

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

MILWAUKEE DEPUTY SHERIFFS' ASSOCIATION

and

MILWAUKEE COUNTY (SHERIFF'S DEPARTMENT)

Case 708 No. 69499 MA-14630

Case 726 No. 69683 MA-14073

Case 727 No. 69684 MA-14074

Case 728 No. 69685 MA-14075

Case 729 No. 69686 MA-14076

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 Deputies Richard Albidress, Peter J. Schneider, James M. Stolen and Toni P. Zarzynski for one (1) day and Sgt. Vasquez for five (5) 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 Department operates the County Jail. The County's Jail Administrator 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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On November 18, 2009, Internal Affairs Investigator Lieutenant Scott Stiff submitted an "Investigative Summary" for each of the following: Deputies Richard Albidress, James Stolen, Toni Zarzynski, Peter Schneider and Sergeant Steven Vasquez. Each "Investigatory Summary" included the following introductory paragraphs:

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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.

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Sergeant Vasquez' "Investigatory Summary" indicates that, on December 14, 2009, Milwaukee County Sheriff David A Clarke, Jr., approved a "5 day suspension w/o pay." Deputy Schneider's "Investigatory Summary" indicates that, on December 14, 2009, Milwaukee County Sheriff David A Clarke, Jr., approved a "1 day suspension w/o pay." Deputy Zarzynski's "Investigatory Summary" indicates that, on December 14, 2009,

Milwaukee County Sheriff David A Clarke, Jr., approved a “1 day suspension w/o pay.” Deputy Stolen’s “Investigatory Summary” indicates that, on December 14, 2009, Milwaukee County Sheriff David A Clarke, Jr., approved a “1 day suspension w/o pay.” Deputy Albidress’ “Investigatory Summary” indicates that, on December 14, 2009, Milwaukee County Sheriff David A Clarke, Jr., approved a “1 day suspension w/o pay.”

The Association grieved each of these suspensions. The parties submitted these grievances 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.

Association and County witnesses agree that there are many layers in the booking process that form a system of checks and balances to prevent improper handling and tracking of inmates. In this case, the system of checks and balances failed because Deputies involved after Deputy Norris failed to perform their duties.

As Lt. Stiff testified, Deputy Albidress should have checked the BK55 screen; which would have allowed him to properly track Inmate JW. Deputy Albidress acknowledged that, in total, he had worked in the jail for nearly eight (8) years. His testimony revealed very detailed knowledge of the process by which inmates are handled. If Deputy Albidress had followed these procedures, then he would have caught Deputy Norris’ mistake. Deputy Stolen failed in his duties because he failed to reconcile the inmates present with the sheet used to confirm the tracking of inmates.

Deputy Zarzynski failed because she did not do a reconciliation report. Deputy Zarzynski testified that reconciliation reports are done, but may not be done if Deputies are busy. Her statement to Lt. Stiff “that night I asked Deputy Stolen to do the reconciliation report” indicates that they were not too busy that night. Deputy Schneider also failed to do a reconciliation report. According to Lt. Stiff, Sgt. Vasquez is ultimately responsible as the Sergeant on duty.

It is essential that Deputies and Correctional Officers keep track of inmates. Failure to perform this duty could result in the accidental release of an inmate and a lawsuit for violation of the Christenson Consent Decree.

The Officers who testified did not claim to be rookies or unfamiliar with Inspector Schmidt's April 2, 2007 report. The suspensions are appropriate in light of the serious nature of their failures and should be sustained.

Association

The 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.

There is an email and a memo regarding this consent decree, but no Departmental directive. The Department has not previously enforced the provisions of the consent decree and has not provided notice of intent to enforce such provisions. Moreover, it makes no sense to argue that Deputies violated a consent decree when their shifts ended prior to the time that the consent decree would have been violated.

Deputy Norris admitted that he was at fault. The Department's attempts to place blame on Deputies Albidress, Zarzynski, Stolen, Schneider and Sgt. Vasquez are unfounded.

The County alleges a violation of Department Rule 202.20 but offers no evidence that shows how equivalently trained members would have performed any differently on September 7-8, 2009. Absent such evidence, Deputies Albidress, Zarzynski, Stolen, Schneider and Sgt. Vasquez could not have violated this rule.

The County has not shown that these Deputies violated Civil Service Rules VII, Section 4(1)(l) and (u). Rather, it is evident that Deputies Albidress, Zarzynski, Stolen, Schneider and Sgt. Vasquez complied with Departmental rules, policies and procedures and were not substandard or careless in the performance of their duties.

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. All of the Deputies have good disciplinary records and have been with the Department for several years. Perhaps more importantly, the Department has been totally inconsistent with its discipline.

Sgt. Vasquez received a five-day suspension while Sgt. Liebenthal received an Employee Activity Documentation (EAD) in his personnel file. The Department does not consider EAD to be discipline.

Deputy Norris admitted that he made a mistake by not marking Inmate JW's tier card with the assigned housing location. The Department could have addressed any concerns with the other Deputies limited involvement in this incident without suspending these Deputies.

In the present case, the County has the burden of proof to establish that misconduct occurred as alleged by the Department and that, under all relevant facts and circumstances, the level of discipline was appropriate. The County has not sustained this burden.

The Association respectfully requests that the Arbitrator find that Deputies Albidress, Zarzynski, Stolen and Schneider and Sgt. Vasquez did not violate the rules as charged and rescind their disciplines. If the Arbitrator were to find a rules violation, then the Association requests that the Arbitrator reduce the level of discipline to an appropriate level given their previous employment histories and Deputy Norris' acceptance of responsibility.

DISCUSSION

The portions of the "Investigative Summary" that are specific to each of the Grievants are as follows:

Deputy Albidress

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On September 8, 2009, Deputy Richard Albidress was assigned as the Booking Security officer. During his interview, Deputy Albidress acknowledged that he has worked Booking Security in the past. He commented that other officers who have worked that position have showed him what needs to be done. He stated that prior to this incident he had never completed a reconciliation report at the end of his shift as the Booking Security officer. However, he acknowledged that as the Booking Security officer, it is his responsibility to ensure that the Booking inmate count is accurate. I asked him if the Booking inmate count on September 8th were accurate and he stated, "Yes." He stated that he matched the inmate tier card count to the count in the log. He stated that at the beginning of his shift he runs an LMO3 screen, which gives you the inmate count of all the locations in the jail. He stated that the LMO3 counts are often inaccurate because they include inmates who haven't been booked yet. He stated that there are inmates that he would not have tier cards for because they have not been booked yet. Deputy Albidress acknowledged that he had been assigned to Pods in the past and he had reconciled his Pod count by using the reconciliation sheet. I asked him if he used a reconciliation sheet for the Pods, why would he think that he did not have to use one in Booking and he stated, "Different areas have different procedures." Deputy Albidress stated that he did not have any contact with Inmate (JW). He acknowledged that prior to this incident he did not do a physical head count of the inmates in the Booking Room. Deputy Albidress

stated that he did not inform a sergeant that he was not familiar with the Booking Security officer responsibilities because of staff shortages. He stated that after this incident, he has seen the reconciliation sheet in Booking.

Based on the aforementioned, the following charged are SUSTAINED for the following: Deputy Albidress was assigned as the Booking Security officer and it was his responsibility to ensure that an accurate reconciliation report was completed at the end of his shift, which he failed to do.

. . .

This "Investigative Summary" references the "Christenson" consent decree, but neither expresses, nor reasonably implies, that this 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 Lt. Stiff's determination that the charged rule violations were sustained for the following: "Deputy Albidress was assigned as the Booking Security officer and it was his responsibility to ensure that an accurate reconciliation report was completed at the end of his shift, which he failed to do."

The directives of April 2, 2007 do not require Booking Security officers to ensure that an accurate reconciliation report is completed at the end of the shift. Nor does the record contain any other written Department work rule, policy or procedure that requires Booking Security officers to ensure that an accurate reconciliation report is completed at the end of the shift.

At hearing, Lt. Stiff stated that the Booking Security officer has a responsibility to do an accurate reconciliation count at the end of the shift. Lieutenant Stiff states that, by failing to ensure that an accurate reconciliation report was completed, Deputy Albidress failed to follow directives. Lieutenant Stiff does not identify these directives.

Lieutenant Stiff testified that Deputy Albidress, as well as Deputy Schneider, stated that they had not received any formal training that a Booking Security officer had to complete a reconciliation report at the end of the shift. At hearing, Deputy Albidress indicated that, at the time of the Inmate JW incident, he was not aware that reconciliation reports were prepared in Booking. Deputy Schneider, who was on FMLA, did not testify at hearing.

At hearing, Lt. Stiff testified that, when he interviewed Deputy Zarzynski, she stated that the Booking Security officer has the responsibility to prepare the reconciliation report at the end of the shift, but that if he/she is busy, the reconciliation report is not always done. Deputy Zarzynski, who testified at hearing, did not deny making such a statement.

Sergeant Graber, who primarily works first shift Intake, states that Booking did not have a reconciliation report until after the Inmate JW incident. According to Sgt. Graber, at the time of Inmate JW incident, reconciliation reports were printed at the floor controls in Housing and distributed to Pods for completion.

At hearing, Lt. Stiff testified that, at the time of the Inmate JW incident, Sgt. Vasquez had responsibility for the Booking room, as well as Housing and Jail Records. In his "Investigative Summary," Lt. Stiff claims that Sgt. Vasquez stated that "typically, the Booking Security officer would complete the reconciliation sheet . . ." Sergeant Vasquez' testimony at hearing was consistent with this statement.

In summary, it is evident that, at the time of the Inmate JW incident, some employees had an understanding that a Booking Security officer had a responsibility to prepare an accurate reconciliation report at the end of the shift and that other employees did not have such an understanding. Given the absence of a written rule, policy, procedure or directive requiring a Booking Security officer to prepare such a report, it would appear that the different understandings arise from a difference in training.

This record provides no reasonable basis to conclude that, at the time of the Inmate JW incident, Deputy Albidress, in his position as Booking Security officer, knew, or should have known, that he had a responsibility to ensure that an accurate reconciliation report was completed at the end of his shift. Accordingly, his failure to do so does not provide the Sheriff with just cause to discipline Deputy Albidress. The Sheriff's charge that Deputy Albidress has violated MCSO Rule 202.20 and Milwaukee County Civil Service Rule VII, Section 4(1)(l) and (u) has not been substantiated.

Deputy Stolen

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Deputy Stolen acknowledged that he has been assigned to a Floor Control assignment over the last 5 years numerous times. During his interview Deputy Stolen explained the procedure for conducting an initial inspection of a Pod. He stated, "Basically I go in and check the cell doors making sure they are secure and I check the Pod sheet to make sure they coincide with the number of inmates." He stated that the Floor Control is a two-officer post. He stated that the first officer starts the Floor Control log and the second officer does the initial inspection of the Pods. He stated that the officers decide amongst themselves who does which rounds. He stated that it depends on the officers. Deputy Stolen described the procedure for reconciling the Pod count at the end

of his shift. Deputy Stolen stated, "Basically our main concern is the Pod sheet and how many inmates we have in the Pod. That is what we work off of all night." He also stated, "We are supposed to reconcile with a couple of other screens within the computer." I showed Deputy Stolen the directive authored by Inspector Schmidt regarding the Electronic Jail Log. Deputy Stolen stated, "I can't say that I've seen it, but it sounds like something that we do." I asked Deputy Stolen if the directive indicates the procedure that is supposed to occur at the end of a shift and he stated, "It sounds like something that is supposed to be implemented, yes." Deputy Stolen acknowledged that he was working and assigned to the 6th Floor Control on September 8, 2009. He stated that his partner was Deputy Zarzynski. I asked Deputy Stolen who reconciled the Pod counts at the end of the shift and he stated, "I don't remember." I asked Deputy Stolen if it was the officer who conducted the final inspection and he stated, "It really depends who you are working with. Someone has to help with the, House bus. Someone has to do conduct the moves." Again Deputy Stolen stated that he did not recall who conducted the reconciliation report that night. Deputy Stolen stated that there is a problem with the reconciliation sheet. He stated that it is frequently wrong because there is push to bring a lot of inmates up from the Booking Room towards the end of the shift. He stated that the reconciliation sheets are printed out at around 5 am and if an inmate has been released late or brought up to the Pod late, they will not be on the reconciliation sheet: He indicated that towards the end of the shift there are times when Changeover has not brought the inmate up, but yet they are on the reconciliation sheet. He stated that this causes discrepancies and it occurs all the time. He stated, "That's why I'm mainly concerned with the Pod sheet and what inmates are actually on the Pods." I asked him if he reviews the BK55 screen when reconciling the counts and he stated, "Yes, my main concern are the Pod sheets and the inmates in the Pod because that what I have been working with all night."

Based on the aforementioned, the following charged are SUSTAINED for the following: Deputy Stolen was assigned as the 6th Floor Control, which included Pod 6A. It was Deputy Stolen's responsibility to ensure that he conducted an accurate reconciliation report regarding the inmate count in Booking, which he failed to do. During her interview, Deputy Zarzynski stated that Deputy Stolen was supposed to reconcile the counts.

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This "Investigative Summary" references the "Christenson" consent decree, but neither expresses, nor reasonably implies, that this 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 Lt. Stiff’s determination that Deputy Stolen had a responsibility to ensure that there was an accurate reconciliation report.

Lt. Stiff’s “Investigative Summary” references “the inmate count in Booking.” It is evident, however, that this reference is a mistake and that Lt. Stiff’s was claiming that Deputy Stolen had a responsibility to ensure that there was an accurate reconciliation report for each Pod assigned to 6th Floor Control.

At the time of the incident, Deputy Stolen was assigned to 6th floor control on the third shift. Lieutenant Stiff’s testimony that, at this time, 6th floor control did not do a reconciliation report for each Pod is not refuted by any record evidence.

Lieutenant Stiff prepared an “Investigative Summary” pertaining to Deputy Stolen and one pertaining to Deputy Zarzynski. In these summaries, Lt. Stiff indicates that Deputy Stolen was partnered with Deputy Zarzynski; that Deputy Zarzynski had stated that she had asked Deputy Stolen to do the reconciliation report; and that Deputy Stolen stated that he could not remember who reconciled the Pod counts at the end of the shift. According to Lt. Stiff, Deputy Stolen acknowledged that reconciliation reports are done using reconciliation sheets.

Deputy Stolen, who was on light duty at the time of the hearing, did not testify at hearing. Deputy Zarzynski, who testified at hearing, did not deny that she had asked Deputy Stolen to do the reconciliation report

In summary, the record warrants the conclusion that, at the time of the Inmate JW incident, the 6th floor control officers had a responsibility to conduct an accurate reconciliation report regarding the inmate count on the pods under their control. It is also evident that an accurate reconciliation report was not done.

As partners, Deputy Stolen and Deputy Zarzynski divided their duties. At the time of the Inmate JW incident and under this division of duties, Deputy Stolen had the responsibility to ensure that there was an accurate reconciliation report. Deputy Stolen failed to ensure that there was an accurate reconciliation report.

This record warrants the conclusion that Deputy Stolen had the ability to conduct an accurate reconciliation report and knew that he had the responsibility to do so. Given the evidence that other floor control officers had such ability and knew that it was their responsibility to do so, the record warrants the conclusion that Deputy Stolen did not perform his duties consistent with the ability of equivalently trained members. The Sheriff’s charge that Deputy Stolen has violated MCSO Rule 202.20 has been substantiated.

The record warrants the conclusion that, by failing to conduct an accurate reconciliation report, Deputy Stolen failed to comply with departmental procedures. The record does not warrant the conclusion that Deputy Stolen refused to comply with departmental work rules, policies or procedures. By failing to comply with departmental procedures, Deputy Stolen has engaged in substandard or careless job performance. The Sheriff's charge that Deputy Stolen has violated Milwaukee County Civil Service Rule VII, Section 4(1)(l) and (u) has been substantiated.

Deputy Stolen has been a Deputy for at least five years. It is not evident that Deputy Stolen has a prior disciplinary record; a history of failing to comply with departmental work rules, policies or procedures or a history of substandard or careless job performance. Nor is it evident that Deputy Stolen's misconduct involves a willful disregard of Department procedures.

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 of Deputy Stolen's work history, as well as the nature of his misconduct, the undersigned is persuaded that Deputy Stolen'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 discipline Deputy Stolen by suspending Deputy Stolen for one day without pay. The Sheriff does have just cause to discipline Deputy Stolen by issuing this Deputy 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 inmate reconciliation procedures.

Deputy Zarzynski

. . .

Deputy Zarzynski acknowledged that she has been assigned to Booking Security and Floor Control numerous times over the past 8 years. During her interview Deputy Zarzynski explained the procedure for reconciling the count in the Booking Room at the end of a shift. She stated that the reconciliation report prints out at approximately 0500 hours at which time she matches the inmate tier cards with the names listed on the reconciliation report. She indicated that she checks the Booking packets as well as the names of the inmates waiting on the pre-book bench. She stated that she then compares the count with the count listed in the Booking log. I asked Deputy Zarzynski to explain the procedure for reconciling the count in each Pod when assigned to a Floor Control. Deputy

Zarzynski stated that the Floor Control has two officers assigned. She stated that around 5am the second officer normally reports to Court Staging to assist with the CCF - South court bus. She stated that she prints out the Pod sheets for each Pod from the Floor Control. She stated that around 0510 hours the "rec" sheets print out. She stated that the officers then reconcile the count by comparing the two sheets. She commented that they are supposed to run a BK55 screen also, but sometimes they don't have time. She stated that a lot is going on between 0500 and 0600 hours. She stated that sometimes they are still receiving inmates from the Booking Room up until 0550 hours, which would change the Pod sheets. I asked Deputy Zarzynski if she was familiar with the Christianson Consent Decree and she stated, "Yes. We try to get them out within 12 hours." She added that usually Classification handles how long an inmate is in Booking and that she has never really had any problems with it. I showed her the directive authored by Inspector Schmidt regarding the Electronic Jail Log and she stated that she was familiar with it. She acknowledged that this directive spells out what is supposed to be done to reconcile the count at the end of her shift. I showed her the directive authored by Inspector Schmidt regarding Booking Room - Inmate Processing and she stated that she was familiar with this directive. She added that she understood that 10 hours was Inspector Schmidt's parameters. Deputy Zarzynski acknowledged that on September 8, 2009, she was assigned, along with her partner Deputy James Stolen, to the 6th Floor Control. I asked her to describe the procedure for conducting an initial inspection on a Pod. She stated that the first officer starts the Floor Control log and the second officer conducts the initial rounds. She stated that when conducting the initial round she takes the Pod sheet and compares it to each cell, which gives her an accurate count of the inmates on the Pod. She stated that if there were any discrepancies, she would then check the inmate tier cards. She acknowledged that on September 8, 2009, she conducted the final inspection round of the Pods. She stated that during the final inspection round she does the same procedure as the initial inspection round by comparing the log sheet to the inmates in the cells. I asked Deputy Zarzynski who is responsible for conducting the reconciliation report and she stated, "That night I asked Deputy Stolen to do the reconciliation report." She stated that she understands that the directive states that the report should include the BK55 screen, but sometimes there isn't enough time to do it. I asked her if she contacts her supervisor when there isn't enough time to conduct an accurate reconciliation report and she stated, "Only when there is a discrepancy." She added that it is difficult to do, but she tries. Deputy Zarzynski acknowledged working on September 9, 2009. She stated that she was assigned as the Female Changeover Officer. I asked her if during the course of her shift was she reassigned to relieve Deputy Thrower as the Booking

Security Officer and she stated, "Yes and Sgt. Vasquez had CO Davis there to help me." She added that CO Davis was assigned to Search that night. She stated that she was also assigned to do Huber Changeovers between 0500 and 0545 hours. I asked her if she reconciled the Booking Room count and she stated, "I did not sir." She stated that she didn't have time. I asked her if she let her supervisor know that she didn't have time to reconcile the count and she stated, "No, I did not." She stated, "I just tried to give CO Johnson the report and sign off the log and everyone else was already gone." I showed her a copy of the log and informed her that it shows that she was making log entries throughout the shift. She stated that she was logged on to the computer and other officers were making entries under her user ID. She added that when she makes a log entry she always puts her name on the log. I asked her if it was her responsibility to conduct the reconciliation report and she stated, "I don't know how to answer that. I had so many other duties and other Booking officers could have done the report too." I asked her if she was the Booking Security Officer and she stated, "If they're saying I was assigned there then I'll take on that responsibility." She added, "If they want me to do Hubers and Med Passes, I can't be in all those places at one time." She stated, "I try to be perfect and on that night I wasn't, but if I would have done the report I would have caught it." I asked Deputy Zarzynski if she had ever been told or seen a directive ordering her not to use the reconciliation sheets to reconcile the counts and she stated, "No." I asked her if other 3rd shift officers use the reconciliation sheets to reconcile the counts and she stated, "I see it less and less." She stated that she couldn't make people do it. She added, "That night I did the best I could."

Based on the aforementioned, the following charged are SUSTAINED, for the following: Deputy Zarzynski was assigned as the Booking Security Officer and it was [his] responsibility to ensure that [he] conducted an accurate reconciliation report regarding the inmate count in Booking, which [he] failed to do. Deputy Zarzynski acknowledged that she did not reconcile the count in Booking because she did not have time. She also acknowledged that she did not notify her supervisor that she didn't have time to reconcile the count by stating, "I just didn't."

...

This "Investigative Summary" references the "Christenson" consent decree, but neither expresses, nor reasonably implies, that this 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 Lt. Stiff's

determination that the charged rule violations were sustained for the following: “Deputy Zarzynski was assigned as the Booking Security Officer and it was [his] responsibility to ensure that [he] conducted an accurate reconciliation report regarding the inmate count in Booking, which [he] failed to do. Deputy Zarzynski acknowledged that she did not reconcile the count in Booking because she did not have time. She also acknowledged that she did not notify her supervisor that she didn’t have time to reconcile the count by stating, “I just didn’t.”

This record, including statements attributed to Deputy Zarzynski that were not refuted at hearing, warrants the conclusion that Deputy Zarzynski, in her position as Booking Security officer, had the ability to conduct an accurate reconciliation report and understood that, at the end of the shift in question, she had the responsibility to conduct an accurate reconciliation report if she had time to do so. The record fails to establish that Deputy Zarzynski’s understanding of her responsibilities as a Booking Security officer was contrary to any Department rule, policy, procedure or directive.¹ The record provides no reasonable basis to discredit Deputy Zarzynski’s claim that, at the end of the shift in question, she did not have time to conduct an accurate reconciliation report.

This record provides no reasonable basis to conclude that, at the time of the Inmate JW incident, Deputy Zarzynski, in her position as Booking Security officer, had a responsibility to ensure that an accurate reconciliation report was completed at the end of her shift. Accordingly, her failure to do so does not provide the Sheriff with just cause to discipline Deputy Zarzynski. The Sheriff’s charge that Deputy Zarzynski has violated MCSO Rule 202.20 and Milwaukee County Civil Service Rule VII, Section 4(1)(l) and (u) has not been substantiated.

Deputy Schneider

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On September 8, 2009, Deputy Peter Schneider was assigned to Booking Security. Deputy Schneider indicated in his interview that he had only worked Booking Security 5 times in the past. Deputy Schneider stated that he learned how to work Booking Security “on the job” and that he never received any formal training. He stated that he does an inmate count at the beginning and end of his shift. He stated that he moves all of the male inmates to one side of the Booking Room and gathers the inmate tier cards and the booking packets. He

¹ In reaching this conclusion, the undersigned notes that Sgt. Vasquez stated that “typically” the Booking Security officer would complete the reconciliation sheet.

stated that he then compares the inmate tire cards and the booking packets to the

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inmates that are in the Booking Room. I asked Deputy Schneider if he ever utilizes the reconciliation sheet at the end of the shift and he stated, "I do now. I knew that one printed out on the floors, but I didn't know that one printed out in Booking until this incident occurred." I asked Deputy Schneider if he recalls a directive authored by Inspector Schmidt regarding the Booking Room and he stated, "I have heard so many directives. You read it and you hope that months later you remember it." I asked him if he had contact with an inmate named (JW) and he stated, "If he was in the Booking Room, I'm sure I did because of how I check the inmate count." Deputy Schneider described a BK55 screen as a screen that tells you exactly what inmate is in your area: He indicated that there are times that he uses a BK55 screen to reconcile inmate counts, but stated that it is usually used in the Pods. I asked him if he ever used the BK55 screen in Booking and he stated, "I may have. I don't recall." Deputy Schneider acknowledged being aware of the directive authored by Inspector Schmidt regarding the Electronic Jail Log. I asked Deputy Schneider if he considers Booking to be a Housing area and he stated, "Obviously inmates are housed there, but we're talking semantics." Deputy Schneider acknowledged that the Classification officer retrieves the tier cards from the Booking Security officer and classifies the inmates. He also acknowledged that the Booking Security officer is responsible for the tier cards, but Classification marks the tier cards appropriately.

Based on the aforementioned, the following charged are SUSTAINED for the following: Deputy Schneider was assigned as the Booking Security Officer and it was his responsibility to ensure that he conducted an accurate reconciliation report regarding the inmate count in Booking, which he failed to do.

...

This "Investigative Summary" references the "Christenson" consent decree, but neither expresses, nor reasonably implies, that this 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 Lt. Stiff's determination that the charged rule violations were sustained for the following: "Deputy Schneider was assigned as the Booking Security Officer and it was his responsibility to ensure that he conducted an accurate reconciliation report regarding the inmate count in Booking, which he failed to do."

As discussed above, Deputy Schneider did not testify at hearing. Neither statements

attributed to Deputy Schneider in Lt. Stiff's "Investigatory Summary," nor any other record

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evidence establishes that Deputy Schneider knew, or should have known, that a Booking Security officer had a responsibility to ensure that he/she conducted an accurate reconciliation report regarding the inmate count in Booking. Accordingly, his failure to do so does not provide the Sheriff with just cause to discipline Deputy Schneider. The Sheriff's charge that Deputy Schneider has violated MCSO Rule 202.20 and Milwaukee County Civil Service Rule VII, Section 4(1)(l) and (u) has not been substantiated.

Sergeant Vasquez

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On September 8 and 9, 2009, Sergeant Steven Vasquez was assigned as the 3rd shift (2200 — 0600 hours) Booking Room Sergeant. Sgt. Vasquez was the sole sergeant on duty on both days, which included the responsibilities of Housing, Booking, Intake and Release. During his interview, Sgt. Vasquez acknowledged that as a Sergeant he has the ultimate responsibility of everything that goes on, but indicated it is also the responsibility of the Booking Security officer to maintain an accurate inmate count of the Booking Room and inform him of any inaccuracies. He stated that he was never made aware that there was a problem with the inmate counts either in Housing or Booking. He commented that if he is strictly the Booking Sergeant and if he has the time to be in Booking, he would ensure that the inmate count is reconciled using the reconciliation sheet. He stated that typically, the Booking Security officer would complete the reconciliation sheet and only notify the sergeant if there was a problem. He indicated that he did not have any contact with Inmate (JW). He stated that if an officer reported to him that the count was not correct, he would resolve the issue. He stated that no officers indicated that there was a problem with any of the inmate counts, either in Booking or Housing.

Based on the aforementioned, the following charges are SUSTAINED for the following: Sergeant Vasquez was assigned as the Booking Room Sergeant and it was his responsibility to ensure that the Booking Security officer conducted a reconciliation report regarding the inmate count in Booking.

...

This "Investigative Summary" references the "Christenson" consent decree, but neither expresses, nor reasonably implies, that this 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 Lt. Stiff's

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determination that the charged rule violations were sustained for the following: "Sergeant Vasquez was assigned as the Booking Room Sergeant and it was his responsibility to ensure that the Booking Security officer conducted a reconciliation report regarding the inmate count in Booking."

The record fails to establish that, at the time of the Inmate JW incident, there was any departmental work rules, policy, procedure, or directive that required Sgt. Vasquez to prepare any inmate reconciliation report. According to Sgt. Vasquez, his duties as Sergeant did not include preparing the inmate reconciliation report and that he would not be aware of any problem with inmate reconciliation unless the officer responsible for the reconciliation contacted him to report a problem.

Given the fact that Sgt. Vasquez was the only third shift Sergeant and had to supervise Jail Records and Housing in addition to Booking, it would not be possible for Sgt. Vasquez to personally verify that each subordinate employee was performing his/her assigned duties. Under the circumstances, it was reasonable for Sgt. Vasquez to assume that each employee was performing his/her assigned duties unless Sgt. Vasquez received information to the contrary.

In the "Investigative Summary," Lieutenant Stiff states that, when he interviewed Sgt. Vasquez, Sgt. Vasquez reported that he was never notified of any problem with inmate counts in Booking or Housing. Sergeant Vasquez' testimony at hearing is consistent with this report.

This record provides no reasonable basis to conclude that, at the time of the Inmate JW incident, Sgt. Vasquez had any responsibility to ensure that the Booking Security officer conducted a reconciliation report regarding the inmate count in Booking. Accordingly, Sgt. Vasquez' failure to do so does not provide the Sheriff with just cause to discipline Sgt. Vasquez. The Sheriff's charge that Sgt. Vasquez has violated MCSO Rule 202.20 and Milwaukee County Civil Service Rule VII, Section 4(1)(l) and (u) has not been substantiated.

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 Albidress for one day or to impose any other discipline upon this Deputy.
2. As remedy for the unjust suspension of Deputy Albidress, the County and the Office of the Sheriff are to immediately:

- a) Rescind the one day suspension without pay;
 - b) Expunge from Deputy Albidress' personnel files all reference to the one day suspension without pay and the Department's conclusion that Deputy Albidress has violated MCSO Rule 202.20 and/or Milwaukee County Civil Service Rule VII, Section 4(1)(l) and (u); and
 - c) Make-whole Deputy Albidress by restoring to him all wages and benefits lost as a result of the unjust one day suspension without pay.
3. There was not just cause to suspend Deputy Stolen for one day.
4. There was just cause to discipline Deputy Stolen 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 inmate reconciliation procedures.
5. As remedy for the unjust suspension of Deputy Stolen, the County and the Office of the Sheriff are to immediately:
- a) Rescind the one day suspension without pay;
 - b) Expunge from Deputy Stolen's personnel files all reference to the one day suspension without pay; and
 - c) Make-whole Deputy Stolen by restoring to him all wages and benefits lost as a result of the unjust one day suspension without pay.
6. There was not just cause to suspend Deputy Zarzynski for one day or to impose any other discipline upon this Deputy.
7. As remedy for the unjust suspension of Deputy Zarzynski, the County and the Office of the Sheriff are to immediately:
- a) Rescind the one day suspension without pay;
 - b) Expunge from Deputy Zarzynski's personnel files all reference to the one day suspension without pay and the Department's conclusion that Deputy Zarzynski has violated MCSO Rule 202.20 and/or Milwaukee County Civil Service Rule VII, Section 4(1)(l) and (u); and

- c) Make-whole Deputy Zarzynski by restoring to her all wages and benefits lost as a result of the unjust one day suspension without pay.

8. There was not just cause to suspend Deputy Schneider for one day or to impose any other discipline upon this Deputy.

9. As remedy for the unjust suspension of Deputy Schneider, the County and the Office of the Sheriff are to immediately:

- a) Rescind the one day suspension without pay;
- b) Expunge from Deputy Schneider's personnel files all reference to the one day suspension without pay and the Department's conclusion that Deputy Schneider has violated MCSO Rule 202.20 and/or Milwaukee County Civil Service Rule VII, Section 4(1)(l) and (u); and
- c) Make-whole Deputy Schneider by restoring to him all wages and benefits lost as a result of the unjust one day suspension without pay.

10. There was not just cause to suspend Sgt. Vasquez for five days or to impose any other discipline upon Sgt. Vasquez.

11. As remedy for the unjust suspension of Sgt. Vasquez, the County and the Office of the Sheriff are to immediately:

- a) Rescind the five day suspension without pay;
- b) Expunge from Sgt. Vasquez' personnel files all reference to the suspension without pay and the Department's conclusion that Sgt. Vasquez has violated MCSO Rule 202.20 and/or Milwaukee County Civil Service Rule VII, Section 4(1)(l) and (u); and
- c) Make-whole Sgt. Vasquez by restoring to him all wages and benefits lost as a result of the unjust five day suspension without pay.

Dated at Madison, Wisconsin, this 28th day of January, 2011.

Coleen A. Burns /s/

Coleen A. Burns, Arbitrator
CAB/gjc

