

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

COUNTY OF MILWAUKEE

and

MILWAUKEE DEPUTY SHERIFFS' ASSOCIATION

Case ID: 161.0045

Case Type: MA

AWARD NO. 7957

Appearances:

Melinda Lawrence, for the County.

Graham Wiemer, for the Association.

ARBITRATION AWARD

Pursuant to the terms of a 2015-2018 collective bargaining agreement, the Milwaukee Deputy Sheriffs' Association requested that the Wisconsin Employment Relations Commission assign an arbitrator as to a grievance between the Association and the County of Milwaukee. I was so assigned.

The parties thereafter filed a stipulated record and written argument by July 26, 2019.

ISSUES

The parties did not agree on how to frame the issues in this matter. Having considered the positions of the parties, I conclude the following issues are before me.

Is the grievance arbitrable?

If so, what is the applicable contractual standard for disciplinary suspensions?

Did the County meet the applicable contractual standard for the grievant's five-day suspension and, if not, what remedy is appropriate?

DISCUSSION

As to the issue of arbitrability, the County contends the Association did not timely file the request for arbitration and thus that the grievance is not procedurally arbitrable. The Association asserts that by first raising arbitrability in its July, 2019 initial brief, the County has waived the right to raise the issue. In this regard, the Association points to my January, 2019 email to the parties asking if there were any procedural issues that need resolution before a hearing date was scheduled and the failure of the County to then responsively assert that an issue did exist.

While it presents a close question, I conclude that the absence of a timely response to my January, 2019 email does waive the County's right to raise the arbitrability issue. Thus, the grievance is arbitrable.

Turning to the question of what is the applicable contractual standard as to disciplinary suspensions, the County contends that an "arbitrary and capricious" standard should apply given the absence of a reference to "just cause" in the parties' agreement. The Association alleges that "just cause" is the contractual standard to be applied.

If this were the first grievance arbitration between the parties as to a disciplinary suspension, the absence of a specified contractual standard would be problematic. However, this is not the first such arbitration proceeding between the parties, and in prior proceedings the parties have stipulated that "just cause" is the applicable standard.¹ In light of those stipulations and in the absence of evidence of a change in contractual language that existed when those stipulations were made, I conclude the applicable contractual standard is "just cause" unless and until the parties affirmatively bargain a different standard.

Regarding the application of the just cause standard to the alleged conduct in question, I am persuaded the male employee intentionally placed his personal cell phone in a female citizen's purse while on duty. In light of the graphic photographic materials the citizen subsequently found on the not password protected phone, there is no question the employee thereby engaged in substantial misconduct. Particularly given the employee's disciplinary history, there was just cause for a five-day suspension.

Issued at the City of Madison, Wisconsin, this 2nd day of October, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Arbitrator

¹ The most recent such proceedings and resultant awards are Award No. 7944 (Carne, 9/17), Award No. 7942 (Jones, 8/17,) and Award No. 7905 (Jones, 1/15).