BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

MILWAUKEE DEPUTY SHERIFFS' ASSOCIATION

and

MILWAUKEE COUNTY

Case 743
No. 70074
MA-14851

(Eric Worden Suspension Appeal)

Appearances:

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

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

ARBITRATION AWARD

The Milwaukee Deputy Sheriffs' Association, hereinafter referred to as the Association, and Milwaukee County, hereinafter referred to as the County or the Employer, were parties to a collective bargaining agreement which provided for final and binding arbitration of all disputes arising thereunder. The Association made a request, with the concurrence of the County, that the Wisconsin Employment Relations Commission designate a member of its staff to hear and decide the appeal of Deputy Eric Worden's suspension. The undersigned was so designated. A hearing was held in Milwaukee, Wisconsin on February 17, 2011. The hearing was not transcribed. The parties filed briefs whereupon the record was closed April 8, 2011. Having considered the evidence, the arguments of the parties and the record as a whole, the undersigned issues the following Award.

ISSUE

The parties stipulated to the following issue:

Was there just cause for suspending Deputy Worden for four days? If not, what is the appropriate remedy?

BACKGROUND

The County operates a Sheriff's Department. The Association is the exclusive collective bargaining representative for the Department's deputy sheriffs. Eric Worden is a deputy sheriff who has been with the Department for 16 years.

The record reflects that Worden has the following disciplinary history. In 2000, he received a written reprimand. In 2008, he was suspended for an unspecified number of days. That suspension was subsequently overturned by an arbitrator. Given that action, Worden had no prior suspensions in his disciplinary file when he was suspended for four days in August, 2010.

FACTS

This case involves the four-day suspension just referenced. On October 20, 2009, Worden was working in the civil process unit where one of his job duties was serving evictions. He has conducted hundreds of evictions and is familiar with the eviction process.

That day, about 12:45 p.m., Detective Jon Nilson – who was on the day shift eviction squad – notified the sergeant in the civil process unit, Sgt. Gaudynski, that they would not be able to complete all of the evictions that they had scheduled prior to the end of their shift and that they would need to be relieved. This is a common occurrence in the department to minimize the amount of overtime expended. Detective Nilson informed Sgt. Gaudynski that there would be four evictions remaining for second shift and that all of the properties were owned by the same landlord.

Deputies Thomas Beal and Eric Worden were working the second shift (i.e. noon to 8 p.m.). Sgt. Gaudynski directed them to relieve the dayshift eviction squad starting at 1400 hours (2 p.m.). Detective Nilson subsequently handed off four evictions to Deputies Worden and Beal to perform. Before he did so, Nilson briefed Deputy Beal on all four evictions and turned over the paperwork to Deputy Beal. Deputy Worden was standing next to them while the briefing occurred. The evictions in question involved the following locations (which were all in Milwaukee County): the first was at 6323 West Carmen Avenue; the second was at 6231 West Carmen Avenue; the third was at 5736 North 63rd Street; and the fourth was at 7948 West Leon Terrace. Worden and Beal arrived at the first location about 2 p.m. The eviction at that location took about 30 to 45 minutes to complete. During that time period, Worden

talked to the residents who were being evicted and Beal completed the paperwork connected with the eviction process. After completing that eviction, Worden and Beal moved to the building where the second eviction was to be performed. The apartment in question was empty when they arrived, so there was no one to be evicted. Worden and Beal then moved on to the building where the third eviction was to be performed. Worden and Beal finished the eviction at the third location at 1600 hours (4 p.m.). The movers for the moving company that worked on that eviction wrote in their log book that they left the 63rd Street location at 1601 hours. Deputy Beal subsequently completed a form for that eviction. That form, known in the department as a 50-A process report, tracks the activity on an eviction order. On that report, Beal wrote that the eviction at the 63rd Street location was completed at 1600 hours (4 p.m.).

It is unclear what Worden and Beal did after they completed the third eviction. They were supposed to move on to the fourth eviction on their list (i.e. the one on Leon Terrace) but for unexplained reasons, they did not do so. Thus, Worden and Beal did not perform the fourth eviction on the list. The Leon Terrace apartment in question is located about five minutes from the site where the third eviction was performed. When deputies on the eviction squad cannot perform an eviction, they are supposed to notify their sergeant about it. For unexplained reasons, that did not happen here (meaning that neither Worden nor Beal notified their sergeant that the Leon Terrace eviction had not been performed).

About 1737 hours (5:37 p.m), Sgt. Gaudynski heard Deputy Beal notify the dispatchers that he and Deputy Worden had completed evictions. Gaudynski heard this on his agency radio.

Deputy Beal subsequently completed a form known as the daily activity sheet. On that report, Beal wrote "10-8 from evictions" at 1821 hours (6:21 p.m.) There is a 2 hour and 21 minute time difference between the time that Beal put on the 50-A process report (i.e. 4 p.m.) and the time that he put on the daily activity log (6:21 p.m.).

Worden and Beal were back at the Criminal Investigation Division (CID) office by 1830 hours (6:30 p.m.) When Sgt. Gaudynski saw them there, he asked them how the evictions had gone, and Worden responded that they (i.e. the evictions) were completed. Deputy Beal then said that the moving company was to blame for the amount of time it took to complete the evictions. Neither Worden nor Beal told Sgt. Gaudynski that the Leon Terrace eviction had not been performed.

The next day (October 21, 2009), the landlord of the Leon Terrace apartment called Detective Nilson and complained that the eviction at the Leon Terrace apartment had not occurred (as it was supposed to have occurred). After getting that complaint call, Nilson told Sgt. Gaudynski that the eviction at the Leon Terrace apartment had not been performed, and that he received a complaint from the landlord about it.

After learning the foregoing from Nilson, Sgt. Gaudynski questioned both Worden and Beal about why the Leon Terrace eviction had not been completed. Worden told Gaudynski

that there was a miscommunication between the shifts and he (Worden) did not realize that they were supposed to perform an eviction at that property. He added that Deputy Beal was in possession of the paperwork and that they finished "around 6". Beal told Gaudynski that the (fourth) eviction was not performed because there was not enough time to complete it. Beal also told Gaudynski that they were performing evictions until approximately 6 p.m..

Gaudynski then reviewed the paperwork which Beal had completed concerning the evictions performed on October 20, 2009 and noticed the time difference in the two reports Beal had completed. Specifically, he noticed that the 50-A process report said that the last (i.e. third) eviction was completed at 1600 hours (4 p.m.), while the daily activity sheet said that they were doing evictions until 1821 hours (6:21 p.m.). Gaudynski considered this time difference to be problematic. Additionally, it made him uncertain about Worden and Beal's whereabouts after they completed the third eviction.

On October 23, 2009, Detective Nilson and Deputy Worden worked together performing evictions. One of the evictions they were to perform that day was at 7948 West Leon Terrace. That was the site of the eviction that was to have been performed by Worden and Beal on October 20, but was not performed. That eviction was rescheduled for October 23, but was not performed that day either because the landlord cancelled it. Sometime during the course of their shift, the following occurred. Worden told Nilson that the sergeant had talked to him regarding the evictions from October 20. Worden then asked Nilson why he "snitched him out" to the sergeant. In response, Nilson told Worden that he did not "snitch him out"; instead, he had just briefed the sergeant on what had happened.

About the same time, Gaudynski sent a report to Internal Affairs about Worden and Beal's failure to perform the Leon Terrace eviction and their whereabouts afterwards. In that report, Gaudynski alleged the following: 1) "that for 4 hours of their 8 hour shift, they [Worden and Beal] were not performing any work related duties"; and 2) that Worden and Beal "misrepresented the amount of work that they did" on both the activity sheet and in the conversation he had with them (in his office) on October 20, 2009 at 1830 hours (6:30 p.m.)

On November 2, 2009, Gaudynski's request for an internal investigation into Worden and Beal's work conduct on October 20, 2009 was approved, and the Department's Internal Affairs Division opened a case against them.

On June 3, 2010, about seven months later, Lt. Scott Stiff of the Internal Affairs Department interviewed both Deputies Worden and Beal about their eviction work on October 20, 2009. In their interviews, the following occurred. First, both Beal and Worden admitted they did not perform the fourth eviction that day (i.e. the one on Leon Terrace). Second, both Beal and Worden stated that they completed the third eviction at 1600 hours (4 p.m.). Third, neither could explain the time difference between the time listed on the 50-A report for the completion of the third eviction (i.e. 1600 hours), and the time listed on the daily activity log as when the evictions were completed (i.e. 1821 hours). Fourth, neither could remember what they did after they completed the third eviction. Fifth, neither could remember

what they told Gaudynski when they talked to him at the end of their shift on October 20, 2009.

Per the Department's standard procedure, Lt. Stiff subsequently wrote a report known as an "Investigative Summary". His report on Beal is not included in the record; only his report on Worden is. In that report, Stiff reached the following conclusions about Worden's conduct on October 20, 2009:

> Deputy Worden completed only three of the four evictions he was assigned to complete. Deputy Worden reported to Sergeant Gaudynski that he finished evictions at 1800 hours. This is contrary to completing the last eviction at 1600 hours.

Based on those conclusions, Stiff found that Worden committed two departmental rule violations and one county civil service rule violation. The department rules Worden was accused of violating were 202.20 (Efficiency and Competence) and 202.23 (Truthfulness). The former provides thus:

> 202.20 Efficiency and Competence
>
> Members shall adequately perform the duties of their assigned position. In addition, sworn members shall adequately perform reasonable aspects of police work. "Adequately perform" shall mean performance consistent with the ability of equivalently trained members.

The latter provides thus:

> 202.23 Truthfulness
>
> Members shall be truthful in all aspects of their duties. Intentional omission of facts, either written or verbal, shall be considered untruthful.

The County civil service rule Worden was accused of violating was subparagraph (u) of Rule VII, Section 4(l). Subparagraph (u) prohibits "Substandard or careless job performance".

Lt. Stiff's findings were subsequently reviewed by the Sheriff. On July 19, 2010, Sheriff David Clarke issued Order No. 1918 which indicated that Deputy Worden was suspended for four days for violating the three rules just referenced. Attached to Order No. 1918 was a "Notice of Suspension". The wording in the "Notice of Suspension" was verbatim to that contained in Lt. Stiff's "Investigative Summary". As a result, it is apparent that the Sheriff adopted Lt. Stiff's findings as his own and disciplined Worden for the reasons set forth in Stiff's "Investigative Summary".

Deputy Beal was also suspended. He was suspended for two days.

Based on the parties' collective bargaining agreement, Worden's suspension was appealed to arbitration. At the hearing, the parties stipulated that the arbitrator's decision on Deputy Worden's suspension would also apply to Deputy Beal's suspension. Thus, if the arbitrator upholds Worden's suspension, then Beal's suspension will be treated likewise. Conversely, if the arbitrator overturns or reduces Deputy Worden's suspension, then Beal's suspension will be treated likewise.

. . .

At the hearing, Worden was asked his whereabouts on October 20, 2009 after he completed the third eviction. In response, he offered the following possibilities: 1) he could have been setting up evictions for the next day; 2) he could have been doing postings; and 3) he could have been making calls back at the station.

POSITIONS OF THE PARTIES

Association

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

The Association initially addresses the fact that Worden and Beal did not perform the fourth eviction on the day in question (i.e. the one on Leon Terrace). It's the Association's view that that inaction was not workplace misconduct for the following reasons. First, the Association contends that Worden and Beal did not know they were to perform the Leon Terrace eviction. According to the Association, Worden and Beal mistakenly believed they only had to complete three evictions – not four. Addressing how that mistaken belief originated, the Association relies on Worden's testimony that there was a miscommunication between Worden and Beal and the dayshift eviction squad about performing the Leon Terrace eviction. The Association avers that because of that miscommunication, Worden and Beal "were unsure whether they were supposed to perform an eviction at the Leon Terrace." As for whose fault it was that this miscommunication occurred, it's the Association's view that fault for same should fall on the dayshift eviction squad – not Worden and Beal. The Association also points the finger of blame, so to speak, at the Department because it (i.e. the Department) "has no procedure in place for uncompleted evictions being turned over to another shift." Second, the Association maintains that another reason why the Leon Terrace eviction was not performed was because Worden and Beal did not have enough time to complete it. To support that premise, the Association simply cites Beal's statement to Gaudynski to that effect (i.e. that they did not have enough time to do it). It also notes in this regard that some evictions don't take much time to complete, while others do. On the day in question, the third eviction took longer to complete than the other two did.

Next, the Association addresses the County's contention that Worden was untruthful in this matter. It disputes that contention. According to the Association, the County did not

prove that Worden made either an intentional omission or misstatement of fact to either Sgt. Gaudynski or in his Internal Affairs investigatory interview. While the Association acknowledges that Worden could not remember all of the specific events of October 20, 2009 when he was interviewed by Internal Affairs, it avers there's a logical reason for that, namely that the interview occurred seven months after the fact. The Association opines that Internal Affairs interviews should occur within a reasonable amount of time and, as the Association sees it, seven months was not a reasonable amount of time. Instead, it was an inordinate delay. As part of its argument on this point, the Association addresses the time discrepancy between the daily activity log and the 50-A process report. It acknowledges that there is a time discrepancy between them (with the former saying that the evictions were completed at 6:21 p.m. and the latter saying that the third eviction was completed at 4:00 p.m.). However, as the Association sees it, there are "numerous possible explanations" for this discrepancy. For example, Deputy Beal could have just made a mistake when filling out the 50-A, or Deputy Beal could have written the time he thought they might complete the eviction prior to completion. The Association also points out that when Sgt. Gaudynski questioned Worden and Beal on October 21, 2009, he did not ask them about the time discrepancy. The Association maintains that had Sgt. Gaudynski "not failed to question Worden or Beal about this time discrepancy", or had Internal Affairs not waited over seven months to interview them, they (i.e. Worden and Beal) would likely have been able to provide the Department "with a specific explanation of the time discrepancy."

Next, the Association addresses the fact that Worden was charged with violating three rules (two department and one county-wide). It argues that the record does not sufficiently link Worden's conduct on October 20, 2009 to the charged rules. It contends that an employee is not responsible for disproving the charges levied against him; instead, the Employer must substantiate the charges. According to the Association, the County did not meet its burden of proving that Worden violated the three rules as charged, and committed workplace misconduct.

Finally, the Association argues in the alternative that even if Worden did commit workplace misconduct on October 20, 2009, there still was not just cause for the level of discipline imposed on him. Here's why. First, with regard to Worden's past disciplinary history, the Association emphasizes that Worden had what it calls a "stellar employment history", prior to being suspended for four days. The Association argues that under these circumstances, a four-day suspension was not warranted; rather, a lesser form of discipline would have satisfied the Department's objective. Second, addressing the matter of comparable discipline, the Association notes that while Worden received a four-day suspension, Beal received a two-day suspension. The Association implies that was inequitable. The Association therefore asks the arbitrator to reduce Worden's punishment to a level more fitting his behavior on the day in question and his past disciplinary history.

County

The County's position is that there was just cause to suspend Deputy Worden for four days. In its view, on the day in question, he failed to "properly execute his duties regarding

evictions". As the County sees it, that action constituted workplace misconduct which warranted the discipline imposed. It elaborates as follows.

The County initially focuses on the fact that on October 20, 2009, Worden and his partner were assigned to complete four evictions. However, they completed just three of them. They did not perform the fourth eviction (as they should have). According to the Employer, the excuse which Worden proffered afterwards to Sgt. Gaudynski (i.e. that there was a miscommunication between the shifts and he didn't know they were to perform the fourth eviction) should not pass muster with the arbitrator for the following reasons. First, after Worden and Beal got this assignment, Detective Nilson briefed them on the four evictions they were to perform. Given that briefing, it's the Employer's view that there should not have been any question in the minds of Worden and Beal that they were to perform four evictions – not three evictions. Second, the Employer also points out that Worden later asked Detective Nilson why he "snitched him out to the sergeant." The Employer asks rhetorically: "If Deputy Worden had done nothing wrong, then why would he accuse Detective Nilson of 'snitching him out'"? As the County sees it, when Worden reprimanded Nilson for "snitching him out", he (Worden) "implied his own guilt".

Next, the County focuses on what happened after Worden and Beal finished the third eviction on their shift that day. Before addressing that point though, it first reviews the following timetable. It notes that Worden and Beal finished the first eviction by 2:30 p.m., the second one shortly thereafter, and the third one (i.e. the one on North 63rd Street) by 4:00 p.m. Having reviewed that timetable, the Employer then emphasizes the following. First, as already noted, Worden and Beal did not do the fourth eviction which was on their to-do list (i.e. the one on Leon Terrace). According to the County, it was odd that they did not perform that eviction because Leon Terrace is just a few minutes away from the location of the third eviction. Second, the Employer points out that after Worden and Beal finished with the third eviction at 4:00 p.m., they "essentially disappeared" until they were back at the station at 6:30 p.m. and Worden told Gaudynski that the evictions were completed. The Employer also points out that the next day, when Gaudynski questioned the two officers about why they did not perform the Leon Terrace eviction, both officers told Gaudynski they finished with the evictions the previous day "around 6:00 p.m.". The Employer characterizes the time period between these different times (i.e. 4:00 p.m. and "around 6:00 p.m.") as being a "large amount of time" that simply is "unaccounted for".

Putting all the foregoing together, the County contends that Worden's actions on October 20, 2009 (namely, 1) his failure to perform the fourth eviction; 2) his being dishonest with Sgt. Gaudynski about having no knowledge of that eviction; and 3) his whereabouts being unaccounted for during a significant portion of his shift) violated three department and civil service rules which govern employee conduct. According to the Employer, Worden violated Department Rules 202.20 (Efficiency and Competence), 202.23 (Truthfulness), and Milwaukee County Civil Service Rule VII, Section 4(1), subparagraph (u), (Substandard or careless job performance).

Finally, with regard to the level of discipline which was imposed, the Employer argues that a four-day suspension was reasonable under the circumstances. The County implies that the arbitrator should give deference to the discipline imposed by the Sheriff. It therefore asks that Worden's four-day suspension be upheld.

DISCUSSION

The parties stipulated that the issue to be decided here is whether there was just cause to suspend Deputy Worden for four days. I answer that question in the affirmative, meaning that I find the Employer did have just cause to impose a four-day suspension on Worden. My rationale follows.

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

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

Before I address Worden's conduct on August 20, 2009, I've decided to make the following preliminary comments about the nature of work that, in my view, apply to this case. First, it's a commonly accepted principle of the workplace that employees are supposed to do the tasks they are assigned to perform. Simply put, that's how work gets done in the workplace. Employers have a legitimate and justifiable interest in having employees perform the work they are assigned to perform. If they don't perform the tasks assigned, they can be held accountable for that by the employer. Said another way, employees who fail to perform their assigned work do so at their own peril. Second, as another broad generalization, employees are expected to work during the work day such that they do not have unexplained gaps in the workday. If they do have portions of their workday that are unaccounted for, they can be held accountable for that by the employer. Third, as a completely separate matter, when employees are questioned by a supervisor about the work they have performed, they are supposed to respond in a forthright fashion. If they don't, they can be held accountable for that by the employer.

The reason I started my discussion by making the comments just referenced is because in this case, the Employer expressly charged Worden with infractions in two of the areas noted

above (namely, the first and third items). The following shows this. First, the Employer charged Worden with not performing one of his assigned evictions (namely, the Leon Terrace eviction). Second, the Employer charged Worden with not being forthright with Sgt. Gaudynski about when he (Worden) finished performing his work on the day in question. The question of whether the Employer charged Worden with a third infraction dealing with the second item referenced above will also be addressed. The foregoing matters will be addressed in the order just listed.

It is undisputed that Worden and Beal did not perform the eviction on Leon Terrace. That's what got the ball rolling in this case, so to speak, because the landlord of that property complained after the deputies were a no-show at that eviction.

The Association offers several explanations for Worden and Beal's failure to perform that eviction which, in its view, should excuse their action. First, it contends Worden and Beal did not know they were to perform the Leon Terrace eviction. According to the Association, they believed they only had to perform three evictions. However, that assumption was just plain wrong because they were supposed to perform four evictions – not three. The Association assigns fault for this "miscommunication" to the day shift eviction squad. I find otherwise for the following reason. The record establishes that Detective Nilson briefed Deputy Beal on the evictions they (i.e. Beal and Worden) were to perform that day. In that briefing, Nilson told the two that they were to perform four evictions on their shift. Deputy Worden was standing next to Beal when that briefing occurred. Nilson also gave them the eviction paperwork for four evictions – not three. Given what happened at that briefing, it's hard for the arbitrator to understand how Worden and Beal could have reasonably thought that they had just three evictions to perform. Next, the Association believes it is significant that the Department has no procedure in place for uncompleted evictions being turned over to another shift. I don't. In my view, that contention misses the mark for several reasons. First, as already noted, Nilson briefed Worden and Beal on the four evictions they were to perform. Second, if Worden and Beal had a question about whether they were to perform an eviction at the Leon Terrace address, they should have sought clarification/guidance on the matter from their supervisor. They didn't do so. Finally, the Association maintains that another reason why the Leon Terrace eviction was not performed was because Worden and Beal did not have enough time to complete it. To support that premise, the Association simply cites Beal's statement to Gaudynski to that effect (i.e. that they did not have enough time to do it). I consider Beal's statement to Gaudynski to be significant for this reason: it's a tacit admission that they (Worden and Beal) knew they were to do the Leon Terrace eviction (but didn't have enough time to do so). That tacit admission (that they knew they were to perform an eviction on Leon Terrace) obviously undercuts the Association's contention that Worden and Beal did not know they were to perform an eviction there. It has to be one or the other; the Association can't have it both ways. As for the merits of Beal's assertion to Gaudynski that they didn't have enough time to do that eviction, there is no support in the record for that assertion. Although I'll address the time matter in more detail later in this discussion, it suffices to say here that Worden and Beal had time – after completing the third eviction by 4:00 p.m. – to do the Leon Terrace eviction. Here's why. At that point in time, they still had half of their shift

remaining (i.e. four hours). While the record establishes that evictions can take varying amounts of time to perform, there's nothing in the record about evictions lasting longer than four hours. That being so, the contention that time limitations on October 20, 2009 somehow precluded Worden and Beal from either starting or completing the Leon Terrace eviction is rejected.

The foregoing persuades me that no legitimate reason was shown for Worden and Beal not performing the Leon Terrace eviction. Simply put, they should have performed that eviction. Their failure to do so constituted workplace misconduct.

In so finding, I'm also convinced that Worden knew he should have performed the Leon Terrace eviction. Here's why. The day after Sgt. Gaudynski talked to Worden and Beal about their not performing the Leon Terrace eviction, Nilson and Worden were working together when Worden asked Nilson why he "snitched him out to the sergeant." What's significant about that statement is the following context: namely, that Nilson was the one who told Sgt. Gaudynski that the Leon Terrace eviction had not been performed. In my view, Worden's "snitch" comment implied that Worden knew he had engaged in unacceptable workplace behavior, and rather than be remorseful over it or acknowledge that he made a mistake, he simply didn't like the fact that he had been caught (i.e. that Nilson had, as Worden put it, "snitched" him out to Sgt. Gaudynski). When considered in that context, Worden's "snitch" comment makes sense. If that context is ignored though, Worden's comment makes little sense.

The focus now turns to the second charge against Worden (namely that Worden was not forthright with Sgt. Gaudynski about when he [Worden] finished performing his eviction work on the day in question). Here's the background pertinent to this charge. After Sgt. Gaudynski learned from Nilson that the Leon Terrace eviction had not been performed, he spoke with both Worden and Beal about when they had finished their eviction work that day. Both deputies told Gaudynski they finished performing evictions about 6:00 p.m. When Sgt. Gaudynski later reviewed the eviction paperwork which Beal completed for October 20, 2009, he (Gaudynski) noticed that the numbers on the paperwork were inconsistent. Specifically, what caught his attention was that the 50-A process report said that the third eviction was completed at 4:00 p.m., while the daily activity sheet said they were doing evictions until 6:21 p.m. Gaudynski knew that Worden and Beal were back at the station by 6:30 p.m. that day because that's when he (Gaudynski) saw them and talked to them briefly about the work they had performed on their shift. In Gaudynski's mind, this paperwork inconsistency raised the following question: when did Worden and Beal finish performing evictions on October 20, 2009? Was it about 6:00 p.m. (as they told Gaudynski on October 21, 2009), or was it 4:00 p.m.?

The record evidence establishes that Worden and Beal finished performing evictions that day at 4:00 p.m. - not 6:00 p.m. as they told Gaudynski the next day. The following shows this. First, when Worden and Beal were interviewed by Internal Affairs about the matter, both men told Internal Affairs that they completed the third eviction at 4:00 p.m.

Second, that's also what Worden testified to at the hearing. Beal was not called as a witness and therefore did not testify. Third, the mover's log also says that the third eviction ended at 4:00 p.m. In contrast, there's nothing in the record that supports the statements Worden and Beal made to Gaudynski that they were doing evictions "till 6 p.m." that day. Their statements to Gaudynski that they were doing evictions until 6:00 p.m. - when in fact they stopped working on evictions at 4:00 p.m. - is obviously problematic. As was noted earlier in the discussion, employees are supposed to be forthright with their supervisors when they are questioned about the work they have performed. On October 21, 2009, Worden and Beal were not forthright with Gaudynski about when they stopped performing eviction work the day before.

While my discussion on this matter could end with the last sentence, it won't for the following reason. When the parties litigated this case, they addressed the question of what Worden and Beal did that day after they completed the third eviction at 4:00 p.m. According to the Employer, Worden and Beal failed to account for the remaining portion of their workday. Quite frankly, I don't know what Worden and Beal did for the remainder of their shift that day. As I put it in the **FACTS**, "it is unclear what Worden and Beal did after they completed the third eviction." At the hearing, Worden offered the following possibilities for his whereabouts afterwards: 1) he could have been setting up evictions for the next day; 2) he could have been doing postings; and 3) he could have been making calls back at the station. Of course, the key phrase in all of the foregoing is "could have been . . ." That phrase (i.e. "could have been") is far less definitive than say, "I was doing. . ." The Association avers that the reason Worden said what he "could have been" doing is that he does not remember what he did after the third eviction on October 20, 2009. I'm not going to decide whether his amnesia on the matter was real or feigned. In my view, I don't need to make that call to decide this case. Here's why. In the **FACTS**, it was specifically noted that when Lt. Stiff wrote his "Investigative Summary", he made two charges against Worden. The first charge was that Worden completed only three of the four evictions he was assigned to complete. The second charge was that Worden was not forthright when he told Sgt. Gaudynski that he finished the evictions that day at 6:00 p.m. when he actually finished them at 4:00 p.m. The reason that I reviewed those charges (which were subsequently adopted by the Sheriff as his own) is this: those were the only charges made against Worden. If the Employer had wanted to, it could have added a third charge alleging that Worden failed to account for a portion of his workday (i.e. that that portion of his workday after 4:00 p.m. was unaccounted for). However, for whatever reason, the Employer did not include such a charge. That was their call to make. Since the Employer did not include such a charge in either the "Investigative Summary" or the "Notice of Suspension", it's my view that I don't need to decide that matter even though the parties treated it as a charge and addressed it in detail in their briefs. Accordingly, no further comments – nor decisions – need to be made about Worden's whereabouts on October 20, 2009 after he finished the third eviction.

Having found that Worden committed the workplace misconduct he was charged with committing, the next question is whether that misconduct also constituted rule violations. The Employer alleged that it did, and specifically that Worden's conduct violated Department

Rule 202.20 (Efficiency and Competence), 202.23 (Truthfulness) and subparagraph (u) of County-wide Rule VII, Section 4(1) (Substandard or careless job performance). In this case, the parties limited their arguments concerning the rule violations to just the narrow question of whether Worden's conduct fits within the confines of those rules. I will do likewise and limit my response to just that narrow question. I find, as did the Employer, that when Worden committed the workplace misconduct referenced above, that misconduct violated Department Rule 202.20 (Efficiency and Competence), 202.23 (Truthfulness) and subparagraph (u) of County-wide Rule VII, Section 4(1). He could be disciplined for same.

The second element of just cause is whether the penalty which the Employer imposed (i.e. a four-day suspension) was appropriate under the circumstances. Based on the following, I find that it was. First, it is noted that nothing in the parties' collective bargaining agreement requires that a lesser form of discipline had to be issued in this particular case. Some labor agreements specify a particular sequence that must be followed by the employer when it imposes discipline (for example, a warning must be imposed before a suspension). This collective bargaining agreement does not contain such language. Second, I conclude that Worden was not subjected to disparate treatment in terms of the punishment imposed. Here's why. While the record indicates that Deputy Beal was suspended for two days (while Worden was suspended for four days), that is all it shows. No other specifics were provided about Beal, his length of service or his disciplinary history. Additionally, the "Investigative Summary" and "Notice of Suspension" pertaining to Beal's suspension are not included in the record. That being so, I find that the fact that Worden was suspended for four days while Beal was suspended for two days – in and of itself – is insufficient to prove disparate treatment. Under these circumstances, I find that Worden's four-day suspension was not excessive, disproportionate to the offense, or an abuse of management discretion, but rather was reasonably related to his proven misconduct. The County therefore had just cause to suspend Worden for four days.

Based on the foregoing and the record as a whole, the undersigned enters the following

AWARD

That there was just cause for suspending Deputy Worden for four days. Therefore, the appeal is denied.

Dated at Madison, Wisconsin, this 17th day of June, 2011.

Raleigh Jones /s/
Raleigh Jones, Arbitrator

REJ/gjc
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