

BEFORE THE ARBITRATOR

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

Case 161.0064

(James Lucky Suspension Appeal)

AWARD NO. 7972

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 12, 2021.

ISSUE

The parties agreed to the following statement of the issue:

Was there just cause to suspend Deputy James Lucky for seven days? If not, what is the appropriate remedy?

DISCUSSION

Lucky was suspended for seven days for having numerous unauthorized phone conversations with two inmates in the Milwaukee County House of Corrections, improperly seeking to have one inmate disciplined, and for having several of the phone conversations while on duty.

The Association contends that the phone calls did not violate the County policy against fraternization because the portions of the policy requiring him to provide written notice were not applicable to Lucky. However, the County correctly points to the policy provision requiring verbal notice that was applicable to Lucky. While there is evidence that Lucky did advise a supervisor of the incarceration of one of the two inmates, it was not reasonable for him to assume that providing that information would also constitute notice that he was seeking permission pursuant to the fraternization policy to have phone conversations with that individual. Thus, the evidence supports the conclusion that Lucky did improperly have numerous unauthorized phone conversations with two inmates. At least one of the conversations occurred while Lucky was on duty.

Lucky's conversations with one of the inmates contained threats by the inmate toward Lucky and his family. Lucky responded angrily to the threats and told the inmate he could get him punished. Lucky reported the threats to the appropriate persons and asked that the inmate be disciplined. A judgment was made that the inmate would not be disciplined, in part because of the back-and-forth nature of the conversation. Lucky thereafter unsuccessfully continued to lobby authorities for discipline to be imposed. On balance, the evidence does not support a conclusion that Lucky improperly attempted to use his position to have the inmate punished but rather was reacting within the bounds of what might reasonably be expected of a father whose family had been threatened.

It is clear that the violation of the fraternization policy was the primary basis for the seven-day suspension. Nonetheless, because it has been concluded Lucky did not improperly seek to have the inmate disciplined, some reduction in the level of the suspension is appropriate under the just cause standard. Therefore, the level of the suspension is reduced to five days and Lucky shall be made whole for the difference.

Issued at Madison, Wisconsin, this 16th day of April, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter Davis, Arbitrator