

Before the Arbitrator Nancy D. Powers

In the Matter of:

Ramsey County, Employer

BMS 10-PA-0838,0839

And

Law Enforcement Labor
Services, Inc., St. Paul, Mn., Union

Date: August 13, 2010

Appearances

For the Union: Isaac Kaufman
General Counsel
LELS
327 York Av.
St. Paul, MN 55130-4019

For the Employer: Marcy Cordes
Labor Relations Manager
Ramsey County

Statement of Jurisdiction

Grievants Anthony Breitbarth and Kevin Clemen timely filed grievances alleging their three-day suspensions were without just cause. The grievances were consolidated and processed to arbitration. The undersigned was selected from a list of arbitrators provided by the Minnesota Bureau of Mediation Services . A hearing was conducted on May 24, 2010. Both parties had an opportunity to present evidence and

arguments in support of their respective positions. Post-hearing briefs were filed and the record was closed on June 20, 2010.

Statement of the Issue

Whether the County had just cause to suspend Grievants. If not, what is the proper remedy?

Relevant Contract Provisions

Article 10 – Discipline

10.1 The Employer will discipline employees for just cause only. Discipline will be in the form of:

- a) Oral reprimand;
- b) Written reprimand;
- c) Suspension'
- d) Reduction;
- e) Discharge

Statement of Facts

Ramsey County Sheriff Deputies Tony Breitbarth and Kevin Clemens worked while off-duty from their regular Ramsey County jobs, at the Minnesota State Fair providing transport services in a police van as Minnesota State Fair Police in August of 2009. They were long-term deputies of Ramsey County with no disciplinary action in their personnel files. Breitbarth had worked at the fair part-time for 11 years. This was Clemens first year working the fair. They wear Ramsey County Sheriff uniforms and service weapons while working as at-will employees at the State Fair. Their Shift Supervisor at the fair was Ron Knafka, a Commander with the Ramsey County Sheriff's Department. The Watch Commander

was Paul Paulos, a Sergeant with the St. Paul Police Department. The facts about what occurred the night of August 31, 2009 are not in dispute except for a few details.

Near the end of their shift, about 11:30pm on August 31, 2009, Knafla asked the two deputies to take the keys of Raelynn Swentik, the administrative secretary on duty that evening, and retrieve her car from the remote parking lot, about 6 blocks away, and park it in front of the Fair Police office.

Swentik had expressed her reluctance to walk to her car alone through dark areas of the fairgrounds after the shift ended, when all the officers had left the area. Present during this event Sergeant Paul Paulos. Witnessing the incident from an adjacent room was Mike Knudson, a St. Paul Park Policeman. On many prior occasions, Knafla and Paulos had performed such a service for a prior female worker.

Knafla had intended to assign the duty to two other deputies, but when Breitbarth and Clemen stuck their heads in the office, he held up the keys and asked them to retrieve Swentik's car. Knafla said it made no sense to call another squad to do the task, when the two deputies were not busy doing anything else. He gave them directions to the car's location, a description and told them to use the alarm function if they couldn't locate it.

Breitbarth laughed and said they were not going to get the car and walked out of the office. Knafla said he was serious, that they needed to get the car, but the two did not return. Breitbarth claimed he offered to take Swentik to her car, but Knafla and Paulos denied hearing him make such an offer.

Knafla had dispatch call the two back to the office for a detail. When they returned, Knafla said that he was serious and the two should get the car. Knafla handed the keys to Clemen and the two left. Knafla said Paulos said "just go get the car".

Outside, they discussed the order and both Clemens and Breitbarth decided they would refuse the order. Clemen returned to the office and left the keys, stating "He was not Knafla's chump".

There was a dispute over the actual words used and whether Clemen's swore, but there was no disagreement about his stated intention to quit rather than follow the order. Knafla asked him if he was serious. Clemens repeated his statement about not being his "chump" and left the office. Knafla followed Clemens out the hallway and tried to explain the need for getting the car.

A few minutes later, Breitbarth walked back into the office and encountered Knafla in the hallway. He told Knafla " He was quitting because he was not going to be treated like a second class employee – he got enough of that in Ramsey County"

Knafla and Knudson went to retrieve the secretary's car. They drove past Breitbarth and Clemens as they were walking to their cars. Knafla told the two why he had asked them to get the car and asked the two if they were really serious about quitting and that he needed Breitbarth's id if they were. They said yes.

That night, Ron Knafla filled out a complaint which he then filed with the Sheriff's Department about the incident. He alleged the two officers had violated two department policies: ¶178: Conduct Unbecoming a Peace Officer and ¶179: Disobedience/Insubordination.

The next morning State Fair Police Chief Art Blakey was informed of the incident. He asked Knafla and Paulos to make a written report on it. Mike Knudson, the investigator for the State Fair Police also sent Blakey a statement.

As a result of Knafla's complaint a Ramsey County Internal Affairs Unit Investigator conducted an investigation which consisted of interviews of Clemen, Breitbarth, and Knafla and statements from Paulos, Blakey, and Knudson. The Investigator stated it was common for employees to file complaints with Internal Affairs, though employees are not listed as potential complainants on the form.

After reviewing Ramsey County policy, the Investigator prepared a report of the incident. It was submitted to Sheriff Bob Fletcher for review. The Investigator found the allegations were sustained. The Sheriff

accepted the report and at the recommendation of Undersheriff Altendorfer, gave both Breitbarth and Clemens a three-day suspension without pay for their actions. Altendorfer felt that the egregiousness of the behavior and its impact on the organization and public and the need to uphold the Sheriff Departments values, as well as trust its officers were all reasons for the discipline. They both timely grieved the discipline.

Tony Breitbarth filed a complaint on October 16, 2009 against Knafla with the State Fair Police after he received notice of the investigator's request to interview him about the incident. The State Fair Police Blakey sent the complaint to Internal Affairs of the Ramsey County Sheriff's Department.

Discussion and Conclusions

Arguments of the Parties

The Union contends that the deputies had no notice that they could be subject to discipline in their "home" department for alleged misconduct committed at the State Fair as an at-will employee. They quit their State Fair jobs – which they could lawfully do, and did not expect any further action would be taken against them .

The Union argues that the order Knafla gave the officers was an unlawful order. The County's policy on disobedience required the employees to report it to the next highest level of command, which would have been Paulos, who witnessed the incident. The Deputies complied

with the Disobedience policy because Paulos knew they considered the order to be unlawful.

The Union contends the investigation was incomplete and unfair. The deputies all filed complaints, Breitbarth and Clemens filed theirs with the State Fair Police. Knafla filed his with Ramsey County even though the complaint wasn't anticipated under County policy. Breitbarth and Clemens were treated as the subjects of the investigation, Knafla was not. The Internal Investigator failed to seek out and interview other officers who could have witnessed the incident that night.

The Union argues that the County did not prove several key points. The allegation that the two quitting created scheduling issues was unproven. The County failed to prove that the officers used foul language directed at Knafla.

Finally, the Union argues that the discipline is too severe. Both deputies had unblemished employment records. The County has not conducted performance evaluations since the mid-90', so any discipline is questionable. The County failed to prove just cause according to the Union.

The Employer contends that the Sheriff's office had authority to discipline the officers for off-duty misconduct. Ramsey County acts as the gateway employer for its deputies, even when they are working for someone else. The County retains the right to discipline officers as well.

The Employer argues that the Deputies' refusal to follow an order constituted insubordination under Ramsey County policies. The evidence clearly established that the Deputies repeatedly refused to follow an order of their superior. They did not contend the order was unlawful until their interviews. They only felt it was "beneath" them. They did not make any complaint to their higher supervision that they felt the order was unlawful, They used disrespectful, even obscene language when addressing their supervisor. Their actions constituted misconduct.

Finally, the Employer contends it had just cause for the three-day suspension, which was appropriate discipline. The need to obey orders is the foundation of the para-military structure of the police department. Officers don't get to decide if and when they are going to obey an order. If Officers won't obey routine orders, they can't be trusted to act in more critical situations as well. The disrespectful and obscene language used by the two exacerbated the misconduct and served to undermine the public's trust in both the State Fair police and the Ramsey County Sheriff's Office. The discipline was appropriate.

Arbitrator's Reasoning

The question to decide is whether the County had just cause to suspend Grievants for three days without pay. The Union argues that the Deputies had no notice they could be disciplined by the County for actions at the State Fair. I find this argument unpersuasive. Both men are

long-term employees of the County. Breitbarth had worked at the Fair for many years. They both had access to the State Fair Police policy manual which plainly states that State Fair part-time police are to be disciplined by their full-time employers¹. Surely they didn't believe they could act in the manner they did with no consequences, by just walking off the job. The County had authority to discipline these employees under State Fair Police Policies and it's own policies².

Concerning the Union's claim that the order was unlawful, the Grievants never contended that the order was unlawful when it was made. Nor did they take any action to complain about what they called an unlawful order. They just felt it was "chump" work and beneath them – certainly NOT valid reasons for objecting to an order. If they felt the order was unlawful, they could have made their complaints to Watch Commander Paulos, who was present, and documented the situation.

Both claimed Knafla and Paulos had been horsing around earlier and making jokes about the movie "Porkies". They claimed Knafla asked one of them to have someone paged. They both refused as it was an hidden obscene reference from the movie and they knew the paging would be recorded. Both Knafla and Paulos denied this incident. John Moore, another officer at the fair said he overheard the "Porkies" discussion, but felt the two officers were out of line for their actions.

¹ Minnesota State Fair Police Policy 100.007

² Ramsey County Sheriff Department Policy 178 & 179.

Even if the incident happened earlier as they claimed, Knafla made the order to get the car clear and communicated that he was serious numerous times. The Officers had every opportunity to comply with the order, yet they refused. Knafla and other Officers had performed the duty on many prior occasions. It was not an unlawful order. Both Paulos and Knudson were shocked at the Officer's refusal to get the car. Law enforcement agencies rely on the swift operation of a chain of command. Officers do not have the option to decide if and when to obey an order, except in very rare circumstances. This was not such a circumstance.

As to the Union's claim that Brietbarth and Clemens complaints filed with the State Fair Police were not pursued, it was clear the complaint was filed in response to the information that they were to be interviewed about the incident by Internal Affairs. Brietbarth and Clemens were appropriately the focus of the investigation.

The Union argued that the County failed to prove the Deputies used foul language. I find whether or not they used obscene language to be irrelevant to the core of the issue. They admittedly talked and acted disrespectfully toward their supervisor and this was in the presence of other officers and employees. Even when it was clear that Knafla was serious, they continued their rude refusal to obey the order. Other officers were in the area and the incident became the talk of the locker room at

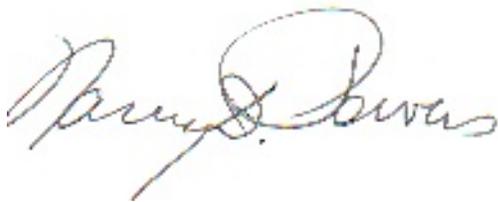
Ramsey County and around the fair. Clemens and Brietbarths actions constituted insubordination and conduct unbecoming an officer according to Ramsey County policies.

The Union contends the discipline is too severe for the alleged misconduct. I find the discipline to be reasonable under the circumstances of the case. This was a clear case of refusal to obey a reasonable order. The men both used disrespectful language. The Sheriff has an interest in sending a message that this kind of behavior is unacceptable. It was warranted by the behavior and the lack of remorse or taking responsibility for their actions. The County had just cause to discipline Clemens and Breitbarth with a three-day unpaid suspension.

Award

The grievance is denied.

Dated: August 13, 2010

A handwritten signature in cursive script, appearing to read "Perry D. Swas". The signature is written in black ink and is positioned below the text "The grievance is denied."