

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
MILWAUKEE DEPUTY SHERIFFS' ASSOCIATION
and
MILWAUKEE COUNTY (SHERIFF'S DEPARTMENT)

Case 713
No. 69584
MA-14658

Appearances:

MacGillis Wiemer, LLC, by **Mr. Graham P. Wiemer**, 2360 North 124th Street, Suite 200, Wauwatosa, Wisconsin 53226, appearing on behalf of the Milwaukee Deputy Sheriffs' Association.

Mr. Roy L. Williams, Principal Assistant Corporation Counsel, Room 303, Courthouse, 901 North Ninth Street, Milwaukee, Wisconsin 53233, appearing on behalf of Milwaukee County (Sheriff's Department).

ARBITRATION AWARD

Milwaukee Deputy Sheriffs' Association, hereafter the Association, and Milwaukee County (Sheriff's Department), hereafter Employer or County, are parties to a collective bargaining agreement that provides for final and binding arbitration of grievances. On February 17, 2010, the Association filed a request to initiate grievance arbitration requesting the Commission to appoint a WERC Commissioner or staff member to arbitrate a grievance. Pursuant to this request, the Commission appointed Coleen A. Burns, a member of its staff, as Arbitrator. An arbitration hearing was held on May 20, 2010 in Milwaukee, Wisconsin. The hearing was not transcribed and the record was closed on July 27, 2010, following receipt of post-hearing written argument.

ISSUES

At hearing, the parties stipulated to the following statement of the issues:

Was there just cause to suspend Deputy Hoffman for five days?

If not, what is the appropriate remedy?

RELEVANT BACKGROUND

Deputy Risa Hoffman (hereafter Grievant) has been employed by the County since 1997. On August 12, 2009, the Grievant and Deputy Boushon were assigned to Intake Court and functioned as Bailiffs. Twice daily, once during the morning session and once during the afternoon session, Intake Court receives a folder containing Arrest Detention Reports (ADRS) and probable cause statements. This folder is commonly referred to as the “probable cause folder.”

The “probable cause folder” is generated by Deputies assigned to the Records Division of the Milwaukee County Jail. The Court must make a probable cause determination within forty-eight (48) hours of a suspect’s arrest or the suspect is released from custody.

On January 11, 2010, Sheriff Clarke issued a “County of Milwaukee Notice of Suspension” in which he notified the Grievant that she was suspended for five days without pay on February 7, 8, 10, 11, and 12, 2010. This suspension was based upon the Sheriff’s conclusion that the Grievant had violated the following:

MILWAUKEE COUNTY SHERIFF’S OFFICE RULES AND REGULATIONS

202.15 Knowledge of Duties, Rules 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 and the Milwaukee County Civil Service system. Members shall immediately inform their supervisor if unfamiliar with any duty to which they have been assigned.

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.

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

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

- (t) Failure or inability to perform the duties of assigned position.
- (u) Substandard or careless job performance.

POSITIONS OF THE PARTIES

County

An internal investigation was conducted in response to an allegation that the Grievant and Deputy Boushon may have failed to properly handle a Probable Cause Folder in In-take court; resulting in the expiration of probable cause in criminal cases and the release of one inmate, SH. Another inmate, CH, would have been released under the expiration of probable cause if he had not been on a probation hold.

As Lieutenant Cox testified at hearing, there is an expectation that Deputies know their duties and responsibilities. At hearing, the Grievant recalled that she turned over the Probable Cause Folder to Deputy Boushon, but attempted to avoid responsibility by claiming lack of knowledge of and experience in In-take court. If a Deputy lacks knowledge of a specific assignment, it is expected that the Deputy would ask questions.

The improper release of an inmate endangers the safety of the public. The two Deputies failed to act in concert with each other to ensure that these important cases were handled in a professional manner.

The five-day suspension is appropriate in light of the Grievant's negligence, the consequence of her negligence and her disciplinary history; which include suspensions for failing to pay attention while at work. The Sheriff's disciplinary decision should be upheld.

Association

The Grievant has been assigned to the Courts Division of the Department since January 2008. Within the Courts Division, the Grievant is normally assigned as a "runner" and has worked Intake Court approximately four (4) times.

Around 9:00 a.m. on August 12, 2009, as the Grievant was transporting documents from the Jail to the Intake Court, Deputy Bondar gave the Grievant a "probable cause folder." Deputy Bondar did not ask the Grievant if she knew what to do with this folder; nor did he confirm that she was aware of its importance or time-sensitivity.

Arriving back at the Intake Court, the Grievant asked Deputy Boushon what to do with this folder. Deputy Boushon took the folder from her and indicated that he would take care of the folder.

Around Noon on August 12, 2009, Deputy Boushon found the “probable cause folder” on the District Attorney table in the court room. Deputy Boushon kept the “probable cause folder” until the Court Commissioner returned from lunch at approximately 1:00 p.m. Deputy Boushon, who did not testify at hearing, told two different stories during the Internal Affairs Investigation.

Following this incident, the Department changed its procedures relative to the delivery of the probable cause folder to Intake Court, requiring the liaison Deputy to deliver the “probable cause folder” directly to Intake Court.

The County must demonstrate that the misconduct occurred as alleged by the Department and that, under all the relevant facts and circumstances, the discipline is reasonable. The County has failed to do so.

Lieutenant Cox acknowledged that he does not have knowledge of all the duties, policies, procedures, rules, and regulations of the Department and Civil Service system. The County cannot reasonably expect the Grievant to have such knowledge.

The Grievant asked her partner about the folder and he indicated that he would take care of it. The Grievant accepted that he would take care of it. As Deputy Felber testified at hearing, this is normal procedure.

The Grievant did not violate the rules as charged. If the Arbitrator concludes otherwise, then the Association contends that just cause does not support the level of discipline imposed.

DISCUSSION

Lieutenant Cox was the Internal Affairs Investigator in this case. As Lt. Cox testified, the “probable cause folder” contains time-sensitive material because “probable cause” must be determined within forty-eight (48) hours of arrest.

It is undisputed that, on August 12, 2009, the Grievant and Deputy Boushon were assigned to act as Bailiffs in Intake Court and that Deputy Bondar was the liaison officer between the Jail and the Intake Court. Lieutenant Cox recalls that, when he interviewed Deputy Bondar, Deputy Bondar stated that he gave the “probable cause folder” to the Grievant; that the Grievant did not understand the routing of the folder; and that the Grievant did not inquire about the folder. This “probable cause folder” contained five arrest reports.

If, as Deputy Bondar’s statements indicate, he had reason to believe that the Grievant did not understand the routing of the “probable cause folder,” it would have been prudent for Deputy Bondar to have instructed the Grievant as to the time-sensitive nature of this folder and to have identified the individual in the Intake Court who was to receive this folder. According to Lieutenant Cox, Deputy Bondar was not a subject of the internal affairs investigation, but rather, was interviewed as a witness.

The Grievant states that, although she had been assigned to Courts from April 2003 to January 2006 and was reassigned to Courts in January of 2008, she rarely worked in Intake Court. Neither the Grievant's testimony, nor any other record evidence, establishes that, on August 12, 2009, by Department experience and/or training, the Grievant had knowledge of the routing procedures of the "probable cause folder" between the Jail liaison officer and the Intake Court.

The Grievant recalls that, when Deputy Bondar gave her the "probable cause" folder, she was carrying other folders; she returned to the Intake Court; she looked at the folders to see what she had; she identified folders for the DA's desk and paperwork that went to the Court Commissioner; she did not know what to do with the "probable cause folder; and she asked Deputy Boushon what she should do with the "probable cause folder." The Grievant further recalls that Deputy Boushon looked at the "probable cause folder" and then told her to give it to him, that he would take care of it.

Lieutenant Cox states that Deputy Boushon had more Court Intake experience than the Grievant. Lieutenant Cox further states that a Deputy who is unsure of how to perform a particular task may question another Deputy and is not required to seek guidance from a supervisor.

During the investigation, Deputy Boushon told Lt. Cox that, between Noon and 12:15 p.m., he discovered the "probable cause folder" on the DA's table in the Intake Court and that he held this folder until the Court Commissioner returned from lunch. Information provided to Lt. Cox during his investigation indicates that the "probable cause" time limit in two of the arrests had expired between 1200 hours to 1257 hours; a third had expired at 1010 hours; a fourth had expired at 1144 hours and a fifth was still within the forty-eight hour period.

According to Lt. Cox, during the internal affairs investigation, the Grievant stated that she gave the "probable cause folder" to Deputy Boushon. Lieutenant Cox recalls that Deputy Boushon refuted this statement of the Grievant and told Lt. Cox that he gave the Grievant instructions on whom to give the folder. At hearing, Lt. Cox testified that he was unable to determine if the Grievant handed the folder to Deputy Boushon or if the Grievant kept the folder.

According to Lt. Cox, when initially questioned, Deputy Boushon had recollection issues. Deputy Boushon did not testify at hearing.

The "Attachment to County of Milwaukee Notice of Suspension" reports that Lt. Cox interviewed a Circuit Court Clerk and that this Circuit Court Clerk stated that it was not possible that Hoffman handed the manila PC folder over to Boushon and that she had witnessed the entire transaction. This Circuit Court Clerk did not testify at hearing. Neither the hearsay statements of Deputy Boushon and this Circuit Court Clerk, nor any other record evidence, provide a reasonable basis to discredit the Grievant's testimony regarding her interaction with Deputy Boushon.

As Lt. Cox testified at hearing, Bailiffs in the Intake Court normally divide their Bailiff work between them. There is no evidence that, on August 12, 2009, the Grievant knew, or should have known, that Deputy Boushon could not be entrusted with the “probable cause folder.” Absent such evidence, it is reasonable to conclude, as the undersigned does conclude, that, after giving the “probable cause folder” to Deputy Boushon, the Grievant no longer was responsible for the “probable cause folder.”

On August 12, 2009 mistakes were made with respect to the processing of the “probable cause folder.” The record, however, fails to establish that the Grievant is responsible for these mistakes.

As the Association argues, the Sheriff’s charge that the Grievant has violated Milwaukee County Sheriff’s Office Rules and Regulations and Milwaukee County Civil Service Rules has not been substantiated. As the Association further argues, the Sheriff does not have just cause to discipline the Grievant.

Based upon the above, and the record as a whole, the undersigned makes and issues the following

AWARD

1. There was not just cause to suspend Deputy Hoffman for five days.
2. The appropriate remedy for Deputy Hoffman’s unjust discipline is for the County and the Office of the Sheriff to immediately:
 - a) Rescind “The County of Milwaukee Notice of Suspension” dated January 11, 2010; the Office of Sheriff “ORDER NO. 1632” dated January 11, 2010; and the five day suspension referenced therein.
 - b) Expunge from Deputy Hoffman’s personnel files the aforementioned “The County of Milwaukee Notice of Suspension” and Office of Sheriff “ORDER NO. 1632” and the five-day suspension referenced therein.

c) Make Deputy Hoffman whole by restoring to Deputy Hoffman all wages and benefits lost as a result of the unjust five-day suspension referenced in "The County of Milwaukee Notice of Suspension" and Office of Sheriff "ORDER NO. 1632" January 11, 2010.

Dated at Madison, Wisconsin, this 5th day of January, 2011.

Coleen A. Burns /s/

Coleen A. Burns, Arbitrator

CAB/gjc
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