

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
MILWAUKEE DEPUTY SHERIFFS' ASSOCIATION

and

MILWAUKEE COUNTY

Case 763
No. 70775
MA-15045

(Fatrena Hale 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 Sergeant Fatrena Hale's suspension. The undersigned was so designated. A hearing was held in Milwaukee, Wisconsin on September 8, 2011. The hearing was not transcribed. The parties filed briefs whereupon the record was closed October 10, 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 Sergeant Fatrena Hale for five days? If not, what is the appropriate remedy?

BACKGROUND

The County operates a Sheriff's Department and a jail. The Association is the exclusive collective bargaining representative for the deputy sheriffs and sergeants who work at the jail.

Sergeant Fatrena Hale has been with the Department for 23 years. She was promoted to the rank of sergeant in 2006. She has worked in the jail for years. Before the incident involved herein, Hale had never been suspended. Additionally, she has not been previously disciplined for insubordination. She received a written warning 12 years ago for reasons not identified in the record.

. . .

Jail deputies and corrections officers deal with unruly inmates at the jail on a regular basis. When that happens, the deputies and corrections officers follow specific procedures to obtain compliance from the unruly inmates. Deputies and corrections officers can use force to obtain compliance from unruly inmates, but when they do so, they are not to use excessive force. After employees use force, they are to report it to their supervisor. First, they report it verbally. After that, they submit a written report wherein they explain what they did and why it was necessary.

The reports just referenced are part of the materials included in a use of force packet. The number of documents in that packet varies depending on the specific facts of the incident, but usually contains the following: (1) an initial report completed by one of the officers or deputies who was present at the scene; (2) supplemental reports completed by all department personnel who were on the scene; (3) a use of force summary completed by all department personnel who used force on the inmate; (4) a use of force summary completed by each inmate against whom force was used; and (5) a major incident report filed by the supervisor on the scene.

The last report just referenced (i.e. item #5 above – the major incident report) has to be completed by the supervisor before he/she leaves his/her shift. The other reports referenced above do not usually have to be completed that quickly. The normal time frame for submitting a completed use of force packet is this: it is to be submitted to the deputy inspector in 7 days

and the Internal Affairs Department in 14 days. Supervisors can shorten this time frame (for submitting a completed use of force packet) if they wish.

FACTS

On October 20, 2010, some corrections officers used force in dealing with inmate Michael Roman. The next day (October 21), Roman complained to the jail's management that he had been "roughed up" by the corrections officers and that the corrections officers had used excessive force on him. The second shift commander (Captain McKenzie) assigned Sgt. Hale to investigate Roman's charge and prepare a use of force packet. After being given this task, Hale started working on it. While Hale was working on the Roman use of force packet, her attention was diverted to another matter involving inmate Robert Tatum.

Here's what happened in that matter. About 8:30 p.m., Hale decided that inmate Tatum needed to be moved from his cell to the discipline pod. Hale and several officers tried to get Tatum to go with them voluntarily, but he did not cooperate with them and refused to leave his cell. An officer tried to use a taser on Tatum, but could not do so because Tatum used his mattress as a shield. Based on Tatum's level of resistance, Hale authorized the use of OC spray (which is essentially pepper spray) on Tatum. After Tatum was sprayed, he capitulated, and officers placed him in RIPP restraints (which bind one's hands at the waist). Sgt. Hale and two officers then escorted Tatum to the elevator. While they were in the elevator, Tatum again resisted the officers. One of the officers responded to Tatum's resistance by delivering a focused strike with his right forearm/elbow to the back of Tatum's neck/head. The officers took Tatum to the floor to regain control over him. As this was happening, Hale put out an "all call" (which is a call for emergency assistance). Multiple corrections officers and deputies responded to the scene. Those officers/deputies relieved the officers/deputies who had used force on Tatum in the elevator. Tatum had visible injuries from the officers' use of force. He was subsequently treated by the jail's medical staff.

One of those who responded to the "all call" was the second shift commander, Captain McKenzie. After Hale briefed McKenzie on the incident, McKenzie told Hale to take pictures of Tatum and do all the applicable paperwork for a use of force packet.

In accordance with the department's procedure, Captain McKenzie then briefed her supervisor (Deputy Inspector Nyklewicz) on the Tatum incident.

About 9:15 p.m., which was a half hour after the Tatum incident occurred, Hale and McKenzie talked on the phone. Three things were discussed in that phone call. First, Hale told McKenzie she (Hale) was going on vacation the next day for a week. McKenzie responded that she was going on vacation the next day too. Second, Hale told McKenzie that she (Hale) was working on the Roman use of force packet. McKenzie told Hale that since she (Hale) was going on vacation the next day, she (Hale) was required to stay on duty until the Roman use of force packet was finished. Third, McKenzie also told Hale that since she (Hale)

was going on vacation the next day, she (Hale) was required to stay on duty until all the officers' reports for the Tatum use of force packet were finished. McKenzie further told Hale to submit her major incident report (on the Tatum matter) to Captain Jonas and the officers' reports (on the Tatum matter) to Captain Jaskulski before she left the building. The conversation ended with McKenzie saying "make sure all these reports are done" before you go on vacation, with Hale responding "okay". Hale did not ask for clarification of McKenzie's orders or ask any follow-up questions. Hale also did not ask for additional time to submit both packets.

Hale's shift was supposed to end at 10:00 p.m., but she stayed five hours longer and worked on the paperwork for the two use of force packets. When she left work at 3:00 a.m., the Roman use of force packet was finished but the Tatum use of force packet was not. While Hale completed the major incident report for the Tatum packet, the remainder of that report was not finished. The remainder of the reports which were to be included in the Tatum use of force packet were to be completed by the other officers who were on-site when the incident occurred.

The next morning, Deputy Inspector Nyklewicz arrived at work and wanted to review the Tatum use of force packet. When he found out that it was not finished and submitted, he was ticked off.

Nyklewicz then called Captain McKenzie at her home and voiced his displeasure over the fact that the Tatum use of force packet was not finished. McKenzie told Nyklewicz that when she had talked to Hale at 9:15 p.m. the night before, she gave Hale a direct order to get the Tatum packet finished before she left work. McKenzie opined that since the Tatum packet was not finished, Hale had not complied with her order.

Nyklewicz and Inspector Schmidt then called Hale at home. At the time, Hale was on her first day of vacation. Nyklewicz told Hale he wanted the Tatum use of force packet finished that day. He then ordered Hale to come into work to finish the Tatum packet.

Hale complied with Nyklewicz's order. She went into work and finished the Tatum use of force packet.

All of the other officers involved in the Tatum matter were also directed to come into work to do their respective portions of the Tatum packet. It can be inferred from the record that, like Hale, they were all off duty at the time. Nevertheless, they all came into work and finished their (respective) portions of the Tatum use of force packet.

That day, after all of the reports for the Tatum use of force packet were compiled from everyone who was involved, the completed Tatum use of force packet was submitted to Deputy Inspector Nyklewicz.

...

McKenzie and Hale were subsequently interviewed about the above-referenced matter by Captain James Cox of the Internal Affairs Division.

In her interview with Internal Affairs, McKenzie said that when she talked with Hale on October 21 at 9:15 p.m., she gave Hale an order to collect all the reports for the Tatum use of force packet by the time she left the building (since she was beginning vacation the next day). According to McKenzie, she made it clear to Hale that she was required to complete the Tatum use of force packet prior to going on vacation.

In her interview with Internal Affairs, Hale said that at the end of their phone call on October 21, McKenzie told her to “make sure all these reports are done.” Hale stated that when McKenzie gave her the directive to complete “these reports”, she (Hale) thought that McKenzie was referring to the Roman use of force reports – not the Tatum use of force reports. Hale acknowledged that she should have asked McKenzie which incident she (McKenzie) was referencing when she said “these reports”.

Cox subsequently wrote a report known as an “Investigative Summary”. In that report, Cox concluded thus:

Sergeant Hale may have been confused by the dual tasks she was required to complete. As she noted in her internal interview, it is her responsibility to follow-up regarding any unsure order from her direct supervision.

Based on that conclusion, Cox found that Hale committed a departmental rule violation and two county civil service rule violations. The departmental rule Hale was accused of violating was 202.06 (Insubordination). It provides thus:

202.06 Insubordination

202.06.1 Purpose

The purpose of this policy is to ensure that officers understand the necessity to maintain basic standards of courtesy, respect, and bearing that reflect a strong degree of discipline and the adherence to a rank structure. Law enforcement, being a quasi-military operation is based on a strict ranking structure, which must be adhered to at every level of the organization. When routinely practiced, these courtesies have the effect of enhancing esprit de corps, agency discipline, and support a chain of command structure that functions well in types of highly charged, stress-filled situations that occur in the execution of our duties.

202.06.2 Policy

It is the policy of the Milwaukee County Sheriff's Office (MCSO) that all employees exhibit a high level of respect and courtesy toward supervisors.

Supervisors shall be addressed by their rank and last name, or by such titles as "sir" or "ma'am". Officers shall be addressed by their rank or rank and last name, to wit:

...

Members of the agency shall obey any lawful order of a superior officer.

The following are examples of insubordination. This list is intended to serve as a guide to general conduct, and is not intended to be inclusive:

- Refusing to obey a proper written order from a supervisor
- Refusing to obey a proper verbal order from a supervisor
- Using profane or insulting language to a supervisor
- Failing to remain attentive, or openly displaying a mocking attitude, during a period of instruction or counseling by a higher ranking officer, or by a member of the MCSO Training Academy staff
- Criticizing agency orders, directives, policies, or decisions by ranking officers

The County civil service rules Hale was accused of violating were subparagraphs (k) and (l) of Rule VII, Section 4(l). Subparagraph (k) prohibits "Refusing or failing to obey orders of supervisors whether written or oral", and subparagraph (l) prohibits "Refusal or failure to comply with departmental work rules, policies or procedures."

Captain Cox's findings were subsequently reviewed by the Sheriff. On April 28, 2011, Sheriff David Clarke issued Order No. 2167 which indicated that Sergeant Hale was suspended for five days for violating the three rules just referenced. Attached to Order No. 2167 was a "Notice of Suspension". The wording in the "Notice of Suspension" was verbatim to that contained in Captain Cox's "Investigative Summary". As a result, it is apparent that the Sheriff adopted Captain Cox's findings as his own and disciplined Hale for the reasons set forth in Cox's "Investigative Summary".

Based on the parties' collective bargaining agreement, Hale's suspension was appealed to arbitration.

POSITIONS OF THE PARTIES

Association

The Association's position is that just cause did not exist for Sergeant Hale's five-day suspension. The Association asks that the discipline be rescinded or reduced. It elaborates as follows:

The Association emphasizes at the outset that on the night in question, Hale stayed five hours after her shift ended and worked on the following reports. First, she finished Roman's use of force packet. Second, she did the major incident report which was part of Tatum's use of force packet. The Association asserts that, at the time, Hale thought she had completed the reports that McKenzie wanted her to complete that night. Said another way, Hale thought that she had followed through with the items that McKenzie wanted finished that night. However, the next day – when she was on vacation – she learned otherwise. She learned it, of course, when Deputy Inspector Nyklewicz called her at home. The Association points out that after Nyklewicz directed Hale to come into work to finish Tatum's packet, she did as directed. Specifically she dropped what she was doing, came into work and finished Tatum's packet. The Association implies that that was significant.

The Association argues that Hale's failure to finish Tatum's use of force packet the night before was not workplace misconduct as the Employer asserts, and certainly was not insubordination. Here's why. The Association submits that Hale did not intentionally disobey a clear work order. Instead, Hale simply did not understand that McKenzie wanted her to finish Tatum's use of force packet that night. According to the Association, McKenzie's order regarding same was not clear.

The Association expounds on the last point just referenced as follows. First, the Association asserts that when Hale and McKenzie talked on the phone at 9:15 p.m., that conversation was focused on inmate Roman – not inmate Tatum. Second, building on that premise, the Association notes that in that phone call McKenzie told Hale to “make sure all these reports are done.” In the Association's view, that phrase was general in nature and therefore subject to interpretation. Thus, when McKenzie made the statement to “make sure all these reports are done”, Hale reasonably thought McKenzie was only referring to inmate Roman's use of force packet – not Tatum's use of force packet. Third, the Association maintains that if McKenzie wanted both Roman's and Tatum's packets finished before Hale left work, she (McKenzie) should have been clearer (than she was) in the order she gave to Hale. Fourth, making a technical argument, the Association quotes from the Employer's own insubordination policy wherein it defines insubordination as “refusing to obey a proper verbal order from a supervisor.” As the Association sees it, an unclear order cannot be a “proper order” within the meaning of that policy. Putting all of the foregoing points together, the Association believes this case boils down to whether McKenzie gave Hale a clear order to finish Tatum's use of force packet before she left work that night. According to the Association, McKenzie did not give Hale a clear order to that effect, so if anyone made a

mistake here, it was McKenzie – not Hale. The Association asserts that, at worst, Hale simply misunderstood an unclear order, so she did not violate the Department’s insubordination policy.

The Association argues in the alternative that even if Hale did commit workplace misconduct when she failed to complete Tatum’s packet that night, there still was not just cause for the level of discipline imposed on her. Here’s why. First, the Association notes that prior to this case, Hale had not previously been suspended. The Association contends that under these circumstances, a five-day suspension was excessive. Second, the Association essentially makes a burden of proof argument, and contends that the Employer did not prove that a five-day suspension was warranted (given Hale’s relatively clean disciplinary history). Accordingly, the Association asks the arbitrator to either rescind Hale’s punishment in its entirety or reduce it to a written warning.

County

The County’s position is that just cause existed for Hale’s five day suspension. According to the County, Hale committed workplace misconduct (specifically insubordination) when she failed to complete an assigned task, namely the Tatum use of force packet. As the County sees it, that misconduct warranted the discipline imposed. It elaborates as follows.

The County begins by reviewing the following facts to give context to what happened. First, it notes that on October 21, 2010, Hale was assigned the job of completing a use of force packet for inmate Roman. Second, later that same day, the Tatum use of force incident occurred. After it occurred, Captain McKenzie directed Hale to complete a use of force packet for inmate Tatum. Third, shortly thereafter, Hale and McKenzie talked on the phone. In that phone call, Hale told McKenzie that she (Hale) was starting her vacation the next day. In response to that information, McKenzie told Hale that she (Hale) needed to complete both Tatum’s and Roman’s use of force packets before she left the building that night. Hale responded to this directive by saying “okay”. Hale did not ask for clarification of McKenzie’s order or ask any follow-up questions.

Focusing particular attention to what happened in their 9:15 p.m. phone call, the Employer emphasizes that McKenzie gave Hale an order to complete both Roman’s and Tatum’s use of force packets by the time Hale left the building that night. The Employer avers that that was a legitimate order. According to the Employer, it doesn’t matter that the usual time period for submitting a completed use of force packet is normally longer than that. In this instance, McKenzie wanted the two packets completed before Hale went on vacation. As the Employer sees it, that’s understandable. In accordance with the Employer’s paramilitary structure, Hale should have done what McKenzie directed her to do and completed both Roman’s and Tatum’s use of force packets that night. The Employer acknowledges that Hale completed the former before she left the building that night. However, Hale failed to complete the latter before she left work that night.

The Employer contends that Hale did not offer a legitimate reason for not completing Tatum's packet that night. Addressing Hale's assertion that she thought McKenzie was only directing her to complete Roman's use of force packet that night, the Employer avers that that assertion lacks a legitimate basis in fact. The Employer notes in this regard that the Tatum incident had just occurred, so it's logical that McKenzie would have talked to Hale about it. Also, the Employer submits that if Hale found McKenzie's order confusing, she (Hale) should have asked for clarification. She did not. Finally, the Employer maintains that Hale damaged her own credibility at the hearing when she "danced around the significance of the incident by saying it is a common occurrence and thus, not serious." The Employer submits that what happened to Tatum was serious.

Turning to the level of discipline which was imposed, the Employer argues that a five-day suspension was reasonable under the circumstances. It acknowledges that prior to this case, Hale had not been previously suspended. Be that as it may, the Sheriff decided that a five-day suspension was warranted. The County requests that the arbitrator give deference to the discipline imposed by the Sheriff, and uphold Hale's five-day suspension.

DISCUSSION

The parties stipulated that the issue to be decided here is whether there was just cause to suspend Sergeant Hale for five days. My answer to that question is split as follows. I find that the Employer did have just cause to discipline Hale for failing to complete the Tatum use of force packet before she left work on the night in question. However, I further find that a five-day suspension was not warranted under the circumstances and I reduce the discipline for that misconduct to a written warning. 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.

I've decided to begin my discussion on this point by noting that on the night in question, Hale did not leave work at the regular time. Instead, she stayed five hours after her

shift ended and worked on various reports. Subjectively speaking, five hours is a long time. In that time period she finished the Roman use of force packet. This case is not about the work Hale finished on the night in question though. Rather, it's about the work that she did not finish that night, namely the Tatum use of force packet.

Hale's defense for not completing Tatum's packet that night is essentially that she didn't know she was supposed to do so (i.e. finish that packet before she left work). She thought that she only had to complete the Roman packet that night.

I find otherwise for the following reasons. First, it is noted that when Captain McKenzie responded to the "all call" concerning Tatum, she (McKenzie) told Hale afterwards to do all the applicable paperwork for a use of force packet. That directive clearly put Hale on notice that she was to complete Tatum's use of force packet. Second, the only question which was not addressed at that time was the timetable for completing the packet. The record indicates that the normal time frame for submitting a completed use of force packet to the deputy inspector is seven days. Third, if Hale thought she had the normal time period to complete Tatum's use of force packet, McKenzie disabused her of that notion when they talked on the phone at 9:15 p.m. that night. Here's why. At the beginning of that call, Hale told McKenzie that she (Hale) was starting her vacation the next day. When McKenzie learned that, she (McKenzie) decided that she did not want either the Roman packet or the Tatum packet to be completed after Hale returned from vacation. Instead, she (McKenzie) wanted both completed before Hale went on vacation. As a supervisor, McKenzie was entitled to make that decision and shorten the time frame for completing those packets. McKenzie then told Hale she (Hale) was to stay on duty until both the Roman and Tatum use of force packets were finished.

For whatever reason, that's not what Hale thought she heard. Hale thought that McKenzie directed her to complete just the Roman packet that night. To support her interpretation, Hale relies on the fact that at the end of the phone call, McKenzie told her (Hale) to "make sure all these reports are done" before you leave. Hale contends that she reasonably interpreted this statement to just apply to the Roman packet – not the Tatum packet. I could accept that interpretation if nothing else had been said in the phone call about the Tatum packet. However, that was not the case. What McKenzie had just said – prior to making that statement – was for Hale to submit her major incident report (on the Tatum matter) to Captain Jonas and the officers' reports (on the Tatum matter) to Captain Jaskulski before she left the building. In my view, those very specific directives concerning the Tatum matter should have made it clear to Hale that when McKenzie said "make sure all these reports are done" before you leave, McKenzie was not referring to just the Roman packet; she was referring to both the Roman and Tatum packets.

Even if I'm just plain wrong about the foregoing, and McKenzie gave Hale a vague/ambiguous order or one that Hale did not understand, the ball was then in Hale's court, so to speak. There were a number of things that Hale could have said in response. For example, she could have asked for clarification of the order, or asked some follow up

questions, or she could have said that she couldn't complete them that night and needed more time to complete them. At that point, she could have discussed alternative arrangements with McKenzie. However, Hale didn't say any of those things and instead responded to McKenzie's order by simply saying "okay". Not surprisingly, that response led McKenzie to believe that Hale understood that she had been directed to complete the Roman and Tatum packets before she left work, and that she would stay at work until they were finished.

The next question to be answered is whether Hale's failure to finish the Tatum packet that night warranted discipline. I find that it did for the following reasons. Employers have a legitimate and justifiable interest in ensuring that employees follow directives from their supervisors. Building on that premise, it's a generally-accepted principle in the workplace that when a supervisor gives an order to a subordinate, or tells an employee to do something, the employee is supposed to comply with the order and do what they are told. That's how work gets done in the workplace. To effectuate that goal, the County has adopted a civil service rule which prohibits "failure to obey orders of supervisors" and why the Sheriff's Department has adopted a work rule which prohibits "insubordination". While there are many different types and forms of insubordination, it suffices to say here that failing to perform an assigned task qualifies as insubordination. As the County sees it, Hale's failure to complete the Tatum packet that night fits into both categories of prohibited behavior. I concur, and find that Hale should have done what she was directed to do and finished both the Roman and Tatum packets before she left work that night. Her failure to finish the Tatum packet that night constituted workplace misconduct for which she could be disciplined.

Next, rhetorically speaking, what's to be made of the fact that Hale came into work the next day and finished the Tatum packet? Simply put, hardly anything. The fact that she did so did not wipe the proverbial slate clean, meaning it did not somehow erase her misconduct (i.e. her failure to complete the Tatum packet before she left work). Moreover, it can't be overlooked that the reason Hale came into work the next day (on her vacation day) and finished the Tatum packet is because Deputy Inspector Nyklewicz specifically directed her to do so.

Having so found, the focus now turns to the second part of the just cause analysis being used here (namely, that the employer establish that the penalty imposed was appropriate under all the relevant facts and circumstances).

When employers decide that an employee's misconduct warrants a suspension of some sort, they usually start with a relatively short suspension of, say one or two days. That didn't happen here. Instead, the Sheriff decided that a suspension of that length was not long enough, and he imposed a five-day suspension. At issue here is whether that decision passes muster.

In addressing that point, I've decided to begin by noting that the undersigned has arbitrated many suspension appeal cases with these parties over the years. In those hearings, what usually happened was that one side or the other offered some evidence to support their

position that the discipline which the Employer imposed on the employee involved was either consistent with, or inconsistent with, the discipline imposed on similarly situated employees.

Here, though, neither side offered any evidence whatsoever concerning prior disciplinary cases involving similarly situated employees.

In this case, that lack of evidence cuts against the Employer. Here's why. When the Employer imposes a multi-day suspension, it has to base the length of the suspension on some objective factors which can withstand arbitral scrutiny. Said another way, the Employer has the burden of showing that the punishment it meted out was not excessive. I find it did not meet that burden for the following reasons. First, the objective facts in the record show that Hale is a long term employee with no prior suspensions and a clean work record (but for a 12 year old written warning). Additionally, she has no history of insubordination or failing to complete assigned tasks. These objective facts militate against a five day suspension for the misconduct involved here. Second, as previously noted, the Employer did not show that Hale's misconduct was similar to other serious misconduct cases where a multi-day suspension was imposed. Given the foregoing, I find that a five day suspension was excessive under the circumstances. Accordingly, I reduce Hale's discipline from a five day suspension to a written warning. The Employer shall make Hale whole for the five days she was suspended.

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

AWARD

1. That there was just cause to discipline Sergeant Hale for failing to complete the Tatum use of force packet before she left work on the night in question; and
2. That just cause does not support a five day suspension for that misconduct. That punishment was excessive and is reduced to a written warning. The County is directed to make Hale whole for the five days she was suspended.

Dated at Madison, Wisconsin, this 1st day of December, 2011.

Raleigh Jones /s/

Raleigh Jones, Arbitrator