

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**WISCONSIN PROFESSIONAL POLICE ASSOCIATION
LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION**
for and on behalf of
JUNEAU COUNTY DEPUTY SHERIFF'S ASSOCIATION
and
COUNTY OF JUNEAU, WISCONSIN

Case 151
No. 69325
MA-14571

Appearances:

Roger W. Palek, Staff Attorney, Wisconsin Professional Police Association, 660 John Nolen Drive, Suite 300, Madison, Wisconsin 53713, for Wisconsin Professional Police Association, Law Enforcement Employee Relations Division, for and on behalf of Juneau County Deputy Sheriff's Association, referred to below as the Association.

Mark B. Hazelbaker, with **Michael R. O'Callaghan** on the brief, Hazelbaker & Associates, 3555 University Avenue, Madison, Wisconsin 53705, for County of Juneau, Wisconsin, which is referred to below as the County, or as the Employer.

ARBITRATION AWARD

The County and the Association are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for final and binding arbitration. The parties jointly requested that the Wisconsin Employment Relations Commission appoint Richard B. McLaughlin, a member of its staff, to serve as Arbitrator to resolve a grievance filed on behalf of Lynne Raiten. On December 1, 2009, hearing on the matter was conducted in Mauston, Wisconsin. Anne Jacobs filed a transcript of the hearing with the Commission on December 10, 2009. The parties filed briefs and reply briefs by April 30, 2010.

ISSUES

By November 7, 2009, the County and the Association executed a document entitled "Voluntary Agreement and Stipulation", which is referred to below as the Stipulation, and which addresses a series of points, including the issues for decision. The Stipulation states:

1. This is a voluntary agreement between the Juneau County Deputy Sheriff's Association and the Wisconsin Professional Police Association/Law Enforcement Employment Relations (Association) on behalf of Lynne Raiten (Raiten) and Juneau County (County).

2. At all times relevant to this complaint, the Association has been a labor organization within the meaning of S. 111.70(1)(h), Wis. Stats.
3. The Association is the sole and exclusive bargaining agent on wages, hours, and conditions of employment for all full-time law enforcement officers with the power of arrest in the Juneau County Sheriffs Department except for the Sheriff, Undersheriff, Lieutenants and Captain.
4. The employees in the bargaining unit described above are municipal employees within the meaning of S. 111.70(1)(i), Wis. Stats.
5. The Association's representative is Roger W. Palek . . .
6. At all times relevant to this dispute, the County has been a municipal employer within the meaning of Wis. Stats. S. 111.70(1)(j) . . .
7. The County's representative in this case is Mark Hazelbaker . . .
8. At all times relevant to this dispute the Association and the County were signatories to a collective bargaining agreement (CBA).
9. At all times relevant, Raiten was in the bargaining unit covered by the CBA, and was a member in good standing of the Association.
10. Sometime around January 2004, Juneau County Sheriff Brent Oleson placed Raiten on administrative leave. The Sheriff alleged that Raiten had released the identity of a confidential informant without authorization. Raiten disputed the allegation. This allegation is known herein as the "First Matter."
11. Sometime around March, 2004, while Raiten was awaiting resolution of the First Matter, the Sheriff alleged that Raiten had an inappropriate conversation with the Necedah Police Chief. Raiten disputed the allegation. This allegation is referred to herein as the "Second Matter."
12. The parties entered into an agreement in March of 2004 that provided that the Second Matter would be held in abeyance until the First Matter was resolved. Upon the end of the abeyance, the parties would retain all of their claims, rights and defenses they had in any subsequent action on the Second Matter.
13. On or about February 8, 2005, the Sheriff filed charges with the Juneau County Grievance Committee regarding the First Matter and sought the termination of Raiten.

14. As a result of the allegations raised in the First Matter, the County Grievance Committee took action to terminate Raiten on October 26, 2005.
15. The Association filed a timely grievance at Step 4 of the grievance procedure outlined in the CBA, and alleged that the termination of Raiten violated its terms.
16. A grievance arbitration hearing on the First Matter was scheduled for June 28, 2005. Mediation of the First Matter was attempted by the parties. Subsequent to the mediation, a dispute arose as the Association and the County did not concur on whether or not a valid and binding settlement agreement had been reached in the mediation.
17. The parties have elected not to contest the validity or existence of such an agreement, and have instead decided to hold an arbitration hearing on the merits of both the First and Second Matters. The hearing will follow the procedures of Article 14 of the CBA except as modified by this agreement.
18. The parties mutually request, that WERC arbitrator Richard McLaughlin serve as arbitrator for the resolution of both matters.
19. Arbitrator McLaughlin shall sequentially hear testimony and take evidence on both matters. Arbitrator McLaughlin will initially decide if, under the CBA, the allegations raised in the First Matter warrant termination of Raiten. If not, Arbitrator McLaughlin will then determine what, if any, discipline is appropriate for the First Matter. Arbitrator McLaughlin does not have the authority to consider any of the evidence from the Second Matter when determining the propriety of the termination, or of any discipline for the First Matter.
20. If Arbitrator McLaughlin determines that termination was not warranted in the First Matter, he will then determine what, if any discipline is appropriate under the CBA as a result of the allegation raised in the second Matter. Arbitrator McLaughlin shall have the authority to consider any discipline imposed in the First Matter when determining the appropriateness of any discipline in the Second Matter.
21. The arbitrator shall have the same authority to interpret this agreement as he does under Article 14 of the CBA.
22. This is the complete understanding of the parties on this issue. Any modifications to this agreement must be made in writing.

The parties entered into an agreement which includes a provision dealing with potential remedial issues. That document is set forth in the **BACKGROUND** section.

RELEVANT CONTRACT PROVISIONS

ARTICLE II – ASSOCIATION SECURITY

...

Section 2.03 – Employer’s Rights: The County possesses the sole right to operate the County and all management right repose in it, subject to the express terms of this Agreement. Its rights include, but are not limited to the following:

...

- (d) To suspend, demote, discharge and take other disciplinary action against employees for just cause . . .
- (f) To take whatever action is necessary to comply with state or federal law . . .

Notwithstanding the above listed employer rights, nothing herein contained shall divest the Association of any of its rights under Wis. Stats. Chapter 111. Furthermore, any and all employer rights shall be exercised consistent with this collective bargaining agreement.

...

ARTICLE XIII – DISCIPLINE/DISCHARGE

Section 13.01: Employees may be disciplined or discharged for just cause. The County recognizes the principle of progressive discipline as part of its discipline practices.

Section 13.02: Discipline shall consist of oral warning/reprimand, written warning/reprimand, suspension, demotion, or discharge. . . .

Section 13.04: Any discipline or discharge may be appealed through this Agreement’s grievance procedure, consistent with the following:

A. Should the County choose to adopt the grievance procedure contained in Wis. Stats. S. 59.21(8)(b), any discipline or discharge which is imposed or sustained by the County’s Grievance Committee may either be appealed through

the grievance procedure of this Agreement or to Circuit Court under Wis. Stats. S. 59.21(8)(b)6. Where an employee appeals action imposed or sustained by the County’s Grievance Committee to Circuit Court under Wis. Stats. S. 59.21(8)(b)6, said employee waives the right to appeal the action through this Agreement’s grievance procedure.

B. Discipline or discharge which is imposed under authority other than the procedure provided for in Wis. Stats. S. 59.21(8)(b) may be appealed through this Agreement's grievance procedure beginning at the grievance procedure step immediately above that of the disciplining authority.

C. If an employee chooses to contest discipline or discharge, which is imposed or sustained by a County Grievance Committee under Wis. Stats. S. 59.21(8)(b), via this Agreement's grievance procedure, any such grievance shall be commenced at the arbitration step of said procedure. . . .

ARTICLE XIV – GRIEVANCES

Section 14.01 – Definition: In the event that any difference arises between employer and Association or between employer and any employee concerning interpretation, application or compliance with the provisions of this Agreement, such difference shall be settled only in accordance with a grievance procedure set forth herein.

Section 14.02 – Procedure: The grievance procedure shall consist of the four (4) steps set forth below as to employee and Association grievances. . . .

Section 14.03 – Steps in Procedure:

. . .

Step 4: . . . The arbitrator appointed shall meet with the parties on a mutually agreeable date to review evidence and hear testimony relating to the grievance. Following said review and hearing, the Arbitrator shall render a written decision which shall be final and binding upon the parties. . . .

BACKGROUND

On December 1, 2009, the parties executed a document entitled “Voluntary Agreement and Stipulation”, referred to below as the Agreement. The Agreement and source documents it incorporates, state:

. . .

3. The collective bargaining agreements between the parties signed on March 16, 2004 and December 12, 2005 were in effect during all times relative to this dispute. . . .
4. During all times relative to this dispute, Sheriff's Department Policy and Procedure No. 96-02 (General Rules and Regulations) was in effect.

Policy and Procedure No. 96-02 states:

. . .

The following actions constitute grounds for just progressive discipline. These are not intended to be exhaustive, but are illustrative;

- a. Commission of a felony under the law;
- b. Intoxication or drinking intoxicants while on active duty, or off duty in uniform utilizing county equipment.
- c. Failure to obey a lawful order from a superior;
- d. Willful neglect of duty;
- e. Willful neglect of disobedience of any Departmental rule . . .
- g. Conduct unbecoming an officer . . .
- i. Communicating information on criminal cases outside the Department without permission . . .
- k. Willful maltreatment of a prisoner . . .
- n. Destructive criticism of Departmental orders to the outside public and other officers;
- o. Failure to report any member of the Department known to be engaged in criminal activities;
- p. Failure to get along and work with fellow officers . . .
- r. Discussing Departmental affairs/orders which are derogatory and in conflict with the rules, regulations and good working order of the Department; either with outside public or department members;
- s. Conducting personal business or non-authorized investigations on department time;
- t. Failure to notify Supervisor of criminal activity or investigation;
- u. Failure to follow chain of command;
- v. Any other act or omission contrary to the good order and discipline, or consisting of a violation of any of the provisions of the rules and regulation of the Department.

For any degree of misconduct by a Deputy Sheriff which in the judgment of the Sheriff or Undersheriff is not serious enough to warrant the filing of formal charges as set forth above, the Sheriff, Undersheriff or Supervisor may discipline by suspending such Deputy Sheriff without pay for a period not to exceed five (5) days. Following the filing of charges in any case, a copy shall be served upon the person charged, if so requested. . . .

5. During all times relative to this dispute Sheriff's Department Policy and Procedures No. 96-09 . . . was in effect.

Policy and Procedure No. 96-09 states:

- A. The Juneau County Sheriff shall designate a deputy or deputies who are authorized to serve as liaison to the news media for the release of information concerning criminal charges, traffic offenses and the like. Such a person and the sheriff and undersheriff shall be the only persons authorized to speak on behalf of the Sheriff's Department as official representatives thereof.
 - B. No deputy may release any information pertaining to an investigation currently underway, or pending before the court, unless authorized to do so by his/her supervisor.
 - C. Officers may not, while on duty, engage in criticism, insubordination or other communications which may tend to disrupt the chain of command or morale of the Department.
 - D. In recognition of the rights of individual officers as citizens to comment on public issues, officers, while off duty, are not precluded from making comments about departmental operations or personnel as individuals, provided that such comments do not hamper pending investigations, disclose informants or confidential information or unreasonably interfere with the efficient workings of the department. The privilege of public commentary does not extend to making false or disruptive statements in reckless disregard of the truth of the statement.
6. The Grievant signed acknowledgement of receipt of the Sheriff's Department Policy and Procedures Nos. 1 through 21 on February 7, 1996.
- . . .
7. During all time relative to this dispute, the Juneau County Personnel Policy manual included Section 2.6 Confidentiality. . . .

Section 2.6 Confidentiality states:

No employee shall use or disclose privileged or confidential information gained in the course of work or by reason of his/hers official position or activities. No confidential information concerning any citizen may be released to an unauthorized person or agency without the signed consent of the citizen. Any violation of this policy may be sufficient cause for immediate termination.

Review of information requested under the Open Records law shall be conducted by the Corporation Counsel.

8. On May 1, 2003 the Grievant signed the Juneau County Employee Confidentiality Agreement. . . .

The Employee Confidentiality Agreement states:

This agreement is made . . . as a condition of employment and continued employment of the Employee.

. . .

Confidentiality is a serious obligation which applies to all County employees. Juneau County expects that all employees will respect the privacy of individuals about whom confidential information has been received by Juneau County or its employees. The undersigned Employee agrees that Employee shall maintain the confidentiality of all information received about specific persons unless the Employee is authorized by an executed release signed by an authorized person, by law, by directive of supervisor or by a court to disclose the information. . . .

9. On May 1, 2003 the Grievant acknowledged receiving a copy of the Juneau County Computer policy. . . .
10. On June 7, 2000 the Grievant received a letter of written reprimand. The parties specifically reserve the right to advance or dispute the relevancy of this document to these proceedings during the hearing or briefing. . . .

The Written Reprimand states:

On June 1, 2000 . . . a phone call was made to Deputy Brian Wilde's residence from the Juneau County Jail. You and Deputy Tully were working the jail that day. I have learned that you were the one that placed the phone call to Deputy Wilde's residence. Deputy Wilde was extremely upset by the phone call and thought his job here in this department maybe in jeopardy. In your conversation with Deputy Wilde you informed him that his wife had come in to talk to the sheriff. You stated that this was the "rumor going around". You further stated that he should contact the sheriff and find out what was going on.

Your phone call to Deputy Wilde is in violation of Policy 96-02, paragraph g . . . and Policy 96-9 paragraph C . . .

On January 7, 2000 I talked to you about spreading rumors in the Department. You assured me that you were not doing this. Th(e) first week of February I talked to you about your conversations with the sheriff when he was on the floor of the jail. Again on February 7, 2000 I talked to you about talking to other deputies about your co-workers. At the end of that conversation you asked me "What do I do if I hear rumors in the department." I told you to come to me with any rumors you hear and then you would not be held responsible for being the one who was spreading them.

This is not what you did on June 1, 2000. Your call to Deputy Wilde caused him undue stress and worry, at a time in his career when he did not need any more. You are therefore issued this written reprimand for your conduct on June 1, 2000. A copy of this letter will be placed in your personnel file. Any further conduct of this nature will result in further disciplinary action, following the progressive discipline format set forth in the JCPPA contract, up to and including termination.

11. The Grievant received two other written reprimands during her employment with the County. However the parties agree that these reprimands are not relevant to this dispute due to either their particular subject matter and/or their remoteness in time. . .

Paragraphs 12 through 26 of the Agreement deal with the Raiten's performance evaluations from 1993 through 2003. The balance of the Agreement, and its supporting documentation, state:

27. On February 8, 2005 Sheriff Oleson filed charges against the Grievant under Wis. Stat. S. 59.26. . . .

The February 8 charges, which are referred to below as the Charges, state:

FIRST CHARGE
RELEASE OF CONFIDENTIAL INFORMATION
CONCERNING CONFIDENTIAL INFORMANT

. . .

3. In January 2004, the Juneau County Sheriff's Department learned that an individual named Steve K. had been involved with others in a residential burglary. Because the crime did not involve personal injuries or violence against persons, it presented a situation in which the Department felt it was possible to obtain the cooperation of Steven K. to work as an undercover informant . . . When presented with the opportunity to obtain leniency in exchange for cooperation in drug enforcement, Steven K. agreed to do so. He was told to work with Detective Randy Georgeson to develop drug cases.
4. The identity of confidential informants is a secret which is kept in the strictest confidence. It is universally understood by law enforcement officers that the identity of confidential informants must be kept secret. Informants lose their value as informants if potential targets of investigations know that informants are working for the police. Further, release of the fact that a person is working as an informant poses a risk of that person being harmed or killed by the target of the investigation.

5. Based upon information, belief and circumstances, the Department has concluded that Deputy Lynne Raiten told her son Chris Stapleton that Steven K. was working as an informant for the Sheriff's Department, and that he should be careful around him. This information is based on the fact that individuals who were present at a party with . . . Chris Stapleton have informed the Sheriff's Department that Chris Stapleton told them that his mother had warned them about Steven K. . . . Chris Stapleton would have had no other way of learning this information.
6. Steven K. worked as a confidential informant for the Department after Deputy Raiten leaked his status. When Steven K. went to make a buy as a confidential informant from a drug vendor, the drug vendor confronted Steve K. and told Steven K. that the vendor was aware that Steven K. was working as a confidential informant. As a result, Steven K. was unable to make the buy and was not able to assist the Department in apprehending the drug vendor. Further . . . Steven K. was put at grave risk of harm or death.
7. Deputy Raiten's actions, in addition to violating Wisconsin state law by constituting felony misconduct in office . . . also violated Policy 96-02 of the Policy, specifically sub. (a) neglect of duty and Section 2.5 of the Juneau County Personnel Policy Manual, conflict of interest.
8. Further, Deputy Raiten's actions violated the terms of an Employee Confidentiality Agreement . . . That Agreement states . . . "The interests of Juneau County as an employer require that the Employee maintain confidentiality of information. This means that the Employee may not disclose any confidential information to anyone, including the Employee's friends or family members, or in any way permits persons not entitled to confidential information to obtain that information."

**SECOND CHARGE: RELEASE OF
CONFIDENTIAL INFORMATION
CONCERNING PENDING CHARGES**

9. The allegations of paragraphs 7 and 8 are realleged and incorporated herein by reference.

10. Deputy Raiten, without authorization, disclosed to Rose Morris, the grandmother of Steven K., that Steven K. would be charged in the burglary incident referenced in Charge One above, at a point in time when Steven K. had not been arrested and the fact that he would be charged had not been released to the public or outside the Department.
11. Deputy Raiten's actions in informing Rose Morris about Steven K's status constituted a breach of confidentiality which was undertaken for a purely selfish purpose, without official permission, and in violation of the Department's confidentiality policy.

THIRD CHARGE:
UNAUTHORIZED INAPPROPRIATE COMMUNICATION
DEROGATORY TO THE INTERESTS OF THE DEPARTMENT

12. The Juneau County Sheriff's Department is a quasi-military organization in which maintenance of a command structure, discipline and order is essential to the fulfillment of its mission.
13. As part of the maintenance of order, it is necessary that the Department establish and maintain a chain of command in which subordinate officers share concerns they have about Department operations with commanding officers or the management structure of the Department. Communication, grievances or concerns about Department operations (other than grievances committed by union contract and the like) pose a serious risk of disruption of the chain of command. Dissension among Department personnel undermines cohesion, undermines command authority, and poses the risk of ineffective response to emergency situations, all of which could endanger the safety of officers and the public. For those reasons, the Department has adopted Policy 96-09, which restricts officers' right to publicly criticize other officers and the Department.
14. Deputy Raiten . . . was oriented to this Policy and is well aware of it. In addition to general orientation, Deputy Raiten has been disciplined three times for violating it. . . .
15. . . . on March 11, 2004, Deputy Raiten violated the Policy by communicating with (the) Chief of the Necedah Police Department, to question why Captain Steven Coronado of the Juneau County Sheriff's Department was at the Necedah High School. Her comments undermined the Department's command staff to individuals outside of the command structure. Her actions

constituted insubordination, disrespect of commanding officers and were the latest in a series of insubordinate and detrimental statements by Deputy Raiten.

16. After due investigation, the Sheriff has concluded that Deputy Raiten, despite being given warnings and the opportunity to correct her behavior, will never cease making derogatory or disruptive statements about the Department, and therefore, will inevitably disrupt and undermine the Department if she remains employed by the Department . . .
28. On January 5, 2004 at 9:26 a.m. a phone call was placed from the Juneau County Huber Center to the phone of Sharon Kalinoski. The call was 57 seconds long. . . .
29. On January 9, 2004 at 8:23 a.m. a phone call was placed from the Juneau County Huber Center to the phone of Sharon Kalinoski. The call was 12 minutes and 39 seconds long. . . .
30. On January 9, 2004 at 8:43 a.m. a phone call was placed from the Juneau County Huber Center to the phone of Sharon Kalinoski. The call was 37 seconds long. . . .
31. On January 12, 2004 at 7:42 a.m. a phone call was placed from the Juneau County Huber Center to the phone of Rose Morris. The call was 8 minutes and 51 seconds long. . . .
32. The Association has requested the Huber Center phone log from the County for February, 2004. Due to the passage of time the County has been unable to meet this request.
33. The Grievant was one of the County deputies on duty at the Huber Center during the time the phone calls to Sharon Kalinoski were placed on January 5, 9, and 12, 2004.
34. Steve Kalinoski was charged and released on December 28, 2003. He was charged with disorderly conduct and battery.
35. Steve Kalinoski was issued a summons and complaint that charged him with burglary and misdemeanor theft. The summons and complaint were issued on March 4, 2004 . . .
36. The grievant was placed on paid administrative leave on March 11, 2004.

37. The grievant was terminated from her employment with Juneau County on October 26, 2005.
38. In the event any remedy is ordered, the arbitrator will retain jurisdiction and the authority to resolve any disputes about the remedy.

THE FIRST MATTER

The Stipulation and the Agreement require that the First Matter be addressed prior to consideration of the Second Matter. The First Matter covers what the Charges set forth as the first and the second charge, which allege that Raiten, without authorization, communicated confidential information betraying the identity of a confidential informant.

Steven Kalinoski is referred to below as Kalinoski. His mother is Sharon Morris and his maternal grandmother is Rose Morris. Lynne Raiten is the mother of Chris Stapleton and the niece, by marriage, of Rose Morris. Prior to the events underlying the First Matter, Raiten, Sharon Morris and Rose Morris had been close friends for a considerable number of years. Sharon Morris served as Raiten's maid of honor.

The events underlying the First Matter roughly start with the arrest of Kalinoski in December of 2003. He was charged with disorderly conduct and battery and then released on December 28, 2003. Raiten's contacts with her son, Sharon Morris and Rose Morris after his release constitute the evidentiary core of the First Matter. Beyond noting that the disputed breaches of confidentiality started in January of 2004, little can be set forth as an undisputed core of fact, and the remaining background is best set forth as an overview of witness testimony.

Sharon Morris

Sharon Morris has worked as a Psychological Service Associate at the Sand Ridge Secure Treatment Center in Mauston since July of 2002. Sharon Morris and Raiten spoke by phone while Sharon Morris was at Sand Ridge on January 5 and twice on January 9, 2004. The date and duration of these conversations is established by phone logs tracking Jail phone lines. Sharon Morris could not precisely remember the dates or specifics of the conversations, but described the initial conversation thus:

- A Well, she had called; and we were carrying on just a normal conversation, and it got brought up that there was a possibility of three other charges that were pending.
- Q Did you know about those three other charges?
- A No, I did not.

Q And what, if anything, did Lynne tell you about them?

A Just that there were charges pending. She didn't mention what -- what the charges were.

Q Now, was this on her initiative, or did you have cause to ask her?

A No. She told me. (Transcript [Tr.] at 24).

At some point after their initial conversation, Sharon Morris learned that Raiten had told her mother about charges pending against Kalinoski. Sharon Morris had not passed this information to her mother, and was angry with Raiten for doing so.

On January 9, Raiten again phoned Sharon Morris at Sand Ridge. Sharon described the conversations thus:

A . . . One of the first things that came out of her mouth was, you know, "Are you still mad at me" . . . Then . . . we were talking just like we always did, and she asked me if Steven was working with them. And I assumed she was referring to the police department.

Q At some point did she ask to hang up and call you back?

A She did . . . she . . . went and looked at the files . . . (Tr. at 27-28)

Sharon Morris described her reaction to the phone calls thus:

I had no idea these charges were coming. And I was, like, just shocked. I mean it's not something you like hearing about your child. . . . I had no idea that my son was doing some of the things he was doing (Tr. at 29-30)

She understood Raiten's reference to Kalinoski "working with them" to question whether he was going to assist the Sheriff's Department in order to have the charges against him reduced.

Sharon Morris responded to the phone calls by contacting Deputy Randy Georgeson, who she described as "Steven's contact" (Tr. at 35). She told him they needed to meet. They did so, at the law offices of the attorney then representing her son. She described the purpose of the meeting to be, "That I just wanted him to be informed that Steven had been outed as a confidential informant, and I wanted him to know that it was not his doing" (Tr. at 36). She informed Georgeson of her conversations with Raiten. Georgeson phoned Undersheriff John Weger, who joined the meeting to discuss the matter with Sharon Morris. Sharon Morris summarized her reporting of the discussions thus:

A I wanted to make sure that what was offered to Steven still remained because it . . . wasn't him that gave away the deal, it was me . . .

Q How did you give it away?

A I told Lynne.

Q What did you tell her?

A That he was working with them, whoever they were.

Q And you believe that that resulted in the release of his status as a confidential informant?

A Yes (Tr. at 38).

Sharon Morris knew he had been charged with disorderly conduct and battery prior to her conversations with Raiten, but had “very little” (Tr. at 41) discussion with Kalinoski about the incidents underlying the charges. She and Raiten discussed whether her son needed an attorney, and Sharon Morris ultimately retained an attorney for him. She took Raiten’s phone conversations to mean that her son faced the potential of three other charges beyond the charges he faced from December of 2003.

The attorney she retained ultimately withdrew due to a conflict of interest, tracing to burglary charges filed against Kalinoski in April of 2004. The burglary took place at the summer home of another member of the law firm of the attorney Sharon Morris originally retained to represent Kalinoski.

Randy Georgeson

Georgeson is currently a Detective and has worked as a County Deputy since 1991. Between October of 2003 and December of 2009 he worked in the department’s drug enforcement program. In that program, he would develop informants, and in 2004 started to develop Kalinoski as an informant. Broadly speaking, departmental policy on developing informants starts with the selection of an individual willing to serve in that role and then moves to follow up interviews to determine if the individual has access to information that can be corroborated. If the individual is found reliable and has access to valuable information, the department executes a cooperative agreement with the informant. Any such agreement must be approved by the Sheriff or a member of his command staff. Georgeson documented the aspects of this process, keeping the information in files stored in his office and on his desk. His office is open and accessible to departmental employees. The law enforcement facility housing his office is not open to the public.

Kalinoski seemed to have potential to be an informant because his name had surfaced in departmental investigations of marijuana use. The charges against Kalinoski in December of 2003 opened the possibility of using his exposure to the criminal process as leverage to obtain his cooperation. With another officer, Georgeson worked with Kalinoski. He never executed a cooperative agreement with him, however, since he “never had the opportunity” (Tr. at 61). His file on Kalinoski included no cooperative agreement, but did include driver’s license and criminal history information.

Georgeson first approached Kalinoski to develop him as an informant in early January of 2004. He thought that he “probably” (Tr. at 63) spoke to Sharon Morris twice, either in January or possibly in February. Sharon Morris initiated the meeting at the office of the law firm then representing her son. He recalled that the discussion included a number of her concerns, including her phone conversations with Raiten. He stated that Sharon Morris told him, “That Lynne had told her son Chris Stapleton that Steven was an informant” (Tr. at 58). Georgeson reported this to Undersheriff John Weger, who came to the law office to take Sharon Morris’ statement. Georgeson played no role in the meeting after he contacted Weger. Georgeson felt he and Raiten had been friends for years.

Steve Coronado

Coronado has served the Department in a variety of positions including his current position of Patrol Captain. He has also served as a Deputy, a Lieutenant, and as a Jail Captain. While Jail Captain, he served as Raiten’s immediate supervisor, and authored her performance evaluations. While a deputy, he spent considerable time in the drug enforcement program, and developed at least five informants on his own, and many more with other officers. While a Deputy, he served as the Association’s Treasurer, Vice-President and President.

Booking a person on a criminal charge is a matter of public record. The investigation that may follow is not. A completed investigation is turned over to the District Attorney’s office, where a formal charge will issue, if a formal charge is made. Between the booking and the issuance of a formal charge, information obtained by the department is confidential.

Sheriff Oleson directed Coronado to investigate Raiten’s conduct in January of 2004. He was then her immediate supervisor. He described the focus of the investigation thus:

Deputy Raiten was to have allegedly released information to Rose and Sharon Morris on charges of a person that they wanted to use as an informant. She was also allegedly supposed to have told her son that that person was an informant, and those were -- I was looking specifically for policy violations in reference to those incidents (Tr. at 73).

Coronado interviewed Sharon Morris, Rose Morris, Raiten, Raiten’s son, Deputy Eymard Krupa, Deputy Steve Tully and Detective Mark Strompolis. By the end of his investigation, he issued a report to Oleson in which Coronado concluded that Raiten had violated Policy 96-02 at subsections i and r; Policy 96-09; and County confidentiality policy. He did not find a policy violation regarding Raiten’s communication with her son, because each of them denied the communication and he could not disprove their denials. Oleson, Weger and Coronado reviewed the report. Oleson disagreed with Coronado’s report on the allegation that Raiten told her son that Kalinoski was an informant. Oleson found a policy violation based on the finding of another investigator that three individuals who attended a party with Chris Stapleton stated that Stapleton informed them that his mother identified Kalinoski as an informant.

In Coronado's opinion, the confidential information that Raiten betrayed was, "That Steve Kalinoski had pending charges, specifically burglary charges" (Tr. at 100). In February of 2004, Coronado received a counseling memorandum from Weger concerning "relaying information from the department to his family" and conveying to him "the possible problems that these types of matters could cause this department." Coronado had informed his daughter that a high school acquaintance of hers had been in a one-car accident in which a pot pipe had been seen. Coronado learned of the incident from a Department Detective, and informed his daughter to stay away from her acquaintance, whom he understood to have driven the car. The source of the information the Detective passed on was the father of a girl who was in the car when the accident occurred. The father of the girl objected to learning from his daughter that Coronado's daughter had been informed of what he said to the Detective. Neither the accident nor the car's driver was the subject of a departmental investigation.

Rose Morris

Morris did not testify at the arbitration hearing, but did testify at a transcribed hearing held before the County Grievance Committee on May 3, 2005. Raiten was present at that hearing and was represented by Association counsel.

The County submitted a letter under the letterhead of Rose Morris' physician and physician's assistant, with a printed notation of their electronic signature. The letter is dated May 18, 2007, and states:

I am writing this letter in regards to . . . Rose Morris, date of birth 05/10/35 . . .

I am aware that Rose is supposed to testify at a grievance hearing in the near future. She has already testified about this situation several years ago. Apparently there has been no change in the history of this case, and having her re-testify would probably add nothing new to what has already been documented.

I am very concerned that testifying once again will exacerbate my patient's already serious health condition. . . . I feel that it is in my patient's best interest to avoid having to re-testify, especially in light of recent hospitalization for her irregular heart rhythm, reactive airways, and subsequent pneumonia. . . .

The County also submitted a handwritten note from Rose Morris' physician's assistant, dated November 30, 2009, which states, "Due to chronic health conditions (see prior letter) it is in patient's best interest to avoid court room testimony." Sharon Morris testified at the arbitration hearing that her mother works a couple of days per week, for four to seven hour shifts, as a bartender in a tavern in Mauston. She serves food and drinks. She lives alone and maintains her own home.

At the May 3, 2005 hearing, Rose Morris testified that she was unaware of charges against her grandson at the time Raiten phoned her. Rose Morris stated that Raiten told her, "That Steven was in trouble. He could be arrested for robbery. That's it (Tr. at 99)." She

phoned her daughter, Lynnelle, after the conversation, unsuccessfully trying to verify the information. She was not generally aware of her grandson's being in trouble at the time. She could not precisely date her conversation with Raiten, and originally told Coronado that she specifically remembered it occurred around Valentine's Day. She changed her mind based on, "The conversation with Lynnelle" (Tr. at 106) which occurred well after proceedings against Raiten started. Departmental phone logs from the Huber Center for January 12, 2004, show a phone call from the Huber Center to Rose Morris' phone number which lasted eight minutes and fifty-one seconds.

Lynne Raiten

At the time of the arbitration hearing, Raiten worked full-time for Volk Field Security; worked part-time for the Village of Necedah as its Police Chief; and worked part-time at the Mauston Kwik-Trip. She started work as a County Deputy Sheriff in January of 2002, serving as a Dispatcher. Prior to her discharge, she served as a Patrol Deputy and as a Jailer. At the time of the incidents underlying the Agreement and the Stipulation, she worked in the Huber Center of the County Jail.

In January of 2004, jailers commonly used the Jail phone system to make outside calls. She was then close to Sharon Morris, and called her with some frequency. The phone calls that became part of Coronado's investigation started with her checking in on Sharon Morris. She had difficulty isolating what was discussed at each call, but stated that the first call started with her attempt to talk about life in general. Raiten knew, when she called, that Sharon Morris "was struggling at that point with her son" (Tr. at 113). Sharon Morris began talking about her son, and Raiten responded by asking if she had gotten an attorney for him. After a silence, Sharon Morris asked, "Lynne, for what? Traffic charges?" (Tr. at 113). Raiten knew at that time that he had been booked for disorderly conduct and battery. She could not recall how she acquired that knowledge. After a discussion of those charges started, Sharon Morris began to weep and then hung up. Raiten returned to the "center" of the jail, finding Coronado, Tully and Krupa. She advised them that she thought Sharon Morris was distraught and that she wanted to leave work to console her. Coronado informed her that he needed a female at the jail and that she had to stay. She did so, determining to call Sharon Morris again.

She eventually phoned Sharon Morris at Sand Ridge. Sharon Morris was composed and they discussed her son. Raiten asked if Kalinoski was out on bond and, if so, whether it had any conditions. Sharon Morris responded that she knew nothing of that process and asked Raiten to check for her. This ended the conversation and Raiten "went to booking, and . . . pulled Kalinoski's file; and . . . checked the bond sheet because Steven was driving to work without a valid driver's license, and he was working down in Lyndon Station at that time" (Tr. at 115). She then got to a phone, called Sharon Morris at Sand Ridge, and,

. . . told her the conditions of bond. And she asked me what that meant. And I said, "Well, depending on what he is charged with and while he's on bond, it could be a felony status." (Tr. at 115)

The only information she had to discuss with Sharon Morris related to the disorderly conduct and battery charges, and that traced to the booking sheet, which is a public document. Sharon Morris initiated the discussion on Kalinoski's status as an informant by telling Raiten, "He is working for them" (Tr. at 117). Raiten at first could not understand the question and pursued it, starting to understand that Kalinoski may be working with Georgeson as an informant in the drug enforcement program. The conversation ended before she felt she understood Kalinoski's situation, and "I begged her at that point to call me later at home because I really wanted to talk to her about it and see if she would change her mind about that situation" (Tr. at 117). However, Sharon Morris never returned the call.

Raiten did not, at any point in her conversations with Sharon Morris, know whether the County planned to charge Kalinoski with burglary. She felt Sharon Morris called Georgeson because, "She was terrified for her son (and) didn't want to see him in jail" (Tr. at 120).

Sometime during the period spanning her phone conversations with Sharon Morris, Raiten phoned Rose Morris. They discussed the disorderly conduct and battery charges. Rose Morris responded to her that "Steven and my son Chris made her puke, and she didn't want either of them around her home" (Tr. at 116). They argued about whether Kalinoski was right to have beaten a person who had damaged Kalinoski's car, and Rose Morris thanked her for the call. At the close of the conversation, Raiten asked Rose Morris to check on Sharon. At no point in any of these conversations, did Raiten assert that Kalinoski was a confidential informant.

THE SECOND MATTER

In March of 2004, the County recorded calls to the Jail's central and booking phones. The system used a digital recorder, voice activated by decibel level, which stored any recorded calls to storage media located in the Dispatch Supervisor's office. The system also recorded 911 calls.

Terry Wafle was, in March of 2004, the Lead Dispatcher. She heard a recording of a call between the jail and the Necedah Police Department. She alerted Oleson to the call. Oleson directed Coronado to make a copy of the recording of the call, and investigate its purpose. The call was between Raiten and Seth Tully, then the Police Chief in Necedah. The recording includes the following dialogue:

Grievant: Hey, I got a question for you.
Tully: What's up?
Grievant: Even though we are on a recorded line -
Tully: Uh-huh.
Grievant: What is Coronado doing a presentation at the school about today?
Tully: I have no idea.
Grievant: I figured you didn't.
Tully: No idea.

Grievant: We were all curious. See how funny that is, how they all start pouring in?
Tully: Yeah.
Grievant: Interesting.
Tully: I could find out, you know.
Grievant: Well, I – I know you will. That’s what we were – I was wondering.

Tully: Yeah. . . .
Grievant: . . . I was just curious because he is gone until, like, 1:30.
Tully: Hm.
Grievant: Uh-huh. Now, why that school . . . I don’t know. Don’t ask me. I just – I just know they infiltrate. It’s coming. . . . (Tr. at 128-130)

The phone call took place on March 11, 2004. Raiten was, at that time, a part-time police officer for the Village of Necedah. Oleson must approve part-time work outside of the County.

Throughout 2004, a number of municipalities, including Mauston and Elroy, were discussing whether to contract with the County for the provision of law enforcement services. Oleson was actively involved in the discussions.

The balance of the **BACKGROUND** is best set forth as an overview of witness testimony.

Steve Coronado

On March 11, 2004 Coronado was at Necedah High School to make a presentation to a sociology class concerning the application of laws in the transition from minor to adult. He had made similar presentations since 1989. Coronado was then Raiten’s immediate supervisor and had been for roughly four years. In his opinion, as reflected in her performance evaluations, Raiten had difficulty maintaining effective relationships with her co-workers. She had a weak rating on this point in performance evaluations dated February 24, 1995; September 8, 2000; March 2, 2002; February 21, 2003; and January 26, 2004.

Oleson directed Coronado to copy the tape; review it; and determine its purpose. Coronado put the point thus:

We turned it into a – one of the charges that we wanted to talk about in the Garrity interview that we conducted and made a copy of the phone conversation and asked her questions about it. (Tr. at 135).

After the interview, Coronado concluded:

I believe that Deputy Raiten's trying to cause a problem between the sheriff's – or at least make Necedah Police Department believe that the sheriff's office is trying to either take over, infiltrate or cause a problem in the relationship between the two departments. (Tr. at 135)

Coronado did not interview Tully, and did not specifically know how Oleson became aware of the call. He concluded that Raiten had violated Policy 96-02, subsection r. He did not believe that Raiten actually had to cause an inter-departmental issue to have violated the policy, which precluded any need to interview Tully. Her Garrity interview, coupled with his review of the tape, established a policy violation. He characterized his interpretation of the tape thus:

I can say what her intent was because that's – what I hear on the tape is the tone in her voice and the way she's talking, the questions she's – or the way she's implying things to him (Tr. at 143).

He also found her responses in the Garrity interview “evasive” (Tr. at 143). Oleson accepted the recommendation and added it to the Charges.

Seth Tully

Tully started working for Necedah on a part-time basis on August 25, 2001. He became a full-time patrol officer on January 22, 2002. He became acting Chief of Police in 2003, and served as Chief of Police from 2004 through February 2, 2009.

No one asked him about the March 11, 2004 phone conversation until roughly two months later, when Oleson called him into Oleson's office. Oleson asked if he remembered the conversation and then asked what Tully thought she intended by making the call. Tully responded that he took her concern to be that she did not understand why a County official would have to appear at a school within the Village's jurisdiction. Oleson asked if Tully thought that the conversation was Raiten's attempt to communicate that the County was trying to contract with Necedah to disband their department. Tully responded, “No, I didn't take that that way at all” (Tr. at 150).

Tully did think Raiten had been critical of Coronado. Tully was not concerned with Coronado's presentation, but “was a little upset” (Tr. at 150) that Coronado had not taken any steps to notify him about the presentation.

Brent Oleson

As of the date of the arbitration hearing, Oleson had served as Sheriff for ten years. Wafle came upon the call by chance and brought it to Oleson's attention. Oleson listened to the conversation some time after Coronado had made a cassette copy of the original digital tape recording. Oleson stated he interviewed Tully because “I thought Mr. Tully should have been

talked to” (Tr. at 153). Oleson saw Tully at the Department lobby, and called him into Oleson’s office to discuss the March 11 phone conversation. The discussion preceded his decision to add the conversation to the Charges. Both he and Coronado viewed the high school presentation to be too routine a function to require prior notice to Tully. The Charges allege a violation of Policy 96-09, because Oleson viewed the entire tape to reflect criticism of Coronado. There was, in Oleson’s view, “no reason for that phone call to be made” (Tr. at 158).

Lynne Raiten

Raiten saw the March 11, 2004 conversation as one of many she had with Tully to encourage him to develop more extensive contact with students and school officials. She saw the conversation to have nothing to do with Coronado, but with a long-standing concern shared by Tully and Raiten concerning school use of County deputies rather than Necedah police to perform functions such as policing basketball games. The County did not inform him of this type of school involvement and Raiten wanted to encourage Tully to be more active with the schools.

Further facts will be set forth in the **DISCUSSION** section below.

THE PARTIES’ POSITIONS

The County’s Brief

In its overview of the record, the County contends that Raiten “violated the trust and reasonable expectations imposed on deputy sheriffs in two major ways.” The first is that “without authority from the Sheriff or other command staff, Deputy Raiten disclosed confidential information about pending charges against an individual being pursued by the department for assistance in criminal investigations.” Specifically, Raiten informed Sharon Morris, Rose Morris and others that Kalinoski might face criminal charges; and Raiten called the integrity of the department into issue during her phone conversation with Chief Tully.

Regarding the first major offense, the department was considering using Kalinoski as an informant, and Raiten’s breach of confidentiality put him and the department’s mission at risk. Raiten’s actions were egregious, because “she did this for personal reasons”. Regarding the second major offense, Raiten sought to undermine the image of the department. The policy violation highlights that her misconduct is not isolated, “but was part of her continued disregard for the responsibilities of her position and the department.”

The labor agreement “calls for discipline to be imposed only for just cause.” Sec. 59.26(8)(b)(5m), Stats., provides the statutory criteria defining just cause. The evidence establishes that the County has demonstrated “all seven criteria of just cause”.

The evidence proves Raiten “had full knowledge that her misconduct violated established department rules and policy.” Policy 96-09 establishes the rule violation, by demanding non-disclosure of information under a pending investigation without supervisory

approval. Coronado's internal investigation was "full and proper", and established that Raiten released "confidential jail information before it was a matter of public record" and released "information regarding an informant for the Sheriff's office." The earliest date the information could be considered public was March 4, 2004, and the evidence establishes repeated contact between Raiten and non-departmental individuals in January of 2004. Sharon Morris' hearing testimony establishes the underlying communications. Morris' mother testified at an administrative hearing, and confirmed the substance of these improper communications. Because the County submitted "written documentation from her doctor that Morris' mother was unable to appear at the grievance hearing in person" it follows that "her testimony by transcript should be considered by the arbitrator."

This breach of confidentiality is "a violation of the first order." The violation is evident without regard to its impact on public safety. Sharon Morris' testimony underscores, however, the actual impact of the breach, since her son "had a gun pointed at him." Without regard to Raiten's intentions, the breach shows a "startling lack of self awareness" and demonstrates "that she cannot uphold the duties of a deputy sheriff."

Raiten's second major offense took place in March of 2004. Raiten had no reason to make the call to Tully; used it "to stir suspicion of the Sheriff's Department"; and denigrated the integrity of the department. Viewing her conduct as a whole, the evidence establishes cause for her discharge.

The Association's Brief

The Association portrays the circumstances surrounding the litigation as "six years of hellish personal and professional limbo" for Raiten. Regarding The First Matter, the Association contends that the County failed to prove that Raiten's personal conversations with the Morris family constitute a disciplinable offense. In December of 2003, Kalinoski's arrest for disorderly conduct and battery started a chain of events that split Raiten from Sharon Morris, who with her mother, were close friends and, by marriage, family. The arrest triggered the interest of the Sheriff's Department in whether Kalinoski could become an informant. This process is involved, and demands a cooperation agreement. Detailed review of the evidence establishes no such agreement was ever executed, and little beyond superficial investigation was documented to file.

At some point in January, Raiten had a series of conversations with Sharon Morris and her mother. The evidence on that series of conversations falls well short of justifying discharge. Significantly, it was Sharon Morris who informed Raiten that her son was being considered as a potential informant. At most, the conversations involved undisclosed charges.

Rose Morris' testimony concerning a "robbery" charge is not "logical or reliable." She did not testify at the arbitration hearing and thus was not subject to cross-examination. Rose Morris could not reliably date the single conversation used by the County. Beyond this, her mention of a "robbery" charge is unreliable, since the contemplated charges were for

burglary. It is implausible that Raiten, as an experienced law officer, would refer to a “robbery” charge when she meant “burglary.” Ignoring the weakness of Rose Morris’ testimony from a prior administrative hearing cannot obscure that she was available to testify. Denying Raiten the opportunity “to confront one of the County’s most significant witnesses against her is absolutely egregious.” Even if Sec. 908.04, Stats., is not considered binding on an arbitrator, it highlights the significance of first-hand testimony and must be considered a source for evaluating the weight to be given to Rose Morris’ earlier testimony. The rules of evidence make “infirmity” a “fairly stringent” standard. Detailed review of the testimony establishes that Rose Morris, though elderly, is a vital woman who still works and maintains her own household. Her prior testimony should be given no weight.

In marked contrast to the Morris’ testimony, Raiten’s was “far more logical and reasonable.” Her testimony accounts for why she made two phone calls on January 9, 2009. Her checking of a bond sheet involves “public information” to assist a friend. County allegations that she used the time between the two calls “to clandestinely slip into . . . Georgeson’s office” in another building to see if she could find a confidential file is “entertaining”, if not “remotely believable.” Viewed as a whole, none of the testimony of County witnesses can establish how Raiten “ever knew about . . . Kalinoski’s burglary charge.” If speculation is appropriate, then there are far more likely sources for the Morris’ family to have learned of the charges other than Raiten, ranging from Kalinoski’s friends, to his accomplice, to the crime’s victims. Detailed scrutiny of the incentives for any of the witnesses to slant the truth to their own purpose cannot persuasively paint Raiten’s testimony as unreliable. The “Morris family had a significant incentive to testify in a way that was favorable to the County”. That Kalinoski ultimately came to face a burglary charge highlights the family interest in advancing the County’s case. That the record is silent on what became of that charge may even point to “a tacit *quid pro quo* where the charges were dismissed in exchange for the Morris’s family’s cooperation in the County’s case against Raiten”. On balance, there is nothing to undercut Raiten’s reliable testimony that she told the Morris family “about the public disorderly conduct, battery and traffic charges.”

Even if the County’s witnesses’ testimony is credited, there is no reliable evidence of conduct demanding discipline. There was no complaint to trigger Coronado’s internal investigation. In the absence of testimony from Oleson on why he directed the investigation, it appears that what prompted the investigation was Sharon Morris’ expressed fear to Georgeson that her conversation with Raiten might have ruined the agreement between her son and the department. Georgeson passed this conversation on to Weger and presumably through Weger to Oleson. The record stands, however, silent on how this chain led to an internal investigation. That investigation falls short of establishing disciplinable conduct by Raiten. Most significantly, Kalinoski “was not a confidential informant” and Raiten never told the Morris family that he was. Coronado’s investigation confirms this. At root, this demonstrates only that “Oleson used Sharon Morris’s anguish for her son as leverage to pin disciplinary action on Raiten.”

Even if Raiten’s conduct warrants discipline, County action disregarded the contractual mandate to use progressive discipline. Raiten’s work record is solid and she has no discipline sufficiently related in time or in substance to the conduct posed here to warrant termination.

Significantly, Coronado received a letter of counseling for a breach of confidentiality “remarkably similar” to that alleged against Raiten. Detailed review of the evidence demonstrates that “a non-disciplinary letter of counseling would be the only appropriate action.” This should not obscure the weakness of County proof of its charges, and that if Raiten has not been proven to be guilty of misconduct, there should be no discipline.

Oleson’s Charges outline the allegations constituting The Second Matter. The investigation of those allegations was “fundamentally and fatally flawed” and the evidence stops short of establishing fact upon which to base discipline. At most, Raiten’s comments to Tully may have been “a ‘little’ critical” of Oleson. There is no proof that Raiten made the call to undercut a contract between Necedah and the County for law enforcement services or that she tried to upset Tully regarding Coronado’s presentation at a Necedah school.

Oleson’s investigation of these charges was “abysmal.” There is no clarity for why the investigation took place or who initiated inquiry into the call. At best, the evidence shows the Lead Dispatcher, who did not testify, informed Oleson of the call from Raiten to Tully; Oleson then directed Coronado to investigate; Coronado then listened to the tape; and then Oleson listened to the tape. Coronado never interviewed the Lead Dispatcher or Tully. Oleson interviewed Tully after Coronado completed his investigation. The evidence thus establishes that “This was a trumped up charge from its murky beginnings to the conclusion of the ‘investigation.’” To the extent the evidence shows any basis for departmental animus toward Raiten, it points to Coronado’s irritation that a subordinate was “checking up on him.” Against this background, there is no basis for discipline based on The Second Matter.

A detailed review of the evidence will not support any discipline against Raiten beyond “a letter of counseling for the *First Matter* and a reprimand for the *Second Matter*”. Even assuming the evidence supports the reasonableness of that level of discipline, “there is simply no way to reach the point of termination for the Grievant.”

Against this background, the Association concludes, “The minimum remedy is that the Grievant must be immediately restored to her position and made whole for all lost wages and benefits.” The litigation has drawn out over six years, with Raiten being out of pay status for over four of those years. In spite of the damage to her personal and professional life, Raiten “has met and exceeded her duty of mitigation and will cooperate fully in providing evidence of such.” The grievance must be sustained to “rectify that terrible wrong that was inflicted upon Raiten for which she has had to endure for so long.”

The County’s Reply Brief

The Association’s effort to unduly complicate the record cannot obscure that “there is no escaping that when Raiten picked up the phone to call the relative of a criminal suspect in an open case to discuss pending charges, she chose to disregard her duties as a deputy sheriff in favor of her own personal allegiances, whatever those were.”

More specifically, the County urges that there is no need for an individual complainant to prompt an internal investigation. The Association obscures that Sharon Morris did not initiate the phone calls and that Raiten phoned her “to tell her about additional charges her son . . . was facing.” This conduct, standing alone, warrants investigation and the investigation “resulted in evidence that Raiten committed misconduct when she revealed confidential information about possible new charges against a criminal suspect.” The only pending, public charge against Raiten at the time of these phone calls was disorderly conduct. The assertion that Sharon Morris’ testimony should be discounted because she sought “to keep her son out of jail” is unsupported. Beyond this, the assertion ignores that “the most important aspect of this case” is why Raiten phoned her in the first place.

The breach of confidentiality does not turn on whether Raiten specifically identified potential future charges or on whether Kalinoski became an informant. That the department delayed in bringing charges is the focal point of Raiten’s impropriety, since Raiten interjected herself in an ongoing investigation. Raiten had no right to question Morris on whether her son was to be used as an informant.

Rose Morris testified credibly and was subjected to cross examination by Association counsel. There is no reason not to credit that testimony. Whether Rose Morris appreciates the difference between “robbery” and “burglary” cannot obscure that she testified credibly to Raiten’s breach of confidential information.

Even if the County cannot definitively prove how Raiten learned of the potential charges against Kalinoski, it does not follow that the County has failed to carry its burden of proof. Her misconduct stands as misconduct without regard to how she got the information. This is not, in any event, “a case where there is any legitimate argument that Raiten could not have learned the information.” Her duties placed her in circumstances in which she is constantly exposed to confidential information. Her decision to convey confidential information without authorization to non-departmental individuals forms the basis upon which the discipline rests.

Association arguments about her experience and past work record cannot obscure a pattern of conduct undermining departmental policy which is evident in the First and the Second Matters. Coronado’s conclusion that Raiten did not release the identity of a confidential informant cannot obscure that Georgeson “never got the opportunity to use Kalinoski as a confidential informant” and cannot obscure “the Grievant’s egregious breach of department confidentiality.” That breach precludes the need to resort to progressive discipline. The labor agreement’s endorsement of progressive discipline “does not require the employer to refrain from terminating an employee when that employee commits extremely serious misconduct.” Coronado’s letter of counseling has no bearing on the evaluation of the totality of Raiten’s misconduct. Whatever breach of confidentiality is laid on Coronado did not involve the investigation of criminal conduct, or the existence of pending criminal charges. The Coronado incident “came to light during the Sheriff’s Department’s investigation into the alleged misconduct of the Grievant.” The County appropriately evaluated the severity of each breach of confidentiality and acted accordingly, based on the degree of proven misconduct. This cannot be characterized as disparate treatment.

The Association's Reply Brief

County assertion that the case should be analyzed under Sec. 59.26, Stats., “is mistaken.” The parties are “free to negotiate the standards upon which discipline is to be imposed upon bargaining unit members.” Those standards are set forth in Articles II and XIII. Since “the contract does not implicitly or explicitly incorporate the statute” the grievance should be resolved under contractual standards. Prior County application of the statutory standards has no bearing here, and the review should be *de novo*, without deference to Grievance Committee determinations.

DISCUSSION

The Standard Common To The First And To The Second Matter

Items 19, 20 and 21 of the Stipulation set standards common to each Matter. Items 19 and 20 seek a determination whether the discipline in each matter is warranted. As the parties' arguments note, the review of discipline can be statutory, under the standards of Sec. 59.26(8)(b)5m, Stats., or contractual, under Articles 13 and 14. Item 21 establishes Article 14 as the contractual source for the review. Sections 2.03 and 13.02, as underscored by the parties' stipulation at hearing, establish “just cause” as the standard of review.

Section 13.04B distinguishes between statutory and contractual review of discipline. The parties have not used Sec. 59.26(8)(b)5m, Stats., to structure their arguments. Where parties do not stipulate the standards defining just cause, I view two elements to define it. The first is that the County must establish conduct by the Grievant in which it has a disciplinary interest. The second is that the County must establish its discipline reasonably reflects the disciplinary interest. Unlike Sec. 59.26(8)(b)5m, Stats., this does not state specific standards. Rather, it states a skeletal outline of the elements to be addressed, leaving the parties' arguments to flesh it out.

Application Of Just Cause To The First Matter

Application of the first element of just cause demands proof of disciplinable conduct. Potential tension between contractual and statutory review surrounds this point, since the Charges define the County's interest less broadly than the evidence submitted at the arbitration hearing. The Charges are, however, a starting point.

The first and the second charge are the basis of the First Matter. Paragraphs 5, 6 and 10 of the Charges are the factual basis of the first and second charge. Paragraphs 5 and 6 have no persuasive support in the evidence. Coronado testified regarding the evidence underlying Paragraph 5, which is summarized above. There is no direct testimony on the point. At the close of his investigation, Coronado concluded the evidence failed to prove that Raiten made the statement attributed to her. The arbitration record, which contains less evidence than Coronado reviewed, affords no basis to question the reasonableness of his conclusion.

The evidence will not support Paragraph 6 of the Charges, beyond the testimony of Sharon Morris that someone, aware that Kalinoski was an informant, pointed a gun at him. This is of little consequence to the County's arguments at the arbitration hearing, since whether

anyone pointed a gun at Kalinoski does not limit the County's disciplinary interest in the asserted breach of confidentiality. The allegation that Raiten betrayed Kalinoski's status as an informant reasonably carries that possibility, whether or not a drug dealer acted on it.

Paragraph 10 of the Charges prefaces the factual issues raised by the County, which question whether Raiten released confidential information in conversations with Rose and Sharon Morris. The breach of confidentiality asserted through arbitration is thus broader than asserted through the Charges. The Association's contention that the County failed to prove any conduct on Raiten's part that supports discipline has persuasive force only if restricted to the Charges. On any view of the evidence spanning the period of time between the four logged conversations between Raiten, Sharon Morris and Rose Morris, Raiten, while on County time, initiated discussion with non-departmental persons about matters under departmental investigation. The investigation concerned a person she knew faced considerable legal jeopardy and knew was associated with the drug enforcement unit. Without any attempt to secure authorization, she took time, during work hours, to examine departmental booking records, disclose their contents, and share her thoughts on the legal implications of alleged criminal activity with non-departmental individuals. The degree of her knowledge, if any, of confidential information may be disputed, but the conduct noted in this paragraph, standing alone, supports a County disciplinary interest.

The disciplinary interest in this conduct rests on Policy No. 96-02, Sections i and s, as well as on Policy 96-09, Section B. The latter concerns "any information pertaining to an investigation currently underway" and the former concerns "information" and "non-authorized investigations." Neither is restricted to "confidential" or "privileged" information, which forms the core of the County's asserted disciplinary interest.

The misconduct alleged beyond this is severe. Paragraph 7 of the Charges alleges felony misconduct in office. Paragraph 8 alleges violation of the Employee Confidentiality Agreement, which governs "the confidentiality of information where disclosure . . . is forbidden by law." Violation of Section 2.6 of the Manual "may be sufficient cause for immediate termination."

The severity of the alleged misconduct demands greater reliability of proof than the record affords, and what proof the record affords supports the Association's view over the County's. Section 2.6 governs, without defining, "privileged or confidential information". Booking information is public record, but it does not strain the normal meaning of "confidential" to conclude the Morris family reasonably viewed it as "confidential" in the sense that they preferred the information remain restricted to departmental files. However, the Charges and the County's arguments establish that the alleged misconduct concerns legally "privileged and confidential" information. Thus limited, the record fails to establish the alleged misconduct.

Coronado's testimony establishes that the core of the asserted disciplinary interest is Raiten's disclosure to Rose and Sharon Morris that Kalinoski faced charges beyond disorderly conduct and battery. The evidence will not, however, support the County's assertion that Raiten either specifically communicated that Kalinoski faced a burglary charge or more broadly communicated information sufficient to betray Kalinoski as an informant.

A fundamental difficulty in establishing the severity of the misconduct involves the impossibility of isolating what information Raiten could betray. It is not clear what, if anything, the department or the District Attorney had decided regarding charging Kalinoski. It is at least conceivable that the absence of charges beyond disorderly conduct and battery represented only the thought process of the District Attorney and a discrete number of departmental personnel. If that is the case, there could be no confidential information for Raiten to convey, unless she was privy to the discussion of those thought processes. There is no evidence to indicate she was. Significantly, there was no confidentiality agreement executed between the department and Kalinoski. Georgeson testified that there was nothing in his file noting Kalinoski as an actual or a potential informant.

This involves more than subtlety of proof. Georgeson stated there was no confidentiality agreement because he never had the chance to execute one, presumably due to Raiten's betrayal of Kalinoski's status. The Charges contradict this, since Paragraph 6 alleges Kalinoski remained an informant "after Deputy Raiten leaked his status."

This is not a subtle point regarding proving a negative. Rather, the evidence fails to establish what Raiten leaked that exposed Kalinoski. Georgeson testified that Sharon Morris requested a meeting with him and at that meeting stated that Raiten told her that Raiten had informed Raiten's son that Kalinoski was an informant. Sharon Morris' recall of the phone conversations preceding her request to meet with Georgeson was that Raiten said that Kalinoski faced more than the charges pending from December of 2003, and asked whether Kalinoski was "working with" the department. This reference is ambiguous. It could imply that she sought no more than whether he was cooperating in a plea bargain process, or could imply she asked if he had agreed to be an informant to leverage that process. More to the point, Sharon Morris testified that at her meeting with Georgeson, she specifically declined to identify Raiten as the person who "outed" Kalinoski. Rather, Sharon Morris told Georgeson and Weger that, in her conversation with Raiten, she identified Kalinoski as an informant. Without regard to Raiten's testimony, the evidence on what Raiten said to Sharon Morris conflicts.

Rose Morris' testimony does not resolve, but exacerbates, the conflict. Even ignoring the objection to her testimony can not resolve the flaws in the evidence that Raiten "outed" Kalinoski. Rose Morris testified that Raiten told her Kalinoski could be arrested for robbery. Even ignoring that the allegedly pending charge was burglary affords no reliable basis to conclude Raiten betrayed confidential information. Taken on its face, the testimony indicates Raiten speculated on what "could" happen to Kalinoski. Whether viewed from the perspective of the Charges or of proof at hearing, the misconduct alleged is willful communication of confidential information, not gossip or speculation. Viewed in the light most favorable to the County, Rose Morris' testimony fails to support the assertion either that Raiten identified Kalinoski as an informant or that Raiten betrayed confidential information.

These flaws make it unpersuasive to find that Raiten willfully relayed privileged or confidential information to Sharon or to Rose Morris. The logical flaws in the evidence noted to this point preface the difficulty of constructing the testimony into a cohesive narrative that can

make an inference of betrayal of confidential information persuasive. The absence of a cohesive narrative cannot be held against Raiten. Departmental phone logs place the four conversations between Raiten, Sharon Morris and Rose Morris between January 5 and 12, 2004. The evidence affords little reason to believe the asserted events can be compressed so tightly. Rose Morris originally stated that Raiten's call to her took place on Valentine's Day. It is not clear when the meeting including Sharon Morris, her son's attorney, Georgeson and Weger took place. Absence of precision on this point undercuts the County's position. More to the point, Raiten's and Sharon Morris' testimony at the arbitration hearing puts Raiten's phone call to Rose Morris between Raiten's call to Sharon Morris on January 5 and her follow-up calls on January 9. This is not reconcilable to the assertion that, between that set of calls, Raiten upset Sharon Morris by phoning her mother on January 12.

Nor is it possible to construct a reliable chronology of the events from the testimony. Sharon Morris was "shocked" to learn the depths of her son's problems on January 9, and stated she knew very little of her son's difficulties at the time. This is difficult to reconcile to her knowledge that Georgeson was her son's contact. She phoned Georgeson to determine if the agreement her son had with the department concerning a reduction of charges in return for serving as an informant could be hurt by the substance of her January 9 conversations with Raiten. It is difficult to reconcile her undisputed contact with Georgeson, at a time when she knew little of her son's difficulties, with the substantive knowledge she conveyed at the meeting. Similarly, the testimony at hearing establishes Raiten encouraged Sharon Morris to retain counsel for her son. It is difficult to make that recommendation part of a meaningful chronology of events between the January 5 and the January 12 phone calls.

The strain of creating such a chronology makes it implausible to conclude Raiten betrayed confidential information in that tightly compressed period of time. The evidence is more readily reconciled to an ill-defined emotional maelstrom that engulfed Raiten, Sharon Morris and Rose Morris and spanned January and perhaps part of February of 2004. The imprecision of the narratives more probably reflects the passage of time coupled with the events' strong emotional content than deliberate misrepresentation. It is a more persuasive reading of the evidence to conclude that there is no precision on what Raiten said regarding other charges because none was offered. Rather, fear ran high and speculation ran rampant. It may be that gossip fueled the discussions, but there is no reason to believe the fuel included confidential information gleaned by Raiten as fact and passed on to Sharon and Rose Morris as fact. Rather, the evidence underscores that Raiten saw herself as helpful, and viewed gossip and information interchangeably, as help to those she perceived in need. She showed no professional sensitivity to Kalinoski's interest or consent in the discussion of his then-pending charges, because she viewed his mother to be personally in need, and to be personally in the best position to help. She informed Coronado of her concerns for Sharon Morris after their first conversation. She tried to leave work to check in on her. She did so openly, without concern for the professionally sensitive nature of the area she was wandering into. This is irreconcilable to the inference that she sought to acquire or sought to convey privileged and confidential information to Sharon Morris or to Rose Morris.

In sum, regarding the first element of the just cause analysis, the record demonstrates misconduct on Raiten's use of work time to investigate booking documents on Kalinoski and to

communicate personally with Sharon Morris and with Rose Morris about professional matters bearing on his relationship with the drug enforcement unit. It does not demonstrate either that she knew or communicated to Sharon Morris or to Rose Morris that Kalinoski was an informant or that she knew of charges pending against him beyond those he faced in December of 2003.

The second element of the cause analysis is whether discharge reasonably reflects the proven disciplinary interest. Sections 13.01 and 13.02 encourage the use of progressive discipline. Policy 96-02 does not recognize progressive discipline as a mandate, but focuses its absence on severe misconduct, since "Termination, the most extreme form of discipline may accompany willful and blatant breaches of work rules, and State Laws." It is not necessary to find conflict between Article XIII and County policy to conclude that the proven policy violations fall short of warranting discharge. Most of the specific sections of Policy 96-02 focus on willful misconduct, and thus, like the sentence quoted above, highlight the significance of willful conduct to warrant summary discharge. Similarly, the Employee Confidentiality Agreement focuses on the role of law regarding willful breach of confidentiality. County Confidentiality Policy and Policy 96-09 focus broadly on the communication of confidential information. At root, each of these policies demands an exercise of discretion to distinguish conduct amenable to progressive discipline from conduct so intractable that summary discharge is necessary.

Raiten's willingness to gossip in the name of helping friends constitutes poor judgment in using work time to investigate and to speculate on sensitive information bearing on a criminal investigation and its relationship to the department. This falls short of deliberately identifying an informant, or deliberately seeking and passing on confidential information. This is not the first time Raiten has indiscriminately gossiped, as reflected in the June, 2000 written reprimand. This should not obscure that the written warning was roughly four years old at the time of the Charges. Nor should it obscure that whatever her evaluations show regarding difficulty interacting with fellow employees, they also show exemplary conduct. There is no persuasive evidence the department weighed her work record in consideration of her discipline. This reflects the severity of the misconduct the department alleged. However, failure of proof on the alleged misconduct exposes the flaw in not considering her work record.

In my opinion, the proven misconduct warrants a minor suspension, based on past discipline for spreading rumor. Her professional insensitivity to the mine field she walked into by speculating with Sharon and Rose Morris on Kalinoski's legal jeopardy was profound. That she treated her work time as available for a personal investigation on Sharon Morris' behalf similarly manifests insensitivity to the demands of her position. Her conduct, if not willful misconduct, stands in violation of sections i and s of Policy 96-02; Section B of Policy 96-09; and the County's Confidentiality Policy. The Award reflects this by permitting the County to suspend her for one day. The Award also sets the discharge aside and requires the County to expunge references to it from her personnel file(s), in addition to making her whole for damages suffered as a result of the discharge. The one-day suspension places her at jeopardy of discharge for a recurrence of the misconduct, but leaves that point open to permit the County to consider whether future misconduct warrants progressive discipline or discharge. Presumably, this permits the exercise of sound discretion established by Sections 2.03, 13.01 and 13.02 as implemented through County policy. No further discussion of remedy is appropriate in light of the retention of jurisdiction stated at Item 38 of the Agreement.

Before closing, it is appropriate to tie this conclusion more tightly to some of the arguments. The applicability of Sec. 908.045(1), Stats., was addressed at hearing, but plays no role in this decision. Treating Rose Morris' testimony as if given at the arbitration hearing will not address flaws in County proof regarding what Raiten said to Rose and Sharon Morris. This does not make inadmissible evidence admissible. Rather, it highlights that the evidence does not affect the grievance's resolution. If inadmissible, the testimony cannot support the County's position that Raiten betrayed confidential information. If admissible, the testimony does not support the persuasive force of the narrative that the County offers to prove a deliberate betrayal of confidential information.

Credibility plays a limited role in the grievance. Sharon Morris' testimony is difficult to sort through and fails to establish a tidy chronology. This does not make her a liar. Her interest in preserving her son's freedom can be acknowledged, but the degree to which it colored her testimony is debatable. Assessing credibility by reliance on "self-interest" affords limited guidance. Raiten, like Sharon Morris, has evident self-interest at stake. It is, however, less than evident how that self-interest accounts for undisputed conduct. Raiten's openness in approaching Coronado after her first conversation with Sharon Morris is not easily accounted for by "self-interest." If anything, the openness points to weakness in judgment on the impact of personal issues on professional matters. This undercuts a conclusion that she willfully betrayed confidential information. Why would a person prone to gossip to help friends resort to a search for fact from legally confidential sources prior to gossiping with friends in need? Even ignoring the absence of proof on what fact, in the sense of proof of Kalinoski's status as an informant, was available to Raiten, the evidence cannot reliably answer the question.

What is most significant about the absence of a tidy chronology is its absence. It is unremarkable that persons who recall fact from long-passed and emotionally trying times may yield something less than a tidy chronology. Two considerations regarding the absence of a tidy chronology are remarkable. The most remarkable is the lack of clarity from sources outside the emotional maelstrom. The conflict between Georgeson's recall and Sharon Morris' regarding what led to and from the meeting at her son's attorney's office is stark, but cannot be resolved from information from non-interested sources. There is no supplementary information from Weger or departmental documents to resolve the conflict.

More to the point regarding credibility, it is remarkable that the common factual core of Raiten's and the Morris' testimony establish what clarity exists. The testimony of Sharon and Rose Morris, coupled with Raiten's, offer a roughly consistent narrative affording little reason to believe confidential information was discussed. They agree that Raiten's approach to Rose Morris angered Sharon Morris. As noted above, this fact is difficult to make a meaningful part of a chronology involving a communication of privileged information. Sharon Morris' and the Grievant's accounts match on her failure to identify pending charges. The most damning conflict between them is the asserted mention of three potential charges, but there is no corroborative evidence from non-interested sources to resolve this conflict. There is no evidence the County charged or considered charging Kalinoski with three offenses. Rose Morris' testimony does nothing to assist the County's view, since what definitive information she offered was that Raiten alleged he "could" be charged with robbery. Ignoring that the evidence shows no such charge or

contemplation of making this charge, this testimony and what demeanor was available in observing it, support the conclusion that gossip and fear, not fact, ruled the day.

As noted above, difficulty in reconstructing events between January 5 and January 12 is more reliably traced to the absence of evidence from non-interested sources than from the interest of those who testified. Credibility considerations thus support the Association's view over the County's. The testimony of Sharon Morris, Rose Morris and Raiten credibly manifest a whirlwind of emotionally driven conversations on intensely personal subjects that spanned a considerable period of time. The County's view of willful misconduct unpersuasively compresses this whirlwind into a roughly ten day period spanning a series of logged phone calls in early January. Conflict between the testimony of Rose Morris, Sharon Morris and Raiten is less troubling than the reconciliation of that testimony to County allegations. On balance, the Grievant's testimony is the most detailed and reliable of that presented at hearing. Her summary of her conversation with Rose Morris tracks well with the earthy tone and substance of what can be gleaned from Rose Morris' testimony and that of her daughter.

That the parties did not use Sec. 59.26(8)(b)5m, Stats., to structure their arguments and that Section 13.04B distinguishes between statutory and contractual review of discipline does not render statutory review irrelevant. Whatever tension exists between the standards does not mean they conflict. The two element test applied above is consistent with the statutes. More specifically, the evidence does not pose any issue regarding the applicability of Subsections a, b, d, or f of Sec. 59.26(8)(b)5m, Stats. The evidence fails to meet Subsection c because the rules at issue are broad, and the reasonableness of the investigation falls short regarding the absence of consideration of anything other than a willful breach of the rules prohibiting disclosure of legally confidential material. Raiten's speculation on Kalinoski's legal jeopardy was improper, but there is a line between indiscrete speculation and deliberate communication of privileged information. The difficulty of proof on the latter should reasonably have yielded more substantial inquiry on the former. The absence of further inquiry lends at least the appearance that the investigation sought fact to corroborate an already made conclusion rather than sought fact from which to build a conclusion. The failure of proof regarding the application of Subsection e is detailed above. The difficulty with Subsection g flows from the failure of proof on a willful betrayal of confidential information. The County's citation of past issues with Raiten's propensity to rumor and the weakness of some evaluations regarding her ability to get along with fellow employees cannot obscure that her evaluations are solid or better. The sanction of discharge rests on the severity of the Charges regarding her misconduct. The Sheriff did not feel compelled to evaluate her work record against the severity of the alleged misconduct. Failure of proof on that point, however, makes a reasoned evaluation of her work record another weakness in proof regarding the reasonableness of the discharge.

Application Of Just Cause To The Second Matter

The disciplinable conduct required by the first element of the cause analysis turns on whether Raiten undermined the departmental chain of command in a March 11, 2004 phone conversation with Tully. The evidence turns on the allegation that she used Coronado's unannounced presentation at Necedah High School as a vehicle to make Tully question whether

the Sheriff's Department was working behind his back to take over the Village's law enforcement duties. Paragraphs 12 through 16 of the Charges allege that the conversation "undermined the Department's command staff"; constituted "insubordination"; and manifested "disrespect of commanding officers".

"Insubordination" has been defined as: "A worker's refusal or failure to obey a management directive or to comply with an established work procedure." Roberts' Dictionary of Industrial Relations, Fourth Edition, (BNA, 1994). Whatever is said of the scope of the behavior covered by this definition, "insubordination" is not a subtle charge and connotes severe misconduct. The Charges allege willful and severe misconduct.

Proof of misconduct does not rise to that level. The evidence shows no directive Raiten disobeyed and no established work procedure she failed to comply with. The evidence indicates her call to Tully did not violate policy, but the "tone" and substance of their conversation did. A review of the tape of the conversation regarding Raiten's tone and use of innuendo through "they keep pouring in" or "they infiltrate" shows little evidence of the level of disrespect referred to in the Charges. Rather, the tape is gossipy and trivial in tone and substance. There is, in short, no evidence of the severe misconduct alleged in the Charges.

This fails, however, to establish the Union's position. There is no evidence, including Raiten's testimony, which supports her making the call at all. That the Department tolerated personal calls on duty cannot reasonably be taken as license for Raiten to say anything she chose, to anyone she chose, while working. As banal as the conversation is, the use of "pouring in" and "infiltrate" can reasonably be taken to imply misconduct on Coronado's part. Coronado's presentation did no more than his duty and did no more than he had on prior occasions.

At most, the evidence shows that Raiten gossiped with Tully on County time and was snide. The Sheriff's citation of Policy 96-09 to establish that she improperly criticized the department or acted insubordinately is unproven. Subsections n and r of Policy 96-02 would appear a better fit. The evidence is, however, insufficient to meet even those sections. Labeling the criticism as "destructive" is difficult enough, but there is no showing that a "Departmental order" plays any role relevant to the conversation. Subsection r appears more applicable, for it highlights that there was some sensitivity in the area under discussion, since subcontracting of smaller law enforcement units to the County was then under consideration. However, the conversation did not involve either "outside public or departmental members" since she spoke to Tully as Necedah Chief of Police. At best, the applicable policy is Section g of Policy 96-02, since her gossip about departmental issues can be considered "conduct unbecoming." Against this, however, stands Coronado's and Oleson's unilateral determination that they need give Tully no notice of their presence. This shows little, if any, consideration of comity between the departments. Tully noted their insensitivity to this point troubled him. Against this background, the conversation appears less a destructive portrayal of County command staff than a relatively accurate recounting of then-existing tensions.

In sum, the evidence on the first element of the cause analysis shows Raiten gossiped and strayed a bit beyond the bounds of propriety set by Policy 96-02. There is, however, no basis to conclude she was guilty of significant misconduct, much less insubordination.

Nor does the evidence establish that the proven misconduct meets the second element of the cause analysis. Oleson added this conduct to the Charges seeking Raiten's termination. The misconduct at issue cannot reasonably be taken to rise to that level. The conclusions stated above regarding the First Matter put Raiten at the suspension level, which put her at the discharge step of the progressive discipline system. However, the Award entered below authorizes the County to issue Raiten a counseling memorandum concerning her propensity to gossip. This is all the evidence reasonably permits.

Several considerations militate against permitting the County to advance Raiten on the progressive discipline system. Contrary to Paragraph 16 of the Charges, there is no persuasive evidence that Raiten would not respond to progressive discipline. She has done so in the past as shown by her evaluations in the years 2000, 2001 and 2002 compared to her 2003 evaluation, regarding her intra-departmental relationships. Nor is there any indication that the department gave this matter "due investigation". Why Oleson directed the investigation of a tape he never heard is difficult to understand. It appears he concluded there was an impropriety and directed Coronado to find one. This is difficult to characterize as "due". Coronado's failure to interview Tully before finding a fundamental policy violation is insupportable. Oleson's interview of Tully, perhaps two months after Coronado concluded his investigation, confirms this. Beyond this, the belated interview was not a search for fact. When informed by Tully that he did not find the conversation remarkable, Oleson pressed him to consider whether Raiten was implying the County was trying to take over law enforcement for Necedah. Tully repeated that he saw nothing remarkable in the conversation. In spite of this, nothing from Oleson's interview affected Coronado's already completed investigation. This is less a quest for fact than a quest to confirm conclusions already reached. Beyond this, if the Department's treatment of Raiten's use of "infiltrate" and "pouring in" can reasonably be seen as "destructive criticism", what is to be made of the Department's failure to consult or notify Tully regarding the presence of County personnel in the jurisdiction he headed? If the then-ongoing sub-contracting discussions demanded some sensitivity from Raiten in her approach to Tully, why did those discussions have no bearing on Departmental command staff?

The sanction noted in the Award is essentially that issued Coronado for the conduct noted in the First Matter. His counseling memorandum essentially sanctions gossip regarding sensitive information traceable to the department. Raiten's propensity to gossip is proven. The underlying information at issue here is considerably less sensitive than that involved with Coronado's communication with his daughter. Applying a similar sanction here fits well within a past exercise of departmental disciplinary discretion. Had the County consistently used Section 13.02 to sanction Raiten's propensity to gossip on work time, it is conceivable that discharge could be warranted. However, the proven violation in the First Matter does not support discharge, and the Second Matter is grossly overcharged. The evidence will not reasonably support any sanction beyond a counseling memorandum.

As with the First Matter, application of the contractual standard of review is consistent with statutory review. Here, the evidence falls short of proving Subsections c, d, e, and g of Sec. 56.29(8)(b)5m, Stats.

Credibility plays some role in this matter. Raiten's attempt to downplay the tone of her conversation was evident, but her candor in responding to the purpose of the conversation was notable. She acknowledged that the conversation did not advance the County's interests. The contrast between her realistic evaluation of the conversation and the overstatement of the significance of the conversation in the Charges is noteworthy.

AWARD

The First Matter

The County did not have just cause to discharge Lynne Raiten for the misconduct alleged in the First Matter, because it has proven neither that she communicated confidential information to Sharon Morris or to Rose Morris, nor that she communicated information to Sharon Morris or to Ruth Morris sufficient to identify Sharon Morris' son as a potential informant. The County did, however, have just cause to discipline Lynne Raiten for using work time to investigate Departmental records regarding charges then subject to a criminal investigation and for communicating indiscriminately on work time with Sharon Morris and Rose Morris on matters bearing on then ongoing departmental investigations.

As the remedy appropriate to the County's violation of Sections 2.03 and 13.01, the County shall expunge references to Raiten's October 26, 2005 discharge from her personnel file(s), but may amend her personnel file(s) to reflect a one day suspension for the conduct noted in the first paragraph of this Award. In addition, the County shall make Raiten whole by reinstating her to the position she would have occupied but for her discharge; and by compensating her for the wages and benefits she would have earned but for the discharge, less appropriate offsets, including the one day suspension authorized in this Award.

The Second Matter

The County did not have just cause to discharge Lynne Raiten for the misconduct alleged in the Second Matter, either standing alone or considered with the misconduct proven in the First Matter. The County did, however, have just cause to discipline Lynne Raiten for using work time on March 11, 2004 to phone then Necedah Police Chief Seth Tully to gossip regarding the purpose of Captain Steven Coronado's presentation at a public school in Necedah, and to indiscriminately imply that Coronado's presentation "poured into" or "infiltrated" Tully's jurisdiction.

As the remedy appropriate to the County's violation of Sections 2.03 and 13.01, the County shall expunge references to Raiten's discharge effective October 26, 2005, from her personnel file(s), but may add a counseling memorandum to her personnel file(s) stating that using work time on March 11, 2004, to phone another law enforcement agency to gossip regarding matters that could reasonably be perceived as detrimental to Departmental command staff, constituted conduct unbecoming an officer.

To address any issue regarding the implementation of remedy under this Award, and consistent with Item 38 of the Agreement, I will retain jurisdiction over the grievance for not less than forty-five days from the date of this Award.

Dated at Madison, Wisconsin, this 3rd day of August, 2010

Richard B. McLaughlin /s/

Richard B. McLaughlin, Arbitrator