

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

MILWAUKEE DEPUTY SHERIFFS' ASSOCIATION

and

COUNTY OF MILWAUKEE

Case ID: 161.0054
Case Type: MA

AWARD NO. 7959

Appearances:

Graham Wiemer, for the Association.

Melinda Lawrence, for the County.

ARBITRATION AWARD

Pursuant to the terms of a 2015-2018 collective bargaining agreement, on September 9, 2019, 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.

On October 10, 2019, the Commission received a letter from the Milwaukee County Personnel Review Board asking that this matter be processed as "expeditiously as possible" because the grievant has related matters pending before the Board. I have done what I can to honor that request through the expeditious issuance of this Award.

A hearing was held in Milwaukee, Wisconsin on October 27, 2019. The proceedings were not transcribed or otherwise recorded. The parties filed written argument by December 2, 2019.

ISSUE

The parties agreed that the issue to be decided by this Award is:

Was there just cause to suspend the grievant for ten days and, if not, what remedy is appropriate?

DISCUSSION

A car was stopped by County law enforcement on suspicion that the driver was drunk. A passenger in the car asserted that she had rented the car in question and wanted to drive it away rather than having the car towed. The passenger was obviously drunk and was told she would not be able to drive the car. The passenger became agitated. The passenger also had to urinate and the grievant was tasked with driving the passenger to a nearby casino for use of a restroom. The grievant did not search the passenger before placing her in the back of a squad car and allowed the passenger to maintain possession of a very large purse and to not utilize a seat belt.

Upon arrival at the casino, the passenger refused to leave the squad car and was taken into custody for disorderly conduct. The grievant transported the passenger to a secure booking facility. The passenger's purse was searched at the facility and a loaded handgun was found therein. Only law enforcement personnel had access to the purse at the booking facility prior to the search.

The record satisfies me that although it may be the "best practice" for an employee to always search a not-arrested citizen passenger and to place any large belongings out of the citizen's control (i.e. either in the front seat or the trunk of the squad), in reality it is largely left to the discretion of the deputy as to how best to proceed.¹ However, I am further satisfied that when that discretion is not exercised reasonably, the deputy runs the risk that events will unfold poorly. Here, given the drunken and agitated state of the passenger, it was not a reasonable exercise of discretion to allow the passenger to keep the purse in her possession and just cause for discipline was created. Fortunately for all, the passenger was not inclined to use the handgun in her purse during the short ride to the casino.

As an additional justification for the ten-day suspension, the County places substantial emphasis on the presence of the handgun in the booking facility. However, the evidence makes it clear that only law enforcement personnel had realistic access to the purse (and thus potential access to the handgun) prior to its discovery and thus that there was no actual danger present.

Because a partial basis for the ten-day suspension has been rejected, some reduction in the length of the suspension is appropriate. In my judgment, the failure to separate the purse from the passenger during the ride to the casino and to seat belt the passenger establishes just cause for a five-day suspension.

Issued at the City of Madison, Wisconsin, this 13th day of December, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Arbitrator

¹It is a clear expectation that passengers are to wear a seat belt and the grievant clearly violated that expectation.