

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
MILWAUKEE DEPUTY SHERIFFS' ASSOCIATION

and

MILWAUKEE COUNTY

Case 711
No. 69537
MA-14643

(Thomas Trettin Suspension Appeal)

Appearances:

Christopher MacGillis, MacGillis Wiemer, Attorneys at Law, 2360 North 124th Street, Suite 200, Wauwatosa, Wisconsin 53226, appearing on behalf of Milwaukee Deputy Sheriffs' Association.

Roy Williams, Principal Assistant Corporation Counsel, Milwaukee County, Room 303, 901 North Ninth Street, Milwaukee, Wisconsin 53233, appearing on behalf of Milwaukee County.

ARBITRATION AWARD

The Milwaukee Deputy Sheriffs' Association, hereinafter referred to as the Association, and Milwaukee County, hereinafter referred to as the County or the Employer, were parties to a collective bargaining agreement which provided for final and binding arbitration of all disputes arising thereunder. The Association made a request, with the concurrence of the County, that the Wisconsin Employment Relations Commission designate a member of its staff to hear and decide the appeal of Thomas Trettin's suspension. The undersigned was so designated. A hearing was held in Milwaukee, Wisconsin on August 5, 2010. The hearing was not transcribed. The parties filed briefs whereupon the record was closed October 20, 2010. Having considered the evidence, the arguments of the parties and the record as a whole, the undersigned issues the following Award.

ISSUE

The parties stipulated to the following issue:

Was there just cause to suspend Sergeant Thomas Trettin for ten days? If not, what is the appropriate remedy?

BACKGROUND

The County operates a Sheriff's Department. The Association is the exclusive collective bargaining representative for the Department's deputy sheriffs and sergeants.

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The number of deputies in the Department has decreased over the past eight years. In 2002, there were 692 deputies in the Department. Now there are 351 deputies.

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This case involves the collection of DNA samples from felons.

Like other law enforcement agencies, the Milwaukee County Sheriff's Department is responsible for collecting DNA samples from convicted felons for a statewide database. This collection is required by law. Additionally, it's a source of income for the department because it is reimbursed by the State for the DNA collections that are made.

In 2001, the Sheriff's Department issued a directive which specified the procedure for collecting DNA samples from inmates. The procedure referenced in that memo need not be listed here.

Over the years, various employees have notified management that staff shortages were impeding the collection of DNA samples from inmates. In 2005, the sergeant who was then in charge of collecting DNA samples – Sgt. Brett Myers – sent a memo to a top administrator in the department wherein he (Myers) opined that “because of staff shortages inmates [for DNA collection] are slipping through the cracks.” The sergeant then made two suggestions to remedy same: (1) have a deputy staff the DNA office or (2) create a permanent position – with a retired deputy or civilian – to collect DNA full time. Later that year, Sergeant Myers sent another memo to the same administrator wherein Myers stated: “[a]t this time, DSB [the Jail] only tests inmates in the Jail and at the HOC. We do not do walk-ins. DNA is done at the HOC when we have staff available.” In July, 2006, the sergeant who was then in charge of collecting DNA samples – Sergeant Kerri McKenzie – informed her supervisors in writing that additional staff was needed to collect DNA samples. To remedy that, she requested that the Department allocate a full-time deputy to the Jail Records Office to collect DNA. Her request was denied. Consequently, no changes were made concerning the way the Department collected DNA samples from inmates or who collected them.

FACTS

Thomas Trettin is a sergeant in the Sheriff's Department. From August, 2006 to January, 2009, he was assigned to the Jail Records Office. While he was there, he wore many different hats, so to speak. His job duties included the following: 1) he supervised jail records; 2) he supervised the taking of prisoners to court and state facilities; 3) he was the booking sergeant; 4) he reviewed House of Correction shipments and packets; 5) he dealt with personnel matters; and 6) he supervised the collection of DNA samples from inmates. By all accounts, being a sergeant in the Jail Records Office is a hectic and stressful job. The biggest part of his job was being the booking sergeant (i.e. the third duty just referenced). As a result, the sixth duty just referenced (i.e. the collection of DNA samples) was not his top job priority. However, in the context of this case, that job duty is the duty being focused on here.

Each day in the Jail Records Office, a list is printed containing the names of all persons in custody that need their DNA collected. This list is cumulative. After someone collects the DNA from an inmate, that information is put in the computer system, and that person's name is removed from the list. If no DNA was collected on any given day, the same names would appear on the list the following day.

When Trettin started working in the Jail Records Office, he was trained by his supervisor - Captain (formerly Sergeant) McKenzie. McKenzie is recognized within the Department as an expert in jail records, rules, policies and procedures and is the "go-to" person in jail records. Captain McKenzie directed Trettin to collect DNA under the following conditions: (1) when the DNA list (referenced in the preceding paragraph) got over two pages in length; and (2) when staff was available to collect the DNA. Trettin followed McKenzie's orders and kept the DNA list to about two pages. A consequence of that was that there were always inmates that needed their DNA taken. While Trettin worked at the Jail Records Office, Captain McKenzie never complained about his (Trettin's) work relative to the collection of DNA samples from inmates or felt he was handling the DNA work improperly. Additionally, she never ordered him to get the DNA list to zero pages. During the entire time that Trettin worked in the Jail Records Office, no deputy or employee was formally assigned to collect DNA. As a result, Trettin used whoever was available to perform that task - assuming anyone was available. If no one was available to collect DNA samples, then that task (i.e. collecting DNA samples) just didn't get done. Trettin spoke with Captain McKenzie about this problem (i.e. the Department's inadequate staffing to collect DNA), and Captain McKenzie agreed with Trettin. Because of her concerns regarding inadequate staffing, Captain McKenzie spoke with a top Department administrator in 2008 and requested a full time deputy to collect DNA. Her request for a person to collect DNA was denied.

In January, 2009, Trettin was transferred out of the Jail Records Office to the Patrol Bureau. When he left the Jail Records Office, the DNA list referenced above was two pages in length (i.e. the length which Captain McKenzie had authorized).

Trettin's replacement in the Jail Records Office was Sergeant Trish Carlson. Carlson had previously worked in the Jail Records Office. In 2007 and 2008, Carlson and Trettin shared an office in the jail. Because of their close proximity to each other, on occasion Carlson heard Trettin assign staff to take DNA samples. Carlson also heard Captain McKenzie and Trettin discuss the DNA list.

When Trettin left the job of Jail Records Sergeant in January, 2009, he did not train his successor (i.e. Sergeant Carlson) on any of the job duties he had been performing or brief her on same. As it relates to this case, he did not train her or brief her on anything related to taking DNA samples. Trettin thought that Captain McKenzie would train Sergeant Carlson on the job (just as she had trained him when he assumed the position in 2006). McKenzie thought that Trettin would train Carlson on the job. There is no department policy or rule which requires an employee leaving a job to either train or brief their successor on the job.

When Carlson assumed the position of Sergeant in the Jail Records Office, she assumed all the duties that Sergeant Trettin had previously performed. By her own account, Carlson felt overwhelmed with her job duties in her new job as Sergeant in the Jail Records Office.

As was noted earlier, one of the many tasks which the sergeant in the Jail Records Office was responsible for was supervising the collection of DNA samples from inmates. After Carlson assumed the sergeant position previously filled by Trettin in the Jail Records Office in January, 2009, not a single inmate DNA sample was taken until September, 2009. The reason no one collected any DNA samples during this time period was because Carlson did not assign anyone to do that task. Since no one was assigned that task, no one performed it for those nine months. That inaction obviously caused the number of inmates needing their DNA taken to back up.

During the time period of January through September, 2009, Captain McKenzie never said anything to Sergeant Carlson about taking DNA samples. McKenzie testified that she assumed Carlson was "taking care" of the DNA list (meaning having DNA samples taken). This assumption turned out to be incorrect because, as just noted, no one was taking DNA samples during that time period.

During this time period when no DNA samples were taken (i.e. January through September, 2009), Trettin was not working in the Jail Office as he had been transferred out of that office. He did not know that DNA samples were not being taken (as they should have been).

In September, 2009, it was discovered that DNA samples were not being taken from inmates as was supposed to occur. After that discovery was made, it was immediately remedied and DNA samples were once again taken from inmates. Many changes in the DNA collection process followed.

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About the same time that the discovery noted above was made, the news broke state-wide that thousands of DNA samples were missing from the state-wide DNA database. It can be surmised from the information in the following paragraph that Milwaukee County Sheriff Clarke commented publicly on that matter and criticized other law enforcement agencies for their inadequate DNA collections.

On October 4, 2009, a well-known *Milwaukee Journal-Sentinel* columnist, Daniel Bice, broke the news that the Milwaukee County Sheriff's Department had not been collecting DNA samples from felons (as they should have been). Bice's story appeared on the front page of the Sunday paper. The headline for the article was "Sheriff's own DNA house not in order." In the article's lead sentence, it was noted that Sheriff Clarke had previously been quoted as saying that the state's missing DNA samples was an "abomination". Bice then opined:

That's the kind of tough talk we've come to expect from the sheriff.

But nobody could have seen this:

Clarke acknowledged last week that his own department had failed to collect hundreds of DNA samples from convicted felons this year at the County Correctional Facility-South, long known as the House of Correction.

"Yes, we had a backlog," Clarke said.

That's putting it mildly.

By his admission, department employees – deputies, corrections officers and civilians – failed to collect DNA at the correctional facility from April to August, a five-month stretch. That means about 350 convicted felons didn't give samples to authorities, Clarke estimated. In addition, no one took DNA swabs from 28 others on electronic monitoring.

And those numbers may be light.

Sources within the Sheriff's Department say the blunder went on for much longer than five months, perhaps as long as a year. They also say the number of inmates who didn't give their DNA may have reached 1,000.

"That's not true," Clarke countered.

Whatever the exact number, his office has opened an internal investigation to determine how the mistake occurred and who knew about it.

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Not usually the self-effacing type, Clarke acknowledged that his department had slipped up. He said he didn't have the manpower to assign someone to DNA duty full time.

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Shortly before the above-referenced article appeared in the newspaper, the Employer opened an internal investigation into the Department's failure to collect DNA samples from January through September, 2009. The investigation was conducted by Captain Lorraine McCabe of the Employer's Internal Affairs Division. As part of her investigation, she interviewed over a dozen people, including Trettin, McKenzie and Carlson. Afterwards, she wrote a report known as an "Investigative Summary". In that report, she reached the following conclusions:

Sergeant Trettin was aware of his duty while assigned as the Jail Records Sergeant to assign personnel to collect DNA from Sentenced Felons at the ACC. Sergeant Trettin did assign personnel, however he neglected to assign officers in the later months of 2008. Sergeant Trettin stated McKenzie trained him in his responsibilities in DNA collection and he was trained that the list was manageable if it was only a page or two. Sergeant Trettin stated when he was transferred the list was possibly a page or two.

Sergeant Trettin transferred to Patrol on January 4, 2009 and no longer responsible for said duties.

However, based on the timeframe Sergeant Trettin was assigned in the Jail Records area August 2006 through December 2008 the number of subjects for the collection of DNA drastically increased. In 2006, Milwaukee County was reimbursed for the collection of 1,660 subjects, in 2007 for 901 subjects and in 2008, 712 subjects.

Sergeant Trettin should have been monitoring the list closely and also insuring that DNA was collected for Sentenced Felons housed in both the CCF-South and CCF-Central along with walk-in subjects.

Based on those conclusions, McCabe found that Trettin committed two departmental rule violations and three county civil service rule violations. The department rules he was accused of violating were 202.15 (Knowledge of Duties, Rules and Regulations) and 202.20 (Efficiency and Competence). The former provides thus:

202.15 Knowledge of Duties and Regulations

Members shall be accountable for their knowledge of, performance of, and familiarization with all duties, policies, procedures, rules, and regulations of the Milwaukee County Sheriff's Office.

The latter provides thus:

202.20 Efficiency and Competence

Members shall adequately perform the duties of their assigned position. In addition, sworn members shall adequately perform reasonable aspects of police work. "Adequately perform" shall mean performance consistent with the ability of equivalently trained members.

The County civil service rules he was accused of violating are part of Rule VII, Section 4(l). He allegedly violated subparagraph (l) which prohibits "Refusing or failing to comply with departmental work, policies or procedures"; subparagraph (t) which prohibits "Failure or ability to perform the duties of assigned position"; and subparagraph (u) which prohibits "Substandard or careless job performance".

Captain McCabe's findings were subsequently reviewed by the Sheriff. On December 18, 2009, Sheriff Clarke issued Order No. 1617 which indicated that Sergeant Trettin was suspended for ten days for violating the five rules just referenced. Since the five rule violations referenced in Order No. 1617 are the same as the five rules referenced in Captain McCabe's "Investigative Summary", it is apparent that the Sheriff adopted Captain McCabe's findings as his own and disciplined Trettin for the reasons set forth in McCabe's "Investigative Summary".

Based on the parties' collective bargaining agreement, Trettin's suspension was appealed to arbitration.

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The record indicates that Captain McKenzie and Sergeant Carlson were each suspended for ten days for their actions relative to the matter referenced above.

The record further indicates that Sergeant Trettin had previously received two written warnings. Neither warning dealt with the topic of collecting DNA samples.

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One of the exhibits which was received into the record at the arbitration hearing was Joint Exhibit 8. That document purportedly contained DNA reimbursement information. The second page of that document contained the following chart:

YEAR	REIMBURSEMENT	DNA SAMPLES
2009	\$12,360.00	618
2008	\$14,240.00	712
2007	\$18,020.00	901
2006	\$33,200.00	1660
2005	\$34,860.00	1743
2004	\$31,180.00	1559
2003	\$42,280.00	2114
2002	\$39,200.00	1960
2001	\$37,780.00	1889

There was no testimony about this document/chart at the hearing and the information contained therein.

POSITIONS OF THE PARTIES

Association

The Association's position is that just cause did not exist for Trettin's ten day suspension. The Association asks that the discipline be rescinded. It elaborates as follows.

At the hearing, the Association acknowledged at the outset that between January and September, 2009, a screw-up occurred in the Jail Records Office and DNA was not collected as it should have been. The Association asks the arbitrator to consider that this screw-up occurred in the context that because of inadequate staffing, no deputy or employee was assigned to collect DNA. It notes in this regard that the record shows that there were people in the Jail Records Office who had previously sought additional staffing to do the DNA collection work, but their requests for additional staffing to do that work had been denied. As the Association sees it, what happened here is that the Employer unjustly "passed the buck" to Trettin for the DNA collection problem which developed after he left the job of Jail Records Sergeant.

Having given that context, the Association next addresses what happened when Trettin was the Jail Records Sergeant between 2006 and January, 2009. For background purposes, it notes that one of the duties of the Jail Records Sergeant is to ensure that DNA samples are collected from sentenced felons. According to the Association, during the time period that Trettin was the Jail Records Sergeant, he performed the DNA duty "efficiently and competently" and "followed [Captain] McKenzie's orders and collected the DNA as she instructed." The Association notes that during that time period, McKenzie never complained

about Trettin's DNA collection work or told him his work was inefficient or incompetent. Building on the foregoing, the Association maintains that Trettin's actions (with regard to DNA collection) "can hardly be seen as substandard or careless." The Association also emphasizes that when Trettin was reassigned to the Patrol Bureau in January, 2009, the DNA list was two pages in length – exactly what McKenzie had told him the list could be.

Next, the Association points out that before Trettin was reassigned to the Patrol Bureau, she shared an office with Carlson. One consequence of this office sharing was that Carlson was around Trettin when he was doing his work, and on occasion, Carlson saw Trettin dealing with DNA collection work. Building on that, the Association opines that Carlson "had to know that the Jail Records Office collected DNA."

Next, the Association addresses the Employer's contention that when Carlson replaced Trettin as the Jail Records Sergeant, Trettin did not train or brief Carlson on the DNA collection work. The Association acknowledges that Trettin did not train or brief Carlson on the DNA collection work, but it contends that his failure to do so was not misconduct for these reasons. First, the Association argues that the Department has no rule, policy or procedure which requires a person moving out of a job to train or brief their successor. Second, the Association points out that when Trettin had become the Jail Records Sergeant in 2006, he was trained by his supervisor, Captain McKenzie. Building on that, that Association submits that Trettin assumed that McKenzie would train his successor too. Third, the Association notes that neither Captain McKenzie nor any other person in the Department directed Trettin to train Carlson. Fourth, the Association asserts that if Carlson had questions about her new job, she would ask him or someone else in the Jail Records Office. That never happened. Given the foregoing, the Association maintains it was unjust for the Employer to discipline Trettin for failing to train his successor (Carlson) when there is no rule, policy or procedure which specifically required that.

Finally, the Association argues in the alternative that even if Trettin did commit workplace misconduct, there still was not just cause for the level of discipline imposed on him. Here's why. The Association emphasizes that Trettin had not been previously charged with violating a rule dealing with collecting DNA samples. The Association contends that under these circumstances, a ten-day suspension was not necessary. As the Association sees it, the Department's objective could have been satisfied, and this situation remedied, via the following: a verbal counseling session, verbal warning, written warning, submitting any other employee activity documentation, or in any other way that conveyed to Trettin that the Department wanted to change the procedures to collect DNA. According to the Association, any of the foregoing would have satisfied the Department's objective. Here, though, that did not happen and the Employer instead suspended Trettin for ten days. The Association argues that a suspension runs counter to the basic principle of discipline that employees are entitled to know in advance what is expected of them. Accordingly, the Association asks the arbitrator to reduce Trettin's punishment to a level more fitting his behavior and past disciplinary history.

County

The County contends that there was just cause to suspend Sergeant Trettin for ten days. In its view, that discipline was warranted because he failed “to see to it that DNA samples were collected from inmates.” It elaborates as follows.

For the purposes of background, the County notes that the Department has to collect DNA samples from sentenced felons. It submits that this collection is important for at least two reasons: first, it’s required by law and second, the Sheriff’s Office is reimbursed by the State for the DNA collections.

Next, building on the foregoing, the County notes that Sergeant Trettin was the Jail Records Sergeant from August, 2006 until January, 2009. While he was in that job, one of his job duties was to ensure that DNA samples were collected from sentenced felons. Additionally, while he held that job, Captain McKenzie talked to him periodically about keeping up with the DNA list and keeping it “manageable” (which meant keeping the list to two pages or less).

It’s the County’s position that Trettin was remiss in monitoring the DNA list and ensuring that DNA was collected from inmates (as it should have been).

At the hearing, the main argument which the County proffered in support of that position was that when Trettin left the position of Jail Records Sergeant in January, 2009, he did not train or brief his replacement (Sergeant Carlson) in the job she was assuming, and in particular, on the DNA matter. According to the County, he should have done so. Lieutenant Cox of the Internal Affairs Division testified at the hearing that it’s a “professional responsibility” that when an employee leaves one job, they are to brief their successor on the job they are leaving. Trettin did not do that. As the Employer sees it, that action alone constituted workplace misconduct which, in turn, warranted discipline.

In their brief, the Employer went further and addressed one of the matters referenced in the Department’s “Investigative Summary”, namely the contention that the number of DNA collections made while Trettin was in that job decreased. Specifically, the County cited some of the data contained in Joint Exhibit 8, to wit: that in 2006, the County was reimbursed for the collection of DNA from 1660 inmates; that in 2007, the number dropped to 901 collections; and that in 2008, the number dropped to 712. The County characterizes this decrease as “dramatic”. That was the only allegation from the Department’s “Investigative Summary” which the County specifically addressed in its brief. It did not address the allegation made in that document that Trettin “neglected to assign officers [to collect DNA samples] in the later months of 2008.”

The County contends that Trettin’s inactions (relative to the collection of DNA from inmates) violated five department and civil service rules which govern employee conduct.

According to the Employer, Trettin violated Department Rules 202.15 and 202.20 and County civil service rule VII, Section 4(1), subparagraphs (l), (t) and (u).

Finally, with regard to the level of discipline which was imposed, the Employer argues that a ten-day suspension was reasonable in light of Trettin's past disciplinary history. It implies that the length of Trettin's suspension was reasonable because Carlson and McKenzie were suspended for the same number of days. The County further implies that the arbitrator should give deference to the discipline imposed by the Sheriff. It therefore asks that Trettin's ten-day suspension be upheld.

DISCUSSION

The parties stipulated that the issue to be decided here is whether there was just cause to suspend Sergeant Trettin for ten days. I answer that question in the negative, meaning that I find the Employer did not have just cause to impose a ten-day suspension on Trettin. My rationale follows.

The threshold question is what standard or criteria is going to be used to determine just cause. The phrase "just cause" is not defined in the collective bargaining agreement, nor is there contract language therein which identifies what the Employer must show to justify the discipline imposed. Given that contractual silence, those decisions have been left to the arbitrator. Arbitrators differ on their manner of analyzing just cause. While there are many formulations of "just cause", one commonly accepted approach consists of addressing these two elements: first, did the employer prove the employee's misconduct, and second, assuming the showing of wrongdoing is made, did the employer establish that the discipline which it imposed was justified under all the relevant facts and circumstances. That's the approach I'm going to apply here.

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

Before I address Trettin's conduct though, I think it's important to first review the overall big picture. Here's the overall big picture: There was a screw-up in the Jail Records Office between January and September, 2009 because DNA was not collected from inmates as should have happened. When there's a screw-up in the workplace, it's common for the employer to assign blame to someone and hold them accountable. Not surprisingly, that's what happened here. Specifically, the Employer assigned fault for the DNA screw-up in the Jail Records Office to three people (Carlson, McKenzie and Trettin), and disciplined them. The Employer imposed the same discipline on each - a ten day suspension.

In this case, I'm just reviewing the discipline imposed on Trettin. To properly do that, it is necessary for me to comment, at least minimally, on the role that Sergeant Carlson and Captain McKenzie played in this saga. I begin with Carlson. Carlson became the Jail Records

Sergeant in January, 2009. One of the many tasks which the sergeant in the Jail Records Office is responsible for is supervising the collection of DNA samples from inmates. However, after Carlson assumed the sergeant position previously filled by Trettin in the Jail Records Office in January, 2009, not a single inmate DNA sample was taken from January until September, 2009. The reason no one collected DNA samples during that time period was because Carlson did not assign anyone to do that task. Obviously, she should have. That said, the focus turns to Captain McKenzie and her role in this matter. McKenzie was Carlson's supervisor for the entire time period between January and September, 2009 (i.e. the time period when no DNA samples were taken). During that time period, McKenzie never said anything to Sergeant Carlson about taking DNA samples. McKenzie testified that she assumed Carlson was "taking care" of the DNA list (meaning having DNA samples taken). This assumption turned out to be incorrect because, as just noted, no one was taking DNA samples during that time period.

The facts just referenced establish that both Carlson and McKenzie were working in the Jail Records Office when the DNA screw-up occurred. As a result, it's easy to see why the Employer assigned fault to them for what happened. Simply put, the DNA screw-up occurred on their watch.

However, that's not the case with Trettin. He was not even working in the Jail Records Office when the DNA screw-up occurred. He had been transferred out of that office in January, 2009 to the Patrol Bureau. Once he was transferred out of that office, he was no longer responsible for ensuring that DNA samples were taken. At that point, it was not his job anymore – it was Carlson's job.

Although Trettin was not even working in the Jail Records Office when the DNA screw-up occurred, it's the Employer's view that fault for what happened in the Jail Records Office can still be ascribed to him (just as it was to Carlson and McKenzie). I find otherwise for the following reasons.

First, the Employer contends that Trettin didn't train or brief Carlson on the DNA collection matter before he left the Jail Records Office. That's true, he didn't. However, I find that his failure to do so was not misconduct. Here's why. Trettin testified that the reason he didn't train or brief Carlson was because he thought that McKenzie was going to train her. That assumption certainly seems reasonable when one considers that McKenzie trained Trettin when he moved into the job in 2006. Moreover, McKenzie never directed Trettin to train Carlson, and Carlson never asked Trettin for help after she assumed the job of Jail Records Sergeant. Finally, it would be one thing if the Department had a rule or policy that requires an employee leaving a job to either train or brief their successor on the job. However, there is no such rule or policy in the Department. While Lieutenant Cox said at the hearing that it was a "professional responsibility" that when an employee leaves a job, they are to train and/or brief their successor, his saying that does not transform that "professional responsibility" into a Department rule or policy. That being so, the Employer can't legitimately charge Trettin with violating a rule or policy that doesn't actually exist.

Second, in the Employer's "Investigative Summary", the Employer accused Trettin of neglecting "to assign officers [to make DNA collections] in the later months of 2008." This accusation differs from the one referenced above in the following respect. The accusation above dealt with Trettin's conduct during the January through September, 2009 time period. In contrast, this accusation deals with a different time period, namely late 2008. This accusation implies that before Trettin left the job of Jail Records Sergeant in January, 2009, he shirked his DNA collection duty. The record evidence belies that assertion. The record evidence establishes that while Trettin was the Jail Records Sergeant, he performed the DNA collection work competently and collected the DNA per Captain McKenzie's instruction. It is noteworthy in this regard that McKenzie never complained about Trettin's DNA collection work. While the DNA collection list was two pages long when Trettin left the Jail Records Office, that was acceptable because that was the length that McKenzie had told him the list could be. It bears repeating – when Trettin left the job of Jail Records Sergeant, DNA was still being collected. It wasn't until after he left the Jail Records Office that the collection of DNA stopped.

Third, in the Employer's "Investigative Summary", the Employer also alleged that "the number of subjects for the collection of DNA dramatically decreased." I interpret this allegation to also accuse Trettin of dereliction of the DNA collection work that he did before he left the Jail Records Office in January, 2009. Once again, I find that the Employer failed to prove this assertion. The only evidence which relates to this assertion is found in Joint Exhibit 8, which contains a DNA reimbursement chart. While that chart shows that the number of DNA samples taken in the years 2006, 2007 and 2008 declined, and those were the years that Trettin was responsible for ensuring the taking of DNA samples, those numbers, in and of themselves, do not prove that Trettin was derelict in performing the DNA collection work. More proof was necessary than just the chart in Joint Exhibit 8 to prove this contention.

Since none of the charges made against Trettin have been sustained, I find that the County did not prove that Trettin committed any misconduct in connection with the DNA screw-up in the Jail Records Office.

Finally, it is noted that the Sheriff charged Trettin with violating two department rules and three county-wide rules. However, other than make the bald assertion that Trettin violated those rules, the County did not prove the rule violations. In so finding, it is specifically noted that the employee does not have to "disprove" the charges levied against him. Instead, the Employer must substantiate the charges. I find that in this case, the Employer did not prove that Trettin violated the five rules as charged.

Since the Employer did not prove the first element of just cause (i.e. whether the employer proved the employee's alleged misconduct), it is unnecessary to address the second element of just cause (i.e. whether the employer established that the ten-day suspension was justified under all the relevant facts and circumstances), and the parties' arguments with respect to same.

Based on the foregoing, I find that the Employer did not have just cause to suspend Trettin for ten days. Accordingly, his ten day suspension is overturned.

In light of the above, it is my

AWARD

That there was not just cause to suspend Sergeant Thomas Trettin for ten days. His ten day suspension is therefore rescinded. The County is directed to make Trettin whole for the ten days he was suspended.

Dated at Madison, Wisconsin, this 22nd day of December, 2010.

Raleigh Jones /s/

Raleigh Jones, Arbitrator