

Arbitration

**In The Matter of Arbitration
Between:**

**Minnesota Teamsters Public and Law Enforcement Employees
Union, Local 320, Union
and
Ramsey County, Employer**

BMS Case No. 13-PA-0472

**Carol Berg O'Toole
Arbitrator**

Representatives:

For the Employer:

**Marcy Cordes, Esq
Labor Relations Manager, Ramsey County
121 East Seventh Place
Saint Paul, Minnesota 55101-2148**

For the Union:

**Kevin M. Beck, Esq.
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Witnesses:

For the Employer:

**Ryan O'Neill, Commander of the Office of Professional Responsibility
Nancy Pearl, Lieutenant in Detention Center
Ron Knafla, Commander and Executive Officer for Undersheriff for
Detention
Brad Lindberg, Lieutenant, Sheriff's Office
Thomas Paget, Sergeant, Sheriff's Office
Dave Metusalem, Undersheriff, Detention Center, Sheriff's Office
John Kirkwood, Chief Deputy, Sheriff's Office**

For the Union:

Vance D. Rolfzen, Business Agent, Local 320
Steve Engstrom, Correctional Officer, Sheriff's Office
Michael Lehman, Correctional Officer, Sheriff's Officer
Lee Anthony Sontoya, Grievant

Preliminary Statements

The hearing in the above matter commenced at 9:27 AM on April 15, 2013, and continued through April 16, 2013 at 121 East Seventh Place, Saint Paul, Minnesota, at the Human Resources Office of the Employer. The parties involved are Ramsey County (Employer) and Minnesota Teamsters Public and Law Enforcement Employees Union, Local 320 (Union). The parties presented opening statements, oral testimony, oral argument, and exhibits. All exhibits were received with the arbitrator's admonition that, depending on the exhibit, some may be given greater weight. Post hearing briefs were filed by both parties. The arbitrator closed the hearing on receipt of the last brief by U.S. Mail on May, 20, 2013.

Issue Presented

The parties agreed on the issue in dispute as follows:

Issue : Is there just cause for dismissal? If not, what is the appropriate remedy?

Contractual and Statutory Jurisdiction

The Union is the certified bargaining representative for "all personnel in the following classification, employed in the Ramsey County Sheriff's Office: Correctional Officer 3". Joint Exhibit 1.

The Employer and the Union are signatories to a collective bargaining agreement (Agreement), Joint Exhibit 1, covering the period from the first day of

January, 2012, to the thirty-first day of December, 2014. It provides in Article 7 that if the grievance is not resolved in Step 3 of the grievance procedure, the grievance may be appealed to Step 4 and then submitted to arbitration. The parties could not agree on a resolution through the grievance procedure; thus, the dispute is properly before the arbitrator. Neither party raised timeliness nor other procedural issues.

Employer's Opening Argument

The Employer opened by stating that until February, 2012, the Grievant was employed as a Correctional Officer in the jail. On nine different occasions the Grievant committed violations of department and county policy when he falsified his time record, reporting that he was at work or sick while he was not. The Grievant also violated the Sheriff's County policy on outside employment. The Grievant performed work for and received compensation from Cretin-Derham Hall School as a hockey coach while on paid county time or paid sick leave. Finally, he violated leave approval procedures by leaving a safety sensitive post in a high security detention facility without prior approval from supervisors. This amounted to almost forty hours of time sheet fraud, totally approximately \$1,200, not counting the overtime costs incurred when staff was assigned to cover the Grievant's illnesses when he wasn't sick. The Employer's Counsel stated that the Grievant admitted the transgressions during the investigation with the excuse that other correctional employee did the same thing. These allegations were investigated and when found to be true, discipline was meted out to other correctional employees. Counsel stated that in none of

the cases that the Union has claimed constitute disparate treatment has the conduct been as brazen and as frequent as that exhibited by the Grievant.

Union's Opening Argument

The Union opened its case with a description of a long-term correctional officer who started at Stillwater in 1994 and moved to Ramsey County in 2003. Counsel for the Union stated that the Grievant had only one prior disciplinary action, a written reprimand totally unrelated to sick leave. Counsel argued that there was no progressive discipline provided to the Grievant regarding his use of sick leave: no counseling, discipline or, even, a "talking to". Furthermore, it was common knowledge that the Grievant coached at Cretin-Derham Hall School and a number of other Corrections Officers coached at area high schools. If the Employer found this to be a problem, they could have "nipped it in the bud".

The Union pointed to the failure of the Employer to treat other employees the same as Grievant within the last ten years. One employee called in sick in 2006 on four consecutive days to move into a new home and was given only one day of suspension. Another employee in 2010 failed to report for an assigned shift although his time sheet showed eight hours worked. That employee was given only a one day suspension. Another employee in the same year called in sick, and then later called the department for a ride home from a bar. Four months later the same employee called in sick and went to We Fest. This person was disciplined with three days of suspension. In 2012, an employee left work early without approval on two occasions, intentionally misrepresented the departure time, and was suspended for twenty days. Later in 2012, another

employee called in sick to work a second job and was given an oral reprimand. The Union concluded by saying the Grievant had a long and good work record, and has been forthright and cooperative despite the Employer giving him no progressive discipline. The Employer knew of the violations, yet did nothing to stop it, and has treated other employees less stringently.

Employer's Case in Chief: Witnesses

Ryan O'Neill

The Employer's first witness was the Commander of the Office of Professional Responsibility, O'Neill. He is the supervisor in Internal Affairs and directed the investigation on the Grievant. He identified Employer Exhibit 7 which outlined the coverage and time-off requirements in the detention center. He indicated that had the Grievant informed the Employer of the need for time off to coach, accommodations would have been made. O'Neill testified that a number of other officers were accommodated with flexible schedules. When asked if it was common practice to take sick leave (to work another job) and that it was treated as a "wink-wink" situation. O'Neill stated that he did not "concur with that". O'Neill also testified regarding the statement in the Union's opening argument that other employees did similar things with lesser discipline. He testified as to the details of each and concluded by saying that none were discharged because their circumstances were different. None were working another job. O'Neill testified at length during cross examination about the internal affairs process.

Nancy Pearl

The second witness for the Employer is a Lieutenant in the Detention Center and the direct supervisor of the Grievant. She testified that the Grievant received training on how to fill out a timesheet and identified the training transcript, Employer Exhibit 3. She testified that she knew the Grievant coached at Cretin-Derham Hall but that she received no off duty requests, no requests for time off, and, no requests for schedule changes from the Grievant. Pearl also stated that she was not aware of any shift trades he had requested. When asked if there was any issue giving the Grievant those time off requests, she testified that there wasn't. Pearl said the Grievant would have had to request time off in advance.

Pearl testified that she reviewed the Grievant's time sheets and because of the frequent discrepancies, talked to him. She said that he sometimes responded, "Oh, I forgot." The discrepancies between what he worked and what he claimed on his timesheet would go in "spurts—sometimes every time sheet [had discrepancies]". She stated that between November and February the discrepancies were "very frequent". She described that as being, more than one day with discrepancies per pay period. She indicated that she had four documented conversations with the Grievant regarding his fraudulent time sheets.

Pearl identified Employer Exhibit 4 as a summary of conversations she had with the Grievant between June 24 and August 8, 2011. When asked if she reminded him regularly, she said, "Yes". Pearl identified Employer Exhibits 5

and 6, the Grievant's hockey coaching schedule for 2011 and the Grievant's time sheets during the same period of time. Pearl identified Employer Exhibit 7 and then described in detail incidents from November 26 through February 11. This was when she started to match the Grievant's time sheets with the Cretin-Derham Hall hockey schedule.

Pearl found numerous days where the Grievant indicated on the time sheet that he was working at the county and he wasn't, or took sick leave when he wasn't sick. She testified that on November 26, 2011, the Grievant took eight hours of unauthorized vacation and turned the slip in two weeks later.

On December 22, 2011, the Grievant called Pearl and requested a comp day for December 25, 2011. She authorized it because the County had adequate staffing. On December 25, 2011, at approximately 5:00 P. M. the Grievant called in sick to the booking counter at the Adult Detention Center. The Grievant stated that he was at Lambeau Field attending the Packer's game with two co-workers and would not be in for his shift the following morning. Pearl testified that the booking counter staff included Officers Gullette, Orheim, and Lydon. They transferred the call to the 402 office. Sergeant Davy spoke with the Grievant who again stated that he was calling in sick, was at Lambeau Field and would not be in for his shift the following day. The Grievant was marked as sick for the day.

On December 27, 2011, Pearl received a call from the Grievant at about 10:30 A.M. saying that he had a broken tooth and had scheduled a dentist appointment for noon that day. Pearl asked him to fill out a request for leave

form and authorized him the time off. Later that day Pearl received two calls, one from Sergeant Chiodin and one from Lieutenant Lindberg mentioning the Cretin-Derham Hall hockey game that afternoon. Chiodin indicated to Pearl that the game was at the Blaine Ice Arena, now named Schwan's Super Rink. At 19:42 on December 27, 2011, Pearl testified she received a text message from the Grievant saying, "got another appointment to get a permanent cap on my tooth. Gonna take all day." Employer Exhibit 8. Pearl testified that on December 28, 2011, she traveled with Commander Naftla and Lieutenant Lindberg to the Blaine arena. "I observed him coaching hockey." Employer Exhibit 6.

On January 2, 2012, Pearl said she received an e-mail from Sergeant Chiodin stating that the Grievant left work at noon, which was unauthorized time off. Pearl testified that on Saturday, January 14, 2012, the Grievant left work without permission and the schedule showed a hockey game. Pearl reported that Commander Knafla observed the Grievant coaching on January 14, 2012 at 12:45 P.M.

Pearl testified that she learned that Sergeant Hoven was working with the Grievant on January 21, 2012, and that the Grievant left work, reporting that he was sick. Pearl pointed out that the Cretin-Derham Hill hockey schedule on the web showed a hockey practice. Employer Exhibit 8.

Sergeant Chinn e-mailed Pearl on January 23, 2012, that when he arrived for his shift at 14:45, the Grievant had left the building early without permission. Pearl testified that she learned that the Grievant asked Sergeant Chiodin to

relieve him at noon for being sick. The schedule showed a 1:00 P.M. hockey game. Lieutenant Lindberg verified the Grievant was coaching at the game.

Pearl testified about the concerns she had with the behavior of the Grievant and her motivation for talking to him. "It's not our job...we don't want to make someone in trouble." She testified that she investigated before she turned the case over to Internal Affairs. She testified that she would be concerned about the Grievant coming back to work. She said, "We need to trust our sheriffs...hold a lot of responsibility." She indicated that there were 100 correction officers looking to the outcome of this case. She expressed concerns about when the Grievant has to discipline a corrections officer. "How is he going to do that himself?"

Ron Knafla

Knafla has worked for twenty-five years in nearly every division of the Sheriff's Office. He is currently the Executive Officer of the Undersheriff for Detention. Among his duties are: research; personnel issues; acting as undersheriff; administrative review of staff misconduct; review of staff misconduct; review of all jail reports; evidence; review of all orders; case investigator for possible criminal charges.

When asked if he was aware that the Grievant was coaching hockey on paid city time, he said that he learned of it from some jail lieutenants who were discussing it. He was Undersheriff on the day Pearl was notified of the Grievant's coaching on County time. Knafla traveled to the Blaine arena. Pearl had also called Lindberg so all three of them went to the arena . In addition, on

January 14, Knafla checked at the Cottage Grove Ice Arena and took photos of the Grievant coaching shortly after noon. Employer Exhibit 9.

Knafla was asked how to obtain time off. He replied that the leave has to be approved by a supervisor. He was also asked if he was aware of a “wink-wink” agreement to take sick leave for such matters. He replied, “Never.” He stated that, “no one came to me with a complaint of that nature.” Knafla stated that he followed up on the Cottage Grove sighting to see if the Grievant had requested time off. He “had not”. He said he went to the department to see if the Grievant was at work. He talked to Hoven who said when asked where Grievant was, “He had hockey. He’s not here.” He followed up by writing an inter-office memo to Metusalem, Employer Exhibit 10. He was asked why he waited ten days to draft the January 18th complaint, he testified that he was discussing how to deal with the matter with administrative staff. When asked if he had talked to the Grievant, he said that “Once the complaint was filed there was no reason to talk to [Grievant]”. When asked if he talked to the Grievant about coaching, he said he didn’t know about him coaching until January.

Lindberg

Lindberg testified that he had worked in the Sheriff’s Office since 2001 and became a permanent lieutenant in 2010. When asked when he became aware of the allegations of falsification by Grievant, he said January 28 when he went to the Blaine arena at about 11:00 AM. He went inside the arena and called from there to report what he saw. Lindberg reviewed Employer Exhibits 5, 6, 11, and 12. On February 11 he was instructed by Metusalem to go to the Shoreview Ice

Arena at 10:30 AM. He observed the Grievant entering the arena and coaching. He took photos. Lindberg looked at the shift activity report for the same time as he had observed the Grievant at the arena. The report said the Grievant had left work sick at 11:00 AM. Lindberg said that time off required asking in advance and getting approval.

When asked about the supposed permissive environment of the “wink-wink” agreement on using sick leave, Lindberg testified, “No, sick is for sick.” He described the Grievant’s practice as “clearly not” acceptable.

When asked what the effect of Grievant being returned to work would be, he described it as “disastrous....morale killer” because the Grievant is in a “position of trust, is the supervisor over a lot of employees”. He stated it would “send a terrible message”. When asked in cross examination if Grievant should get a lesser form of discipline, Lindberg disagreed saying, “Clearly, these are terminable offenses.” When questioned about the time it took to do the investigation and terminate the Grievant, Lindberg replied that the investigation was thorough and that the time was necessary to insure due process. When asked about other employees misusing sick leave and not being terminated Lindberg made the distinction that none of them were supervisors as was Grievant. Then Lindberg was asked about Rodriquez’s twenty day suspension and the misconduct. Lindberg said that that instance did not involve the employee working another paid job while getting paid by the county which “makes a complete difference”.

Thomas Paget

Paget has 29 ½ years with the Employer. His most recent position started in 2011 as an Investigator in the Office of Professional Standards. This position has involved doing hundreds of interviews and working on 130 cases per year. He received specialized training for this position, including a two day class at the Bureau of Criminal Apprehension. Paget testified that he did not know the Grievant prior to the investigation. Paget stated that the most serious allegation against the Grievant was the working at another job on County time on multiple dates. He described Policy 24.1, Table 6 of Employer Exhibit 7 as the pertinent rule violated. He testified that the Grievant admitted that he called in sick when he wasn't sick. He described the Grievant's characterization of his own conduct as not malicious, as "maybe credible, but time after time" not credible. He described the Grievant as characterizing his lying to Pearl about the two dentist appointments as "respectful" as being the "ultimate disrespect". He stated that several of the charges were not sustained, but that he found 50 policy violations involving nine incidents. When he finished he turned the investigation into O'Neill. On cross examination, he was asked about Grievant's demeanor. He described the Grievant as being apologetic about his conduct and characterizing it as "not malicious, just mistakes." Paget said that was "not my take" on the matter.

Dave Metusalem

Metusalem is the Undersheriff for the Detention Center. He has a long career in law enforcement starting in Los Angeles County in 1986. He described the Detention Center as a 500 bed pre-trial facility where individuals enter directly

from being arrested. Many are on drugs and mentally ill. There is lots of movement at the center with most individuals staying five to six days. Metusalem testified that assaults on staff and inmates are common and weekends have a particularly high incidence of individuals on drugs and booze. The Sergeant on the weekend and holidays is usually the highest ranking officer and responsible for 400-500 inmates and 40 staff members. That Sergeant is also responsible for compliance with policies and makes decisions that have a life or death consequence. The Sergeant also approves overtime and works without supervision.

When asked if there was an informal agreement that allowed use of sick leave for time off, as the Grievant had used it for, the “wink wink” policy, Metusalem responded that such an agreement was “absolutely false”. He described the difference between the Grievant and Cory Henrickson’s leaving work early. Hendrickson had left work early but with approval and recorded it correctly. Metusalem was asked if about the dates Grievant had dual commitments. Metusalem said that “none of the dates in question [would be] a problem” if the Grievant had asked for the time off in advance. He then explained the procedure. When asked if the Grievant had permission to work the off-duty job of coaching, he testified, “He did not.”

Metusalem was asked when he first learned about the allegations of falsifying records. He said it was at the end of 2011 when Pearl alerted him to the irregularities. After she told him, he instructed her to document and give him information including the shift activity time sheets before they got Internal Affairs

involvement. When asked why the Grievant was not notified of a violation of policy, Metusalem explained by saying that the Grievant either knew or didn't know what was a violation of the policy and that this was "such a blatant disregard of the policy". The concerns he had were writing a "credible Internal Affairs report and the possibility of criminal prosecution". He, in the end, made a recommendation to discharge Grievant for this behavior that exhibited "a complete lack of integrity".

The Grievant had a job that affected a lot of people and had a high "level of responsibility: one hundred correctional officers looking to the Sergeants. Metusalen indicated that the number of violations was a factor in his recommendation as was the fact that the Grievant was personally profited from the deception. The Grievant had lied to his supervisor, falsified time sheets and profited from the misconduct. He testified that none of the employees mentioned by the Union as being treated less stringently, was a "good match up".

On cross examination, he indicated if the misconduct of the Grievant had been done by a public official it would have been "double dipping". He indicated that he had seen no other employee in his twenty-five years that had been this bad: getting paid by two employers for the "exact same hours". When asked about the ramifications of the Grievant being returned to work, he said supervisors wouldn't have "faith and trust " and that the Lieutenants share the same concern. He testified that he hadn't reviewed the personnel file of the Grievant, but said that he thought there had been no prior performance issues.

Kirkwood

Kirkwood started in law enforcement in 1981 in Lincoln, Nebraska, and had a variety of positions in law enforcement including working in the Federal Bureau of Investigation in the Omaha, Nebraska, and Washington, D. C. offices. In 1993 he worked the presidential detail covering President Clinton. He retired in 2010 with 26 years. In 2011, he became the Chief Deputy in Ramsey County. Among his current duties and responsibilities are operations, personnel, staff, labor relations, and contract issues.

He was asked about the option of criminally prosecuting the Grievant. He testified that reading through the investigation and considering the time it would take to prosecute, he decided to handle it as an administrative matter although with the several instance of fraud, criminal prosecution was technically appropriate.

Kirkwood testified that the Grievant had been given “the benefit of [the] doubt” when Pearl pointed out repeatedly the discrepancies in the time sheets. This gave him no concern about providing notice. In addition, as a Sergeant, the Grievant supervised 30-40 employees and their reporting on time sheets. “I was aware he had been corrected many times before...continual pattern of ‘mistakes’...looked intentional...”

He testified that from December to the discharge there were nine acts of sick leave or leave abuse, numerous policy violations, including calling in sick when Grievant was not sick, two instances of lying to a supervisor, calling in on Christmas Day saying he was going to be sick and was at a Packer’s game, and,

in the process, putting a co-worker, a newly promoted Sergeant, in a conflict of interest position. Kirkwood said that when the Grievant was asked why he lied to his supervisor Pearl, he claimed he lied out of respect for the supervisor.

He said he knew of no other Deputy or officer with the same set of facts. This set of facts warranted discharge. Returning the Grievant to duty would have a bad impact on the employees in the jail and would send a bad message to those who follow the rules. He said such action would have to be explained in the future and that it would create a morale problem.

On cross examination he was questioned why he did not put the Grievant on leave on January 7 or 14. He replied that it was “a judgment call I made”. When asked if he reviewed the personnel file of the Grievant, he responded, “I believe I did.” He then indicated there had been one past discipline meted out to Grievant for sending an inappropriate e-mail. When asked about Davy answering the phone call from the Grievant on Christmas Day, Lindberg testified that the Grievant “put Sergeant Davy in a very compromising position” by, in essence, asking him to lie.

Union’s Case in Chief

Vance D. Rolfzen

Rolfzen testified first for the Union. He is the Business Agent for Local 320, serving 27 units and 1100 members, mostly law enforcement. He has worked in this capacity for two years. He was a Ramsey County Correctional Sergeant and Probation Officer for more than 23 years.

Rolfzen described the bidding process in detail and stated that the staff levels at the jail are at a minimum. He said that his experience was that employees use sick leave “ a lot” for short notice days off because it has “certainty”. He was asked if sick leave was used to work a “second job”. He replied, “Yes”. When was asked if anyone was discharged for misuse of sick leave or falsifying time sheets he replied, “No, not that I know of.” He testified that in using sick leave supervisors don’t ask if you require a sick leave. Employees use it for “deer hunting”, “opening of fishing”, and “Super Bowl”. Rolfzen testified that supervisors know about that and plan ahead.

He testified that the Grievant has been “very forthcoming”. Rolfzen testified that he was surprised when the Notice of Discharge came as the Grievant “had a good record [with] no other discipline that I knew of”. After the Grievant was put on Notice of Discharge, he talked to management about strictly enforcing the sick leave provision in Article 17. He asked the department to put employees on notice that they were going to enforce the sick leave provision. He testified that the administration said they didn’t need to.

Rolfzen was asked about Grievant. Rolfzen said, I believe [the Grievant] is telling the truth.” He testified that he didn’t think it would be a problem reinstating the Grievant because, “No one has come to me to express concern that he’s coming back.” He believes this is a matter of the Grievant “not being told the rules”.

On cross examination, he testified that he had never been a Correctional Officer in the jail. He stated that it was difficult to get vacation time stating,

“Everyone has a hard time.” When asked if he had complaints about not getting incidental time off from Sergeants, he stated he had not. When asked about the use of sick leave for other than sick, he said that was his experience when he worked in the workhouse. When asked if he had any specific instances he could point to where Sergeants had trouble getting time off, he said “No”. When asked how he knew about the “wink wink” agreement on using sick leave for other things he stated that “members tell me and my experience at the jail [informs me]”. He was asked about Hendrickson alleged misuse of leave time and the abandonment of his post. Rolfzen said that he knew this because he received complaints but had no access to Hendrickson’s time sheets. He was asked about his suggestion that the Department be put on notice. He said that the Grievant knew what he was doing was a violation and that during the Internal Affairs investigation, the Grievant had admitted it. He was asked if he knew about the allegation that a Deputy worked at an off duty job at the Dorothy Day Center while he was scheduled at Ramsey County, he said, “No”. When Rolfzen was asked about the timing of the misconduct and the length of time to investigate, he indicated that anything over thirty days was untimely.

Steve Engstrom

Engstrom is a current employee, a Correctional Officer, and has been with Ramsey County for thirteen years. His experience includes four and one-half years as an Acting Sergeant, a special assignment as a Classification Officer, and six and one-half to seven years at Oak Park, the maximum security facility for adults. He has twenty years total. He worked “closely” with the Grievant for

two years on the same shift, afternoons. He described the Grievant as having a great work ethic, being able to talk to and de-escalate situations with inmates and staff, and being an “all around... good officer”. He added that the Grievant wrote “outstanding reports...and did a nice job.”

Engstrom testified that he talked with Lindberg about the use of sick leave and that Lindberg told him “If you’ve got to call in to take a mental [health] day, do what you’ve got to do.”

Engstrom described his friendship with the Grievant and called him an outstanding worker, especially considering he was going through a tough divorce. “Then he coaches kids on top of that...what does that tell you about him?” He said he was a “great leader” in the jail and “always had your back”. When asked if he trusted the Grievant, he said he did.

On cross examination, Engstrom was asked if there was a difference in the difficulty of getting time off between Sergeants and Correctional Officers. Engstrom responded that he was relieved from the Sergeant duties six years ago and could not say for the years 2011 and 2012 because he was not a Sergeant then. He testified that Lindberg told them three weeks ago to call in sick when you need to.

Michael Lehman

The next Union witness was Correctional Officer Lehman. He has been a Correctional Officer in Ramsey County for eleven and one-half years, but also had a year and one-half as a Detention Deputy in Hennepin County. Prior to that, he served in the Navy for twenty-one years and nine months as a Chief

Petty Officer. He worked with the Grievant for a year at the old jail. The Grievant worked at the Annex and Lehman worked in the Core. Lehman characterized the Grievant's work performance as "outstanding" as a Correctional Officer and as a supervisor. Lehman testified that he would trust the Grievant with "his life" and that he had a good reputation, "that he knew of". Regarding Grievant's discharge, Lehman said he came in one day, found out, and was in "shock" and "incredulous". He stated it was difficult to obtain non-vacation time off as the County did not have the staff and were running short to begin with, based on his 2009 work as a Sergeant. He thought the Grievant had suffered a "grave injustice", had no progressive discipline, and was not "treated right".

Grievant

The Grievant testified fourth in the Union's case in chief. He began with a description of his work history with Ramsey County starting in August, 2003. He started his law enforcement career with nine years of working for the Department of Corrections in Stillwater. At Ramsey County he was the Correctional Officer in the Annex for one year. Six months after serving as Correctional Officer in the new facility, he was named Acting Sergeant. Then, he was promoted to Sergeant and given his "hard stripes. He had three and one-half years as an Acting Sergeant and three and one-half years as a Sergeant with "hard stripes". For the first few years he worked the midnight shift and then in 2009 or 2010 he began working days. His duties at first involved being responsible for the welfare of the inmates and supervising and scheduling staff. He then was put in charge of booking where you work with new arrestees, finger printing them, etc. He

supervised staff on the first floor. He “was always in charge of scheduling”, approving overtime and time off.

The Grievant testified that it was common practice that employees would use sick leave for other purposes. “We all did it.” He testified that he reviewed time sheets and payroll records and in the process, “fixed a ton of timesheets every two weeks.” When asked if he ever counseled workers on this, he said “No”. When asked if he formally disciplined workers regarding this, he “never formally disciplined or [issued] a written reprimand”. The Grievant said he orally reprimanded staff members because a “person was constantly late...had to start a paper trail”. He testified that he got along with co-workers and spoke his second language all the time, although it was not a part of his official job duties. He described his prior discipline as a written reprimand for a response he made in an e-mail to Lindberg. He has not received discipline on this since and said, “No, I was careful on that”.

The Grievant testified as to calling in sick on Christmas Day from Lambeau Field and coming into work on December 27. He left his post early that day and went down to the office. He was asked by Pearl why he was going home sick. There were some officers in his office and he wanted to be “respectful...didn’t want to say going to a hockey game...because subordinates there...I looked at her [Pearl] like, you know I don’t have a dentist appointment”. When asked about the Pearl memorandum, Employer Exhibit 4, the Grievant testified that he “disputed the whole memo”, but also stated he had been talked to about the incidents saying, “Yes, I am human.” He was asked if Pearl ever

told him he could be subject to discipline, he said "Never". When asked why he did it, the Grievant responded, "We all did it." When asked if he ever thought he would be discharged or if he was aware of others being disciplined, he said "No". He was asked if it was a mistake to do what he did. He said it was and if he was reinstated, he "would use it [sick leave] under the scope of the policy". He would transfer back to nights to be able to coach hockey. The Grievant indicated he made \$2500 for five months of coaching hockey. When asked if he would comply with the policy, he testified, "Yes, I'd have to enforce it." The Grievant then testified about the difficulty in calling a Lieutenant and the "problems all the time". He stated that he never had "an issue...had I known I was doing something wrong...I love the job and am responsible for three kids. [If I had known I would] jeopardize my major source of income...would never did it."

On cross examination, he reiterated his admissions regarding use of sick leave, leaving early, arriving late and working at coaching while on County time. The Grievant also admitted that his supervisor Pearl, "might have said, 'Hey, you messed up this date, could you fix it?' " When asked if he asked Pearl for time off when he got the hockey schedule, he said, "I'm not positive if I did or not." When asked if he requested a flexible schedule when he got the hockey schedule, he said, "No". When he was asked if he asked anyone to switch shifts with him, he replied, "No, I don't recall. When asked if it was possible to get time off approved but he chose to go for a "guarantee", he replied, "Yes". When asked if there was a lot of agreement among Sergeants that they could do this, he testified that he, "worked with every one of them" and that the agreement was that they could get

away with it. When asked if he admitted he “inaccurately recorded”, he stated “there could have been mistakes”. When asked about correcting subordinates timesheets and correcting his own, he stated, “Yes, I did.” On redirect, the Grievant was asked if Pearl or any supervisor had told him he “had issues”. He said, “No.”

Rebuttal Witnesses of Employer

Brad Lindberg

Lindberg was asked a number of questions regarding other employees doing the same thing as Grievant had done including Hoven and Engstrom. Lindberg explained both, illustrating the differences between Grievant and the others and the discipline meted out. When asked about the meeting three weeks prior to the hearing where Engstrom reported Lindberg had said employees could take a mental health day off as sick leave, Lindberg said, “I would never tell anyone it’s OK ” to take a mental health day off and charge to sick leave. He was asked about the disciplinary action Engstrom got for misrepresenting leave. He identified Employer Exhibit 19.

Discussion

The Acts of Misconduct

The inquiry into a discharge usually involves a two part examination: did Grievant commit the alleged misconduct, was the punishment proper. Here, the Grievant has admitted the misconduct both during the internal affairs interviews and at this hearing. Specifically, the Grievant has admitted that he violated department and county policy nine different times when he falsified his time

record, reporting that he was at work or sick while he was not. The Grievant also admitted violating the Sheriff's County policy on outside employment. The Grievant admitted he performed work for and received compensation from Cretin-Derham Hall School as a hockey coach while on paid County time while he was supposed to be working or was on paid sick leave. Finally, he admitted he violated leave approval procedures by leaving a safety sensitive post in a high security detention facility without prior approval from supervisors. This amounted to almost forty hours of time sheet fraud, totaling approximately \$1,200, not counting the overtime costs incurred when staff was assigned to cover the time Grievant claimed illnesses when he wasn't sick. I find the misconduct occurred. Grievant committed the misconduct he was charged with and he admitted it.

The Just Cause Standard

This misconduct meets the requirement for just cause in the Agreement. In Article 10, Discipline, it states, "The Employer will discipline employees for just cause only." Joint Exhibit 1. Just cause includes duties owed by employees including honesty and the right of the Employer to discharge for theft.

Worthington Corp. 24 LA1, 6-7 (McGoldrick, Sutton & Tribble, 1955) as cited by Elkouri & Elkouri, *How Arbitration Works* (6th Ed. BNA) at 932. Here the Grievant who is a supervisor and held to a higher standard committed acts of dishonesty and theft repeatedly. I find that the Employer had just cause to discharge.

Progressive Discipline and Due Process

The Union argues that there was insufficient due process given the Grievant, including no progressive discipline. This is a closer case as the Grievant was offered primarily oral coaching by his supervisor, Pearl. Employer Exhibit 4. Her testimony was credible.

The case for the Employer would have been better had some of the coaching been reduced to writing so a paper trail would have been created. The Grievant himself testified that he did just that (created a paper trail) with one of his own subordinates. In addition, the Grievant defeats his lack of due process and progressive discipline argument and thus, not knowing he was wrong, with his own behavior. He testified that he lied to his supervisor because he was in the presence of his subordinates. This was the tooth cap incident. This is behavior of an individual who knows he has to cover up for something wrong so he won't look bad to the people he supervises.

Finally, the Grievant was well aware of and had been trained on the policies and procedures he repeatedly violated. Employer Exhibit 3. He had been given copies of them and had used them with his own subordinates. The Union valiantly tried to prove that the Grievant did not know he was doing something wrong and in danger of being discharged. They tried with nearly heroic effort to prove that these time sheet representations were "mistakes".

The acts were too numerous and the Grievant had been orally corrected too many times to have the characterization of "mistakes" be credible. Grievant appeared intelligent, articulate and aware of his role and responsibilities. I find

the Grievant knew he was violating the policies and procedures and did so deliberately. The repeated correction by Pearl, albeit oral, was sufficient to meet the requirements of due process and progressive discipline with the circumstances that existed in this case where the transgressions were so serious and blatant.

Everyone Else Did It,

The Union's claimed and Grievant's testified that others misused sick leave, worked other jobs and were disciplined less stringently. These claims do not hold in light of the credible testimony of witness after witness for the Employer. I find their testimony that the "wink wink" agreement was a myth, that the other employees carried out far less brazen and serious acts and were disciplined proportionately to be much more credible than the Union witnesses who had little or no direct knowledge and a great deal of speculation. The Employer successfully distinguished the misconduct of every employee the Union claimed had been as bad and had received lighter punishment. I find that the Grievant was unique in the level, frequency and, in the words of the Employer, brazenness of misconduct. Those characteristics coupled with the Grievant's obligations as a supervisor, left the Employer with no other viable alternative than a discharge.

Coaching is an Honorable Activity

In vigorously defending the behavior of the Grievant, the Union argues that coaching is an honorable activity done by a long term, previously good-performing employee. It is true that Grievant has a clean previous record except

for one unrelated written reprimand. Grievant has no record at all of performance reviews, a vacuum that has been or will be corrected by the present administration according to the testimony. There was no testimony by the Employer that when the Grievant was at work and working, his performance was other than satisfactory. Grievant could have been a model employee. There is no doubt that the Grievant was more than capable of doing his job well and perhaps with distinction. I found the Union witnesses to be credible in their testimony that Grievant was very good in dealing with inmates and staff. I believe they are certain that he 'has their backs". Those are commendable traits.

Unfortunately for the Grievant, that is not the issue when you have misconduct of this nature. You cannot do a job well when you are not there because you are faking sickness. Nor can you do an important job well when you leave it unattended to do another job, getting paid in the process for both.

I agree with the Union's contention that coaching is an admirable calling and I am sure that the hockey players that played under Grievant admired and respected him. That is the travesty of all of this. A coach is supposed to be a role model, as is a supervisor of any sort. I hope that occurs for the Grievant with a new employer and a new start. The admissions would lead one to think that the Grievant will learn from this hard lesson.

Decision

I find no violation of the Agreement. The grievance is denied.

Dated this 19 day of June, 2013.

Carol Berg O'Toole