

BEFORE THE ARBITRATOR

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

Case 738  
No. 69954  
MA-14816

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Appearances:

**Graham P. Wiemer**, MacGillis Wiemer, LLC, 2360 124<sup>th</sup> Street, Suite 200, Wauwatosa, WI 53226, appearing on behalf of Milwaukee Deputy Sheriff's Association.

**Roy L. Williams**, Principal Assistant Corporation Counsel, Office of Corporation Counsel, Room 303, Courthouse, 901 North 9<sup>th</sup> Street, Milwaukee, WI 53233, appearing on behalf of Milwaukee County.

**ARBITRATION AWARD**

Milwaukee County, hereinafter County or Employer, and the Milwaukee Deputy Sheriff's Association, hereinafter Association, are parties to a collective bargaining agreement that provides for the final and binding arbitration of grievances. The Association, with the concurrence of the Employer, requested the Wisconsin Employment Relations Commission to assign a Commissioner or staff member to resolve a dispute between them regarding a four-day disciplinary suspension of Deputy Theodore Robinson. Commissioner Susan J.M. Bauman was so appointed. Hearing was held on January 4, 2011, in Milwaukee, Wisconsin. The hearing was not transcribed. The record was closed on February 9, 2011, upon receipt of all post-hearing written argument and the undersigned being advised that no reply briefs were to be filed.

Having considered the evidence, the arguments of the parties, the relevant contract language, and the record as a whole, the Undersigned makes the following Award.

### ISSUE

There are no procedural issues. The parties stipulated to the substantive issue as:

Was there just cause to discipline Deputy Robinson for four days? If not, what is the appropriate remedy?

### BACKGROUND and FACTS

The Grievant herein, Deputy Theodore D. Robinson, has been employed by the Milwaukee County Sheriff's Department for seventeen years. At the time of the events giving rise to the discipline in dispute herein, April 13, 2010, he was assigned to the airport, on first shift. On April 23, 2010, an Internal Affairs case was opened regarding the behavior of Deputy Robinson and others. The case was assigned to Lieutenant Scott Stiff. After the investigation and all steps in the disciplinary process had been completed, Sheriff David A. Clarke Jr. issued a Notice of Suspension on June 7, 2010 by which Deputy Theodore D. Robinson was suspended for four (4) days, June 21, 22, 23, and 24, 2010. The attachment to the Notice of Suspension described the events giving rise to the issuance of the suspension. Most of the facts contained therein are not in dispute. The Attachment reads as follows:

On Tuesday, April 13, 2010, Deputy Rheume (Sq. 412A) and Deputy Robinson (Sq. 413) were assigned to day shift (0700 - 1500 hours). Shortly after roll call, Deputy Robinson activated his assigned Airport Digital Recorder and recorded the start of his shift. Deputy Robinson did not deactivate [sic] the record button and subsequently, inadvertently recorded audio of the next 4 hours of his shift.

Between 0730 - 0800 hours, Deputy Robinson observed an Escalade stopped on the ticketing drive. Deputy Robinson approached the vehicle and advised the male driver that he could not park there and that he needed to move the vehicle. The male driver turned to the back seat and asked the female what she was going to do. During his interview, Deputy Robinson acknowledged that they could have been arguing based on the tone of the driver's voice. The vehicle subsequently drove away, but was observed several more times by Deputy Robinson on the ticketing drive.

A short time later, Deputy Robinson observed the same female standing inside the airport doors on her cell phone crying. Deputy Robinson asked her if she was looking for the driver of the Escalade and she replied that she was taking her bags to ticketing. During his interview,

Deputy Robinson acknowledged that he did not ask her why she was crying or if she needed any help, even though he observed her possibly arguing with the driver of the Escalade earlier. Deputy Robinson left the area momentarily to help a citizen, who was in a wheelchair, with their [sic] bags.

At approximately 0810 hours, Deputy Rheume observed the same female kick the back bumper of the Escalade that was parked on the ticketing drive. At this time Deputy Rheume did not have knowledge of Deputy Robinson's previous contact with the female. Deputy Rheume heard the female talking in a loud tone of voice with the male driver. Deputy Rheume reported in his Incident Report that the female and male were engaged in a "heated" conversation. Deputy Rheume recognized the male driver to be Brandon Jennings of the Milwaukee Bucks. During his interview, Deputy Rheume stated that he asked the female several times what was going on, but she continually ignored him. Deputy Rheume stated that the female eventually told him that Jennings owed her \$60.00. Deputy Rheume described the female as being "highly upset". Deputy Rheume admitted that the female told him that Jennings hits women, but denied that the female stated that Jennings struck her in the face.

Deputy Robinson observed that Deputy Rheume was dealing with the same female and approached the scene to offer Deputy Rheume help. Deputy Robinson stayed with the female and Deputy Rheume approached Jennings to verify her claim that he owed her \$60.00. Jennings informed Deputy Rheume that he did not have \$60.00 and that he only had \$10.00. Jennings then asked Deputy Rheume if he would borrow [sic] him \$50.00, which Deputy Rheume declined.

During his interview, Deputy Robinson stated that the female was complaining that Deputy Rheume was more worried about her kicking the truck and not listening to what she was saying.

The female then approached Jennings and started to argue with Jennings over the money. The female then flicked what appeared to be a hotel key inside the Escalade and stated, "Fuck you Brandon. I never want to see you again." The female then entered the airport. Deputy Robinson then advised Deputy Rheume to inform Jennings to leave the area. Deputy Rheume then informed Jennings that he could leave at which time he did. This incident occurred in the presence of the general public. Neither Deputy Rheume nor Deputy Robinson positively identified the female or Jennings nor did they advise the checkpoint or a sergeant of the situation.

A short time later the female appeared from the airport and approached both deputies stating, "That's all your [sic] going to do to him. You're going to let him drive away after I told you he hit me." The female complained the [sic] Jennings slapped her in the face. Deputy Rheume became argumentative with the female stating several times, in a loud tone of voice, that she never said that to him. Deputy Robinson acknowledged that Deputy Rheume became upset with the female and that Deputy Rheume's response was not appropriate. Deputy Rheume asked the female several times if she wanted to file a complaint against Jennings, which she refused. She admitted that she lied to Officer McBride so Jennings would not get in trouble. Deputy Robinson acknowledged that they did not ask any follow-up questions regarding her accusations. Deputy Robinson stated that when she was describing the incident, she admitted that she lied and I figured, "Why should we believe her now. She lied earlier, so why should we believe what she is telling us."

A check with the Milwaukee Police Department revealed that Officer McBride did not have contact with Jennings or the female.

The female requested Deputy Rheume's information because she intended to file a citizen complaint against Deputy Rheume for the way Deputy Rheume treated her. Deputy Rheume did provide her with his information at which time the female left the scene.

After the incident both Deputy Rheume and Deputy Robinson realized that neither had obtained her information at which time Deputy Robinson attempted to locate the female with negative results.

Both Deputy Rheume and Deputy Robinson admitted that they thought the female was a prostitute, but denied treating her any differently because of such.

Deputy Rheume and Deputy Robinson met a short time later and discussed the incident. Deputy Robinson asked Deputy Rheume if he had is [sic] recorder on and Deputy Rheume responded, "No, did you" and Deputy Robinson responded, "No". Deputy Robinson stated, "Don't sweat this crap. If she wanted to file a complaint that he battered her, she should have done it when I walked up." Deputy Robinson stated, "She'll come back later and complain that she got her ass kicked and I'll be like no you didn't bitch."

Both Deputy Rheume and Deputy Robinson acknowledged that they received training in Tactical Communications, specifically the Tactical 8-step, which they both failed to follow.

During his interview, Deputy Rheame acknowledged that he could have handled this situation better and stated, "Obviously I would have gotten all of the information from the female and Mr. Jennings. I would have brought her back to the office to see if she really wanted to make a complaint or not." He added, "I am much better than this. I would have done a lot of things different and better."

During his interview Deputy Robinson stated that he if he could do the situation over he would make sure he knew who he was dealing with and try to find out more of what was happening." He added that he would follow the Tactical 8-step.

Both Deputy Rheame and Deputy Robinson acknowledged that they are aware of Airport Directive 505.00 (Airport Digital Recorders) and admitted that they did not activate the record button to record the incident.

Deputy Rheame and Deputy Robinson reported the incident to Sergeant Dobernig and Sergeant Dulan. Again, both Deputies stated that they did not record the incident.

After speaking with the sergeants, Deputy Rheame and Deputy Robinson reported [to] the checkpoint to make a log entry of the incident. Deputy Nigel Pinnock and Deputy Kim Dunigan were both assigned to the checkpoint and both were present. Deputy Rheame asked Deputy Robinson if he should put into the log that Deputy Robinson had the initial contact with them (female and Jennings) and that they were arguing. Deputy Robinson informed him that he should because they already reported it to the sergeants.

While Deputy Rheame was making the log entry, Deputy Robinson described the incident that occurred on the ticketing drive to Deputy Pinnock and stated, "That's all she wanted was a little dick." Deputy Robinson also stated, "She walked off and was like fuck him and fuck you too, so I was like fuck you."

Deputy Pinnock and Deputy [sic] began to have a conversation regarding vacations that they had taken. Deputy Pinnock described an incident that he observed while he had frequented a strip club in Jamaica. He stated that he observed a midget with a big dick fucking a woman on stage, who was covered in food.

Deputy Robinson then described an incident that he observed while vacationing in Mexico. He stated that he witnessed a “donkey show”. He stated, “A chick crawled up under this donkey and she was working him. The donkey’s nut come out like a shotgun and her head flew back.” Deputy Robinson admitted that this was said in the presence of a female officer and that it was not appropriate.

I interviewed Deputy Donigan who acknowledged that she was in the checkpoint and heard their conversation. She stated that she felt that it was very childish, immature and inappropriate. She added that she doesn’t even know what type of human being would even want to watch that kind of stuff. She stated that she really didn’t want to listen to it and was trying to ignore them. She added that when she heard the part regarding the “donkey show, [sic] she thought it was disgusting. She stated that someone stated that there was a woman present and Deputy Robinson responded that he’s been in the checkpoint when there are all women present and they talk worse than men.

During his interview, Deputy Rheume acknowledged hearing the “donkey show” and admitted that it was not appropriate. He stated that he did not report it because he did not hear everything.

At the end of his tour as Squad 413, Deputy Robinson was turning his Digital Recorder over to his relief when he noticed that the recorder had been recording since his initial recording at the start of his shift. He stated that he attempted to listen to the recording, but was busy with other work. He did report to Sergeant Dulan that the incident involving Jennings had been recorded.

**NOTE:**

Deputy Inspector Edward Bailey contacted the Milwaukee Bucks organization that identified the female as Brittany Bryant, 11-29-87, who resides in San Liandro [sic], California.

Based on the aforementioned, the following charges are SUSTAINED for the following:

**MILWAUKEE COUNTY SHERIFF’S OFFIC RULES:**

202.14 Violation of Policy

To Wit: 505.00 Digital Recorders (Airport)

202.17 Conduct of Members

202.19 Treatment of Citizens / Employees

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

Following the investigation that resulted in the four day suspension to the Grievant, Deputy Rheume was issued a two (2) day suspension and Deputy Pinnock was directed to participate in a sexual harassment seminar. Deputy Robinson grieved the suspension issued to him and the instant arbitration ensued.

Additional facts are included in the Discussion, below.

**APPLICABLE RULES**

**MILWAUKEE COUNTY SHERIFF'S OFFICE RULES:**

202.14 Violation of Policy

Members shall not commit any act, or omit any act, which is contrary to their training or constitutes a violation of any Milwaukee County Sheriff's Office policy, procedure, rule, regulation, order, or directive, whether stated in this section or elsewhere.

To wit: 505.00 Digital Recorders (Airport)

505.01 Purpose

The purpose of this policy is to ensure that the deputy sheriffs who work at the General Mitchell International Airport are accountable for the interactions with the public, and are provided with an avenue to protect themselves from unfounded complaints of verbal misconduct, discourtesy and incivility.

505.02 Policy

This policy is put into effect in order to provide officers with guidance as to courtesy and civility while seeking voluntary compliance from the traveling public. The agency recognizes the need for accountability of one's actions while at the same time protecting credibility. The use of a digital recorder is legal, since the law requires only one person involved in a conversation to consent to being recorded.

#### 505.03 Procedure

The Airport Division has digital recorders that are mandatory for use on the ticketing and baggage drives. This tool was purchased to assist deputies by providing a measure of protection from unfounded complaints of courtesy and civility violations

Training on the use of the recorders will be the responsibility of shift sergeants. They will demonstrate how to operate the recorders, at roll calls or on an individual basis, until all personnel have been trained.

#### Third Shift Sergeants:

Third shift sergeants are responsible for downloading the data from each recorder to an appropriate file on a daily basis. They will ensure that each recorder has adequate battery life or will replace batteries if necessary. They will also reissue the recorders to deputies with drive assignments.

The recorder files will be stored for a three-month period, then archived. They will be emptied from the archived file after six-months to retain storage space, unless a complaint arises. In this case, the file will be retained until the case is resolved.

#### Shift Sergeants:

Sergeants on all shifts will conduct physical inspections of deputies for recorder compliance during drive assignments. Sergeants will make a voice recording during the physical inspection.

#### Deputies:

Each deputy assigned to drive duties will have a digital recorder in their possession and record all citizen contact during their assignment on the drives. This tool is provided for the officer's protection from unwarranted complaints and to assure mission compliance for deputy professionalism when dealing with the public. Deputies will review and carry a Tactical Communications guide card with them during their tour of duty.



Each deputy upon receiving the recorder will make an audio entry that states the following:

- Their name
- Date
- Time
- Name of the person who gave them the recorder

Before ending their tour of duty on the drive each deputy will again make an audio entry that states the following:

- Their name
- Date
- Time
- Name of the person they are giving the recorder to

If while on drive duty the officer encounters an irate citizen or has any type of negative encounter, they will notify the sergeant immediately and ensure that the recording of that encounter is downloaded. The sergeant will review the complaint upon receipt.

The digital recorders are for official use only, intended for use on the airport drives and not for any other use unless authorized by a supervisor.

Any questions or concerns should be directed to the shift sergeants.

#### 202.17 Conduct of Members

Members shall not engage in any conduct or activity, on or off duty, which discredits or impairs the efficient and effective operation of the Milwaukee County Sheriff's Office or its members.

#### 202.19 Treatment of Citizens and Employees

Members shall perform all duties impartially; without favor, affection or ill will; and without regard to status, sex, race, religion, political belief, or aspiration. All citizen and employees shall be treated equally; with courtesy, consideration, and dignity.

#### 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):**

- (l) Refusing or failing to comply with departmental work rules, policies or procedures.
- (t) Failure or inability to perform duties of assigned positions
- (u) Substandard or careless job performance

**DISCUSSION**

This case involves discipline imposed upon Deputy Theodore Robinson for his actions on April 13, 2010. At hearing, the Grievant's testimony differed slightly from the description of the events of that day which were included in the Notice of Suspension and are recited above. These discrepancies, however, do not affect the outcome of this case. Although Deputy Robinson argues that he did not violate any rules and, therefore, should not be subject to disciplinary action of any type, I find that Deputy Robinson did engage in certain conduct which is inappropriate for a sworn member of the Milwaukee County Sheriff's Department. I find, however, that the penalty assessed Deputy Robinson for his role in these events, particularly as compared to the other officers who were involved in certain aspects of the day's events, was too severe. I have, therefore, reduced the penalty to a two (2) day suspension.

The issue herein is whether there was just cause to suspend Deputy Theodore Robinson (for four (4) days)? The collective bargaining agreement between the County and the Association does not define just cause. Accordingly, the inquiry that the undersigned must undertake is one to determine whether the Grievant's actions constitute wrongdoing and if so, whether the discipline assessed is appropriate to the actions committed by the employee.

Deputy Robinson is alleged to have violated four departmental rules and three subsections of the Milwaukee County Civil Service rules, the violation of which is derivative to the alleged violation of the departmental rules. That is, a finding that the Grievant violated any departmental rule must result in a finding, at a minimum, of a violation of Civil Service Rule VII (4)(1)(l).

**Alleged Violation of Rule 202.14 - Violation of Policy - To Wit: 505.00 Digital Recorders (Airport)**

The digital recorder policy was developed for the purpose of ensuring that deputies working at General Mitchell International Airport who regularly interact with the public "as an avenue to protect themselves from unfounded complaints of verbal misconduct, discourtesy and incivility." To that end, deputies are instructed to activate

the recorders at the beginning of a shift in order to identify themselves, the date, time and name of person who gave the recorder to them. Thereafter, the recorder is to be activated when on drive duty, the officer “encounters an irate citizen or has any type of negative encounter.” At the end of the shift, the recorder is, again, to be activated to record the name, date, time, and person to whom the person is being transferred.

On April 13, 2010, the Grievant turned on his recorder at the beginning of the shift, made the appropriate statements and, thereafter, forgot to turn off the recorder. Although Deputy Robinson and Deputy Rheume both thought they had not turned on their recorders, only Deputy Rheume failed to do so.

The digital recorder policy also requires an officer to notify the sergeant immediately upon encountering an irate citizen or having any type of negative encounter. Neither the Grievant nor Deputy Rheume notified a sergeant until after the prolonged, but intermittent, encounter with Brandon Jennings and the woman who had issues with Mr. Jennings. It is unclear to the undersigned at exactly what point Deputy Robinson should have contacted a sergeant, at what point he had encountered an irate citizen or had a negative encounter with one.

Deputy Robinson’s initial contact with the woman was, apparently, when she was in the back seat of Jennings’ vehicle and, perhaps, argumentative words were exchanged between them. Was this when Robinson should have activated the recorder and notified the sergeant? His next encounter with her was inside the terminal when she was on a cell phone and appeared to be crying. Was this when Robinson should have activated the recorder and notified the sergeant?

When Robinson exited the terminal some minutes later, he saw Deputy Rheume and the woman behind Jennings’ Escalade. He approached them and then stayed behind the vehicle with the woman while Rheume spoke with the driver. Was this when Robinson should have activated the recorder and notified the sergeant? The woman then went to the car window spoke to Jennings and flicked what appeared to be a hotel key into the vehicle. Was this when Robinson should have activated the recorder and notified the sergeant?

After Jennings drove away, the woman returned from the interior of the terminal and asked Deputy Rheume whether this was all he was going to do. At that time, she made it clear that she wanted Deputy Rheume’s identification in order to file a complaint against him. Was this when Robinson should have activated the recorder and notified the sergeant?

Although the County has failed to clearly identify when Deputy Robinson should have activated his recording device and notified the sergeant of either an irate citizen or a negative encounter, Deputy Robinson did record the entire conversation and is, therefore, not in violation of Policy 505.00 and, therefore, not in violation of Rule 202.14.

Alleged Violation of Rule 202.17 – Conduct of Members

Rule 202.17, Conduct of Members, states that “Members shall not engage in any conduct or activity, on or off duty, which discredits or impairs the efficient and effective operation of the Milwaukee County Sheriff’s Office or its members.” The County fails to state, with specificity, the nature of the action taken, or not taken, by Deputy Robinson that constitutes a violation of this rule. However, it is clear from the reports, the testimony, and the Grievant’s admission, that he failed to obtain the identity of the woman involved in the incident, and that the identity of Brandon Jennings was only known because Deputy Rheume identified him because he is a member of the Milwaukee Bucks.

Deputy Robinson interacted with the woman a number of times as the events of April 13 unfolded. It is not clear that there was a need to obtain her identity until the Grievant joined Deputy Rheume, after the woman had been kicking the tires of Jennings’ vehicle.<sup>1</sup> Deputy Robinson was not aware, as he joined the encounter between Deputy Rheume, the woman, and Jennings, that Deputy Rheume had failed to obtain the identity of the woman. The record is not clear as to whether Robinson, as the second person on the scene, should determine whether the first deputy has obtained the information or whether the second arriving deputy should, individually, obtain that information. However, in this case, nobody obtained the information. It is important to note, however, that upon realizing that neither Rheume nor Robinson had obtained the information in question, it was Robinson that entered the terminal in an attempt to locate the woman and obtain the information in question.

Alleged Violation of Rule 202.19 – Treatment of Citizens and Employees

Rule 202.19 states: “Members shall perform all duties impartially; without favor, affection or ill will; and without regard to status, sex, race, religion, political belief, or aspiration. All citizen and employees shall be treated equally; with courtesy, consideration, and dignity.” The County alleges that Deputy Robinson violated this rule in a number of ways.

First, it is alleged that the Grievant violated the rule when he told Deputy Rheume “don’t sweat this crap if she wanted to file a complaint that he battered her, she should have done it when I walked up. She’ll come back later and complain that she got her ass kicked and I’ll be like no you didn’t bitch.” Second, at the checkpoint

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<sup>1</sup> The County appears to claim that Robinson should have gotten her name earlier, perhaps when she was in Jennings’ vehicle or when she was crying in the terminal building. The County has failed to convince the undersigned that there was any reason, whatsoever, to obtain the identity of the woman until she engaged in tire kicking, claiming Jennings had slapped her, and asserted a desire to file a complaint against Rheume.

when Rheaume was to make the log entry regarding the event, the Grievant told Deputy Nigel Pinnock, “that’s all she wanted was a little dick. She walked off was like fuck him and fuck you too, so I was like fuck you.” Third, and most, significantly, it is alleged that Robinson engaged in conversation with Deputy Nigel Pinnock regarding sex acts that they had witnessed while on vacations out of the country. Pinnock described an act in which a midget had sex with a woman on stage, after which Robinson described a “donkey show” he saw in Mexico. This discussion took place in front of a female deputy, Kim Dunigan. Someone else present during the conversation pointed out that there was a woman present and Robinson responded by saying that he had been at the checkpoint when only women were present and they talk worse than men.

Deputy Robinson argues that because there was no complaint filed by anyone, including Deputy Dunigan, that there was no problem with his comments and behavior. Robinson’s argument is without merit. His language is inappropriate on a work site, and his sharing of stories of sex acts constitutes sexual harassment, whether Deputy Dunigan complained of the behavior or not. It is true that the County only became aware of this discussion because it was caught on Robinson’s tape recorder. It is his fault that he failed to turn off the recorder before having such discussions. He can’t argue that he didn’t violate the voice recorder policy by having the recorder on, albeit inadvertently, and then argue that the Employer does not have the right to listen to the entire tape and discipline him for the things that can be heard on the tape.

Deputy Robinson is clearly in violation of Rule 202.19. He failed to treat his co-workers with courtesy and his comments regarding the woman with Jennings reflect a lack of courtesy towards her.

#### Alleged violation of Rule 202.20 - Efficiency and Competence

Rule 202.20 states: “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.” To a large extent, this rule is a catch-all rule whereby an employee who fails to perform the duties of his or her position in such a manner as to be in violation of another rule must, by extension, be in violation of this rule. Much as the violations of the Milwaukee County Civil Service Rules for which the Grievant has been cited, a violation of this rule, 202.20, does not constitute a separate rule violation but, rather, a violation that derives from the fact that there has been, as here, a violation of other rules.

### Appropriate Level of Discipline

Contrary to his contention that he has not violated any rules, Deputy Robinson violated Rules 202.17 and 202.19 by his actions on April 13. By violating these rules, he also violated Rule 202.20 and Milwaukee County Civil Service Rules VII (4)(1)(l) and (u).<sup>2</sup>

The Sheriff disciplined Deputy Robinson by issuing a four (4) day suspension without pay.<sup>3</sup> Deputy Rheume was suspended for two (2) days for his actions on the day in question, and Deputy Pinnock was required to attend a sexual harassment training seminar for his participation in the discussion of sex acts. I find that a two day suspension is appropriate for Deputy Robinson's behavior. His violations are limited to failing to obtain the woman's identification and his inappropriate use of language. By contrast, Deputy Rheume observed the woman engaging in aggressive, inappropriate activity, something that Robinson never observed. Rheume did not obtain the woman's identification information and he never had his recorder turned on. Although Robinson had earlier contact with the woman, none of that contact can be described as negative or hostile, nor was the woman irate. It was not until the events which Rheume observed, the kicking of tires, that there was any possible reason to believe that the woman was irate or that this was a hostile or negative encounter.<sup>4</sup>

It appears to the undersigned that the discipline meted to Robinson was, in some way, a combination of that which was applied to Rheume and Pinnock. However, Robinson did not engage in all of the wrong doing that is attributable to Rheume. The appropriate discipline for Robinson, if limited to the Jennings/woman interaction, would be less than that of Rheume. Given that Robinson also engaged in the violations during his discussion with Pinnock, a two day suspension is appropriate.

Accordingly, based upon the above and foregoing and the record as a whole, the undersigned issues the following

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<sup>2</sup> I have not found a violation of Rule VII (4)(1)(t), failure or inability to perform duties of assigned position. Robinson did perform the duties, and he is capable of performing his duties.

<sup>3</sup> Curiously, the documents indicate a two (2) day suspension that is subsequently modified to a four (4) day suspension. The County was unable to explain this modification.

<sup>4</sup> The County argues that a police officer should obtain the name of every individual that he or she speaks with. The County has failed to establish that this is a Milwaukee County Sheriff's Department policy and, on its face, this is absurd. If someone asks an officer for directions, should the officer get that person's name? Should an officer obtain the name of every person that he or she asks to move their car on the drives?

**AWARD**

The grievance is sustained in part and denied in part.

There was just cause to discipline the Grievant, but not for a four day suspension. The four day suspension shall be reduced to a two day suspension and the Grievant is to be made whole for the difference in wages and benefits and his record shall be modified to reflect a two day suspension.

The undersigned will retain jurisdiction for a period of thirty (30) days of the date of this award to resolve any issues regarding the remedy ordered.

Dated at Madison, Wisconsin, this 15<sup>th</sup> day of March, 2011.

Susan J.M. Bauman /s/

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Susan J.M. Bauman, Arbitrator

SJMB/dag  
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