

BEFORE THE ARBITRATOR

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

Case 161.0065

(Jason Mielke Suspension Appeal)

AWARD NO. 7971

Appearances:

Graham Wiemer, MacGillis Wiemer, LLC, 11040 W. Bluemound Road, Suite 100, Milwaukee, Wisconsin, 53226, appearing on behalf of Milwaukee Deputy Sheriffs' Association.

Melinda Lawrence, Assistant Corporation Counsel, Milwaukee County, 901 N. 9th Street, Suite 303, Milwaukee, Wisconsin, 53233, appearing on behalf of Milwaukee County.

ARBITRATION AWARD

Pursuant to the terms of a collective bargaining agreement, the Wisconsin Employment Relations Commission assigned me to serve as arbitrator as to a suspension appeal. A Zoom hearing was held on October 29, 2020. A transcript of the hearing was not prepared, and the parties thereafter filed briefs by February 5, 2021.

ISSUE

The parties agreed to the following statement of the issue:

Was there just cause to suspend Deputy Jason Mielke for five days? If not, what is the appropriate remedy?

DISCUSSION

It is undisputed that Mielke used his personal cell phone to twice share a photo of a dead citizen's badly damaged head with other deputies. The citizen had jumped from a bridge. Mielke did not take the cell phone photo.

Mielke's actions were discovered as part of an investigation prompted by an anonymous letter from a deputy complaining that certain unidentified deputies were laughing at cell phone photos of the citizen's head. Mielke did not laugh or joke about the photo when he shared it.

The Union, contrary to the County, asserts that his actions did not constitute misconduct because they were consistent with a practice among deputies of sharing crime or accident photos as part of informal on the job training. The County persuasively counters that any such practice was not known to it or condoned by it. Thus, the existence of any such practice does not diminish the obvious invasion of privacy that sharing such a photo represents. Thus, it is clear that Mielke engaged in misconduct.

If misconduct is found to exist, the Union contends that a five-day suspension is excessive. It argues that Mielke is an otherwise exemplary employee. The County points to what it views as the seriousness of the misconduct and multiple examples of five-day suspensions that have been imposed on deputies in the last several years for a variety of offenses.

I conclude there is no persuasive reason to reduce the level of the suspension. The County is entitled to send a strong message that the informal sharing of photos is not appropriate conduct. Mielke has only been a deputy for five years and does have a two-day disciplinary suspension on his record. Thus, although the length of this suspension was not based on a consideration of the prior two-day suspension, the combination of the two-day suspension and Mielke's relatively short tenure cuts against any reduction in the length of suspension that might be justified for a long tenured employee with a clean record.

In light of the foregoing, I conclude there was just cause to suspend Mielke for five days.

Issued at Madison, Wisconsin, this 12th day of April, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter Davis, Arbitrator