

BEFORE THE ARBITRATOR

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

Case 709  
No. 69500  
MA-14631

(Deputy Norris Suspension)

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**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. 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 September 1, 2010 in Milwaukee, Wisconsin. The hearing was not transcribed and the record was closed on December 8, 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 Mark Norris for four (4) days?

If not, what remedy?

**RULES AND REGULATIONS**

**MILWAUKEE COUNTY SHERIFF'S OFFICE RULES AND REGULATIONS**

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**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.

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

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

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(u) Substandard or careless job performance.

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**BACKGROUND**

The Milwaukee County Sheriff's Office issued the following "Reports" dated April 2, 2007:

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**TO: All Detention Bureau Personnel**  
**FROM: Richard R. Schmidt, Jail Administrator**  
**RE: Booking Room - Inmate Processing**

Effective Immediately, the following procedure shall be utilized to help expedite the inmate flow in booking.

**All inmates are to clear pre-book, booking, and every effort made to house them within ten hours of entering the jail.**

The only exceptions are inmates that have a high propensity to be released after attending intake court.

**NO** inmate is to remain in booking more that **23 hours. NO exceptions.**

**Intake Sergeants are to pay extreme attention to the flow of inmates into pre-book and booking.** When the booking room reaches 75 inmates, it is an indication that we must put extra effort into reducing the population before it reaches a critical number that will slow down the intake process.

**Therefore, when the booking room reaches 75, the Intake Sergeant is to contact the Shift Commander, and all necessary resources (Officers, Medical, Clerical) shall be utilized to expedite inmates through booking and to housing.**

The following may be utilized to expedite processing:

Officers may be temporarily reassigned from any area of the Jail to help:

Search, Book, Perform Changeovers, and provide Movement to the Pods.

**The Shift Commander shall contact the Nursing Supervisor and request that medical personnel be temporarily reassigned to booking until the backlog is completed.**

The **Nursing Supervisor** shall make every effort to reassign staff to help immediately alleviate the booking room population.

The Jail is a very large complicated operation that requires all disciplines to work together as one efficient team. The booking process presents a constant challenge that requires outstanding leadership and extreme focused commitment from the staff. Thank you for your hard work and constant efforts in our relentless pursuit of excellence.

Thank You,

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**TO: All Detention Bureau Staff— ATTENTION Classification Unit**  
**FROM: Richard R. Schmidt, Jail Administrator**  
**RE: Booking Room — Inmate Processing — Part 2 of 2**

This week provided a significant challenge in keeping the booking room flow moving. Tuesday and Wednesday provided exceptionally large numbers of intakes compared to the rest of March. It is anticipated that this will be an issue as the weather gets warmer, and as MPD and other agencies make a concentrated effort to incarcerate more offenders.

**Classification** is extremely key to keeping the flow of inmates moving expeditiously through booking and up to the housing units. **Classification** must pay Special Attention to the following:

**1. Booking room population — Every Effort Must Be Made to keep the booking room population below 75 inmates. All attempts should be made to keep booking at 50 or less inmates at all times. It is essential that the booking room is near zero by noon, Monday-Friday, to allow for the large influx of State, Court, and outside agency intakes between noon and 6 p.m.**

**Classification must work with the Intake Sergeant and the Shift Commander who will in turn with medical, clerical and officer staff to expedite processing - KEY!**

**2. Carefully watch the length of time the inmates are in booking**

Unless there is a reasonable expectation that an inmate will be released in less than 23 hours from the time they entered the Jail, they should be housed in less than **10 hours**.

**3. Overall Jail Population:**

When the overall population reaches 910, the Shift Commander shall call the House of Correction and preparations made for inmate movement to the HOC. This is a very dynamic issue as there may be a significant number of pending releases that will keep our population at or below the 900 mark. We want to carefully review our intakes and releases before we make a strong appeal to move a large number of inmates. The House of Correction has worked very cooperatively with us, and we want to maintain a very positive relationship. If the numbers are going to go up based on your review, then the appeal to move additional inmates to the HOC should be made. If the HOC staff opposes the move, the Shift Commander is to call me with the details.

This is a much stronger plan that will keep the booking room flow at a constant reasonable level. It is bold, but as we work together and adapt to the concepts, it will result in a more manageable population when the intake numbers are higher than normal.

Thank You,

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The Milwaukee County Sheriff's Office operates the County Jail. At all times material hereto, Mark Norris, hereafter Grievant, has been employed as a Milwaukee County Deputy Sheriff.

On November 18, 2009, Internal Affairs Investigator Lieutenant Scott Stiff submitted the following "Investigative Summary":

**NATURE OF CASE:**

MCSO Rule; 202.20 Efficiency and Competence and Civil Service Rule VII, (4) (1) (I) "Refusing or failing to comply with departmental work rules, policies and procedures"; and (u) "Substandard or careless job performance"

On Tuesday, September 15, 2009 an Internal Affairs case was opened relative to Deputy Mark Norris. The case was assigned to Lieutenant Scott Stiff.

On September 7th, 2009, at approximately 1758 hours, Inmate (JW) entered the CCF — Central facility and had his initial medical screening. At approximately 2308 hours, Inmate (JW) was fully booked. At approximately 2359 hours, Classification Deputy Mark Norris assigned Inmate Westmoreland to Pod 6A, Cell #8 and completed an LM1O, which is a CJIS screen for updating an inmate's housing location. During his interview Deputy Norris acknowledged that he failed to mark on Inmate (JW's) tier card the assigned housing location. Inmate (JW's) tier card was placed with the remaining inmates that were located in the Booking Room.

On September 8, 2009, at approximately 0004 hours, Deputy Norris completed an LM25, which is the CJIS screen to update the inmate's current housing location. This update is to be performed when the inmate actually moves from one housing area and is relocated to another. This function is to be performed

by the officer that is physically moving or receiving the inmate. Deputy Norris updated Inmate (JW's) housing in the computer without physically moving him or having confirmation that he had been changed over and housed in 6A, Cell #8. During his interview, Deputy Norris stated that there was no intention to violate the Christenson Consent Decree. He stated that he did assign Inmate (JW) to a housing location and had every intention on him moving well before the allotted time. He stated that Classification has housed over 10,000 inmates in the past year and there has never been a problem before.

Deputy Norris' actions caused a chain of events that lead to Inmate (JW) staying in the Booking Room for thirty-eight (38) hours. This is in violation of the Christenson Consent Decree, which was approved by the circuit court in May 2001. In part, the decree states that there shall be now inmate in the jail for longer than thirty (30) hours without being assigned to a bed approved by regulations of the Wisconsin Department of Corrections for overnight housing.

Based on the aforementioned, the following charged are SUSTAINED for the following: Deputy Norris acknowledged that he failed to follow the Classification procedures, which caused this incident to occur.

**MCSO Rules:**

**202.20**

Efficiency and Competence

**Milwaukee County Civil Service Rules VII (4) (1):**

- (l) Refusing or failing to comply with departmental work rules, policies or procedures
- (u) Substandard or careless job performance

**PROPOSED DISPOSITION OF COMPLAINT: SUSTAINED**

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Deputy Norris' "Investigatory Summary" indicates that, on December 14, 2009, Milwaukee County Sheriff David A. Clarke, Jr., approved a "4 day suspension w/o pay." The Association grieved this suspension. The parties submitted this grievance to arbitration pursuant to their contractual grievance arbitration provisions.

## POSITIONS OF THE PARTIES

### County

On September 7 and 8, 2009, Deputy Norris failed in his duties as a Deputy in the booking room. As he acknowledged, he failed to mark on Inmate JW's tier card the assigned housing location. This failure was only the beginning of a series of failures regarding this inmate. The County respectfully requests that the charges be sustained and the suspension recommended by the Sheriff be upheld.

### Association

The Grievant was working in the Classification Office on the evening that Inmate JW was brought to the County Jail. On September 7, at 11:59 p.m., the Grievant completed an LM10, which designates an inmate to a particular housing location, and assigned Inmate JW to POD 6A, Cell 8. The Grievant mistakenly did not mark Inmate JW's tier card with his assigned housing location before placing it back with the other inmate tier cards at the booking station. The Grievant admitted this mistake during the investigation and at hearing.

The Christensen consent decree was entered in 2001. Lieutenant Stiff admitted that the provisions of the consent decree are not well-known throughout the Department and that he does not know them.

On September 8, at 12:04 a.m., the Grievant completed an LM25, which updates the actual location of the inmate in the Jail although Inmate JW was not actually moved from the booking-waiting area. When the Grievant completed his shift at 6:00 a.m., Inmate JW had been in the booking-waiting area for a total of twelve (12) hours. At that time, there had been no violation of the Christensen consent decree.

Under the just cause standard, the County has the burden to prove that the alleged misconduct occurred and that, under all the relevant facts and circumstances, the level of discipline was appropriate. The County has failed to meet this burden.

During Inmate JW's twenty-six hour wait, other Jail staff members could have and should have discovered that JW was not at the proper housing location. The Grievant adequately performed the duties of his assigned position and should not be held accountable for the faults of others.

The Grievant complied with Departmental rules, policies and procedures and performed his duties in a way that was not substandard or careless. The Grievant also performed the duties of his assigned position.

If the Arbitrator were to determine that just cause supports one or more rule violations, just cause would not support the level of discipline imposed by the Sheriff. The Grievant has

been employed by the Department for twenty-four and a half years. The Grievant has not been disciplined by the Department in twenty-three years. The Department could have addressed the Grievant's involvement through a means other than suspension, *e.g.*, a verbal counseling session, verbal warning, written warning. Additionally, several of those involved received lesser, or no, punishment.

The Department's discipline was unjust. The Arbitrator should hold that the Grievant did not violate any of the rules charged. In the alternative, the Arbitrator should reduce the discipline to an appropriate level.

### DISCUSSION

The "Investigative Summary" references the "Christenson" consent decree, but neither expresses, nor reasonably implies, that the Grievant was charged with violating the "Christenson" consent decree. The record does not provide a reasonable basis to conclude that the Sheriff based his disciplinary decision upon any factor other than Lieutenant Stiff's determination that the charged rule violations were sustained for the following: "Deputy Norris acknowledged that he failed to follow the Classification procedures, which caused this incident to occur."

On the evening that Inmate JW was brought to the County Jail, the Grievant was working as the Classification Officer. At approximately 11:59 p.m., the Grievant assigned Inmate JW to POD 6A, Cell #8 and completed an LM10, a computer screen that indicates the inmate's housing location, by entering this housing assignment. The record does not establish that this conduct of the Grievant was inconsistent with any Department rule, policy, procedure or directive.

As the Classification Officer, the Grievant had the responsibility to retrieve inmate tier cards from the Booking Intake Officer, determine a location for each inmate, and write their assigned housing location on each inmate tier card. The Grievant then had the responsibility to return the completed inmate tier cards to the Booking Intake Officer.

Lt. Stiff's "Investigative Summary" indicates that the Grievant erred by completing the LM25. The Grievant's testimony, however, indicates that, at the time of the incident, Classification Officers completed the LM25. The record does not establish that the Grievant's completion of the LM25 was inconsistent with any Department rule, policy, procedure or directive.

The Grievant acknowledges that it would be a mistake to not write the assigned housing location on Inmate JW's tier card prior to placing it with the other inmate tier cards at the booking-waiting station. While the Grievant does not recall failing to mark Inmate JW's tier card prior to returning this card to the booking-waiting station, it is evident that the Grievant did not write this assigned housing location on Inmate JW's tier card prior to returning this card to the booking-waiting station.



Tier cards at the booking-waiting station are used to determine if inmates have been assigned housing and are ready to be escorted to this housing assignment. The Grievant's failure to mark Inmate JW's tier card with Inmate JW's housing assignment was a breakdown in the Department booking process and a factor that caused Inmate JW to be in the booking room for longer than the directive of April 2, 2007 and not housed within the time period recommended in the directive of April 2, 2007.

It is evident that one of the purposes of the April 2, 2007 directives is to prevent situations that would cause the Department to be in violation of the "Christensen Consent decree." The Department has a significant legitimate interest in complying with the "Christensen Consent decree," as well as having its employees follow Department directives that have been developed to ensure compliance with the "Christensen Consent decree."

### **Conclusion**

This record warrants the conclusion that Deputy Norris failed to follow Department Classification procedures when he returned Inmate JW's tier card to Booking without marking the inmate's housing assignment. This failure provides the Sheriff with just cause to discipline Deputy Norris.

MCSO Rule 202.20 require Department members, such as Deputy Norris, to "adequately perform;" with "adequately perform" defined as performance consistent with the ability of equivalently trained members. It is evident that Classification Officers, including the Grievant, knew that they had a responsibility to mark the housing assignment on the inmate tier card prior to returning this card to Booking. Deputy Norris' performance of the duties of his assigned position was not consistent with the ability of equivalently trained members. The Sheriff's charge that Deputy Norris violated MCSO Rule 202.20 has been substantiated.

The record warrants the conclusion that the Grievant's failure to follow Department classification procedures was a mistake, rather than a willful disregard of Department classification procedures. Thus, it is not evident that the Grievant has refused to comply with department work rules, policies or procedures. It is evident that the Grievant has failed to comply with department work rules, policies or procedures and has engaged in careless work performance. The Sheriff's charge that the Grievant violated Milwaukee County Civil Service Rule VII, Section 4(1)(l) and (u) has been substantiated.

The Grievant's conduct is distinguishable from the conduct of other Deputies that were involved in this incident. Thus, the fact that these other Deputies received varying levels of discipline, or no discipline, does not warrant the conclusion that the Grievant has been the recipient of disparate treatment.

The Grievant has been a Deputy since 1986. According to the Grievant, he was disciplined in 1987, but he has never been disciplined for "something like this."

It is not evident that the Grievant received any discipline after 1987. Nor is it evident that the Grievant has a prior history of failing to comply with departmental work rules, policies or procedures and/or careless job performance.

It is commonly recognized that the function of discipline under the just cause standard is to correct employee misconduct, rather than to punish the employee. Given the evidence that the Grievant's failure to follow Department classification procedures was a mistake, as well as the evidence that the Grievant has been a good employee for over twenty years, the undersigned is persuaded that the Grievant's misconduct is likely to be corrected by a written warning.

Based upon all of the relevant facts and circumstances, the undersigned concludes that a suspension is punitive, rather than corrective. The Sheriff does not have just cause to suspend the Grievant for four (4) days without pay or to impose any suspension upon the Grievant. The Sheriff does have just cause to discipline the Grievant by issuing a written warning to not violate MCSO Rule 202.20 and Milwaukee County Civil Service Rule VII, Section 4(1)(l) and (u) by failing to follow Department classification procedures.

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 Mark Norris for four days.
2. There was just cause to discipline Deputy Mark Norris by issuing a written warning for violating MCSO Rule 202.20 and Milwaukee County Civil Service Rule VII, Section 4(1)(l) and (u) by failing to follow Department classification procedures.
3. As remedy for the unjust suspension, the County and the Office of the Sheriff are to immediately:
  - a) Rescind the four day suspension without pay;
  - b) Expunge from Deputy Mark Norris' personnel files all reference to the four day suspension without pay; and

- c) Make-whole Deputy Mark Norris by restoring to him all wages and benefits lost as a result of the unjust four day suspension without pay.

Dated at Madison, Wisconsin, this 28<sup>th</sup> day of January, 2011.

Coleen A. Burns /s/

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Coleen A. Burns, Arbitrator