first place, the County maintains that it is not up to the victim to determine whether charges should be brought. That call is made by the D.A.. The County submits that whether or not a case goes forward to the D.A. has no bearing on the duty to conduct a complete investigation. The County also emphasizes that it was the grievant himself who made the referral to the D.A. to charge DeAnn and Jason with theft. According to the County, no one ordered the grievant to make the referral to the D.A.. The County notes that both Sheriff Kaminski and Chief Deputy Hahn testified they were trying to give the grievant the benefit of the doubt when they forwarded the matter to the D.A. for review. They both thought maybe they were misinterpreting something in the grievant’s reports and they wanted to give the grievant the opportunity to have the D.A. support his finding of probable cause. The Employer notes that the D.A. concluded that no crime had been committed. The Employer also calls attention to the fact that outside of this matter, there was just one instance in the department’s history where an officer thought they had probable cause for an arrest, and the D.A. thought they did not. That was the February, 2008 incident where the grievant was given a letter of reprimand for failing to conduct a thorough investigation.

The second deficiency that the County cites in the grievant's investigation is that Department policy states that when there is probable cause to believe a car has been stolen, the deputy is supposed to take the car into custody and hold it as evidence. The grievant didn't do that. Instead, he allowed his wife to go to the towing company, pay the requisite fees and pick up the car. As the County sees it, this demonstrates that his primary motive was to gain a benefit for his wife that would not have been possible were it not for his position as a deputy.

Finally, the Employer contends that the grievant failed to complete the required reports. It notes that in all theft cases, a deputy is required by state statute to have the victim complete two departmental forms: one is the "Statement of Loss and/or Damage" form and the other is the "Crime Victim Information" form. The grievant did not have his wife fill out either form. The County notes that at the hearing, the grievant's excuse for that was that "it slipped through the cracks." The County calls that excuse completely unacceptable, and notes that it can be subjected to a fine for not having those forms completed. Given all the above, it's the Employer's position that the record evidence supports the first of the four charges contained in Sheriff Kaminski's complaint.

The Employer's second charge against the grievant was "misuse of TIME system and teletype for personal reasons." For the purpose of putting this charge in context, the Employer notes the following. First, the Employer notes that the TIME system is used by various law enforcement agencies to access information such as driver's license information, vehicle information, etc. Second, the County notes that it has an internal policy governing access to and use of such information. Third, the County notes that the grievant was trained on using the TIME system and as a result, knew the TIME system was only to be used for valid law enforcement purposes. Fourth, it points out that the March 1, 2009 stolen vehicle entry was the first time any formal law enforcement complaint was filed in Rusk County with respect to the 2004 Hyundai. Having given that background, the Employer argues that the grievant's use of the TIME system on at least three occasions prior to March 1 to access vehicle registration and driver's license information for persons connected with DeAnn Hookstead constituted misuse of the TIME system for personal reasons which is prohibited both by County policy and by the County's TIME system agreement with the DOJ. The Employer's investigation of the grievant's conduct in this matter revealed that the grievant made the following TIME queries dating back to October, 2008. On October 23, 2008, while on duty, the grievant ran an eTIME query on a vehicle license plate registered to Jason Biegemann. Biegemann lived with DeAnn Hookstead. There is no evidence there was any law enforcement complaint being investigated on that date involving either Hookstead or Biegemann. On January 19, 2009 while on duty, the grievant ran an eTIME query on the 2004 Hyundai Sonata registered to his wife and DeAnn Hookstead. This was the date the grievant's wife was informed by the finance company that loan payments for the vehicle were in arrears for the months of November and December, 2008 and January, 2009. There is no evidence there was any law enforcement complaint being investigated on that date involving either Hookstead or the grievant's wife. On February 15, 2009, the grievant ran an eTIME query on a vehicle license plate registered to Denise Mondry of Eagle, Wisconsin. This was a license plate number which the grievant's wife had documented during a child custody exchange on that date.

involving her grandson and DeAnn Hookstead. There is no evidence there was any law enforcement complaint being investigated on that date involving either Hookstead or Mondry. The query was run while the grievant was not on duty, as he did not work on this date. According to the Employer, there was absolutely no valid law enforcement purpose for any of these three eTIME queries. The Employer notes that when the grievant was interviewed by the Employer, he told the Employer that the reason he ran the inquiries was “to find out who Hookstead was associating with.” The Employer submits that “finding out who Hookstead was associating with” did not constitute a valid law enforcement purpose for using the eTIME system. It also asserts that the grievant’s after-the-fact attempt at the hearing to justify the February 15 check as simply performing “ministerial duties” while off duty is beyond the pale. The Employer asks rhetorically: “Does the grievant really expect us to believe this?” There was no official request for him to run an eTIME query that day. It’s the Employer’s view that at the hearing, the grievant acknowledged that all three of these inquiries on the eTIME system to dig up information on DeAnn’s acquaintances were purely personal and not for a valid law enforcement purpose. As for the Association’s characterization of the latter two inquiries as being “secondary” to the theft investigation, the Employer disputes that contention and notes that there was no “investigation” being conducted prior to March 1, 2009. The Employer also argues that Chief Deputy Hahn never gave the grievant approval to use the eTIME system to “see where things led.” Building on the premise that probable cause did not exist for a stolen vehicle investigation, the County contends that the grievant’s March 1, 2009 use of the County’s teletype system to locate and seize his wife’s vehicle was also improper. Insofar as the record shows, no other officers have used either the TIME system or the teletype for personal reasons. Given all the above, it’s the Employer’s position that the record evidence supports the second of the four charges contained in Sheriff Kaminski’s complaint.

The Employer’s third charge against the grievant was “misconduct in public office”. For the purpose of putting this charge in context, the Employer notes that the Department has rules against employee misconduct, conducting personal business on duty, engaging in criminal conduct, and making false statements in an official report. According to the Employer, the grievant violated these policies because he (1) conducted personal business on duty; (2) failed to provide a crime victim information form as required by state statute; and (3) made false statements to investigating officers and in his official report. Next, the County points out that it has a Code of Ethics policy. The County maintains that the grievant violated that policy by his conduct (specifically using his position as a deputy to locate a vehicle co-owned by his wife, reporting the vehicle as stolen, and having it seized and impounded by the Adams County Sheriff’s Department). It’s the County’s view that when the grievant did the foregoing, he (1) used County-owned equipment and materials for unauthorized nongovernmental purposes and for unauthorized personal convenience and profit; (2) granted special consideration, treatment and advantage to his wife beyond that which is available to every other citizen; and (3) used his public position to obtain financial gain of substantial value for the private benefit of himself and his wife. Given all the above, it’s the Employer’s position that the record evidence supports the third of the four charges contained in Sheriff Kaminski’s complaint.

As part of this issue, the Employer addresses the Association's contention that when the grievant decided to investigate the car matter which involved his wife, he was simply following the County's directive not to reassign cases to other deputies because family members are involved. The Employer believes there is a big difference between investigating an alleged stolen vehicle co-owned by your wife where the penalty is a Class G felony and responding to a complaint where your stepdaughter is riding on the hood of a car (i.e. the example the grievant cited at the hearing). The Employer believes that the seriousness of this matter should have caused the grievant to turn it over to another deputy. As the Employer sees it, the grievant used poor judgment when he did not do so.

Next, with regard to the level of discipline imposed, it's the Employer's position that standing alone, the grievant's mishandling of his wife's stolen vehicle investigation was so egregious as to warrant immediate termination. Not only did he fail to establish probable cause to believe the vehicle had been stolen, he also violated numerous County policies for which discharge is specifically listed as an appropriate penalty. Aside from that, he has a long history of prior discipline and performance counseling. It believes that when the seriousness of his misconduct is combined with his long history of prior discipline, discharge is clearly appropriate – particularly in light of the fact that two of the prior instances involved the same infraction as here (failure to conduct a complete investigation) and one of the two instances involved a stolen vehicle investigation. The County urges the arbitrator to take special note of the incidents dated October 18, 2007 and February 1, 2008 because both involved probable cause issues for the D.A.'s office – just like this case did. As the County sees it, that prior discipline failed to get the grievant to modify his work performance so discharge was the only remaining alternative.

Finally, in its initial brief, the Employer argued that if the arbitrator does use the DAUGHERTY standard for determining just cause, it has proven that its discipline was consistent with the seven elements in that standard. Here's why. With regard to the first element (i.e. whether the employee knew the rule and had foreknowledge of the possible or probable consequences of his conduct), the Employer answers that question in the affirmative. In support thereof, it notes that the grievant received training in proper investigatory and interviewing procedures and use of the TIME system. Additionally, he had twice been counseled/disciplined about the very same type of behavior he displayed in his wife's stolen vehicle investigation. With regard to the second element (whether the work rule was reasonably related to the orderly and efficient operation of the employer's business), the Employer answers that question in the affirmative. In support thereof, it avers that a crucial part of a deputy's obligation under the County's standards of conduct is to avoid using his position as a deputy to gain a personal benefit for himself or his family that would not be possible were it not for his public position. Equally critical is following proper protocol when conducting investigations to ensure that probable cause exists before an individual is arrested or charged with a crime. The Employer maintains that failure to abide by these requirements can expose the County to serious legal ramifications. With regard to the third element (whether the Employer conducted an investigation to determine if the employee violated a work rule), the Employer answers that question in the affirmative. According to the

Employer, Hahn conducted an extensive investigation wherein he reviewed all the relevant reports, interviewed all of the key individuals who were involved, and gave the grievant several opportunities to explain his side of the story. It also notes that at the hearing, the Association's attorney offered to stipulate that the County's investigation was thorough and complete. With regard to the fourth element (whether the investigation conducted was fair and objective), the Employer answers that question in the affirmative. It maintains that there is no record evidence that the County's investigation was anything other than fair and objective. With regard to the fifth element (whether the County obtained substantial evidence that the employee was guilty as charged), the Employer answers that question in the affirmative. The Employer notes that Sheriff Kaminski and Chief Deputy Hahn were not the only ones who thought the grievant was guilty. It notes that the District Attorney also came to the conclusion that there were serious problems with the grievant's conduct as well. She cited both a lack of probable cause and a lack of jurisdiction, and raised an additional concern about the potential for a "serious conflict of interest" given the fact that the grievant's wife was the owner of the alleged stolen vehicle. The County also notes that the Adams County dispatchers and their supervisor also questioned the grievant's motives. With regard to the sixth element (whether the work rule is applied evenhandedly), the Employer answers that question in the affirmative. According to the Employer, there is no evidence that the County has treated other employees more favorably or that the grievant was in any way discriminated against when the County terminated his employment. The Employer points out that during this same time period, another deputy was suspended – and ultimately terminated – for filing incomplete and inaccurate reports and for failing to conduct proper investigations. With regard to the seventh element (whether the discipline imposed relates to the seriousness of the alleged violation in light of the employee's discipline record), the Employer answers that question in the affirmative. It argues that the grievant's mishandling of the investigation was so egregious as to warrant immediate termination. It also asserts that the grievant has a long history of prior discipline and performance counseling. It maintains that when the seriousness of his misconduct is combined with his long disciplinary history, discharge is appropriate – especially since two of the prior instances involved the same type of conduct. Finally, the County contends it did not abuse its discretion when deciding to discharge the grievant.

Given all the foregoing, the Employer requests that the arbitrator uphold the termination and deny the grievance.

Association

The Association's position is that the County did not have just cause to discharge the grievant "in response to the actions he took regarding the theft investigation he made into his wife's vehicle." It summarizes his actions thus: The grievant had a reasonable suspicion that the car was, in fact, stolen (i.e. that a theft had occurred). He then ran a teletype listing the car as stolen. He did so in an attempt to locate the car. Shortly afterwards, the car was found. After the car was returned to the complainant (Brenda), she withdrew the complaint she had filed.

Before it delves into the facts, the Association first addresses the standard which the arbitrator should use to review this discipline. It contends the arbitrator should use the generally accepted two part analysis for determining just cause: the first element is whether the employer proved the employee's misconduct, and the second element, assuming the showing of wrongdoing is made, is whether the employer establishes that the discipline which it imposed was justified under all the relevant facts and circumstances. The Association argues that the County did not satisfy either element of that test. With regard to the first element, it's the Association's view that the Employer did not substantiate all of the charges it made against the grievant. With regard to the second element, the Association argues that the penalty should be reduced because the penalty of discharge was excessive. It elaborates on these contentions as follows.

The first charge which the Employer made against the grievant was "incompetence in performance of duties – failure to conduct proper investigation and complete accurate reports." According to the Association, this charge "was created out of a patchwork of ten smaller issues". In making this contention, what the Association is referring to is this: in the Employer's charging document, after the Employer made the first charge just referenced, it then went on to list what it denominated as items 1 through 9. Item 9, in turn, consisted of subsections a, b, and c. The Association's reading of the foregoing is that it contains "ten smaller issues". As to the merits of these "ten smaller issues", it's the Association's view that each "lacks basis in fact or law."

The first matter which the Association addresses is the Employer's contention that DeAnn was still a legal co-owner of the car after she signed the MV1 form on February 1, 2009. The Association contends that "it is not all clear to a non-attorney that the MV1 form does not itself transfer legal ownership to the new owner." The Association submits that Brenda thought that the signatures on the form transferred ownership of the vehicle to her and Deputy Jones thought so too. Addressing the fact that the MV1 paperwork was not filed with the DOT until later, the Association calls that a "ministerial act" which merely "documents the change in ownership which has already occurred." According to the Association, "the important point to recognize here is that it does not matter who is right on the question of legal ownership, but only whether the County has proven that it has a policy on this matter, and whether the County ever trained Deputy Jones on such a policy." Building on the foregoing, the Association contends that it was up to the County to prove that the grievant received training on this point, and that he failed to follow it. The Association maintains that the County failed to meet its burden on this point. With regard to Chief Deputy Hahn's testimony that deputies have been instructed to go by what it says on the title, the Association calls that testimony "self-serving, vague and not supported by any documentary evidence." The Association also asserts that Hahn's testimony on this point was refuted by Deputy Jones' truthful testimony that he was never trained on what constitutes legal ownership of a vehicle. Elaborating further, the Association maintains that the County did not prove that Deputy Jones "should have known that a signed MV1 form did not itself transfer ownership of the vehicle for purposes of bringing a theft investigation." Finally, the Association believes "it was reasonable for Deputy Jones to act on his understanding that the MV1 form transferred ownership of the car to Brenda."

The second matter which the Association addresses is the Employer's contention that Deputy Jones did not have probable cause to believe the vehicle had been stolen when he reported the vehicle stolen and had it seized and impounded by the Adams County Sheriff's Department. The Association disputes that contention. According to the Association, "the County is mistaking to its benefit the difference between the probable cause for a crime to have been committed, which is necessary to refer charges to the district attorney for prosecution, and the reasonable suspicion necessary to investigate the activity of citizens to determine whether a crime has been committed." The Association asserts that there was reasonable suspicion in this case to believe that a theft had occurred. Building on that premise (that there was reasonable suspicion in this case to believe that a theft occurred), the Association maintains that there was also a legitimate work-related reason for Deputy Jones to access information on the eTIME system to find out further information on the possible whereabouts of the car. Further building on the premise that there was reasonable suspicion in this case to believe that a theft occurred, the Association also asserts that there was a legitimate work-related reason to send out the teletype that the vehicle was stolen, and to mark it accordingly in the system as stolen.

The third matter which the Association addresses is the Employer's contention that Deputy Jones did not establish that the elements of a crime were met. This matter is essentially part of the same matter just referenced, but the Association has decided to address it separately. The Association argues that the Employer failed to recognize the fact that a "theft" might not constitute a "taking" from the owner. It notes in this regard that theft is defined by the Wisconsin statutes not only as a "taking and carrying away" of another person's property without consent and with intent to deprive, but also when a person "conceals or retains possession of moveable property of another" under those circumstances. As Deputy Jones saw it, Hookstead tried to conceal the car from the other car-owner (i.e. his wife). The Association contends that whether or not the case would hold up to a criminal court's muster here is not the point. It maintains that the only point for purposes of discipline is whether Deputy Jones was working under a good faith understanding of the law. According to the Association, he was, and he believed that the elements of the crime were met in this case. The Association avers that he based that belief on the entire theft statute, not just the "take and carry away" clause.

The fourth matter which the Association addresses is the Employer's contention that Rusk County was an improper venue for any criminal charge. The Association contends that it was impossible for Brenda to establish the "venue" for the crime because she did not know where her property was being "concealed". The Association acknowledges that for the most part, Rusk County Sheriff Deputies should focus on crimes that occur in Rusk County, but it contends that in this "very complicated situation" it was not improper for Deputy Jones to investigate this possible crime. In support thereof, it notes that Chief Deputy Hahn admitted that the County's Deputies have "the ability to conduct law enforcement investigation outside [the County] when circumstances warrant." The Association argues that the fact that the venue of the alleged theft was unclear did not make Deputy Jones' actions improper.

The fifth matter which the Association addresses is the Employer's contention that Jones referred the matter to the District Attorney for prosecution. The Association disputes this contention and alleges that it was the Sheriff – not Deputy Jones – that referred the matter to the District Attorney's office. To support that contention, it notes that on cross-examination, Sheriff Kaminski stated that he did not believe that there was a theft here, but he "sent [the charges] up to the district attorney anyway" because he felt he would "give Pete the benefit of the doubt." The Association submits that the role of the Chief Deputy and the Sheriff is to be a check on officers' reports before they are sent to the District Attorney. Building on that, the Association avers that if the Chief Deputy and the Sheriff "were so sure that there was not probable cause for theft in this case, they would have never sent it to the district attorney in the first place." The Association notes that the Sheriff testified he "struggled" with whether the car was stolen. Given that acknowledgement, the Association believes "this was a situation that must fall within an officer's discretion, and therefore Jones' actions cannot be worthy of significant discipline in this regard."

The sixth matter which the Association addresses is the Employer's contention that Jones' investigation was incomplete and that Jones violated Department procedure when he did not complete a "Statement of Loss and/or Damage" form or give Brenda Jones a "Crime Victim Information" form. The Association responds by noting that the car was found just hours after Brenda filed her theft complaint. The Association contends that once the car was recovered, and the car was back in the hands of its "rightful owner", "the case had been resolved to the complainant's liking." According to the Association, the complainant simply wanted the car back and did not wish to press charges. It's the Association's view that under these circumstances, there was no reason to conduct a more thorough investigation or have Brenda fill out the additional paperwork referenced above. The Association also maintains that since Deputy Jones never intended to refer this case to the District Attorney for charges, then he should not be held responsible for the fact that a less than complete investigation was turned over to that office.

The seventh matter which the Association addresses is the Employer's contention that Jones told the Adams County dispatchers that DeAnn had missed six payments (rather than the correct figure of three). The Association calls that a minor, inconsequential, inadvertent misstatement of fact. The Association asks the arbitrator to dismiss that charge as *de minimis*.

The eighth matter which the Association addresses is the Employer's contention that Jones violated the Department's procedure dealing with stolen vehicles when he failed to seize the car as evidence. The Association notes that Deputy Jones himself never took the car into custody – instead, he allowed Adams County personnel to do that "after the vehicle was found at a residence belonging to neither DeAnn, nor Brenda, nor CAF." It is the Association's position that Deputy Jones did not violate the Department's policy dealing with stolen vehicles because he "believed that the possession of the vehicle by anyone other than Brenda at this point amounted to probable cause for theft." The Association characterizes any "infraction" of that policy as minimal and *de minimis* because the seized vehicle was returned to its "rightful owner" shortly after recovery and "was returned before inventory and release procedures could be completed."

The ninth matter which the Association addresses is the Employer's contention that Jones violated the Employer's Report policy. The Association again characterizes any "infraction" of that policy as minimal and *de minimis* because the vehicle turned up so quickly after it was reported stolen. Under these circumstances (i.e. where Deputy Jones thought the matter was resolved), it's the Association's view that "it would make sense that some of these formalities were skipped" since "filling out forms to document same amounted to little more than a waste of time and resources of the department."

The tenth (and last) matter which the Association addresses on the first charge is the Employer's contention that Jones' conduct was contrary to state law (namely, Sec. 950.08 and 11, Stats). The Association finds this charge to be especially infuriating. As the Association sees it, the inclusion of this allegation "may very well constitute an admission by the County that it truly believes that a 'crime the department is responsible for investigating' had been committed." Aside from that, the Association argues that this law should not apply here because Brenda, in essence, dropped the charges as soon as she had assurance from the Sheriff's Department that they knew where the car was, and that she would be able to pick it up.

Next, the Association responds to the second charge which the Employer made against the grievant (i.e. "misuse of TIME system and teletype for personal reasons"). The grievant admits that he did, in fact, misuse the TIME system for personal reasons, but he essentially puts a cutoff date on his admission of misuse. According to the Association, the grievant's admission of misuse is limited to those occasions where he accessed the TIME system prior to February 1, 2009. The Association believes the date of February 1, 2009 is significant because that is the date where Brenda signed the MV1 form and misrepresented to Brenda that the car had been repossessed. Building on that cutoff date, the Association contends that the TIME system and teletype inquiries which the grievant made after February 1, 2009 were secondary to a legitimate theft investigation and, as a result, were not improper uses of the TIME system.

Next, the Association responds to the third charge which the Employer made against the grievant (i.e. "misconduct in public office"). For the purpose of context, the Association notes that this particular charge is typically applied to public officials (such as legislators) who use their position for personal gain (such as extorting cash). Here, though, the charge centers on the fact that Deputy Jones dealt with a complainant who was also his wife. Having given that context, it's the Association's position that this charge should be thrown out entirely because the record "clearly establishes that there was no clear rule on how to deal with family members who have issues needing law enforcement investigation." To support that premise, the Association notes that at the hearing, Chief Deputy Hahn said it was okay for deputies to work with family members in "non-criminal" matters, "forfeiture" situations and even in "minor situations". The Association calls the foregoing "an unworkable mess", because "when you open this door a crack to allow deputies to engage their families in their professional capacity, opportunities abound to favor them in ways that may not be immediately apparent." Building on that premise, the Association contends it was okay for the grievant to

work on a case involving his wife. The Association further asserts that when the grievant worked on this particular case, he was simply following the orders of the Chief Deputy to not hand off matters involving his family members to other deputies. The Association submits that if the County wishes to create workable rules with regard to how to investigate matters involving family members, and if the County wishes to train Deputy Jones (and the rest of its staff) on how to better handle these types of situations, “we welcome those results.” The Association further maintains that in order for the County’s ethics rule to be the basis for discipline, the County needs to have a “master list” of situations where cases should be reassigned if a family member is involved. The Association contends that since no such black and white rule exists, Deputy Jones could not have known what the proper rule was with regard to working cases involving family members, so this charge must be dismissed. As for the County’s contention that the grievant violated the County’s ethics rule by obtaining financial gain from his actions, the Association disputes that contention and argues that Deputy Jones and his wife did not obtain financial gain or get anything of value “other than the continued use of their own property.” To support that contention, the Association cites the grievant’s testimony that he acted in good faith and never intended to use his position as a deputy sheriff for personal gain. It also cites his testimony that while he undertook the actions herein for his wife, he would have done the same thing for anyone else who had the same issue.

Finally, the Association addresses the second part of the just cause analysis: namely, whether the discipline imposed herein (i.e. discharge) was justified under all the relevant facts and circumstances. It contends it was not for the following reasons. First, it asserts that Deputy Jones was a “good” employee with a “solid” ten year work history. It notes in this regard that a joint exhibit contains the commendations and awards Deputy Jones had received. The Association asks the arbitrator to consider his “positive work record” as a mitigating factor. Second, the Association addresses the grievant’s prior disciplinary record. It characterizes his disciplinary record as “not spotless, but far from egregious.” According to the Association, it was not the “long prior disciplinary record” that the Employer tries to make it out to be. As for the February 1, 2008 discipline which the Employer relies on, the Association disputes the County’s assertion that that incident was the “same type” of incident as the instant matter. Thus, the Association sees the facts of the February 1, 2008 incident as being “clearly distinguishable” from the facts here. Aside from that, the Association emphasizes that before being discharged, the grievant had served just one day of suspension; the other suspension days were being held in abeyance. The Association argues that jumping from a one-day suspension directly to discharge “flies in the face” of arbitral law requiring the imposition of progressive discipline. It also cites what it calls “the plethora of WERC cases” where various arbitrators reduced a termination to either a 5, 10, 30 or 90-day suspension. It does so to “underscore the range of options available to the Arbitrator short of termination and to debunk the fallacy that there is no alternative short of termination in this case.” Third, the Association argues this is not a gross dereliction of duty case requiring immediate discharge, nor is it a situation where the continued employment of the grievant could not be tolerated by the Employer. Instead, as the Association sees it, “this case boils down to a deputy taking a very unusual set of facts, and doing the best he could with them.” The Association argues that

even if he used “improper methods”, his motivation in this matter was not financial gain for himself, but rather a desire to return a missing vehicle to its “rightful owner”. The Association characterizes that as a proper motivation, which was both efficient and effective. That said, the Association submits that the grievant now understands that this was not the best way to handle the situation, and he will adhere to the Employer’s rules and procedures in the future. The Association also emphasizes that it is not advocating an “all’s well that ends well” standard for all cases, but in this case where the car was quickly returned to its “rightful owner” with a minimal use of law enforcement facilities, this is the case where it is an appropriate mitigating factor. Finally, the Association avers that “there is nothing in the record to support the idea that Deputy Jones cannot return to work and continue his career as a successful deputy.” The Association therefore asks that the grievant’s discharge be reduced to what it calls an appropriate amount of discipline, that he be returned to his job, and that he be made whole for all backpay and benefits.

DISCUSSION

I. Introduction

The parties stipulated that the issue to be decided is whether the County had just cause to terminate Deputy Jones. Since that stipulated issue deals with discipline, I’m going to first review the contract language which deals with same.

Section 11.01 provides that non-probationary employees “shall not be disciplined or discharged without just cause.” This language obviously subjects employee discipline to a just cause standard.

The threshold question is what criteria is going to be used to determine just cause. The phrase “just cause” is not defined in the collective bargaining agreement, nor is there contract language which identifies what the Employer must show to justify the discipline imposed. Given that contractual silence, those decisions have been left to the arbitrator. Arbitrators differ on their manner of analyzing just cause. Many arbitrators apply a standard which consists of a two-prong analysis: the first element is whether the employer proved the employee’s misconduct, and the second, assuming this showing of wrongdoing is made, is whether the employer established that the discipline which it imposed was commensurate with the offense given all the circumstances. Other arbitrators apply what has come to be known as the DAUGHERTY standard, named after Arbitrator Carroll Daugherty. In one of his cases, he tried to crystallize the definition of just cause into seven independent questions. Although the County made it clear that it was not asking the arbitrator to apply the DAUGHERTY standard, it addressed the seven DAUGHERTY questions in its initial brief to “cover the bases” in the event the arbitrator applied the DAUGHERTY standard. Since the parties did not agree to have the arbitrator apply the DAUGHERTY standard, I’m not going to apply it. Instead, I’m going to apply the two-prong analysis noted above.

II. The First Element of Just Cause

As just noted, the first part of the just cause analysis being used here requires a determination of whether the employer proved the employee's misconduct. Attention is now turned to making that call.

The Sheriff's formal complaint made four specific charges against Deputy Jones. I'm going to address the first three charges in this section of the discussion. I'll address the fourth charge in Part III.

The first charge which the Sheriff made against the grievant was "incompetence in performance of duties – failure to conduct proper investigation and complete accurate reports." That charge contained several subparts. While the Association counts the number of subparts at ten, I've come up with a lower number, namely four, because I've consolidated several of the subparts. In my view, this charge contains these four subparts: 1) did the grievant have probable cause to file a stolen vehicle report; 2) if so, was Rusk County the proper jurisdiction/venue for that charge; 3) did the grievant conduct a proper investigation; and 4) did the grievant complete the required reports. I'll address these four subparts in the discussion which follows.

Before I delve into those subparts though, I've decided to comment on the following. What precipitated this entire matter is that Brenda co-signed a car loan for DeAnn. In doing that, she became legally responsible for making the payments regardless of whether or not she actually possessed the car. When DeAnn failed to make the payments, that no doubt affected Brenda's credit rating because her name was on the loan papers. However, a lien holder does not care who makes the payments – they just want the payments made. Brenda could have made the payments herself. Had she done so, that would have averted any negative impact on her credit. However, the Joneses did not do that. Instead, Deputy Jones did a number of things to find the car and take possession of it. He thought he could do the things that he did because, as he saw it, his wife Brenda was the sole legal owner of the car, and DeAnn was keeping the car from her (i.e. Brenda). Thus, the grievant viewed DeAnn's conduct involving the car as a criminal matter. That's why he filed the stolen vehicle report. The Employer sees it differently, and characterizes the dispute over the car between the Joneses and Hookstead as a civil matter – not a criminal matter.

I'm going to use the last point just referenced as the starting point for my review of the grievant's conduct.

I begin by addressing the fact that the grievant reported the car as stolen. When he did that (i.e. reported it as stolen), his legal basis for believing he had probable cause to do so was that on February 1, 2009, both Brenda and DeAnn had signed a MV1 form which listed Brenda as the sole owner of the car. That partially completed form was his prime determinant of probable cause. As of March 1, 2009, though, that form had not been filed with the DOT and the appropriate fees paid. The date of March 1, 2009 is significant, of course, because

that's the date that Deputy Jones reported the car as being stolen. The grievant testified that he thought the partially completed MV1 form was sufficient to transfer ownership of the car solely to Brenda. However, he never made any inquiries into whether signing the form, in and of itself, conferred sole ownership of the car to Brenda. Instead, he simply assumed that a signed yet unfinished, unfiled and unpaid MV1 form was sufficient to transfer vehicle ownership. It's an understatement to say that his assumption was problematic. Here's why. The ownership of a car is a fundamental fact which needs to be established before an officer can pursue a charge of vehicle theft. The grievant had an entire month to verify that an unfinished, unfiled and unpaid MV1 form transferred ownership of the car solely to Brenda. The fact that he did nothing to verify his assumption is telling. The Association mischaracterized the record testimony when it stated that the grievant "was never trained or cautioned on this specific point." To the contrary, Chief Deputy Hahn testified that an unfinished MV1 form does not establish proof of ownership; instead, deputies are instructed to determine vehicle ownership using only 1) the name that is listed on the vehicle title, or 2) information shown in DOT records. While the Association characterizes Hahn's testimony on this point as "self serving, vague, and not supported by any documentary evidence", I credit Hahn's testimony on this point and find it dispositive. The grievant did not successfully rebut it. While the grievant also testified that he would have taken the same actions (meaning started a stolen vehicle investigation) if this case had involved a perfect stranger rather than his wife, it's hard to believe that the grievant would have accepted a complete stranger's unfinished, unfiled, unpaid MV1 form as proof of vehicle ownership when both the vehicle's title and the official eTIME system showed otherwise. Notwithstanding Deputy Jones' contention to the contrary, legal ownership of the car remained with Brenda and DeAnn jointly until the MV1 form was filed with the State. This is confirmed by the language on the car title itself which states: "The person . . . on this Title is the lawful owner of the vehicle described, subject to any Security Interest (liens) shown." When the grievant ran an eTIME inquiry on the car on March 1, 2009, it still listed DeAnn as a co-owner of the car. The fact that DeAnn was still a legal co-owner of the car as of that date, with a corresponding legal right to possess the car, obviously undercuts the grievant's assertion that he had probable cause to believe the car had been stolen (by DeAnn). In its initial brief, the Association acknowledged that Jones "did not know for a fact" whether a signed MV1 form conferred legal ownership of the car to Brenda. If that was so, and he was not absolutely certain on that point, why did he launch a stolen vehicle investigation based on the partially completed MV1 form as the prime determinant of probable cause? If he "did not know for a fact" that the partially completed MV1 form transferred legal ownership to Brenda, he did not have probable cause to pursue a vehicle theft charge against DeAnn.

While the grievant thought that he had probable cause to believe the car had been stolen, I think it is significant that all the other law enforcement officers involved in this matter thought otherwise. The following shows this. The two Adams County dispatchers who dealt with the grievant, as well as their supervising officer, questioned why the grievant had reported the car as stolen. When that supervising officer was subsequently interviewed, he put it this way: that the matter "sounded like it was a dispute over ownership," that the situation "did not sound right," and that there seemed to be some "red flags" to indicate this was not a

stolen car. Chief Deputy Hahn and Sheriff Kaminski concurred with that assessment. So did the Rusk County D.A. who succinctly stated: "I don't see a crime here." In making that statement, what the D.A. was referring to was that DeAnn could not have stolen something that she legally co-owned.

Even if the grievant did have probable cause to believe the car was stolen, the next question is whether Rusk County was the proper jurisdiction/venue for that charge. It was the grievant's view that Rusk County did have jurisdiction/venue over that charge. I find his conclusion problematic for the following reasons. First, as noted above, DeAnn remained a legal owner of the vehicle. The unfiled MV1 did nothing to change that fact. As a legal owner, she could not take and carry away, use, transfer, conceal or retain possession of movable property "of another" since she owned the property. At the hearing, the Association focused on the fact that under the theft statute, theft can be either "taking and carrying away" of movable property as well as "concealment". I find this distinction irrelevant. Whether DeAnn "concealed" or "took and carried away" the car, she continued to be a co-owner of the car. As such, she neither "concealed" nor "took and carried away" the property of another, since she remained the car's legal owner. Second, even if the car was considered to be Brenda's car, Brenda had consented to DeAnn's removal of it (i.e. the car) from Rusk County. In fact, the car was never kept in Rusk County. DeAnn lived in Janesville when the car was originally purchased, and it was licensed and titled there. Third, DeAnn knew that Brenda had consented to the removal of the car from Rusk County and her possession of it. Fourth, there is no evidence that DeAnn intended to permanently deprive Brenda of possession of the car. Insofar as the record shows, Brenda never asked DeAnn to turn the vehicle over to her. Even when DeAnn told Brenda on March 1, 2009, that "somebody picked up the car because I don't have it," neither Brenda nor the grievant made any further inquiry as to when DeAnn last had the car or who else had access to it. Moreover, there is no evidence that the car, which was found at DeAnn's boyfriend's father's house, was kept there without DeAnn's consent. The foregoing establishes that no element of the alleged crime occurred in Rusk County. The vehicle was not taken without consent (i.e. stolen) from Rusk County, nor was it concealed in Rusk County. As a result, the grievant could not possibly have been "following up" on a crime that had been committed in Rusk County. While there was uncertainty as to the car's location, the one thing that *was* certain was that it was not in Rusk County. Thus, Rusk County was the one county where proper venue *could not possibly exist*. The Association claims Brenda "knew" her vehicle was being concealed. If that is true, at the very least her theft complaint should have been filed in the counties where she thought DeAnn might be "concealing" it. In sum then, the alleged "theft" had absolutely no connection to Rusk County except for the fact that the complainant lived in Rusk County and was married to a Rusk County deputy. Deputies have not been trained to determine jurisdiction according to the address of the complainant. That being so, the grievant's assumption that his wife's county of residence was sufficient to establish jurisdiction over a criminal case lacked a justifiable basis.

The next major subpart in the Employer's first charge against the grievant is that he failed to conduct a proper investigation. I begin my discussion on this matter by noting that the grievant's entire investigation consisted of the following: a verbal report from his wife

(later documented in a written statement); an unfinished, unfiled MV1 form; a vehicle title showing both his wife and DeAnn as co-owners; and an eTIME inquiry showing the same co-ownership information. Despite the fact that Deputy Jones recommended theft charges against them, at no point did he ever interview DeAnn Hookstead or Jason Biegemann, nor did he ever request Adams County to do so. The grievant “assumed” Adams County would interview DeAnn and Jason, just as he himself had done for other counties which asked Rusk County for assistance. However, the grievant never asked for any assistance from Adams County beyond seizing and impounding the vehicle. That being so, this was Rusk County’s case and Rusk County’s investigation. The grievant never asked Adams County for assistance in interviewing the alleged suspects, never asked for copies of any reports which Adams County generated in connection with the matter, never asked to speak with any of the Adams County officers who impounded the vehicle to determine what conversations may have occurred when the vehicle was seized, and never followed up with Adams County to determine what actions they may have taken with respect to the matter. Not only did the grievant fail to interview DeAnn Hookstead and Jason Biegemann, he also failed to interview Gordon Biegemann, the owner of the property where the car was found. In fact, he never even attempted to interview any of these individuals. His failure to interview anyone outside of his wife was inexcusable. His failure to interview Jason Biegemann is especially egregious in light of the fact that the grievant ultimately recommended Biegemann be charged with theft, when his only connection to the car was the fact that he was dating DeAnn and the car was found outside his father’s house. By his own admission, the grievant’s investigation basically ended once the car was located and his wife was able to take possession of it. He justifies this by noting that his wife “was satisfied when she got the vehicle back. . .” The problem with this contention is that theft investigations must be carried through to completion, regardless of whether the complainants wish to press charges. In this case, it was the grievant himself who initiated a stolen vehicle investigation. Once that happened, and the car was entered as stolen, the Sheriff’s Department became obligated to treat it as a crime. As the investigating officer, it became the grievant’s job to conduct a complete and thorough investigation. He dropped the proverbial ball in that regard because by his own admission, his investigation came to a halt once the car was located and impounded. It shouldn’t have. Deputies have not been trained to stop their investigation when a case is resolved “to the victim’s liking”. The fact that the grievant stopped his investigation at that point establishes that the grievant was more concerned with getting the car back than conducting a thorough investigation.

The Association attempts to minimize the deficiencies in the grievant’s investigation by claiming that the grievant’s wife did not wish to press criminal charges against DeAnn and, therefore, the case should not have been forwarded to the District Attorney (D.A.) in the first place. However, it is not up to the victim to determine whether charges should be brought; it is up to the D.A. to decide if charges are filed. In this case, it was the grievant himself who made the referral to the D.A. to charge DeAnn Hookstead and Jason Biegemann with theft. While the Association insinuates he did so only after being directed by the Sheriff to do that, I’m satisfied that no one ordered the grievant to make the referral to the D.A. Instead, he did that on his own volition. What the grievant is essentially trying to do on this point is have it both ways. On the one hand, he argues that probable cause existed to issue a theft charge and

then he turns around and finds fault with the Sheriff for forwarding the charge to the D.A. He can't have it both ways.

Aside from the flaws in the grievant's investigation noted above, the grievant also failed to follow Department procedure in the following respects. First, the County's policy governing seizures of motor vehicles states that where probable cause exists, deputies are authorized to "take the vehicle into custody and classify it as 'seizure as evidence'". The grievant failed to follow this procedure. After Adams County found and impounded the car, the grievant did not have it taken into custody and did not have it classified as evidence. Instead, he had his wife drive to Adams County, pay the requisite fees, and pick up the car. In its initial brief, the Association stated that the car was returned to Rusk County "before inventory and release procedures could be completed." That is conjecture. Nothing prevented this procedure from being followed. Law enforcement officers have lots of paperwork they have to complete. It's just a part of the job. The grievant is not empowered to skip the required paperwork. The Association also relies on the theory that once the car was returned to its "proper owner" (i.e. Brenda), proper seizure procedures were unnecessary and required paperwork could be skipped. That's not true. Deputies have not been trained to skip required reports when the victim does not wish to press charges. Second, the Department's procedure is that in all theft cases, a deputy is supposed to have the victim complete two departmental forms: one is the "Statement of Loss and/or Damage" form and the other is the "Crime Victim Information" form. The grievant did not have his wife fill out either. While the Association contends it was pointless for the grievant to file these two forms since "the car has been found and the case has been resolved to complainant's liking", there is nothing in the County's policy which allows an officer to forego filing these forms where the stolen property is retrieved or the complainant is satisfied with the outcome. More importantly, the Crime Victim Information form is required by Wisconsin law, and under Sec. 950.11, Stats., the County is subject to up to a \$1,000 forfeiture for intentional failure to provide it. Nowhere does Sec. 950.11 state that the form need not be provided where a case "is resolved to the complainant's liking", nor does that statute give a law enforcement officer discretion to decide whether the form is to be provided. Aside from the foregoing, I'm persuaded that the grievant's allowing these two forms to, as he put it, "slip through the cracks" is further evidence that the grievant's investigation was compromised by the fact that the victim was his wife. Rhetorically speaking, would he have failed to provide these two forms if the victim had been any other citizen? I think not.

Based on the above, I find that the Employer substantiated the first charge in the Sheriff's complaint (i.e. "incompetence in performance of duties - failure to conduct proper investigation and complete accurate reports"). In so finding, I have also found that the Employer substantiated the following four subparts of that charge: 1) that the grievant did not have probable cause to file a stolen vehicle report; 2) that he failed to establish that Rusk County was the proper jurisdiction/venue for that charge; 3) that he failed to conduct a proper investigation; and 4) that he failed to complete the required reports. Each of the foregoing constituted misconduct. Additionally, each violated several County policies.

The second charge which the Sheriff made against the grievant was “misuse of TIME system and teletype for personal reasons.” In considering this matter, I’ve decided to note the following to help put this charge in its overall context. First, deputies are not supposed to use the TIME system for personal reasons. That is prohibited both by County policy and by the County’s TIME system agreement with the Wisconsin DOJ. Second, the March 1, 2009 stolen vehicle entry was the first time any formal law enforcement complaint was filed with respect to the vehicle. Having given that background, it is noted next that there is no question that the grievant used the TIME system on at least two occasions prior to March 1, 2009 – namely, October 23, 2008 and January 19, 2009 – to access vehicle registration and driver’s license information for persons connected with DeAnn Hookstead. At the hearing, the grievant admitted that his doing that constituted misuse of the TIME system for personal reasons which is prohibited. That said, the Association claims the grievant had “understandable” reasons for running the inquiries (i.e. finding out who DeAnn was associating with). The problem with that contention is that the County’s written agreement with the Wisconsin DOJ makes no exceptions for personal inquiries, regardless of how “understandable” they might seem to the user. That agreement says that “any” personal use of the system puts the County at risk of losing TIME system privileges altogether. The Association also contends that the grievant’s admission of misuse is limited to those occasions where he accessed the TIME system prior to February 1, 2009. As the Association sees it, the date of February 1, 2009 is significant because that is the date when DeAnn signed the MV1 form and misrepresented to Brenda that the car had been repossessed. Building on that cutoff date, the Association contends that the TIME system inquiry which the grievant made on February 15, 2009 was “secondary to a theft investigation” and as a result, was not an improper use of the TIME system. This argument is not persuasive because the record indicates that the Wisconsin DOJ does not allow use of the TIME system to gain information that might, at some later date, be used in a valid law enforcement investigation. The grievant acknowledged that as of February 15, 2009, he had not yet begun a theft investigation. Since there was no ongoing theft investigation as of that date, his February 15 eTIME inquiry was just as improper as the other two inquiries already noted. On all three occasions, the grievant’s use of the eTIME system to get information on DeAnn’s acquaintances was purely personal and not for a valid law enforcement purpose. Additionally, I’m not persuaded that in prior personal conversations, Chief Deputy Hahn gave the grievant some sort of supervisory approval for improper eTIME queries. It is noted in this regard that the grievant testified that on several occasions prior to March 1, he advised Hahn in personal conversations about his concerns regarding the car, specifically “its whereabouts, falling behind on payments, and what could be done”. According to the grievant, Hahn advised him that he could continue to look into it and see where it led. Even if Hahn said that, it hardly equates to supervisory permission to use the eTIME system to “see where things led.” As Hahn testified, the grievant never said during any of these personal conversations that the car was going to be reported as a stolen vehicle. In addition to misusing the TIME system, the grievant also misused the Dispatch teletype when he sent a teletype to the four counties where he thought the car might be located. In that teletype, he reported the car was stolen. As previously noted, the problem with that was that there was no probable cause to report the car as stolen. The legal standard of probable cause requires more than mere suspicion. Finally, the record does not indicate that other officers have used either the TIME

system or the teletype for personal reasons. Based on the above, I find that the Employer substantiated the second charge in the Sheriff's complaint (i.e. "misuse of TIME system and teletype for personal reasons"). The grievant's conduct violated several County policies as well as the County's agreement with the DOJ governing proper use of the TIME system.

The third charge which the Sheriff made against the grievant was "misconduct in public office". According to the Association, this charge should be "thrown out entirely" because there is allegedly "no clear rule" on how deputies are supposed to deal with situations where family members are involved. For the purpose of context, it is initially noted that since the Sheriff's Department is small in staff size, deputies sometimes investigate matters involving family members. Additionally, it is further noted that there is no "master list" of factual situations where a deputy is to recuse himself from a case that involves a family member. Bootstrapping these points together, the Association portrays the County's actions here as inconsistent because, as the Association sees it, all the grievant did was handle his wife's case himself so that it didn't have to be handled by another deputy. I find that contention misses the mark for the following reason. The County's third misconduct charge is not based on the fact that a family member of the grievant was involved. Instead, the fundamental underpinning of the County's third misconduct charge is the grievant's use of his public position to obtain something of financial value for a family member. This charge has a legitimate basis given the following facts: 1) the grievant used his position as a deputy to track down a car and have it seized and impounded which was 2) co-owned by his wife when 3) the repossession company had been unable to locate it and 4) the other co-owner's failure to make the payments was affecting his wife's credit (and indirectly, his own credit). By doing the foregoing, the grievant granted special treatment to his wife beyond that which is available to other citizens. Said another way, but for his position as a deputy sheriff, the grievant would not have been able to have the car impounded and turned over to his wife. Notwithstanding that conclusion, it's the Association's position that neither the grievant nor his wife benefitted from the grievant's actions "other than the continued use of their own property." I find that the facts belie that assertion. Here's why. Both the grievant and his wife obtained the use/possession of a \$10,000 plus vehicle that had previously never been in their possession. Additionally, they saved all the money that it would have cost them had they gone to court in a civil action to get sole ownership of the vehicle. Both of those qualify as getting something of "substantial value" for the grievant's own "private benefit". The reason I put quote marks around certain words in the previous sentence is because the County's Code of Ethics says in pertinent part that "no. . .employee may use his. . . position to obtain financial value or anything of substantial value for the private benefit of himself. . . or his. . . immediate family." The grievant's testimony that he never intended to use his position as a deputy sheriff for personal benefit does not change what happened. His actions speak louder than words. Based on the above, I find that the Employer substantiated the third charge in the Sheriff's complaint (i.e. "misconduct in public office"). The grievant's conduct violated both the County's Code of Ethics and the Department's Policy and Procedure Manual.

...

The grievant's actions referenced above can fairly be summarized as follows. Before any theft report was filed, the grievant misused the official law enforcement TIME system to track down individuals and addresses that might be connected to the car's other co-owner (i.e. DeAnn). After the repossession company was unable to locate the car, the grievant used his position as a deputy sheriff to track down the car. In doing so, he essentially took the law into his own hands and used his law enforcement position to get possession of the car. He accomplished this by reporting the car as stolen. He should not have done that. It was an abuse of his deputy position. At the time, Brenda was not the sole owner of the car; she still shared legal ownership of it with DeAnn. When joint owners of a car have a falling out – as happened between Brenda and DeAnn – the traditional way of resolving the ownership dispute is via a civil court action. The Joneses opted not to go that route. Instead, the grievant simply treated Brenda as if she was the sole owner of the car and entitled to possession of it. I'm persuaded that the reason the grievant did that was because Brenda was his wife and they both wanted to get possession of the car from DeAnn without a civil court action. By filing the stolen vehicle report without having probable cause to do so, the grievant improperly turned what was a civil matter into a criminal matter. Although the grievant was the one who turned this matter into a criminal matter (by reporting the car as stolen), none of his subsequent actions were consistent with conducting a proper criminal investigation. After the car was located in Adams County, he did not have the car taken into custody and classified as evidence. Instead, he simply had it impounded. Later, he had his wife go to the towing company located in Adams County, pay the requisite fees, and pick up the car. At that point, by his own admission, his "theft" investigation ceased.

The Employer could have chosen to characterize the grievant's misconduct in a number of different ways. As noted above, the Employer chose to make these three charges against the grievant: 1) "incompetence in performance of duties – failure to conduct proper investigation and complete accurate reports"; 2) "misuse of TIME system and teletype for personal reasons"; and 3) "misconduct in public office". The question before the arbitrator is not whether he would have made these same three charges. Instead, the question is this: having decided to make those three charges against the grievant, did the Employer substantiate them? My discussion shows that it did.

The final topic relative to these charges concerns the level of seriousness that can fairly be ascribed to them. In its reply brief, the Association characterized the charges as "minor and correctable." That's certainly not how the Employer saw it. They saw them as very serious charges warranting severe discipline. I agree with the Employer on this matter.

III. The Second Element of Just Cause

The second part of the just cause analysis being used here requires that the Employer establish that the penalty imposed for the employee's misconduct was appropriate under all the relevant facts and circumstances. In reviewing the appropriateness of discipline under this standard, arbitrators generally consider the notions of due process, progressive discipline, and disparate treatment. The undersigned will do likewise in reviewing the appropriateness of the

discipline imposed here (i.e. discharge). These matters will be addressed in the order just listed.

I begin my discussion on the first matter just referenced (i.e. due process) with the following introductory comments. When the term due process is used in the grievance arbitration context, it generally refers to employers treating employees fairly during the disciplinary process. Unfair treatment of an employee during the disciplinary process undermines the process and may lead an arbitrator to reverse the discipline imposed by the employer.

One implicit aspect of due process which is sometimes addressed in arbitration awards is whether the employer conducted a fair investigation before it acted against the employee. In this case, the Employer conducted an extensive investigation. The following shows this: Chief Deputy Hahn reviewed the grievant's incident report and all related documentation, the dispatch reports from Rusk County and Adams County, a report detailing all of the grievant's TIME system queries dating back to October, 2008, and a recording of the grievant's telephone conversations with Adams County Dispatchers Laporte and Quarles. Hahn also conducted follow-up interviews with Brenda Jones, the grievant himself, Jefferson County Sheriff's Department Sergeant Paul Wallace, Adams County Lieutenant David Carlson and Rusk County Dispatcher Manly Peterson. Finally, Hahn and Sheriff Kaminski interviewed the grievant and gave him an additional opportunity to explain his side of the story. The foregoing satisfies me that the County's investigation was thorough, fair and complete. That being so, the Employer's investigation passes muster.

The focus now turns to the second matter referenced above (i.e. progressive discipline). While the grievant's disciplinary history was noted in the **BACKGROUND** section, I've decided to summarize it as follows. Prior to the incident involved here, Jones had received eight counseling letters for a variety of performance related matters. The counseling letter that is noteworthy here is the one the grievant received October 18, 2007 for deficiencies and omissions in a stolen car report. In that incident, the grievant failed to provide sufficient facts in his report to indicate that a crime had been committed and also failed to conduct proper interviews of witnesses and suspects. After the Employer had issued the numerous counseling letters referenced above, it moved to formal discipline. On January 18, 2008, the grievant was given a written warning for failure to complete an assigned task. On February 1, 2008, the grievant was given a letter of reprimand as well as a four-day suspension for arresting a person before obtaining probable cause and not conducting a complete investigation. Jones did not serve the four-day suspension because the parties subsequently agreed to hold it (i.e. the four-day suspension) in abeyance. While the four-day suspension was not served, it nevertheless remained on the books, so to speak. On April 10, 2008, Jones was given a third letter of reprimand and a one-day suspension for failing to appear for a scheduled overtime shift. Jones served this suspension.

The foregoing shows that prior to the discipline imposed here, the grievant had already received three formal written reprimands and two suspensions. While the Association

correctly points out that he had served just one day of suspension, the fact of the matter is that he still had two suspensions in his disciplinary history – a one-day and a four-day. In the October 18, 2007 counseling letter and the February 1, 2008 letter of reprimand/four-day suspension, the grievant was given detailed work directives. Specifically, he was to have probable cause before he acted and he was to conduct proper investigations. There was nothing unreasonable, unattainable or unrealistic about these work directives. To the contrary, these instructions are standard for law enforcement officers.

When viewed against this backdrop, it is apparent that the grievant's actions in this matter were similar to what he had done previously. Here's why. Once again, he acted before he had probable cause (i.e. he reported the car as stolen without having probable cause to do so and subsequently had the car impounded by Adams County). Additionally, once again, he failed to conduct a proper investigation. One purpose of progressive discipline is to get the employee to change or modify bad behavior. The theory is that after an employee is disciplined for proscribed behavior, they will change. Here, though, that didn't happen and the grievant engaged in conduct that was similar to what he had done previously. By repeating the same broad type of misconduct, he rightly exposed himself to more severe discipline.

The Association maintains that the discipline which the Employer imposed here was excessive. According to the Association, the Employer skipped the disciplinary step that exists between a four-day suspension and discharge. Building on that premise, the Association asks the arbitrator to reduce the discipline to something less than discharge. I decline to do so for the following reasons. First, while there are collective bargaining agreements that specify that another suspension is to follow a one-day and a four-day suspension, this particular collective bargaining agreement does not contain such language. That being so, the collective bargaining agreement does not require that another form of discipline – such as a suspension longer than four days – had to be imposed here. Second, the arbitrator is well aware that other arbitrators have overturned discharges and instead imposed suspensions. As some examples, the Association's reply brief cites awards where discharges were reduced to 5, 10, 30 or 90-day suspensions. Indeed, I've done that when circumstances warranted it. When an arbitrator overturns a discharge, one common reason why is because a charge made against the employee was not substantiated. I could see doing that here if any of the substantive charges made against the grievant had not been substantiated. However, that did not happen. As my discussion in Part II shows, I found that the Employer substantiated all three of the charges it made against the grievant in the charging document. Since those charges were substantiated, I lack an objective basis for overturning the discharge.

Finally, with regard to the third matter referenced above (i.e. disparate treatment), I find that the grievant was not subjected to disparate treatment in terms of the punishment imposed. In order to prove disparate treatment, it is necessary to show that other similar factual situations occurred where the Employer imposed either lesser or no punishment. That was not shown here.

When the seriousness of the grievant's misconduct is considered along with his disciplinary history, it is held that the severity of the discipline imposed here (i.e. discharge) was not excessive, disproportionate to the offenses, or an abuse of management discretion. Accordingly, the Employer had just cause within the meaning of Section 11.01 to discharge Deputy Jones.

In light of the above, it is my

AWARD

That there was just cause to terminate the employment of Deputy Jones. Therefore, the grievance is denied.

Dated at Madison, Wisconsin, this 11th day of May, 2010.

Raleigh Jones /s/

Raleigh Jones, Arbitrator