

BEFORE THE ARBITRATOR

In the Matter of a Dispute Between
WISCONSIN PROFESSIONAL POLICE ASSOCIATION
and
CLARK COUNTY

Case 144
No. 72752
MA-15268

(Carmen Stimac Termination)

AWARD NO. 7902

Appearances:

Andrew Schauer, Staff Attorney, Wisconsin Professional Police Association, 660 John Nolen Drive, Suite 300, Madison, Wisconsin, 53713-1469, appearing on behalf of the Wisconsin Professional Police Association.

Daniel Borowski and Patrick Henneger, Phillips Borowski S.C., 10140 N. Port Washington Road, Mequon, Wisconsin, 53092-5796, appearing on behalf of Clark County.

ARBITRATION AWARD

Wisconsin Professional Police Association (hereinafter referred to as WPPA or Association) and Clark County (hereinafter referred to as County or Employer) were parties to a CBA that provided for final and binding arbitration of unresolved grievances. Pursuant to the parties' request, the Wisconsin Employment Relations Commission appointed the undersigned to decide the Carmen Stimac discharge grievance. A hearing was held in Neillsville, Wisconsin, on April 22 and 23, 2014. The hearing was transcribed. The parties filed briefs and reply briefs, whereupon the record was closed on August 4, 2014. Having considered the evidence, the arguments of the parties and the record as a whole, the undersigned issues the following Award.

ISSUES

In paragraph 7 of their Voluntary Agreement which submitted this matter to arbitration, the parties agreed that the issues are as follows:

1. Whether the grievance is arbitrable?

2. If the grievance is arbitrable, whether there was just cause for the County to terminate Stimac?
3. If there was not just cause to terminate Stimac, what is the remedy?

PERTINENT CONTRACT PROVISIONS

The parties' 2010-2012 CBA contained the following pertinent provisions.

ARTICLE 6 - DISCIPLINE

Section 1: The parties recognize the principle of progressive discipline. No disciplinary action shall be taken against employees except for just cause. The employee shall have the right of representation at any disciplinary meeting or hearing. Written notice of any disciplinary action shall be provided to the affected employee and a representative of the WPPA/LEER or his/her designee. The written notice shall set forth the specifics upon which the discipline is based.

Section 2: The following shall be the sequence of disciplinary action:

- A. Verbal warning;
- B. Written reprimand;
- C. Suspension;
- D. Discharge

Section 3: The County may repeat disciplinary action. The above sequence of disciplinary action need not apply in cases where the infraction is considered just cause for suspension or immediate discharge.

* * *

ARTICLE 33 – MANAGEMENT PREROGATIVES

Except as otherwise specifically provided in this Agreement, the County retains all the rights and functions of management that it has by law.

Without limiting the generality of the foregoing, this includes:

* * *

- C. The determination of the size of the workforce, the assignment of work or workers, the determination of policies affecting the selection and training of employees, and the right to hire, recall, transfer, promote, lay off, suspend, or dismiss employees for just cause.

BACKGROUND

A. Introduction.

The County operates a Sheriff’s Department. The Association is the exclusive collective bargaining representative for the Department’s deputy sheriffs. Carmen Stimac was a deputy sheriff with the County from 1998 until her discharge which was effective November 25, 2013. This case involves her discharge.

B. The Department’s Rules and Regulations.

Like most law enforcement agencies, the Clark County Sheriff’s Department has detailed rules, regulations and policies which deputy sheriffs are expected to follow. Some of these policies are: Conduct Unbecoming – 2-2-1; Professional Conduct and Responsibilities – 2-1-2; General Regulations – 2-1-3; Misuse of Abuse of Official Position or Authority – 2-1-4; Refusing to Display Badge, Name, or Present Identification Upon Request (Improper Use of Official Position or Identification) – 2-1-5; Violation of Criminal Law – 2-1-10; and Miscellaneous Prohibited Conduct – 2-1-11. These policies apply to on and off-duty conduct and plainly place deputy sheriffs on notice that “[v]iolation of these rules and regulations by an employee constitutes grounds for disciplinary action.”

The County also maintains an Employee Handbook and Administrative Manual which sets forth various work rules. Conduct which is prohibited under the work rules includes, without limitation: (1) arrest or conviction of a felony, misdemeanor or ordinance violation involving morality, in which the circumstances of the arrest or conviction are substantially related to the requirements of the employee’s position; (2) insulting, abusive or inflammatory conduct toward the public, employer or fellow employees; (3) misuse or abuse of the authority of their position within Clark County; (4) failure to provide complete, accurate and truthful information when requested or required; and (5) violations of County Department policies or work rules.

C. Stimac's Disciplinary History.

Prior to her discharge, Stimac's disciplinary history was as follows:

In 2005, Stimac received a written warning for failure to perform work duties and inaccurate and incomplete reporting.

In 2006, Stimac had her authority to carry a firearm withdrawn as a result of her failure to attend firearm training/qualification sessions required by the Department.

In 2007, Stimac received a "Notice of Deficiency." The notice related to Stimac's job performance and her failure to fill out a full and complete report regarding her work activities.

In 2008, Stimac was suspended for one day and lost one day of accrued vacation leave in connection with her failure to properly handle an offender who had been arrested for operating while intoxicated. According to the disciplinary agreement between the County, Stimac and the Association, Stimac booked an offender into the jail who had a BAC of .22. Stimac subsequently released the offender in violation of Department policy which requires the deputy to ensure that the offender's BAC was .05 or below or arranging for a responsible party to which the offender could be released.

D. Stimac's Use of Alcohol.

For at least three years prior to 2013, Stimac drank alcohol excessively. By her own admission, she drank to the point of passing out nearly every day that she was not working. Again, by her own admission, Stimac experienced blackouts when she drank. Her excessive use of alcohol was continuous, except for a short period of time when she stopped drinking after she fell down a flight of stairs and sustained a concussion. Notwithstanding her excessive alcohol use, Stimac never sought any kind of treatment.

Stimac took an anti-anxiety medication, Celexa, which was prescribed by one of her physicians. Celexa can intensify the effects of alcohol. Stimac began taking Celexa in 2009.

FACTS

Here is an overview of the facts which follow. On March 7, 2013, Stimac was arrested in Altoona, Wisconsin, for operating a motor vehicle while intoxicated. She was off duty when this happened. Early in her interaction with the arresting officer, Stimac announced that she was a Clark County sheriff's deputy. She then said repeatedly that if she was arrested (for OWI), she would lose her job. Stimac then attempted to convince the arresting officer into not arresting her because of her position as a law enforcement officer and because of who she knew in the Altoona Police Department. When that didn't work, Stimac asked the arresting officer to give her a break and drive her to her girlfriend's house two blocks away. The arresting officer declined to do that. When that didn't work, Stimac attempted to shame the arresting officer into letting her go by stating that she would let the arresting officer go if their positions were reversed. Later, as she was being transported to jail, Stimac told the arresting officer that if he ever came to Clark County, he should "be prepared to pay the price." It is clear from the context in which this

statement was made that Stimac was telling the arresting officer that she would use her position in Clark County to retaliate against him.

After Stimac returned to work following her arrest, she joked with fellow officers about her arrest, degraded the arresting officer, and said that her attorney was going to tear the arresting officer apart.

Stimac later pled no contest to operating while intoxicated (OWI) with a blood alcohol content (BAC) of .204. As part of the stipulation, Stimac's driver's license was revoked for eight months and she was required to have an Ignition Interlock Device (IID) on any vehicle that she operated for one year.

A dispute subsequently arose between the Sheriff and the County's Law Enforcement Committee (LEC) concerning the level of discipline that was going to be imposed on Stimac for the matters referenced above. Both the Sheriff and the County's LEC conducted their own investigations into the matter and brought separate charges against Stimac. The Sheriff wanted to suspend Stimac for seven working days, while the County's LEC wanted to discharge her. Ultimately, Stimac was terminated. Her discharge was effective November 25, 2013.

As previously noted, this case involves her discharge.

A. Stimac's Arrest for OWI.

Stimac was off duty on the evening of March 6, 2013. About 8:00 p.m. that evening, Stimac's brother, Shanon Moon, picked her up at her home in Neillsville in his black Honda. Their plan was to travel from Neillsville to Eau Claire. From there, they were going to take a 2:45 a.m. shuttle bus to the Minneapolis airport, where they were going to catch a plane to Arizona for a vacation. Stimac said she did not have anything to drink prior to her brother's arrival at her home.

Stimac and her brother then drove from Neillsville to a Buffalo Wild Wings restaurant in Eau Claire. They arrived there about 9:00 p.m. and subsequently had dinner. Stimac said that she had one beer at Buffalo Wild Wings. After eating dinner, Stimac and her brother drove from Buffalo Wild Wings to a bar named Scooters (which is also in Eau Claire). They arrived at Scooters about 10:00 p.m. and met a friend.

Stimac recalled drinking three or four beers at Scooters. She also recalled drinking a shot of alcohol. Stimac did not recall drinking any more alcohol than what was just noted.

Whether she recalls it or not, it can be inferred from the facts which follow that Stimac must have consumed more alcohol than what was just noted.

Stimac said that she did not recall leaving Scooters in the black Honda. Whether she recalls it or not, it can also be inferred from the facts which follow that Stimac later left Scooters without her brother, got in her brother's car by herself and drove off.

About 1:40 a.m. (on March 7, 2013), Officer William Lindeman of the Altoona (Wisconsin) Police Department was on patrol when he observed a black Honda traveling east on

River Prairie Drive in the City of Altoona. (Note: He later learned the car was being driven by Stimac.) The car proceeded to turn onto North 10th West Street, at which time Officer Lindeman noticed that the vehicle had a broken taillight. Officer Lindeman then drove up behind the black Honda and activated his emergency lights. Notwithstanding the emergency lights, the black Honda continued to travel east on North 10th West Street for a time period Officer Lindeman considered "longer than normal." After the car pulled over, Officer Lindeman got out of his squad car and approached the driver's side of the black Honda.

When Officer Lindeman arrived at the driver's side window of the vehicle, he observed that the driver looked confused and was having difficulty figuring out how to use the window controls on the car. The driver eventually opened the door to the vehicle at which time Officer Lindeman smelled an odor of intoxicant. Officer Lindeman then asked the driver how much she had to drink, to which the driver responded in a slurred voice, "a little bit." Officer Lindeman said that with "fumbling fingers" the driver pulled her driver's license out of her wallet and gave it to him. The driver then told Officer Lindeman that she was a Clark County sheriff's deputy. Officer Lindeman said nothing in response, but returned to his squad car and checked on the black Honda's registration and the driver's license information. When he checked the driver's license, he learned that the driver was Carmen Stimac.

While Officer Lindeman was in his squad car, he activated a handheld tape recorder he uses to record what is spoken in traffic stops that he makes. According to Officer Lindeman, that is his standard operating procedure. Additionally, Stimac's disclosure that she was a Clark County sheriff's deputy made him uncomfortable and (he felt) placed him in a compromised position. Officer Lindeman then put this tape recorder in his outside coat pocket. It (i.e. the tape recorder) recorded the interaction that followed. Everything that Stimac and Lindeman said to each other from that point on was recorded on the tape recorder. Thus, there's essentially a transcript of the rest of their interaction. Officer Lindeman later used the tape recording to prepare his police report.

[Note: What follows next is not a complete transcription of everything that Stimac and Lindeman said during their interaction. Rather, it's simply those portions (of the tape) that the undersigned considers germane to this matter. I put quote marks around Stimac's comments; I did not put quote marks around Lindeman's comments.]

When Officer Lindeman returned to Stimac's vehicle, the first thing he asked her was how much she had to drink. Stimac responded "too much." Officer Lindeman then asked her how much was "too much," and Stimac again responded "too much." Officer Lindeman then asked Stimac where she was drinking and she responded at "Scooters, with my friend Nicole." Stimac then told Officer Lindeman that she started drinking "two hours ago" and stopped drinking "a half hour ago."

Officer Lindeman then administered field sobriety tests to Stimac. The first test that was administered was the "horizontal / vertical gaze nystagmus test." During the test, Stimac had difficulty following his instructions and keeping her balance. Stimac was swaying back and forth to the point that Officer Lindeman considered stopping the test for fear of her falling over. During this portion of the test, Stimac again told Officer Lindeman that she worked as a law enforcement officer "for a living."

Officer Lindeman then proceeded to administer the “walk and turn test” and the “one-leg stand test.” Stimac failed each test.

After these tests were completed, Officer Lindeman asked Stimac if there was alcohol in the vehicle. She replied “no” and told Officer Lindeman that he could check the vehicle himself.

About that time, another officer in the department arrived at the scene to back up Officer Lindeman. That officer found a Coors Light bottle in the center console of the vehicle. According to Officer Lindeman, the bottle had a small amount of liquor in it. Additionally, there was an unopened case of beer in the back seat of the car.

Officer Lindeman next asked Stimac if she would consent to a preliminary breath test (PBT) and Stimac agreed. The result of the PBT was .178. Upon receiving the result, Officer Lindeman placed Stimac under arrest for operating while intoxicated.

As Officer Lindeman placed Stimac in the back of his squad, Stimac said: “I’m going to lose my job for this. You know what I do for a living? I work for Clark County Sheriff’s Department. I am a patrol officer.” Stimac then asked Officer Lindeman who he worked for and he replied that he worked for Altoona. Stimac then said: “I have a good friend, Nicole, I do not know if you know Nicole, she works for St. Paul right now.” (Note: The record indicates that the “Nicole” who Stimac referred was Nicole Erickson; she previously worked as a reserve deputy for the Altoona Police Department.) Officer Lindeman replied that he did not know her. Stimac then mentioned Nicole’s name a second time and said: “I’m not trying to talk you out of this but honestly, I mean this sucks.” Officer Lindeman then told Stimac that while it was uncomfortable for him to arrest a fellow law enforcement officer, he had to treat everyone the same. To that Stimac replied: “That’s not true and I know it’s not true.” Stimac then tried a different tactic and asked Officer Lindeman to drive her home which, according to Stimac, was “two blocks away.” Stimac said: “My girlfriend, I am gay. And my girlfriend lives two blocks away. If you could give me a ride there, I, I’d be done.” When Officer Lindeman declined to do that (i.e. take her home), Stimac protested, saying: “Why don’t you give me a ride home? I mean I would give you one, I would. I would give you a ride home.” When Officer Lindeman answered that he would not put Stimac in that position, Stimac replied: “Yeah you would, you know you would. ... I have been. Okay. So for you to say you have not been in this position and that you wouldn’t put me in this position, that is bull crap.” Stimac then reiterated her point, saying: “Just give me a ride home. Really, just give me a ride home, because I would give you one.” When it became clear to Stimac that Officer Lindeman was not going to take her home, Stimac said: “Just so you know, my job depends on this.” Officer Lindeman replied that he understood.

Officer Lindeman then transported Stimac to the Mayo Clinic Hospital in Eau Claire where she had her blood drawn for purposes of determining her BAC. The test results showed that Stimac had a BAC of .204. That is two and a half times the legal limit.

From there, Officer Lindeman transported Stimac to the Eau Claire County jail. While they were traveling there, Stimac told Officer Lindeman: “I hope you come to Clark County, ‘cause if you do, be prepared to pay the price.”

After arriving at the jail, Stimac was booked. She was released from jail later that day.

* * *

Officer Lindeman subsequently wrote a report concerning his encounter with Stimac. In doing so, he relied on his tape recording of the encounter. In his report, Lindeman included numerous quotations of Stimac's comments (just as the arbitrator did in the section above).

B. Stimac Notifies the Sheriff of Her Arrest.

After Stimac was released from jail, she texted Clark County Sheriff Gregory Herrick and told him that she "messed up" and "got picked up for an OWI." Later that same day (March 7, 2013), she spoke with the Sheriff by telephone. She told him that she had been picked up for drinking and driving. In response, the Sheriff did not ask for any details, but simply told Stimac to submit a written report regarding her arrest after she returned to work.

C. Stimac's Return to Work Following Her Arrest.

After Stimac returned to work following her arrest, she continued to work as a deputy sheriff. She worked in the jail for an unspecified amount of time. Also, for an unspecified amount of time, Stimac worked on patrol. In that capacity, she arrested drivers for OWI.

D. Stimac's Report Regarding Her Arrest.

Before Stimac submitted her written report regarding her arrest for OWI, she obtained a copy of Officer Lindeman's police report of her arrest. She also listened to a copy of the audiotape that Officer Lindeman recorded.

Stimac then wrote and submitted the following undated report regarding the incident:

On March 6, 2013 at around 8:00 p.m., my brother Shanon Moon met me at my house to drive to Eau Claire, WI to get on a shuttle bus at 2:45 a.m. that would take us to the Minnesota airport to catch a plane to Arizona. My brother said he had business to take care of so I drove to Eau Claire. I had nothing to drink at this point. At 9:00 p.m. we stopped at Buffalo Wild [W]ings for dinner. At dinner I had one Blue Moon beer. We left Buffalo Wild Wings and I drove and met a friend Mark Walloch at Scooters Tavern in Eau Claire for a couple of drinks. I told my brother I was not driving once we left Scooters.

I don't remember the number of beers I drank at Scooters.

At about 1:40 a.m., I was stopped by an Altoona Police officer for a broken tail light. I don't remember much about the stop but I was eventually arrested for Operating a Motor Vehicle while Intoxicated.

I was transported to a hospital where I submitted a sample of my blood.

I was transported to Eau Claire County Jail and booked in and released to a responsible party.

I had no idea why I was driving and asked Mark Walloch when I returned from Arizona why I was driving. Mark told me I was upset with my brother because he was flirting with a female at the bar and he is married and has six kids. Apparently I was going to drive myself to the Shuttle area and he was going to catch a ride with the female party.

This is all the information that I have at this time.

E. Stimac's Comments to Deputy King about Her OWI Arrest.

On the day Stimac returned to work from her vacation (March 15, 2013), she encountered coworker Jason King in the squad room. King is a reserve deputy with the Department. (Note: Reserve deputies are not part of the bargaining unit represented by the Wisconsin Professional Police Association.) King has significant experience working with Stimac and considered his working relationship with her to be good. King testified that Stimac told him she was writing the report about her arrest for operating while intoxicated. She then told King that, on the evening prior to the arrest, she was drinking with her brother and Mark Wollach at Scooters when she got upset with her brother for "hitting" on other women. She stated she went there for one drink, "but you know how that goes." Stimac told King that she was pulled over by the Altoona police officer because the vehicle she was driving had a broken taillight. She also told King that she underwent field sobriety testing, that the tests were hard, and she was pretty sure she did horribly on the tests. She further said that she took a preliminary breath test and that the results showed she had a BAC of .18. King asked Stimac why she did not call someone for a ride home that evening as opposed to driving. In response, Stimac said that although she could not remember exactly how much she drank, she drove because she did not think she was too drunk to drive. With respect to her interaction with Officer Lindeman, Stimac told King that she was initially nice to the arresting officer but later became unfriendly. She also said that she told the arresting officer she would write him every ticket she could if he ever came to Clark County.

In April or May 2013, Stimac spoke again with King about her OWI arrest. In a conversation in an elevator, Stimac told King that her BAC ultimately was a .204. She maintained though that she did not believe she was that drunk the evening of her arrest. Stimac also said that she hired a lawyer from Madison that did a lot of law enforcement OWIs, and that they were going to attempt to get around the requirement that any vehicle that Stimac operates be equipped with an IID. Stimac further said that she was going to fight the OWI citation because Officer Lindeman purportedly wrote the wrong ticket for her broken taillight. Stimac further said that she and her lawyer were going to "rip the kid apart."

King testified that he was upset after his discussion with Stimac in the elevator because Stimac was going to drag Officer Lindeman through the mud even though she knew she was guilty of driving while intoxicated. King felt that Stimac's attitude made everyone in the Department look bad.

In July 2013, King was part of a group of law enforcement officers that attended a law enforcement organization's meeting. While the officers were talking amongst themselves, Stimac walked up to the group and joined them. Then, on her own volition, Stimac raised the topic of her OWI arrest. She told the group of officers that she listened to the audio of her arrest with her lawyer, that it did not sound good (for her), and that she could not remember what happened that night. Stimac's last comment (i.e. her claim that she could not remember what happened the night of her arrest) surprised King because he (King) thought that Stimac remembered a lot of details about her OWI arrest when she initially told him about it (i.e. March 15, 2013), but as time went by, it seemed to him that Stimac was intentionally recalling less and less.

Clark County Personnel Director Kathryn Roellich subsequently directed King to write a statement concerning the comments that Stimac made to him about her OWI arrest. King complied with this directive. His written statement provided in pertinent part:

While Carmen talked to me on many occasions about her legal issues dealing with her OWI, it was often Carmen who would initiate all of the conversations regarding her OWI. The conversations would start off about other things and lead into her OWI. Carmen would speak of the OWI as if were (sic) no big deal. There did not appear to be any remorse or humility for what she had done to herself, career, or the entire Clark County Sheriff's Department. There were times she could remember what happened in the beginning and then it changed at the end because it seemed it was easier for her not to remember as she told other people

F. Stimac's Comments to Deputy Hebert about Her OWI Arrest.

Deputy Wade Hebert worked with Stimac for years. He testified that he always got along well with her.

On March 16, 2013, Hebert was working as a field training officer and was training a probationary patrol deputy, Deputy Chapman. That day, he and Chapman were dispatched to a train derailment on the Clark County – Jackson County line. While they were there, they were approached by Stimac, who had just returned to work following her vacation. Stimac asked Hebert if he heard what happened to her over (her) vacation. Hebert responded yes, he had heard about her OWI. Stimac then said that the officer who arrested her had better stay out of Clark County or she would write him every citation (that) she could. According to Hebert, Stimac made this statement “nonchalantly” with “a smirk on her face.” Hebert did not respond to Stimac's comment. When Hebert did not respond, Stimac told him that she was kidding. Hebert testified that he's worked with Stimac enough to know when she's serious and when she's not. Based on that experience, Hebert did not believe that Stimac was joking when she said she would write every citation (that) she could to Officer Lindeman if he came to Clark County.

On several occasions thereafter – the record does not identify when – Stimac told Hebert that Sheriff Herrick supported her and (as a result) she wouldn't be losing her job; instead, once her license restriction was done, she'd go back to patrol.

In mid-August 2013, Stimac again raised the topic of her pending OWI case with Hebert. This time, Stimac told Hebert that she was getting a lawyer to defend her in the OWI case and that she (the lawyer) was going to make Officer Lindeman “look like a fool.” Hebert responded that he was uncomfortable talking to her (Stimac) about the topic (of her OWI arrest) and did not want to be any part of it.

Like King, Hebert was subsequently directed by Personnel Director Kathryn Roellich to write a statement concerning the comments that Stimac made to him about her OWI arrest. Hebert complied with this directive.

G. Stimac’s Letter to Officer Lindeman.

On May 9, 2013, Stimac sent Officer Lindeman the following letter:

This letter is in reference to an incident involving myself on March 7th, 2013. The purpose of this letter is to convey my sincerest apologies about that night and particular incident.

It is with my full sincerity that I apologize for my actions on this day. I am regretful for ever putting you in such a position. Please understand it was never my intentions or objective to make you feel uncomfortable in any way. I completely understand you were doing your job and want to thank you for being professional. I am upset with myself that I put you into such a situation. If I did anything or said anything inappropriate I want to reassure you that it was not my intention and I am immensely sorry for the entire incident.

I apologize to you personally, to your department, and to every officer in which I have shamed in my actions. That night does not reflect my true character as a citizen, as an officer, or of my department.

Please accept my most sincere apologies.

H. Stimac’s Interviews.

Stimac was interviewed three times regarding her OWI arrest and subsequent actions. In her interviews, Stimac made several conflicting statements as to whom she spoke with and what information she had when she wrote her report.

Her first interview was conducted on July 11, 2013. In that interview, Stimac said that she did not recall anything about the March 7, 2013 arrest (whereas in her written report to the Sheriff she claimed that she did not “remember much about the stop”). Likewise, in that interview, Stimac recalled that she drank three to four beers at Scooters and consumed at least one shot (while in her report to the Sheriff, she indicated that she did not remember the number of beers she drank at Scooters and mentioned nothing about drinking a shot). She also said that she prepared the report for the Sheriff on the date she returned to work and that she had not prepared any portion of it prior to returning to work. With respect to the information she had when she prepared the report, Stimac

denied that she spoke with anyone from the Altoona Police Department prior to writing the report. She further denied reviewing any documents prepared by the Altoona Police Department regarding the arrest. Finally, she denied speaking with anyone from the Sheriff's office from the time that she was directed to write the report by the Sheriff until she wrote the report upon her return to work.

The second interview was held on August 2, 2013. That interview was conducted by then-Captain Hirsch along with the Sheriff. The stated purpose of this interview was to determine whether Stimac was truthful in her July 11, 2013 interview as to what she recalled from the March 7, 2013 arrest and what she told other officers about it. In this interview, Stimac said that she had Officer Lindeman's police report before she wrote her report for the Sheriff regarding her arrest on March 7, 2013. She said she had gotten the police report before she came back to work. She also said that she remembered "nothing" from the time she stopped playing pool at Scooters until she was getting fingerprinted at the booking room. Stimac also said that if she spoke to other officers regarding the details of the stop after she returned to work, it was not based on her memory of the arrest, but rather based on her review of Officer Lindeman's arrest report and the audio of the arrest.

The third interview was conducted on September 5, 2013. In that interview, Stimac denied that she had Officer Lindeman's police report when she wrote her report to the Sheriff. She stated that she obtained the police report after she wrote her report to the Sheriff.

I. Stimac's Plea of No Contest.

On October 1, 2013, Stimac pled no contest to first offense operating while intoxicated (OWI). As part of the stipulation and order, Stimac's DOT operating license was revoked for eight months and she was required to have an Ignition Interlock Device, known as an IID, on any vehicle that she operated for one year. An IID is a device which a driver must blow into before being able to operate a motor vehicle. The Department's squad cars are not equipped with IIDs. On October 4, 2013, Stimac's lawyer sent the trial judge a letter which essentially asked him to lift the IID requirement for Department vehicles which Stimac operated. That letter provided in pertinent part:

The defendant understands and has no objection to installing an ignition interlock device on her personal vehicle; however, because she drives a squad for work, even if the Sheriff's Department allowed an ignition interlock device to be installed (which they will not), the additional cost and maintenance of that device would cause a financial hardship. Further, the financial hardship is present because the Clark County Sheriff's Department has indicated to Ms. Stimac that no IID will be placed in any squad car. That would preclude Ms. Stimac from working in her capacity as a deputy sheriff, which would be an additional hardship.

The judge denied the request to lift the IID requirement for Sheriff's Department vehicles, and said he was not going to require the Department to equip its vehicles with an IID.

J. Disciplinary Charges against Stimac.

Two separate sets of disciplinary charges were ultimately filed against Stimac with the County's Grievance Committee. These charges sought different disciplinary outcomes for Stimac.

Sheriff Herrick filed his charges against Stimac on August 2, 2013. His charges were four pages long. The Sheriff requested that Stimac be suspended for 84 hours (seven 12-hour shifts) and be given a mandatory referral to the Employee Assistance Program.

The County's Law Enforcement Committee (LEC) filed a separate charge against Stimac on October 15, 2013. Their charges were 46 pages long. The LEC requested Stimac's termination.

K. The Final Disciplinary Outcome.

On September 3, 2013, Captain Hirsch sent an email to Deputies Hebert, King and Chapman which said that the Sheriff had told him that they were not to talk (anymore) to "Kathryn in Personnel." This two sentence email ended with the following terse sentence: "If you do you may be charged with insubordination."

It can be inferred from this email, plus the two separate sets of charges with different disciplinary outcomes for Stimac, that there was a dispute between the Sheriff, the County Personnel Director and the County's Law Enforcement Committee concerning the level of discipline that was going to be imposed on Stimac. The ultimate outcome concerning same was that Stimac was terminated, not suspended. Her termination was effective November 25, 2013.

L. The Aftermath of Stimac's OWI Arrest and Conviction.

Stimac's OWI arrest and conviction became a matter of public notoriety and an embarrassment to the Department. When officers in the Department subsequently made OWI arrests, sometimes arrestees would cite Stimac's situation, and claim they too should not be arrested for drinking and driving. Additionally, when some of Stimac's OWI cases subsequently went to court (i.e. cases where she was the arresting officer), defense counsel in Clark County tried to defeat the OWI charge by introducing evidence of Stimac's OWI conviction.

M. Stimac's Testimony Concerning Her Post-Arrest Alcohol Use.

Stimac testified at the hearing that she has not consumed any alcohol since her arrest, and going forward, she said she is "never going to have a drop of alcohol again." Stimac also testified that following her OWI arrest, she went to a counselor five or six times and went to several AA meetings.

POSITIONS OF THE PARTIES

A. Association's Initial Brief.

Responding to the three stipulated issues, the Association contends that (1) the matter is arbitrable; (2) there was not just cause for Stimac's termination; and (3) the arbitrator should overturn her discharge and award her job back with back pay and benefits (minus the suspension time requested by Sheriff Herrick). It elaborates as follows.

With regard to the first matter (i.e. arbitrability), the Association asserts that the matter is arbitrable. According to the Association, they are “left to guess as to why the County, while entering into the Voluntary Agreement, would also not also concede arbitrability of this matter” because the parties waived the entire grievance procedure up to the arbitration step. As the Association sees it, that means there are no timeliness issues. The Association then goes on to guess that the County may make the argument that once Sheriff Herrick temporarily assigned Stimac to the jail, Stimac’s rights under the parties’ CBA were somehow extinguished. The Association submits that if the Employer makes such an argument, it would be without merit. Here’s why. The Association notes that it is apparent from the Complaint drafted by Sheriff Herrick that he believes Stimac’s discipline should be a 7-day, 84-hour suspension, and he attempted to impose that. It then avers that “[a]fter her plea, and before she was suspended with pay pending the hearing on the Charges filed by the County’s Law Enforcement Committee, Sheriff Herrick temporarily assigned her to duties in which she could continue to work as a Deputy while keeping within her license suspension and Interlock Ignition Device (IID) restrictions.” From there, the Association then opines that “in protecting the public and in running the jail as he or she sees fit, the Sheriff’s powers to make temporary assignments are protected by the Wisconsin Constitution.” The Association elaborates further on this point saying that “the Sheriff has every right to assign deputies as he sees fit so long as such assignment involves peace preserving and law enforcement activities.” Building on that, the Association avers that Sheriff Herrick can assign Stimac to desk duty or to a two-person squad if he feels as though such assignment is appropriate. The Association asserts that all of these possible assignments, each within the rights of the Sheriff, “make the ability to drive a squad no longer a bona fide occupational qualification, despite whatever self-serving and unenforceable job description the County Board or its committees come up with.” The Association ends its argument on this point as follows:

If Sheriff Herrick had not been willing to make such temporary assignment, we would not be arbitrating this case, and we would concede she is unable to do the job as of right now. However, by the time a decision is made in this case, we fully expect Stimac’s licensing and IID restrictions to have ended. So for this reason as well, the County’s potential arbitrability arguments must fail.

Next, the Association comments on the facts. It begins with the following overview: “There is little disagreement as to the facts of Stimac’s OWI, but there is disagreement over some of the discussions held about it afterward, and there is a great disparity as to the amount of discipline the conduct deserves.”

From there, the Association starts with the OWI. It first comments that it “does not quibble in any way with the recitation of facts given by Officer Lindeman of the OWI incident itself.” It also admits that Stimac made what it characterizes as “numerous regrettable comments to Officer Lindeman” that night.

The Association then goes on to ask the arbitrator to consider these matters in the following context.

First, it notes that Stimac has no independent memory of what happened on the night in question because of her extreme inebriation.

Second, with regard to the “numerous regrettable comments” that Stimac made to Officer Lindeman, the Association emphasizes that “she made none of those statements voluntarily or in her right mind.” The Association maintains that while she voluntarily became drunk, her “degree of culpability for these actions needs to be judged in the light of the involuntary state of mind cause[d] by her intoxication.” According to the Association, her statements that night “should not act as an indication of her actual and current capabilities as a Deputy Sheriff.”

Third, the Association asserts that Stimac “apologized for her conduct that night.” To support that contention, it cites the letter that Stimac sent to Officer Lindeman.

Fourth, the Association notes that Stimac caused no collateral damage on the night in question. It emphasizes in this regard that Stimac did not get into an accident that night or hit some innocent person in her inebriated state. Instead, she was pulled over that night because of a broken taillight. Thus, she did not get pulled over for her driving, per se. The Association submits that had Stimac caused collateral damage, it would have assuredly raised the criminal and civil penalties for her actions.

Fifth, the Association notes that when Stimac ultimately pled guilty to first offense OWI, the other two tickets she received from Lindeman (i.e. a prohibited blood alcohol percentage ticket and a broken taillight ticket) were dismissed. The Association sees that as significant, because when the LEC made its list of charges against Stimac, it included some matters which were either never ticketed by Officer Lindeman or were dropped by the district attorney. Specifically, the Association notes that the LEC’s charges against Stimac deemed her guilty of “operating with a defective tail light,” “operating with an open intoxicant,” “avoidance of arrest” and “threatening an officer of the law.” The Association maintains that since Stimac wasn’t found guilty of these charges, their inclusion in the LEC’s list of charges was inappropriate and should therefore be disregarded by the arbitrator.

The Association then addresses these matters one at a time. With regard to the taillight matter, the Association admits she was driving a car with a broken taillight. That said, the Association notes that it was not her car, and she did not know the taillight was broken when she started to drive it. The Association contends that under any other circumstances, this action would at worst receive a warning from a police officer.

With regard to the open intoxicant matter, the Association admits that Stimac was driving a car with a bottle in the center console with a small amount of liquid in it. That said, the Association notes that neither Officer Lindeman nor anyone else confirmed the makeup of that liquid. Stimac herself opined that it was probably her brother’s chew spit. According to the Association, the reason why Officer Lindeman never ticketed Stimac with this offence is because such a charge would never hold up to any amount of serious scrutiny. That’s because without proof of the substance in the bottle, if Lindeman had written that ticket, it would have been dismissed. Despite all of that, the County thinks inclusion of this in their charges is appropriate.

With respect to the “avoidance of arrest” and “threatening an officer of the law” charges that were included in the LEC’s list of charges, the Association avers that the criminal system would call these charges “obstruction” and “harassment.” It opines that the real reason Stimac was not criminally charged with these offenses is because “the rants of a drunken person while being arrested for OWI are not voluntary or necessarily indicative of the person’s true motivations.” It

notes that Stimac made OWI arrests for a living, yet she could not stop herself from making her “unfortunate comments.” The Association avers that Officer Lindeman knew Stimac’s “unfortunate comments” did not amount to chargeable obstruction or harassment, “so he knew that fairness dictated that he not charge her accordingly, despite the existence of statutes and ordinances that could fit the exact words used.” The Association opines that “such concerns of fairness did not stop the County from including the same in its Charges.”

Next, the Association comments on several matters that happened following Stimac’s OWI arrest. It contends that the County’s investigation into this matter was a “witch hunt of epic proportions” which focused on “what she knew and when she knew it,” for no apparent reason “other than to create an untruthfulness or concealment charge, and to generally overhype the incident.” The Association first addresses the matter of when Stimac obtained Officer Lindeman’s report. As the Association sees it, this entire topic is a red herring, because even if she had possessed Officer Lindeman’s report ahead of her writing her own report (as she testified at the hearing and as she said in her second interview) it would not have mattered. That’s because “the purpose of a police report is to write what a person knows personally, not to repeat the observations other officers have already described in their reports.” The Association submits that Stimac rightfully assumed that Sheriff Herrick and Captain Hirsch would review the report of the arresting officer. Stimac thought it was inappropriate to repeat that same information. It also notes that neither Sheriff Herrick nor Captain Hirsch asked Stimac to rewrite her report of that evening to include more information.

The Association now turns to the comments that Stimac allegedly made to Deputies King and Hebert. According to the Association, there is disagreement as to what was said, by who, and when. Building on that premise, the Association opines that “we will leave it to the arbitrator to sort out what he believes occurred and what did not, or to ignore the matter entirely.” That said, the Association submits that Stimac’s comments to her coworkers were “ham-handed attempts” on Stimac’s part to expose the “elephant in the room” and make her OWI arrest “a little less awkward for the other officers.” The Association contends that Stimac’s statements to her coworkers were not intended to exhibit a lack of remorsefulness, “but were an attempt to move past an embarrassing and difficult set of events.” Additionally, the Association submits that they were intended to be “private conversations between herself and her co-workers at down moments.” However, because of the County’s “overzealous” investigation of this incident, they “were scrutinized beyond reason.” As the Association sees it, Stimac’s comments to her coworkers amount to nothing more than discussion after the fact. That being so, the Association believes they are not themselves disciplinable conduct. The Association points out that Sheriff Herrick did not let this third-hand “he said / she said” matter stop him from believing that Stimac’s apologies in this matter were sincere, so neither should the arbitrator.

Having made those comments about various factual matters and the charges made against Stimac, the Association now turns to what it calls its “legal argument.”

It notes at the outset that it believes this case centers on the appropriate amount of discipline that should be meted out to Stimac for her OWI arrest in March, 2013, and “for any related conduct thereafter which may be worthy of additional discipline.”

Next, it notes that a case like this, which largely centers on off-duty conduct, would normally have a large section devoted to whether there is a “nexus between the conduct and the

employer's legitimate business interests" (citing Elkouri). However in this case, the Association concedes the point. They also concede that a sheriff's deputy necessarily is held to a "higher standard" with regard to conducting herself in a legal and upstanding way. It notes though that this nebulous "higher standard" has never been specifically laid out. No matter what it entails, it surely does not follow that any failure to follow any law would in and of itself be a dischargeable act. Therefore, the arbitrator should apply a just cause analysis which takes into account how off-duty law enforcement OWI matters have been historically treated.

Next, the Association addresses the matter of which just cause standard should be used here. Rhetorically speaking, is it the seven-step test incorporated in Chapter 59.26(8)(b)(5m) of the Wisconsin Statutes, or is it the two-step test used by many arbitrators? The Association argues that "both tests lead to the same place." With regard to the two-step test, the Association concedes the first part of the test (i.e. that Stimac committed "certain actions" which constituted misconduct). However, with regard to the second part of that test (i.e. determining whether the discipline imposed was "justified under all the relevant facts and circumstances"), the Association asks the arbitrator to specifically consider five of the seven tests which are incorporated into Chapter 59.26(8)(b)(5m). The five tests which the Association asks the arbitrator to consider are the following:

- progressive discipline considerations, which not only provide notice to Stimac of the possible consequences of the alleged conduct, but also raises the level of seriousness of such future conduct;
- considerations regarding the fairness and objectivity of the investigation;
- considerations whether the County is applying the rule or order fairly and without discrimination to Stimac;
- considerations whether the proposed discipline reasonably relates to the seriousness of the conduct, which also includes a discussion of whether the alleged conduct is so serious that Stimac could no longer reasonably continue in the position; and
- considerations regarding Stimac's record of service with the Sheriff's Department, which the Association believes would include not only the reviews and commendation received by Stimac, but also any documented and expressed sincere remorsefulness of Stimac.

Finally, the Association posits that the arbitrator needs to address these three questions: (1) is the seriousness of the proven and admitted misconduct such that progressive discipline is appropriate at all; (2) is Stimac properly remorseful for her actions; and (3) if returned to work, is Stimac able to continue in her job successfully? According to the Association, the answer to all three of these questions must be in the affirmative.

Next, the Association argues that in this case, the penalty which was imposed here (i.e. discharge) was too severe and needs to be reduced by the arbitrator for the following reasons.

First, the Association contends that progressive discipline necessitates a second chance here. To support that premise, it avers that a first offense off-duty OWI is not a “major incident” which should be deemed so serious as to warrant discharge without progressive discipline. To support that premise, it cites three arbitration awards: *Dodge County*, *Milwaukee County*, and *Town of Southampton*. It submits “that while the specifics of each one of these cases vary,” what they have in common is that arbitrators have often reduced the discipline imposed on a policeman for a first offense OWI from a discharge to a suspension. The Association also points out that Sheriff Herrick reviewed Stimac’s “entire work record” and, after doing so, he came to the conclusion that Stimac was a good road deputy who was savable. Thus, in his view, Stimac deserves a second chance. The Association characterizes his conclusion as the “correct conclusion.”

Second, the Association asserts that Stimac is properly apologetic and sincerely remorseful for her actions. According to the Association, her testimony dealing with same at the hearing was heartfelt and appropriate. She knows that her actions gave the Department a black eye. Additionally, the Association emphasizes that Sheriff Herrick, who has known Stimac for a long time, believes that her remorse is sincere and that she will not reoffend. The Association notes that in most discharge cases, the arbitrator has the difficult task of determining (usually on the say so of the grievant only) whether or not the grievant is sincere and whether he or she will reoffend. Usually, it’s just the grievant who says that. Here, though, the Sheriff also says that. The Association points out that Sheriff Herrick is the duly-elected leader of the Department. As such, his “contentions on this matter are entirely trustworthy, and ought to bear great weight.” The Association maintains that the only counterpoint made about the sincerity of Stimac’s apology was by Officer Lindeman, who took umbrage with the word “if” in the sentence which started “if I did anything or said anything inappropriate” The Association submits that it is very possible Stimac used the indefinite article “if” because “she did not remember what she said at the time, and therefore, felt uncomfortable apologizing for the specific comments themselves, but instead, more importantly, she apologized for the reaction of the officer to them.” In the alternative, the Association posits that Stimac “may have hoped he might not have taken offense to her drunken ramblings.” In any event, even with the word “if” included, it’s the Association’s view that this could not be a more thorough apology letter. The Association also avers that if this case boils down to the sincerity of Stimac’s apology, then it should be Sheriff Herrick’s opinion that prevails. That’s because Officer Lindeman never dealt with Stimac before or after this incident except for receiving the apology letter. Finally, the Association emphasizes that Stimac has refrained from drinking alcohol for over a year. It notes that she promised the arbitrator on the record that she is “never going to touch a drop of alcohol again. It’s not going to happen.” According to the Association, her testimony was sincere and believable.

Third, the Association contends that if the arbitrator were to reinstate Stimac, she would be able to do the job (even while the restrictions on her driver’s license continue). To support that premise, the Association notes that Sheriff Herrick testified he would be willing to place her within the Sheriff’s Department on desk duty. He also said that she could ride shotgun with another officer. He also said that she could be assigned to the jail on a temporary basis. The Association maintains that the Sheriff’s position that he could do those things (i.e. temporarily assign Stimac to

the jail, or to the road in a two-person squad, or to a desk position) is completely up to him. To buttress that contention, the Association cites two Wisconsin Supreme Court decisions that have addressed the constitutional power of the sheriff: *Heitkemper* and *Manitowoc County*. The Association asserts that what the County did here was to “unilaterally” come up with their own job description of what it believes a sheriff’s deputy must do and then argue that Stimac – because of her current licensing and IID restrictions – does not meet that job description. Building further, the County extrapolated that she is unable to do her job and therefore her actions create just cause for discharge. The Association responds to that contention with one word: “Hogwash.” The Association avers that “in her current state of affairs and with the Sheriff’s willingness to assign her accordingly, she fully meets the real job description of the position.” The Association maintains that if Sheriff Herrick wants to temporarily assign her to the jail, or to the desk, or to ride shotgun with another deputy, as long as the CBA is followed, he is within the Sheriff’s constitutional powers to assign her accordingly. The Association submits that if Sheriff Herrick “were not so willing to make this temporary transfer, and he demanded that Stimac continue to do her job duties as a solo Patrol Deputy, we would agree that her actions would create just cause for discharge, because [of] the terms of her plea she would be unable to fulfill those duties.” That’s not the situation here, though. In this case, “since Sheriff Herrick is willing to give a worthy employee a second chance to succeed in her job, it is not only within his powers, but it is right and just for him to do so.”

Finally, the Association maintains that a reduction of Stimac’s discipline from discharge to a suspension is appropriate “under the law.” It then cites a number of arbitration awards where the arbitrator reduced an employee’s discharge to a suspension. It then cites Elkouri for the proposition that arbitrators routinely consider the following mitigating factors in arriving at an appropriate amount of discipline: (1) the grievant’s past record; (2) length of service with the employer; (3) knowledge of rules; (4) prior warnings; and (5) due process and procedural requirements. As the Association sees it, all of these mitigating factors “cut in favor of” Stimac, and thus demand a reduction of the discipline. Here’s why. First, the Association addresses Stimac’s past work record. According to the Association, this factor differs from progressive discipline in that it simply looks at what type of employee the grievant is and whether she is prone to satisfactory or unsatisfactory conduct. The Association notes in this regard that Stimac had “positive work evaluations” as well as a letter of commendation. Additionally, it notes that at the hearing, Sheriff Herrick praised Stimac’s good work ethic and positive attitude. Second, with regard to her length of service with the Employer, the Association notes that she was a 15-year employee. The Association asks that she be given appropriate credit for her years of service to the County. Third, with regard to knowledge of the Employer’s rules, the Association concedes that Stimac had complete knowledge of the rules against which she is being measured. However, while she knew the rule, she did not know the penalty that was attached. Specifically, she was never warned that off-duty first offense OWI would result in her discharge. The Association submits that Stimac’s lack of understanding of the disciplinary severity of an OWI possibly explains why Stimac “may have felt compelled to discuss this matter as openly with her co-workers as she did, and why some of her co-workers received a false sense from her statements that she was not taking responsibility for her actions.” Fourth, with regard to her prior warnings, the Association disputes the Employer’s contention that Stimac’s disciplinary history somehow put her on notice that an OWI would result in discharge. It notes that none of her prior disciplinary actions have anything to do with off-duty alcohol consumption or warn her that her alcohol use was a problem. Additionally, the Association believes it is significant that, of the four disciplinary actions in her file, the most recent occurred in 2008. Fifth, with regard to due process, the Association avers that opposing counsel’s interviews of

Stimac were “oppressive and overbearing” and, as a result, cannot be described as “reasonable.” To support that contention, it notes that opposing counsel repeated the same questions multiple times using slightly different verbiage each time, especially with regard to when she wrote her report. Whether it was intentional or unintentional, the effect was to confuse Stimac into saying different things each time to the same question. The Association maintains that whatever factual misrepresentations Stimac made in the multi-hour interviews about the incident, “it was due to the manner in which this questioning was done, or the length in time between when the incident occurred (March), and when the interviews were held (July, August and September).

In sum then, the Association asks that the grievance be overturned, and that Stimac be reinstated with a suspension and made whole.

B. Association’s Reply Brief.

Broadly speaking, the Association’s reply brief addresses three topics: (1) the effect that alcohol intake had on the voluntariness of Stimac’s actions on the night in question; (2) the effect of Stimac’s “independence” from alcohol; and (3) the “misstatements” in the County’s initial brief.

The Association begins its comments on the first topic with the following introduction: “We have conceded that the comments made by Stimac that night, if done in her right mind, would amount to conduct unbecoming, misuse of position, and other violations, and would amount to just cause for discharge.” The key part in this sentence, of course, is the phrase “if done in her right mind.” The reason the Association sees that phrase as key is because, in their view, Stimac “was not in her right mind” on the night in question. That’s because the amount of alcohol she consumed that night had a serious effect on what the Association calls the “voluntariness” of her actions. Building on that premise, the Association then argues that “[t]he Arbitrator must agree intentional bad acts are more worthy of serious disciplinary response than are involuntary bad acts.” The Association then asserts that Stimac’s “bad acts” on the night in question were involuntary as opposed to intentional. The Association submits that if the arbitrator sustains Stimac’s discharge, then the discipline imposed on her will be more punitive than corrective.

Second, the Association points to the positive steps that Stimac has made since the incident. What the Association references, of course, is Stimac’s testimony at the hearing that she gave up drinking alcohol altogether following her arrest on March 7, 2013. The Association sees that as significant and characterizes it as her “independence from alcohol.” Building on the premise that Stimac has put “her alcohol problem behind on her” and “that her drinking days are over,” the Association points out that arbitrators have recognized that the post-incident conduct taken by an employee with an alcohol problem can be taken into account in determining the appropriate discipline. According to the Association, Stimac’s “recovery from alcohol” should mitigate the discipline in this matter.

Finally, the Association seeks to “correct” and “shed some light” on what it characterizes as some “misstatements” that the County made in their initial brief.

First, it contends that the County’s statements that (1) Stimac “is unqualified to serve in her position as a patrol deputy” and that (2) “it is undisputed that one of the job requirements of a deputy sheriff in Clark County is a valid and unrestricted driver’s license” are both patently false. According to the Association, “there is plenty of dispute as to whether the Sheriff’s Department or

the County Board has the final say as to the job duties of deputy sheriffs, and more importantly, whether a temporary inability to drive a squad makes a deputy unqualified to do their job.” The Association also asserts that “the Sheriff’s Department’s own listing of job duties in its job description does not list the ability to drive a squad car.” Building on that, it’s the Association’s view that nothing in the current job description precludes Sheriff Herrick from assigning Stimac to ride along with another deputy, or to be temporarily assigned to the jail, or to desk duty. Said another way, the Sheriff can assign deputy sheriffs to whatever law enforcement work he sees fit. As the Sheriff himself put it in his testimony: “the county board or the law enforcement committee doesn’t dictate to me where I’m having my deputies work.” The Association repeats the argument it made in its initial brief that “*Manitowoc County* and a long line of other precedential Sheriff’s Constitutional Powers cases hold that to be true.” The Association notes that normally it is not in the position of having to make these arguments in support of the Sheriff’s powers, “but this is not an ordinary case.” The Association maintains that it is “not asking for an extension of those powers here, but simply a fair understanding and application of the law in this regard.” Building on the foregoing, the Association submits that “it is simply untrue that [Stimac] has somehow become unqualified to serve as a patrol deputy.” Therefore, this case is arbitrable and should be decided on the merits.

Second, the Association comments on the following two statements in the County’s initial brief: (1) “Her actions on the morning of her arrest have also placed the County’s ability to prosecute other drunk drivers at risk” and (2) “[H]er actions have also created a significant burden on the County when prosecuting cases in which Deputy Stimac is involved.” The Association posits that the County brought no evidence, either in terms of documents or testimony, to support these statements. Specifically, they did not show that any case was dismissed, or where a case was not charged, or where a defendant has been found not guilty because of Stimac’s actions. To the extent that the County is referencing the situation where “a defense attorney made hay of Stimac’s arrest and tried to file a ‘motion to admit evidence of bias,’” the Association notes that Stimac testified that the judge denied that motion.

Third, the Association challenges the following statement in the County’s initial brief: “Her fellow law enforcement officers wanted nothing to do with her because her actions do not reflect what a law enforcement officer is or should be.” The Association notes that of the four officers who testified at the hearing who were critical of Stimac’s actions, none of them stated that they “want nothing to do with her.” Also, the Association avers that there was one officer who testified positively as to her ability to continue in the position (namely, Sheriff Herrick). The Association also maintains that it is not relevant to this case whether or not the other deputies want to work with Stimac. If the arbitrator awards Stimac her job back, her fellow officers will work with her.

Fourth, the Association challenges the following statement in the County’s initial brief: “The public simply no longer trusts Clark County Sheriff’s deputies” The Association characterizes this as “the most egregious of all of the County’s overreaches.” It notes in this regard that there was no testimony or evidence of the opinion of the “public” in this case. Specifically, there were no opinion polls entered into evidence, no testimony of members of the public, or no other indication of what the “public” thinks. As the Association puts it, “[t]he sheer audacity and grandiosity of the County to state what the public believes and does not believe in this case boggles one’s mind.”

Finally, the Association comments on the following two statements in the County's initial brief: (1) "There is nothing in the CBA which requires the County to finance Deputy Stimac until she is able to resume her job duties"; and (2) "[t]he County cannot and should not have an obligation to create new positions for deputy sheriffs who are not able to work because of restrictions resulting from their own bad acts." It submits that both statements are true. That said though, it opines that "no one has asked the County to pay [Stimac] for work outside of her job description" and "no one has asked to create a new position for her in this case." The Association asserts that while the County Board has the ability to create its own hiring qualifications and job description, it is the Sheriff "that still runs this department." Thus, it is up to the Sheriff to decide which work is done by whom and where. The Association maintains that as long as the Sheriff is willing to assign Stimac work within her job description, she will not be accepting some "accommodation" from the County to "finance" her. Additionally, the Association avers that the County has it backwards when it looks to the CBA and essentially says that nothing in it requires the Sheriff to make these types of assignment. According to the Association, there is nothing in the CBA which effectively restricts the Sheriff from making such assignments. Building on that premise, the Association maintains that "the CBA must be read to either (1) have never given the power to the County to assign specific deputy sheriffs to specific law enforcement tasks within their job descriptions, as that power remains with the Sheriff; or (2) require the Sheriff to be the representative of the County charged by the Wisconsin Constitution with the "assignment of work or workers" when those workers are deputy sheriffs, and they are engaged in duties that maintain law and order and preserve the peace." As the Association sees it, both lines of thinking lead to the same place. "For counties that work with their Sheriff, respect his constitutional authority, and see him as part of the County's management structure, the latter works. For places such as Clark County, we will have to rely on the former."

In sum then, the Association asks the arbitrator to find that the case is arbitrable because the Sheriff is willing to allow Stimac to continue in her job despite her licensing restrictions. With regard to the merits, it's the Association's position that the County did not have just cause to terminate Stimac from her position as deputy sheriff. The Association asks that the termination be reduced to a suspension, that she be returned to her job and be made whole for all back pay and benefits.

C. County's Initial Brief.

The County contends that, as an initial matter, Stimac's termination is not arbitrable because she is not qualified to perform her patrol deputy position because of her IID restriction, and the CBA does not require the County to maintain her employment until she is qualified. Arbitrability aside, it's the County's view that Stimac engaged in misconduct when she operated a motor vehicle while severely intoxicated, used her position as a Clark County deputy sheriff to try to avoid getting arrested for OWI, and then used her position as a Clark County deputy sheriff to threaten the arresting officer. Then, following her OWI arrest, she made incomplete, false, and misleading statements in both her OWI incident report and in her three investigation interviews. Finally, the Employer maintains that her interactions afterwards with several coworkers showed that she did not accept responsibility for her OWI or realize the gravity of her actions. Building on the foregoing, the Employer argues that the discipline which it imposed on Stimac for her misconduct – termination – was warranted under the circumstances. It elaborates as follows.

As just noted, the Employer contends at the outset that Stimac's termination is not arbitrable. The basis for this contention is that she cannot operate a squad for purposes of patrol because of a restriction which was placed on her driver's license that any vehicle she operates have an IID (a device into which a driver blows before being able to operate a motor vehicle). The Employer submits that one of the job requirements of a deputy sheriff in Clark County is a valid and unrestricted driver's license and another is being able to operate a marked squad car. The Employer maintains that until the IID requirement is lifted in October, 2014, Stimac cannot operate a squad car unless it is equipped with an IID. The Employer then points out that there are no squads equipped with an IID in the Department. Putting these two points together, the County posits that since Stimac cannot drive a Clark County squad car, she cannot serve as a deputy sheriff until her IID restriction on her driver's license is lifted (i.e. October of 2014). Extrapolating further, the County avers that since Stimac is not qualified to perform her patrol deputy position, and the CBA does not require the County to maintain her employment until she is qualified, the grievance is not arbitrable.

In response to the Sheriff's claims that he has the authority to unilaterally transfer deputies from patrol work to desk duty, the Employer avers that no such authority exists under the parties' CBA. According to the County, by virtue of Sec. 111.70 and the plain terms of the CBA, it is the County – not the Sheriff – that is authorized to bargain terms and conditions of employment for County patrol deputies. The County maintains that the parties' CBA does not give the Sheriff the right to unilaterally redefine the terms and conditions of employment for patrol deputies by transferring deputies who cannot perform their essential job duties to desk duty. Additionally, there is no provision in the CBA which requires, or even permits, deputies who are no longer able to perform their job duties to be placed on desk duty until any restrictions on their ability to work as a deputy sheriff are lifted.

Moving to the merits, the Employer asserts at the outset that the arbitrator should use the standard two part just cause analysis he has traditionally used in reviewing employer imposed discipline. The Employer contends that after he applies that test to the facts herein, he will find that Stimac engaged in egregious misconduct, and as a result, the County had just cause to terminate her employment.

Next, as a preliminary matter, the County maintains that Stimac's actions need to be viewed in the context of her being a law enforcement officer who is sworn to obey and enforce the law. It notes in this regard that law enforcement officers are responsible for enforcing civil and criminal laws, and for arresting and confining those who violate those laws. The Employer then submits that because of the public trust vested in law enforcement officers, "they must live exemplar lives not only while on duty but off duty as well." The Employer cites the law enforcement code of ethics for the proposition that law enforcement officers are to live their private lives unsullied, as an example to all; to be honest in thought and deed in both their personal and professional lives; and to be standard bearers in obeying the law of the land and the regulations of their department. Building on the foregoing, the County posits that when County law enforcement officers disregard and disobey the law and departmental policies and abuse their positions, the County has an obligation to take disciplinary action against them.

The County maintains that this is such a case. The County submits that "[t]he Arbitrator can scour previous grievance arbitration decisions and never find a case where the events of misconduct are so many and the evidence of such misconduct so compelling." As the County sees

it, this is not a case of “he said, she said.” Instead, Stimac’s misconduct is established by her own admissions, the audio recording of her OWI arrest, the testimony of the arresting officer (Officer Lindeman), and her violation of numerous departmental policies and County rules and regulations. Responding to the Association’s attempt to blame Stimac’s indiscretions on the night in question on the excessive amount of alcohol that she consumed, the County disputes the Association’s suggestion that Stimac cannot be held responsible for her actions. It argues that the law does not support such an argument, because being drunk does not excuse an individual from their bad acts.

The County first points out that on the night in question, Stimac became extremely intoxicated while she was taking an anti-anxiety medication. Specifically, she drank to the point where her blood alcohol level was .204. That’s over two and a half times the legal limit. According to the County, it should have been self-evident to Stimac – an experienced road deputy who has seen numerous instances of impaired drivers who chose to drive – that she should not drive since she was intoxicated. However, that’s exactly what she did. The County characterizes that as an egregious form of misconduct because she not only endangered her own life by driving, but also the lives of those around her.

The County contends it would be one thing if that was the extent of Stimac’s “transgressions.” However, it wasn’t. According to the County, she did more – much more – both that night and afterwards.

Next, the County focuses on what happened after Stimac was stopped by Officer Lindeman. Almost at the get-go, Stimac told the officer that she was a “Clark County sheriff’s deputy.” She then repeatedly reminded him that she was a fellow law enforcement officer. Stimac then tried to convince, if not coerce, Officer Lindeman into not arresting her because of her position as a law enforcement officer and because of who she claimed she knew (namely former Altoona Police Reserve Officer Nicole Erickson). Stimac then attempted to shame the arresting officer into letting her go, stating that she would let the arresting officer go if their positions were reversed. Stimac then suggested that since her girlfriend lived two blocks away, the officer should drive her there (rather than moving forward with her arrest). When all of those attempts to get out of the arrest failed, Stimac then threatened the arresting officer by telling him words to the effect that if he ever came to Clark County, he should be prepared to pay the price. The County avers that this was a threat.

Next, the County addresses the report which Stimac ultimately submitted about the OWI arrest. The County characterizes Stimac’s report as incomplete, false and misleading and disingenuous. The County avers that her report contained untruthful statements regarding her recollection of her arrest because she specifically indicated that she did not recall how much alcohol she consumed prior to her arrest but stated in her July 11, 2013 interview the number of drinks that she recalled consuming. She further indicated in her report to the Sheriff that she did not recall “much about the arrest” and later stated in her July 11, 2013, August 2, 2013 and September 5, 2013 interviews that she did not remember anything about her arrest. If Stimac did have the arrest report when she wrote her report, she omitted any of the information that was contained therein.

Next, the County contends that after the OWI incident, Stimac exhibited a profound inability to accept responsibility for her actions or express any kind of remorse for what she did. That’s because she joked with fellow officers about her arrest and how she would retaliate against

the arresting officer. She also openly attacked and degraded the “kid” who arrested her and said that the attorney she hired was going to tear the arresting officer apart. The County submits that while Stimac joked about the threats she made to the arresting officer, her coworkers knew they were not jokes at all. The City also contends that Stimac’s comments exhibited an incredible lack of remorse and responsibility for what she had done. Additionally, since Stimac questioned the honesty and integrity of the deputies who testified about her statements to them, Stimac has created an environment of mistrust and fear in the Sheriff’s office. The County also submits that Stimac’s arrest had a detrimental impact in that it placed the County’s ability to prosecute other drunk drivers at risk because the public simply no longer trusts Clark County Sheriff’s deputies. It asks rhetorically how can Clark County credibly claim to its citizens that it is doing everything in its power to reduce the leading cause of traffic fatalities if it were to turn a blind eye to a particularly egregious violation by one of its own officers.

Finally, the County contends that Stimac repeatedly failed to provide truthful and accurate statements in her three investigatory interviews. For example, in her investigatory interviews, she claimed that she recalled nothing from the time that she was sitting in Scooters until she was booked. However, in her conversations with Deputies King and Hebert, though, her recollection was much more vivid. Her statements to Deputy King that she drove the morning of March 7, 2013 because she did not think she was that drunk are particularly damning. According to the County, her “amnesia” appears designed at avoiding any responsibility for her actions. The County also maintains that Stimac gave numerous untrue and contradictory statements regarding material matters concerning her arrest, her conduct following the arrest, and statements made to witnesses following her arrest. The County avers that Stimac made at least eight such false and misleading statements during her interviews. According to the County, Stimac did this to frustrate the County’s investigation into her actions.

The County submits that for all of these reasons, it had just cause to terminate Stimac. In its view, the punishment fit the crime. It therefore asks that the grievance be denied and the discharge upheld. The County argues that if the arbitrator were to allow Stimac to return to work under any scenario it would be devastating to the ability of the County to regulate and discipline its law enforcement officers in the future. It opines that officers who break the law, abuse their positions, threaten fellow law enforcement officers, fail to tell the truth, and make jokes to their fellow officers about their illegal conduct would then be able to do so without threat of the ultimate penalty of termination. That should not be the case.

D. County’s Reply Brief.

It’s the County’s position that it had just cause to terminate Stimac for engaging in the following misconduct: operating a motor vehicle with an aggravated blood alcohol level (BAC) of .204; abusing her position as a deputy sheriff; threatening a police officer; demeaning an arresting officer; lying to an arresting officer; avoiding arrest; joking about her arrest while on duty; failing to truthfully and accurately report; and failing to tell the truth to investigators charged with investigating her March 7, 2013 arrest. As the County sees it, it made a reasonable and justified decision to terminate Stimac for her multiple instances of serious misconduct.

At the outset, the County repeats its contention that the grievance is not arbitrable because Stimac cannot perform the essential duties of a patrol deputy. This conclusion is based on the premise that Stimac cannot legally operate any vehicle without an IID. The County notes that none

of its squad cars have an IID on them. Putting these two points together, the County maintains that Stimac cannot operate a squad car. According to the Employer, being able to drive a squad car is an essential job responsibility of a patrol deputy. It notes in this regard that in her testimony, Stimac admitted that being able to legally operate a squad car is essential to fulfilling her essential job duties as a deputy sheriff. The County further opines that Stimac's former position is called a patrol deputy position for a reason, namely, that most of the job duties require a squad car to perform, including patrolling in a marked vehicle; operating radar equipment and issuing citations; directing and escorting traffic; and investigating and providing assistance to citizens involved in road accidents. The County also points out that Stimac represented to the court in her OWI defense case that she would lose her job if the IID requirement was not lifted. Additionally, the County cites the testimony of Chief Deputy Hirsch, who testified that the IID requirement precluded Stimac from serving as a patrol deputy in Clark County because she could not perform her essential job duties. Hirsch testified that patrol deputies are required to operate a motor vehicle as part of the job; are required to have a valid driver's license; and could not perform their essential job duties if they were required to blow into an IID before operating a squad.

On a related matter, the County argues that it is not bound to honor the Sheriff's desire to create the new positions of "desk deputy" or "ride-along deputy" to accommodate Stimac's inability to operate a squad car due to her IID requirement. As the County sees it, it is under no legal obligation under the CBA to honor such a requirement, and neither the Association nor the Sheriff have any right to require the County to honor the reassignment much less pay Stimac in an unauthorized temporary position while the County pays another deputy to patrol the roads in Stimac's stead. The County also contends that notwithstanding the Association's assertion to the contrary, there is nothing in the CBA which requires the County to reassign Stimac while it waits for her to be able to perform her job again. The emphasis in this regard is that Stimac's inability to work is not something that the County inflicted on her (as the Association's brief seems to suggest). Rather, it is something that she inflicted on herself. If she had not intentionally gone out and consumed alcohol to the extent of a .204 BAC, gotten behind the wheel of a motor vehicle, illegally operated it and been stopped by Officer Lindeman, none of this would have happened. Additionally, the County maintains that nothing in the CBA mandates that the County effectively become the guarantor of an employee's employment when an employee, such as Stimac, can no longer perform her essential job duties. Correspondingly, there is nothing in the CBA which authorizes the Sheriff or the Association to mandate that the County maintain and dedicate resources to an employee who can no longer perform her essential job duties. The Sheriff has no authority under the agreement to commit the County's resources in such a fashion. Additionally, he is not a party to the CBA. The County then goes on to argue that pursuant to the statutory authority vested in the County as a municipal employer under § 111.70. Stats., it is the County and not the Sheriff that has the management prerogatives under the CBA as it relates to the assignment of deputy sheriffs, citing *Brown County Sheriff's Dep't v. Brown County Sheriff's Dep't Non-Supervisory Employees Ass'n*. The County also contends that the Sheriff does not have the constitutional authority to create a position for a deputy who cannot perform essential job functions. It reads the Association's brief to take the position that, contrary to the express terms of the parties' CBA, the Sheriff has the constitutional authority to "temporarily" reassign Stimac to either a desk job that does not exist, a two-person squad or the jail (based on her admitted inability to serve as a patrol deputy due to the IID requirement). The County maintains that that position is belied by Wisconsin case law and is under the facts of this case, groundless. It then cites numerous Wisconsin Supreme Court cases that have dealt with the constitutional authority of the sheriff. It argues that the Association's reliance on *Manitowoc* and *Heilkemper* are not only incorrect, but the

Association misstates and mischaracterizes those decisions. According to the County, the type of temporary appointing which the Sheriff proposed making here (i.e. to keep Stimac busy while she waited to have the IID requirement lifted) is not constitutionally protected. The County summarizes its argument on this point as follows. The CBA governs the right to reassign Stimac during the period that the IID requirement is in place and the right belongs to the County. Stimac could not perform her essential job functions while the IID requirement is in place. The County decided to not exercise its right to temporarily reassign Stimac to a position she could perform and instead terminated Stimac based upon her inability to perform the essential functions of her position. Accordingly, Stimac's grievance that she could not be terminated is not arbitrable because she cannot perform her essential duties due to loss of licensure. In the alternative, the County had just cause for terminating Stimac based on her inability to perform the essential duties of a patrol deputy due to the IID requirement. The County contends that if the arbitrator does decide that the grievance is arbitrable, or that the County did not have the authority under the CBA to terminate Stimac on the grounds that she could not perform her essential job duties, then he will be modifying, adding or deleting from the agreement which he is precluded from doing.

Next, moving on to the substantive merits of the discharge, the County argues that the Association seeks to apply incorrect legal standards in addressing the merits of the discharge. As the County sees it, that essentially amounts to the Association renouncing the terms of the CBA. It elaborates as follows.

First, the County disputes the Association's assertion that the "just cause" provision in § 59.26(8)(b)(5m), Stats., apply in this case. Said another way, the County contends that the applicable legal standard for determining whether there was "just cause" to terminate Stimac is not under § 59.26(8)(b)(5m), Stats., as the Association claims. It notes in this regard that under the "Voluntary Agreement" entered into between the parties regarding arbitration, the parties expressly agreed to "waive their respective rights and responsibilities under Wis. Stat. Sec. 59.26, if any." In the County's view, that agreement means that the just cause factors set forth in that statute are inapplicable here and just cause is to be decided per the CBA. It notes in this regard that the CBA does not incorporate a definition of "just cause." Under those circumstances, it avers that the standard to be applied is the (standard) two-part just cause test of: (1) whether the employer proved the employee's misconduct; and (2) assuming the showing of wrongdoing is made, whether the employer established that the discipline which it imposed was justified under all the relevant facts and circumstances.

Second, the Employer disputes the Association's contention that the County was bound to follow progressive discipline prior to terminating Stimac. The Employer asserts that the full text of Article 6, entitled "Discipline," belies any assertion that the County was mandated to follow a sequence of progressive discipline before terminating Stimac. The Employer notes that while that provision says, in part, that the parties "recognize the principle of progressive discipline" consisting of a sequence of a verbal warning, written reprimand, suspension and discharge, it specifically asserts that there is no requirement in the CBA that the County follow progressive discipline under the facts involved in this case. It notes in this regard that Article 6 expressly relieves the County of any obligation to impose a sequence of progressive discipline where "the infraction is considered just cause for suspension or immediate discharge." The County maintains that in this case, there is no question that the County considered Stimac's multiple transgressions and misconduct as "cause for ... immediate discharge." It notes in this regard that following completion of its investigation, the County's Law Enforcement Committee presented more than 45

pages of charges against Stimac arising out of the March 7, 2013 arrest and its aftermath. At the close of the charges, that Committee sought termination. The County submits that the absence of any requirement that the County follow concepts of progressive discipline in the CBA effectively precludes the arbitrator from imposing such a requirement in connection with Stimac's grievance even under the two-step "just cause" standard.

Next, the County responds to the Association's statement of facts. According to the County, the Association's version of the facts is "selectively distorted and incomplete." As the County sees it, this case is far more serious than a simple first time drunken driving arrest. It involves more than that. It involves a law enforcement officer with a history of failing to tell the truth and accept responsibility for her actions who committed multiple instances of serious misconduct that go well beyond an OWI. When considered collectively, the Employer maintains that Stimac violated "virtually every founding principle reflected in the law enforcement officers' code of ethics and disregarded fundamental expectations of Clark County deputy sheriffs." The Employer contends that it established multiple instances of serious misconduct by Stimac in satisfaction of the "first prong" of the just cause analysis requiring that the County prove Stimac's misconduct. As the County sees it, it proved that Stimac did the following: (1) was unable to perform her essential job duties as a deputy (because of the IID restriction); (2) operated a vehicle while intoxicated; (3) provided false information to a law enforcement officer; (4) abused her position by trying to avoid arrest for OWI; (5) threatened the arresting officer; (6) later made disrespectful statements to coworkers about the arresting officer; (7) made false and / or misleading statements during her investigatory interviews; (8) failed to cooperate with the Employer's investigation; (9) failed to take responsibility for her actions and (10) had an open intoxicant in the vehicle and operated a vehicle with a defective taillight. The County maintains that all those facts were either admitted by Stimac in her investigative interviews or were not challenged by the Association in their initial brief. The County asks that all this misconduct be considered in determining the appropriate punishment.

Next, the County addresses the Association's various defenses to these acts of misconduct. The County contends that overall these defenses are not only meritless, but are just thinly veiled efforts to deflect responsibility and ultimately avoid accountability for Stimac's misconduct. It elaborates as follows.

First, addressing what it calls the "drunkenness defense," the County argues that the defense that Stimac cannot be punished for her bad acts that she committed while drunk is groundless and violates fundamental precepts of common sense. Also, if adopted by the arbitrator, it would be devastating to law enforcement employers who seek to hold their deputies to a code of conduct.

Second, the County addresses the Association's claim that Stimac cannot be disciplined for illegal conduct for which she was not cited, or for which the prosecutor decided not to prosecute, including driving a vehicle with a broken taillight, operating a motor vehicle with an open intoxicant, obstruction or harassment. The County argues that this "arrest and prosecution" defense is absurd, and Stimac is responsible for her illegal conduct notwithstanding the absence of any citation or prosecution. Additionally, the Employer points out that charges for lesser included offenses are often either not brought or plea bargained away by prosecutors. It contends that "fortunately, the results of prosecutorial efforts do not preclude employers who have an interest in such conduct from taking disciplinary action." It also notes that there is no authority in

employment law that holds that an employer such as the County cannot discipline an employee, particularly a law enforcement officer, for violation of the law regardless of whether they are prosecuted or result in conviction.

Third, the County addresses the Association's claim that the absence of any collateral damage in the form of injuries or innocent persons or property damage establishes that her misconduct in drinking and driving was relatively minor. The County contends that this theory is spurious. The County emphasizes again that this is not a case, as the Association seeks to portray it, which simply involves drinking and driving. To the contrary, it's a case which involves reckless and egregious conduct on Stimac's part. As the County sees it, Stimac left plenty of collateral damage in her wake for which she can be disciplined.

Fourth, the County responds to what it calls Stimac's "I was only kidding" defense. It contends that defense is meritless. It notes in this regard that Stimac joked with fellow officers about writing every ticket she could to Officer Lindeman if he came to Clark County, and also stated that she was going to tear Officer Lindeman apart. While Stimac portrays these statements as "jokes," the Employer submits that they were inappropriate comments. The deputies who heard them, including Deputy Hebert, did not find them an appropriate topic of discussion for the workplace. In fact, Hebert did not even think that Stimac was joking when she made her comments about Officer Lindeman. Equally important, Stimac made her comments in the presence of a deputy trainee. As observed by Hebert, comments which reflect a failure on the part of law enforcement officers to take responsibility for their actions and which demean other law enforcement officers lowers morality in the Sheriff's Department and gives the Department a bad reputation, making it look crooked and unfair.

Fifth, the County addresses the Association's contention that Stimac cannot be disciplined for filling out an incomplete and misleading report regarding her arrest. As the County sees it, this claim is not based on the policy for reporting maintained by the Sheriff's Department, but rather on their own, made-up policy. The County contends this argument is ludicrous. It notes in this regard that law enforcement officers are frequently asked to prepare reports regarding incidents they did not personally witness. Rarely do law enforcement officers have personal firsthand observations about what happened. Here, though, Stimac did have firsthand knowledge about what happened. That being so, Stimac should have reported the facts and circumstances surrounding her arrest. She breached this duty and instead prepared a report that was inaccurate, incomplete, selective and aimed at concealing the truth. As the County sees it, Stimac plainly violated the policy on reporting.

Sixth, the County responds to the Association's claim that Stimac should not be held responsible for the inconsistent answers she gave during her interviews. The Employer disagrees with that contention and asserts that Stimac's inconsistent answers need not be disregarded. For the purpose of context, the Employer notes that what usually happens in arbitration is that the employee attacks the incompleteness of an investigation. As the story goes, the employer rushes to judgment without taking the time and effort to discover the true facts underlying the charges of misconduct. Here, though, the Association takes the position that the County's investigation was too thorough and that Stimac was asked too many questions during her investigatory interviews. The Employer posits that "[a]pparently, due process in the eyes of Stimac consists of being only required to explain herself once, no matter how many contradictory statements she makes thereafter" and "[i]nconsistent statements, if not outright lies, should apparently be ignored." The

Employer contends that contrary to the Association's position, "lies are important," particularly for someone employed in law enforcement. According to the County, lies undercut the very code of ethics and public trust upon which law enforcement is based and undermines the County's ability to prosecute those arrested for OWI. As a result, the Employer believes that Stimac's inconsistent answers are fair game for consideration. The County argues that it defies reason that the County can be criticized for further investigating inconsistent statements such as these, especially coming from a law enforcement officer who is charged with investigating incidents thoroughly and who has a history of inaccurate and incomplete reporting. Moreover, the Association's arguments ignore that giving Stimac the opportunity to explain herself with respect to the inconsistencies in her statements is what due process is all about. It is giving an employee notice of the issues created by the employee's statement and an opportunity to be heard. The Employer argues that the due process issues raised by the Association are without merit and fail to credibly explain her contradictory and inconsistent statements in this matter.

Next, the County turns to the penalty that it imposed on Stimac. It argues that it was justified in discharging Stimac for her multiple instances of serious misconduct. The County submits that throughout their brief, the Association takes lightly or outright ignores Stimac's multiple transgressions which began with her public intoxication and ended with her failing to tell the truth during her investigative interviews in this matter. In so doing, the Association disregards a fundamental principle in this matter: namely, that law enforcement officers are held to a higher standard of conduct. It then goes on to cite several arbitration awards involving discipline of law enforcement officers which have recognized this principle.

The County also contends that the various reasons cited by the Association for mitigation of the penalty are either factually groundless or irrelevant. It elaborates as follows.

First, it addresses the Sheriff's testimony that he believes Stimac will be able to perform the job in the future. The County submits that while Sheriff Herrick did his best to attempt to save Stimac (including testifying against the County), his "opinion" is "uninformed and immaterial." As the County sees it, Stimac cannot be trusted as a coworker, cannot be trusted to accurately fill out reports, cannot be trusted to take officer misconduct seriously, and cannot be trusted as a witness in support of prosecutions: if a prosecution comes down to her honesty and integrity, the case will be lost. She can no longer testify credibly in criminal proceedings. The County also argues that Sheriff Herrick's opinion about the appropriate level of discipline is immaterial "based upon his unwillingness to fully and completely investigate Deputy Stimac's many transgressions in this case." Aside from the legal reasons to disregard Herrick's opinion regarding just cause, there is no factual basis to give it any credence either. Here's why. By his own admission, Sheriff Herrick did not consider all of the facts in this case and conducted no meaningful investigation into Stimac's March 7, 2013 arrest. Instead, he hindered the County's investigation and, in fact, advised his deputies that if they cooperate further with the County's investigator, they would be disciplined. Additionally, the County avers that Sheriff Herrick has no relevant experience or expertise in making "just cause" determinations because his primary experience has been as a deputy sheriff, not a law enforcement manager. That being so, the County opines that the Sheriff is unqualified to render any opinion in this case and, as a result, the County is not bound by his opinion that Stimac should be reinstated.

Second, the County addresses the Association's contention that Stimac's work record should be a mitigating factor in this case. According to the County, the Association presents a one-

sided view of her past record that focuses on her “positive work evaluation,” a letter of commendation and the Sheriff’s biased view that Stimac has a good work ethic and positive attitude. Noticeably missing from their discussion of Stimac’s work history is any discussion or mention of her disciplinary history which directly relates to her misconduct in this case. As the County sees it, Stimac’s work record not only demonstrates that she had been subjected to prior discipline including suspension, but importantly that she has been notified of the importance of conducting herself in an appropriate manner, respecting her fellow law enforcement officers, and being truthful and honest in reports prepared for her superiors. The County maintains that Stimac’s work history does nothing to mitigate the penalty in this case. Rather, her work history demonstrates that past progressive discipline has done nothing to change her behavior in being untruthful, inaccurate and incomplete in her reporting, her view that her position can be used for personal gain, and her failure to take responsibility for her actions.

Finally, the County addresses the three arbitration awards which the Association cited for the proposition that termination was inappropriate under the circumstances of this case (i.e. *Dodge County*, *Milwaukee County*, and *Town of Southampton*). As the County sees it, all are distinguishable on their facts and have no bearing on this case. Here’s why. While each of the cases involved a first offense OWI, Stimac committed more misconduct than that. The additional misconduct aggravated the seriousness of her actions. The County then goes on to cite the arbitration award of *City of Fairborn* for the proposition that it has “some similarities” to the facts of this case.

Based on the above, the County asks the arbitrator to deny the grievance in total and sustain Stimac’s termination.

DISCUSSION

Arbitrability

Since the Employer has raised an arbitrability argument, I’ll address that first.

Normally, when I address an arbitrability contention, it’s a procedural arbitrability contention. That’s not the situation here. In this case, the Employer has raised what can fairly be characterized as a type of substantive arbitrability contention. The County contends that because of her IID restriction on her driver’s license, Stimac is not qualified to perform her patrol position and drive a squad, because none of the Department’s squads are equipped with an IID. Additionally, the County maintains that the CBA does not require the County to maintain Stimac’s employment as a patrol deputy until she is qualified (to drive a squad again). The Association disputes those contentions.

As noted in the POSITIONS OF THE PARTIES section, both sides make numerous arguments about this matter. In the course of doing so, they addressed the constitutional authority of the Sheriff to run the Sheriff’s Department. That’s a topic that has been addressed by the Wisconsin Supreme Court in numerous cases. Given the judicial history on that topic, it’s not at all surprising that the parties argue at great length over the scope and application of those cases to this matter. To illustrate that, it is noted that the Employer spent six pages of their reply brief addressing this one contention. Not to be outdone, the Association likewise averred in their reply brief that the arbitrator “has no choice” but to address the Sheriff’s constitutional authority matter.

I see it differently. I've decided that I don't need to address the topic of the Sheriff's constitutional authority because the facts present an easy out to sidestep the entire arbitrability matter. The easy out that I'm referring to is this: Stimac's IID requirement ended in October of 2014. At that point, Stimac no longer had an IID restriction on her driver's license, and she could legally drive a squad car again without restriction. That date – October of 2014 – has come and gone. I'm going to hang my proverbial hat on that. Since Stimac's license restriction has expired, that makes the Employer's arbitrability contention moot. While I could still address all of the parties' claims regarding the constitutional authority of the Sheriff, that's not going to happen here. As a result, all of the parties' arguments about contract claims and the constitutional authority of the Sheriff are deferred to another day and another case. It follows from the foregoing decision that this case is arbitrable. My reason for doing so (i.e. ducking this issue) and deciding this case on the merits will become apparent at the end of my discussion.

The Merits

Having found the matter arbitrable, the focus now turns to the merits.

I'm first going to look at the applicable contract language. Article 33, Section C, of the parties' CBA specifies that the Employer retains the right to "dismiss employees for just cause." This clause requires the County to have just cause to dismiss an employee. The same principle is also specified in Article 6, Section 1, wherein it provides that "no disciplinary action shall be taken against employees except for just cause." Given that contract language, the obvious question to be answered here is whether the County had just cause to discharge Stimac.

The threshold question is what standard or criteria is going to be used to determine just cause. As is normally the case, the term "just cause" is not defined in the parties' CBA. Given that contractual silence, it's up to the arbitrator to determine what standard of review he will use to review the employer's discipline. While arbitrators differ on their manner of analyzing what just cause means, one commonly accepted approach – and the approach the undersigned has applied in hundreds of discipline cases – consists of addressing these two elements: first, did the employer prove the employee's misconduct, and second, assuming the showing of misconduct is made, did the employer establish that the discipline it imposed on the employee was commensurate with the offense given all the relevant facts and circumstances. The factors which I've historically considered subsumed into this second element are the notions of due process, progressive discipline and disparate treatment. In this case, the Association asks me to go further and specifically consider five of the seven tests which are incorporated into Chapter 59.26(8)(b)(5m) of the Wisconsin Statutes. For shorthand purposes, I'm going to refer to the statutory standard just referenced as the "Daugherty" standard. It would be one thing if the parties had jointly asked me to apply the "Daugherty" standard. If they had asked, I would have done so. However, that didn't happen, so I'm not going to apply the "Daugherty" standard. Instead, I'm going to apply the two-part standard that I've applied in hundreds of other discipline cases.

The First Element of Just Cause

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. In making that call, I

will address two separate components: did the employee do that which was alleged, and if so, was that misconduct? These two components will be addressed in the order just listed.

Normally at this part of the discussion in a discharge case, I review the employee's discharge letter for a listing of what the employee allegedly did and why the employee was fired. While in some disciplinary cases the union faults the employer for providing a vague or cursory discharge letter, that's certainly not the situation here. In this case, the discharge letter is the 46 page charging document filed by the LEC. It is, without a doubt, the most detailed discharge letter I've ever encountered.

The LEC's charging document made a dozen charges against Stimac. I've decided that it's unnecessary for me to address all of those charges to decide this case. Here's why.

One of the Employer's charges was that Stimac was unable to drive a squad because of her IID requirement. I addressed that claim in my discussion on arbitrability above. That being so, I see no point on expanding on that matter further.

Another of the Employer's charges was that Stimac's incident report was "false and misleading." The way I see it, in order for me to decide if the report was "false and misleading" (as the Employer claims), I'd have to go through the report line by line to determine whether any individual line therein – or the document considered as a whole – was "false and misleading." I'm not going to do that. Instead, I'm just going to duck the charge entirely. In my view, I don't need to address this charge to decide this case. My reasoning for this conclusion will become apparent at the end of my discussion.

Another of the Employer's charges was that Stimac failed to cooperate with the Employer's investigation. Even if that's true, I'm not going to hang my proverbial hat on that charge because if I did, I'd have to delve into the question of exactly what the duty to cooperate entails (when an employee is facing disciplinary action). Rather than opine on that topic, I'm just going to duck it. Simply put, I don't need to address that charge to decide this case. My reasoning for this conclusion will become apparent at the end of my discussion.

Another of the Employer's charges was that Stimac gave false and misleading information in her three interviews. Like any law enforcement officer, Stimac knew that when she was interviewed, she had to give accurate and truthful answers. Officers who don't do that are routinely punished for same. That's the origin of the old law enforcement saying: "you lie, you die." What happened here is that Stimac gave inconsistent answers to the same questions during her three investigatory interviews. To illustrate that point, one need look no further than what Stimac said when she was asked whether she did, or did not, have Officer Lindeman's report in hand when she prepared her own report. In her first interview, she claimed she did not have it; in her second interview she claimed she did have the report; in her third interview she again claimed that she did not have the report. There is no way that these inconsistencies on such a basic point can be reconciled. The Association argues that once Stimac answered that question in her first interview, the County was precluded from inquiring into the matter again. I disagree. Simply put, that's not how disciplinary interviews work. The employer can, and frequently does, ask the same question again and again. One reason why the Employer's counsel did so here is because Stimac kept changing her testimony (as the example cited above shows). However, the basic question that the arbitrator grappled with herein is whether I need to hang my proverbial hat on this charge to decide

this case. I conclude that I don't need to do so. My reasoning for this conclusion will become apparent at the end of my discussion.

Still another of the Employer's charges was that Stimac had an open intoxicant in her vehicle and that her vehicle had a defective taillight. In my view, these charges can fairly be characterized as the tail on the proverbial dog. Even if the charges were true, I'm not going to spend any time commenting on them. Thus, I'm ducking those charges too. Once again, my reasoning for reaching this conclusion will become apparent at the end of my discussion.

Having decided that it is unnecessary for me to address the charges identified above, the focus now turns to those charges that I will be addressing. The charges I'll be addressing fall into two broad categories: 1) Stimac's OWI arrest and her comments to the arresting officer; and 2) Stimac's comments afterwards to her coworkers about her arrest.

Before I address those charges though, I'm going to comment on the following preliminary matters to provide some overall context.

First, it's a given that law enforcement officers are supposed to comply with the law while they are on and off duty. Lest there be any question about it, both the Sheriff's Department and the County have adopted various rules and policies that explicitly say that deputy sheriffs are required to comply with, and uphold, the law while they are on and off duty. Thus, it doesn't make any difference whether the officer is on or off duty. In this case, a law enforcement officer was disciplined, in part, for an off-duty OWI. Normally, when an employee is disciplined for off-duty conduct, the arbitrator usually has to address whether there is a nexus between that conduct and the employer's legitimate business interests. However, in this case, I don't need to do that because the Association concedes that point. Even if they didn't (concede the point), an OWI by a deputy sheriff has an obvious nexus to their job. That's because a deputy sheriff is empowered to arrest drunk drivers. In this case, Stimac was arrested for doing the very thing she's empowered to arrest others for. No one knows better than a deputy sheriff of the dangers posed by drinking and driving a motor vehicle. They see firsthand that drunken people engage in erratic, dangerous and outrageous behavior. Obviously, a deputy sheriff who operates a vehicle while intoxicated does something that flies directly in the face of the Sheriff's Department's mission to promote highway traffic safety. The Sheriff's Department would be ineffective in that regard if its officers were allowed to disregard the OWI laws they are supposed to enforce.

Second, both sides address what they characterize in their briefs as the so-called "higher standard" applicable to law enforcement officers to comport themselves in a legal and upstanding way. While I could address this point in detail, I'm not going to do so because the Association concedes the point. That being so, I decline to comment on what this nebulous "higher standard" for law enforcement officers encompasses. Again, I'll leave that topic to another day and another case.

* * *

Having commented on those matters, the focus now turns back to the charges which I'm going to address.

The first charge is that Stimac operated a vehicle in an intoxicated state on March 7, 2013. There's no question whatsoever that Stimac did, in fact, operate a vehicle in a highly intoxicated state on that date. She had a BAC of .204. That's over two and a half times the legal limit. Consequently, this was not a case where someone accidentally or inadvertently had too much to drink and then got behind the wheel not realizing that he or she may have exceeded .08. In this case, the record demonstrates that Stimac had a three-year history of drinking to get drunk and in most instances passing out. Thus, when she embarked on drinking on the night in question, there was no question where she was headed with her drinking – she was going to get drunk, very drunk. Yet after drinking enough to trigger a .204 BAC, she knowingly and intentionally got behind the wheel of her brother's car. That was inexcusable and incredibly reckless conduct. That's because her high level of intoxication rendered her incapable of driving safely, and posed a substantial risk of harm to the public. One way of putting it is that Stimac was too impaired that night to realize that she was too impaired to drive.

The next three charges all involve Stimac's "comments" to the arresting officer.

Before I address those charges though, a preliminary observation is in order. As just noted, what's going to be reviewed next are "comments" that Stimac allegedly made. What sometimes happens in arbitration hearings is that statements/comments are attributed to someone which they, in turn, deny making. When that happens, the arbitrator has to decide whether the statements/comments were, or were not, made. Oftentimes, the arbitrator has to make a credibility call. In this case though, the arbitrator does not need to make a credibility call. That's because what happened here is that Stimac's statements/comments to Officer Lindeman were all recorded by Officer Lindeman on a tape recorder. Given the existence of that tape recording, there's no question about what Stimac said to Officer Lindeman. Everything is on the tape. Thus, in this case, the "comments" attributed to Stimac are not just alleged "comments." Instead, they were all proven to have been uttered by Stimac.

The first charge is that when Stimac was pulled over, she gave false information to Officer Lindeman. The tape recording conclusively proves that that happened. The following shows this. The tape recording establishes that Stimac made the following statements to Officer Lindeman: 1) that she began drinking "two hours" before she was stopped; 2) that she did not have alcohol in the car at the time; 3) that she had been drinking with her good friend Nicole Erickson (a former Altoona Police Department reserve police officer) the evening of the incident; and 4) that her girlfriend lived two blocks away (from where Stimac was stopped). In her interviews, Stimac admitted that all of the responses she made above were inaccurate. Stimac knew from her extensive experiences as a law enforcement officer that she was supposed to be truthful in her responses to Officer Lindeman. However, she was not truthful with the Officer about the matters referenced above.

(Note: I'll address the question of whether Stimac can be held responsible for what she said on the night in question later in this discussion.)

The second charge is that Stimac abused her position as a law enforcement officer by trying to avoid arrest for OWI. The tape recording conclusively proves that that happened. The following shows this. Before the arresting officer could barely speak a word, Stimac told him that she was a "Clark County Sheriff's Deputy." She then repeated over and over that she was a sheriff's deputy and/or law enforcement officer. Stimac said this while she was in her car, then later while she was

outside doing field sobriety tests, and later in the back of the squad car. She also repeatedly told Officer Lindeman that she would lose her job with Clark County if she was arrested (for OWI). She then told Officer Lindeman several times that Nicole Erickson was a good friend of hers. (Note: Erickson use to be a reserve officer in the Altoona Police Department, which was Officer Lindeman's employer). Finally, Stimac told Officer Lindeman that her girlfriend lived two blocks away, and she asked him (Officer Lindeman) to drive her there (rather than arresting her for OWI). All of these comments were attempts by Stimac to convince Officer Lindeman not to arrest her for OWI. When these attempts to convince Officer Lindeman did not work, Stimac then attempted to shame Officer Lindeman into letting her go. She told him that if their roles were reversed (and she had stopped Officer Lindeman for drinking and driving), she would let him go (and not arrest him).

The final charge that relates to what Stimac said to Officer Lindeman is that she threatened him. The tape recording conclusively proves that that happened. The following shows this. When all of her efforts to avoid being arrested had failed, and Officer Lindeman was driving Stimac to jail, Stimac said to him: "I hope you come to Clark County, 'cause if you do, be prepared to pay the price." There's no question that this statement was meant as a threat, and that's certainly how Officer Lindeman took it. Additionally, it was not received as a hollow threat, because Officer Lindeman testified at the hearing that he would be concerned about what would happen if he were ever stopped by a deputy sheriff in Clark County.

While I've already commented on the significance of some of Stimac's statements to Officer Lindeman, I'm now going to comment further on them. Broadly speaking, all of Stimac's statements to Officer Lindeman were problematic. Here's why. First, from the moment that Stimac announced that she was a Clark County sheriff's deputy, the very nature of the stop changed. The driver went from a citizen driver who had been pulled over for a broken taillight to a law enforcement officer who was seeking to get a break (specifically, avoiding arrest) by abusing and taking advantage of her law enforcement position. To say that Stimac was trying to take advantage of her position as a law enforcement officer is an understatement. Stimac essentially demanded to get a break by virtue of her position. For a law enforcement officer, that is a type of cardinal sin. It simply is not supposed to happen. It happened here, though. Since it did, Stimac can fairly be faulted for this action. Second, when Stimac repeatedly told Officer Lindeman that she would lose her job if he arrested her, that was obviously an attempt to make him feel guilty so he would not take action against her. Stimac can fairly be faulted for doing that. Third, when Stimac kept talking about her good friend, Nicole Erickson, Officer Lindeman understood that Stimac was trying to use that friendship as leverage to get him to give her a break (and not arrest her). Stimac can fairly be faulted for doing that. Fourth, when Stimac repeatedly told Lindeman that she would let him go if their roles were reversed (and Stimac had arrested Lindeman), that not only impugned the integrity of Officer Lindeman, but it also hung her fellow officers in the Clark County Sheriff's Department out to dry. The reason it impugned Officer Lindeman's integrity is because it implied that he had driven while intoxicated in the past and thus had put other law enforcement officers in the same position that Stimac had placed Lindeman. The reason that Stimac's statement disparaged her own department is because it implied that it is common for law enforcement officers to drive while intoxicated, and that deputy sheriffs in Clark County are willing to ignore OWIs and give special privileges to fellow law enforcement officers. It further implied that Stimac believed that fellow law enforcement officers, whether with the Clark County Sheriff's Department or another law enforcement organization, should receive a free pass no matter how dangerous or reckless their actions. Obviously, the public deserves more. Finally, it was absolutely unconscionable for Stimac to threaten Officer Lindeman after he refused to let her off. For a law enforcement officer, that is a

type of cardinal sin. It simply is not supposed to happen. It happened here, though. Thus, while it was an egregious violation for Stimac to use her public position to try to get special privileges, it was also an egregious violation for her to threaten to use her position to retaliate against the arresting officer. She can fairly be faulted for doing that.

The focus now turns back to the final charge against Stimac which I'm going to address. It's that following her OWI arrest, she joked about the incident with her coworkers, made disrespectful statements to coworkers about the arresting officer, and failed to take responsibility for her actions.

This charge differs from those that have already been reviewed in that this charge references comments that were not recorded. While the comments at issue here were not recorded, I find that Stimac said and did the following. First, she told a coworker that she did not believe she was that drunk the night of her arrest. Second, Stimac initiated conversations with coworkers about her OWI arrest. In those conversations, she said that if Officer Lindeman ever came to Clark County she would write him every ticket she could. She once made this statement in front of a deputy trainee. Third, she openly attacked and degraded the "kid" who arrested her and said she and her lawyer were going to "rip the kid apart."

I find that those statements and actions were inappropriate for the following reasons. To begin with, it was Stimac herself who initiated conversations about her arrest. When she did so, she joked about her arrest and how she was going to retaliate against the arresting officer. While Stimac characterized her "jokes" and comments as merely attempts to lighten the mood in the workplace, that's not how her coworkers interpreted her comments. Simply put, they did not find Stimac's comments funny or appropriate workplace banter. With regard to Stimac's contention that she was joking when she threatened retaliation against the arresting officer by writing him every ticket she could, it's significant that her contention did not fly with the deputy (Deputy Hebert) who received the comment. Hebert, who has worked with Stimac for many years and knows her well, testified that he believed Stimac was serious when she made that comment. Hebert was not only bothered by Stimac's failure to appreciate the consequences of her acts, but was also bothered by Stimac's willingness to degrade and demean a fellow law enforcement officer in front of the new officer he was training. Next, Stimac's statement to Deputy King that she drove the morning of March 7, 2013 because she did not think she was that drunk is particularly telling. That's because Stimac knows that under the law, a person's subjective view of their ability to drive after drinking alcohol is not controlling; what's controlling is whether they are over or under the magic number of .08. Stimac was way, way over that number. That being so, her protestation to King about this matter was not only unavailing, but also undercut Stimac's contention that she accepts responsibility for her actions. So did Stimac's use of the word "If" in her apology letter to Officer Lindeman (wherein she said "If I did anything or said anything inappropriate ..."). Of course Stimac did something incredibly inappropriate; she drove drunk and then abused her law enforcement position to try to get out of a warranted OWI arrest. Stimac also said something incredibly inappropriate to Lindeman when he would not let her off the hook; she threatened him with retaliation.

Based on the discussion above, I find that the Employer substantiated the above-referenced charges.

Next, I'm going to address some of the defenses which the Association raised to try to excuse Stimac's actions or deflect blame elsewhere. In the next paragraph, I'll explain why I used the surprising word "some" in the last sentence, rather than the word "all" which the parties probably expected me to use.

The list of defenses which I'm going to address is far shorter than what the Association actually argued. Here's why. As noted above, I decided that I only need to address five of the twelve charges made against Stimac to decide this case. Of course, when the parties filed their briefs in this matter, they didn't know I was going to do that. As a result, they made arguments about all twelve of the charges made against Stimac. Their arguments about all twelve charges are found in the POSITIONS OF THE PARTIES section of this award. However, I'm not going to respond to the arguments made concerning the seven charges which I sidestepped. Instead, for the purpose of internal consistency, I'm only going to deal with the Association's defenses to the five charges I addressed above.

First, the Association essentially lumps Stimac's inebriation on the night in question and her comments to Officer Lindeman together and argues that "she made none of those statements voluntarily or in her right mind." The Association maintains that while Stimac voluntarily became drunk, her "degree of culpability for these actions needs to be judged in the light of the involuntary state of mind cause[d] by her intoxication." I disagree. I find that being drunk does not excuse an individual from their bad acts. That being so, Stimac can indeed be held responsible for everything that she did and said on the night in question, notwithstanding her high level of intoxication. Said another way, Stimac is responsible for everything she did and said in her intoxicated state. I am unaware of any principle in employment law that holds that once drunk enough, law enforcement officers are not responsible or culpable for the consequences of their actions and do not have to answer for them. I find that whether Stimac's actions are deemed unintentional or simply outrageous and reckless, she still can be held responsible and accountable for them.

Second, with regard to the OWI matter itself, the Association points out that Stimac did not cause any collateral damage the night that she drove drunk. That's true; she didn't hurt anyone or cause any property damage that night. According to the Association, that's significant and establishes that her misconduct was relatively minor. It suffices to say that I don't see it that way. While it's fortunate that Stimac didn't hurt anyone that night, her conduct in driving drunk was still reckless and egregious. Simply put, she should not have driven that night after becoming intoxicated.

Third, with respect to the comments that Stimac made to Officer Lindeman, the Association notes that Stimac was neither ticketed, nor criminally prosecuted, for those statements. That's true; she wasn't. According to the Association, it follows from that that Stimac could not be disciplined for her statements to Officer Lindeman. The Association is just plain wrong on this point. Of course the Employer can still hold Stimac accountable for her statements to Officer Lindeman even though she wasn't ticketed or prosecuted criminally for them. That's because employers are empowered to discipline employees for conduct that they consider disciplinable misconduct, even if the employee is not prosecuted criminally for same.

Having reviewed those defenses and found them unpersuasive, it follows that Stimac can indeed be held accountable for her serious misconduct. In the employment setting, serious misconduct warrants serious discipline.

The Second Element of Just Cause

The second part of the just cause analysis being used here requires that the employer establish that the penalty imposed for the employee's misconduct was appropriate under the relevant facts and circumstances. I previously indicated that in reviewing the appropriateness of the discipline under a just cause standard, I was going to consider the notions of procedural due process, progressive discipline and disparate treatment. These matters will be address in the order just listed.

I begin my discussion on the first matter just referenced (i.e. due process) with the following introductory comments. When the term due process is used in the grievance arbitration context, it generally refers to employers treating employees fairly during the disciplinary process. Unfair treatment of an employee during the disciplinary process undermines the process and may lead an arbitrator to reverse the discipline imposed by the employer.

One implicit aspect of due process which is sometimes addressed in arbitration awards is whether the employer conducted a fair investigation before it acted against the employee. In this case, the LEC conducted an extensive investigation. That investigation included interviewing Stimac three times. While that's more interviews than are usually conducted, that does not establish that it was the "witch hunt of epic proportions" that the Association characterized it as. The same conclusion is made concerning the Association's characterization of the Employer's interviews of Stimac as being "oppressive and overbearing." Overall, I'm satisfied that the LEC's investigation was sufficiently thorough, fair and complete. That being so, the Employer's investigation passes muster.

Having found no due process violation, the focus now turns to progressive discipline. It is noted at the outset that the normal progressive disciplinary sequence is for employees to receive a written warning and a suspension prior to discharge. That had happened to Stimac, albeit a while back. Prior to the discipline imposed here, Stimac's last formal discipline was a one-day suspension in 2008. The Association argues that the discipline that should have been imposed here was the seven-day suspension proposed by the Sheriff. While there are some CBAs that specify that a short suspension has to always be followed by a longer suspension (prior to discharge), this CBA does not contain such language. Aside from that, this CBA acknowledges in Article 6, Section 3, that when an employee commits serious misconduct, the Employer can proceed directly to discharge. As the Employer sees it, this is such a case. The Association disagrees and contends that discharge was excessive. I'll address those contentions below.

The Association argues that discharge is too severe a punishment because a "first offense off duty OWI" is not a "major incident" which should be deemed so serious as to warrant discharge without progressive discipline. It would be one thing if Stimac's misconduct was limited to just a "first offense off duty OWI" (as the quoted language implies). However, it wasn't. It was more than that. Much more. To prove that point, I'm going to quote from a portion of the first paragraph of the FACTS section (wherein I have an overview of the facts). Here's what I said on pages 4 and 5:

Early in her interaction with the arresting officer, Stimac announced that she was a Clark County sheriff's deputy. She then said repeatedly that if she was arrested (for OWI), she would lose her job. Stimac then attempted to convince the arresting officer into not arresting her because of her position as a law enforcement officer and because of who she knew in the Altoona Police Department. When that didn't work, Stimac asked the arresting officer to give her a break and drive her to her girlfriend's house two blocks away. The arresting officer declined to do that. When that didn't work, Stimac attempted to shame the arresting officer into letting her go by stating that she would let the arresting officer go if their positions were reversed. Later, as she was being transported to jail, Stimac told the arresting officer that if he ever came to Clark County, he should "be prepared to pay the price." It is clear from the context in which this statement was made that Stimac was telling the arresting officer that she would use her position in Clark County to retaliate against him.

These comments are far more serious and damaging to Stimac than the Association acknowledged. In fact, in my view, they are more serious than the OWI. Here's why. While a first offense OWI – in and of itself – might be a capital offense warranting immediate dismissal, I don't need to decide if it is in this particular case. That's because Stimac did two other things that night – aside from her OWI – that I find were cardinal offenses. First, she attempted multiple times to use her position as a Clark County deputy to try to avoid arrest. That's a capital offense for a law enforcement officer. Second, when it became apparent to Stimac that Officer Lindeman was not going to let her off, but was going to arrest her for OWI, she then threatened Officer Lindeman in retaliation for arresting her. That's also a capital offense for a law enforcement officer. Both actions were absolutely indefensible and should not have occurred. It is not hyperbole to say that Wisconsin law enforcement officers across the board know that they are not supposed to use their law enforcement position to 1) avoid getting arrested; and 2) threaten retaliation against another law enforcement officer. I'm persuaded that Stimac – as an experienced officer – knew that too.

One of the cases which the Association cited to support their contention that the discipline should be reduced is *County of Dodge*, Case 227 No. 68504 MA-14255 (McLaughlin, 6/2009). In that case, the arbitrator found that the employer did not prove the charge that the deputy tried to use his position to avoid arrest. That's different from this case, of course, because Stimac herself admitted that she tried to use her position as a deputy sheriff to avoid arrest. Notwithstanding that factual difference, *County of Dodge* is still noteworthy because in that case the arbitrator opined on page 26: "A deliberate effort by a Deputy to use law enforcement status to avoid arrest could reasonably warrant discharge" This statement obviously supports the County's disciplinary decision here.

The arbitrator is well aware that in some situations, discharges have been overturned and reduced to a suspension where the circumstances warranted it. I've done that occasionally. When an arbitrator does that though (i.e. overturn a discharge), one common reason why is because a charge made against the employee was not substantiated. I could see doing that here if some of the substantive charges made against Stimac had not been substantiated. However, that did not happen.

As my discussion shows, I found that the Employer substantiated all of the charges that I relied on. Since those charges were substantiated, I lack an objective basis for overturning the discharge on that basis.

The focus now turns to the third matter referenced above (disparate treatment). It is noted at the outset that the principle of equal treatment dictates that an employer must enforce rules and assess discipline in a consistent manner; employees who engage in the same type of misconduct are to be treated the same unless a reasonable basis exists for variations in the assessment of punishment. In order to prove disparate treatment, it is necessary to show that other similar factual situations occurred where the employer imposed either less or no punishment. That was not shown here. In this case, the Association did not establish that anyone else committed the same type of misconduct that Stimac did and was not fired for it. As a result, the Association did not prove that Stimac was treated unfairly. I therefore find that Stimac was not subjected to disparate treatment in terms of the punishment imposed.

The above discussion shows that Stimac received procedural due process, was progressively disciplined, and was not subjected to disparate treatment. That being so, no reason has been established thus far for overturning her discharge.

The next question is whether there are any mitigating circumstances which warrant altering this conclusion. The Association avers that there are. I'll address those contentions next.

First, the Association notes that at the hearing, Stimac apologized for her conduct and said she regretted it. According to the Association, that remorse should mitigate the penalty here. I begin with the assumption that her remorse is genuine and sincere. Even if it is though, that does nothing to lessen the egregious nature of her numerous instances of misconduct, including her two capital offenses. Additionally, her apology letter to Officer Lindeman is problematic because of the inclusion of the article "if" at the start of a sentence. In an attempt to address this concern, the Association posits that one possible reason that Stimac used the indefinite article "if" is because "she did not remember what she said at the time, and therefore, felt uncomfortable apologizing for the specific comments themselves" I don't find that contention persuasive because the record shows that by the time Stimac sent her apology letter to Officer Lindeman (i.e. in May 2013), she had, in fact, listened to Lindeman's tape recording of the arrest. After listening to that tape recording, Stimac no longer had any reason whatsoever to say – as she did in her letter – "If I did anything or said anything inappropriate" That single word effectively undercut the sincerity of the letter as a whole. Aside from that, what I consider the most telling is how Stimac dealt with the OWI matter months later with her coworkers. What I'm referring to, of course, is that she told King she was not that drunk that night (when, in fact, she had a BAC of two and a half times the legal limit); she repeatedly joked about her arrest; and attacked the character and fitness of Officer Lindeman. When considered together, those statements show both a lack of remorse and that Stimac did not take her misconduct seriously.

Next, the Association notes that at the hearing, Stimac testified she gave up drinking alcohol altogether following her OWI. The Association sees that as significant and contends that that changed behavior should mitigate the penalty here. It may well be that Stimac has put "her alcohol problem behind her" (as the Association put it in their reply brief). However, even if the Association's premise is correct, that simply means that Stimac won't repeat what happened on March 7, 2013 (i.e. she won't repeat her misconduct). While that emphasis on Stimac's future

behavior is commendable, it essentially sidesteps the main focus of a disciplinary case. What I'm referring to, of course, is that the main focus of any disciplinary case is on the behavior that resulted in the discipline being imposed. After wrestling with the Association's contention that Stimac has changed her behavior, I conclude that even if she has, that's still not a sufficient basis for me to overturn the discipline imposed here.

Accordingly then, it is held that the severity of the discipline imposed here (i.e. discharge) was not excessive, disproportionate to the offenses, or an abuse of management discretion, but rather was commensurate with the employee's proven serious misconduct. The Employer therefore had just cause within the meaning of Article 6, Section 1, and Article 33 of the CBA to discharge Stimac.

In light of the above, it is my

AWARD

1. That the grievance is arbitrable; and
2. That the County had just cause to discharge Stimac. Therefore, the grievance is denied.

Dated at Madison, Wisconsin, this 16th day of January 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Raleigh Jones, Arbitrator