

IN THE MATTER OF THE GRIEVANCE ARBITRATION BETWEEN

Sherburne County

and

BMS Case No. 13-PA-0825

Minnesota Teamsters Public & Law
Enforcement Employees' Union Local 320

NAME OF ARBITRATOR: George Latimer
Assistant James St. Peter

DATE AND PLACE OF HEARING: January 23, 2014
Sherburne County Government Center

BRIEFS RECEIVED AND RECORD CLOSED: February 14, 2014

DATE OF AWARD: March 3, 2014

APPEARANCES

FOR THE EMPLOYER: Greg Wiley, Attorney
Joel Brott, Sheriff
Don Starry, Chief Deputy
Aaron Valley, Correctional Officer
Roxanne Chmielewski, HR Director

FOR THE UNION: Paula Johnston, Attorney for Local 320
Sergeant Melissa (Lisa) Kachmarek, Grievant
Craig Johnson, Local 320 Business Agent
Chris Hansen, Steward Local 320

STATEMENT OF THE ISSUES

1. Did the employer discipline the grievant for just cause when it issued her a one day suspension on March 4, 2013?
2. If not, what should the remedy be?

RELEVANT CONTRACT PROVISION

ARTICLE I – PREAMBLE (Emp. Ex. 1)

Section 4 – The Employer and the Union through this Agreement shall continue their dedication to the highest quality service and protection to the County of Sherburne. Both parties recognize this Agreement as a pledge of this dedication.

ARTICLE VIII – DISCIPLINE (Emp. Ex. 1)

Section 1 – The following disciplinary procedure shall apply.

(1) The Employer will discipline employees for just cause only. Just cause will be reduced to writing when applied pursuant to this Article. Discipline will be in any one of the following forms:

- (a) Discharge
- (b) Demotion
- (c) Suspension
- (d) Written reprimand
- (e) Oral reprimand

The above listing does not include any required step progression for disciplinary action; appropriate action will be taken based on the circumstances of each situation. Cause is not required for discipline or removal of employees serving a probationary period.

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RELEVANT PROVISION OF GENERAL OPERATIONS MANUAL

NUMBER 5 – STANDARDS OF CONDUCT AND PERFORMANCE (Emp. Ex. 3)

5.20: Neglect and Inefficiency: No member shall neglect their duty and shall in every event attempt to reasonably conclude an assignment during a tour of duty and transmit all essential information to relief staff and/or a supervisor. In the event a member demonstrates neglect, inefficiency, or incapacity, supervisors will take reasonable steps to improve an officer's ability or performance; however, they will not allow the safe and efficient operation of the department to suffer due to the continued poor performance of any member.

RELEVANT PROVISION OF JAIL SERGEANT JOB DESCRIPTION (Emp. Ex. 2)

GENERAL DESCRIPTION – Jail Sergeants supervise all Correctional Officers, Master Control Operations, and Transport/Court Security Officers assigned to the jail and ensure safety for all civilian staff.

EXAMPLES OF TYPICAL DUTIES & RESPONSIBILITIES – 10. Conduct a briefing for each on coming shift.

INTRODUCTION

This is a grievance arbitration between Minnesota Teamsters Public & Law Enforcement Employees' Union Local 320 (Union) and Sherburne County (Employer or County). The parties are signators to a collective bargaining agreement. On March 4, 2013, Grievant, Sergeant Melissa Kachmarek, received a one-day suspension. On March 13 the Union filed a grievance on her behalf (Union Ex. 1). On March 18 the Step 1 Grievance was denied. (Union Ex. 2). On April 8, Sheriff Joel Brott conducted a Step 2 Interview with Teamsters Local #320 business agent, Craig Johnson, Grievant, union representative Sergeant Chris Hansen, and Union attorney Paula Johnston. On April 9 the Step 2 Grievance was denied. (Union Ex. 3). On April 17 a Step 3 Appeal was filed. This arbitration ensued. There are no jurisdictional disputes between the parties. A hearing was held on January 23, 2014. Briefs were filed by both parties on February 14, 2014, and the record was closed.

BACKGROUND AND STATEMENT OF FACTS

Sherburne County is home to the second largest jail in the state of Minnesota, consisting of 667 beds. The majority of the prison's bed space is rented to the federal government (U.S. Marshal's Office and Immigration and Customs Enforcement (ICE)), to house pre-trial detainees. The prison also detains sentenced inmates for the Department of Corrections. (Testimony of Sheriff Brott). Included among these inmates in February, 2013, were 20-25 members of a large

organized crime group in Minnesota known as the Native Mob. Sheriff Brott testified that these individuals were the most difficult and violent in memory.

On February 8th, 2013, three inmates, Goodwin, Robinson, Luedtke committed an organized assault against two correctional officers, Kipka and Overlie. While the response time to the attack was timely (roughly 30-40 seconds according to Sheriff Brott) the violent assault left Kipka with serious injuries, leaving him out of work for 10 months. All three inmates were subsequently charged and convicted of felony assault.

After the assault, the correctional officers expressed concern for their safety. As a result, on February 13, 2013, there was a “shakedown,” a clearing of the house and search of the jail by the Correctional Emergency Response Team (CERT). During this search, two shanks were found. A shank is a homemade weapon, typically made out of a scrap of metal sharpened like a knife with the bottom tightly wrapped with a cloth or tape as a handle. One of these shanks was found in the cell of Robinson, one of the three individuals involved in the February 8th assault.

Later in the evening of February 13th, Grievant responded to a call that involved inmate Robinson being disruptive by repeatedly flushing the toilet and flooding his cell. In conversation, Robinson motioned with his head toward the cell next to him and stated, “He (Goodwin) wanted me (Robinson) to shank Valley first.” (Emp. Ex. 10, p. 8). When Grievant asked Robinson why Goodwin wanted him to do that he responded, “Just for something to do.” (Emp. Ex. 10, p. 8). Robinson said he wouldn’t do it because he liked Valley. (Emp. Exs. 7, 10).

Grievant ended her shift at 8:30 PM. On February 14, 2013, at 5:47 in the morning, Grievant sent the following email to 5 jail sergeants and 2 captains:

Hi,

Yesterday was pretty crazy, intense and exciting. However, I wasn't able to get a few things completed. If someone can help me out and see if this could get done.

1. Rover schedule needs to get updated (Heather is down stairs-maybe she can come up and complete til Sunday). 2. make sure we have problem reports on the shake down (what they found, took away, and what the inmate was told to earn his belongings back). Problem reports on Robinson flooding BH4. **You also should be aware that Robinson informed me last night that Goodwin was trying to talk him in to shanking Valley for something to do. (before Kipka assault)

Robinson told Goodwin no, because he liked Valley.

3. work orders for maintenance on Special Housing cells (I know they are aware, but I think they need orders for documentation) Please add S91 for work order, Morris went in there fore 10 minutes last night and the pipe from sink was off) he gave it back and was moved to S73. I left at 830 last night and the only items given to Ludetke, Goodwin and Valley (sic – Robinson) were orange pants and a pair of socks. Goodwin wanted a new t-shirt, I didn't give him one because he tore his other one. 4. Before I gave Robinson his pants, I made him remove items off the back window. He stuck some type of paper up there.

5. The transport going to Washington County did not have luggage rack for property-All property for Stone, Oquist, Williams, Mat Poitra, and Alex Jones was left behind until another transport can take it up. All inmates left their jail uniforms.

6. There was a release at USM court yesterday. It was a female Burchete or something like that. She had no property in housing, however, I don't know if someone got her property bag to take to USM on next transport.

7. When calling for over time, there were 2 people with numbers disconnected...I believe Moose and ???

That's all for now, this was bugging me, maybe, I can go back to bed. (Union. Ex. 14).

Grievant was off February 14-16, returning to work Sunday, February 17. During Grievant's shift, "Valley popped into my head" and she thought "I should probably call down and see if somebody's talked to him or, at least as a sergeant, maybe I should inform him if he doesn't know...not thinking that he was in anymore danger than all of us." (Emp. Ex. 10, p. 11). She called Valley and informed him about her conversation with Robinson on the night of February 13. According to Valley's statement, taken on February 18, "When she told me that there was a threat or talk about shanking me four days prior to this [call], I was obviously pretty upset....She made it really seem like it was no big deal." (Emp. Ex. 8, p. 2).

On February 17, 2013, Grievant documented the incident in Phoenix CSM at 6:49 PM. She labeled the activity type, “Administrative Other.” In this report, Grievant wrote the following:

Inmate Robinson was placed in BH4 – had shank during shake down. When I was in cat walk / maintenance to turn off water – (Robinson flooded) Robinson informed me that Irah Goodwin wanted Robinson to “shank” Valley just for something to do. (This is prior to Kipka assault). Robinson stated that he told Goodwin “no” because he fucking likes Valley.” (Emp. Ex. 6).

The following day, February 18, Grievant also filed an Incident Report regarding the conversation that had taken place with Robinson on the night of February 13. In that report Grievant wrote, “I believe from this conversation, I/M Robinson was informing me that him and I/M Goodwin originally spoke about assaulting LCO Valley and then changed their minds.” (Emp. Ex. 7).

On February 17, 2013, Chief Deputy Don Starry prepared an Initial Citizen Complaint Report for Grievant and the two captains who received Grievant’s email on the morning of February 14. The complaint stated that Grievant “failed to notify CO Valley or other staff about the threat prior to ending her shift on February 13, 2013.” (Emp. Ex. 9).

On February 18, 2013, Chief Deputy Starry interviewed CO Valley. On February 20, statements were taken from Grievant, and Captains Christopher Bloom and Thomas Zerwas. In the Chief Deputy’s Internal Investigation report he wrote, “Based upon the above listed reports and interviews I believe that [Grievant], Captain Christopher Bloom and Captain Thomas Zerwas were negligent and inefficient by not informing staff or supervisors of the threat information in violation of General Operations Policy 5.20.” (Emp. Ex. 12). The following recommendations were provided:

- (1) Create a Policy to address how inmate threat complaints are communicated to staff

- (2) 1-day unpaid suspension for Grievant
- (3) 1 day unpaid suspension for Capt. Bloom
- (4) Oral reprimand for Capt. Zerwas

Accordingly, Grievant served a one-day suspension unpaid on Wednesday, October 16, 2013. (Emp. Ex. 20).

EMPLOYER ARGUMENT

The County had just cause for giving the Grievant a one-day suspension for her failure to timely convey to a supervisor or her relief that one of her subordinate employees was identified by a dangerous inmate (Robinson) as the target of a violent attack. The information the Grievant received from Robinson was essential and should have been reported immediately. Her failure to report this information was a violation of the Rule 5.20 and a breach of her subordinate employee's trust.

Part of a jail sergeant's job description is to "conduct a briefing for each on coming shift." (Emp. Ex. 2). One of the main goals of this briefing is to make all relevant staff aware of changing conditions in the jail. Sheriff Brott testified that supervisors (i.e. Sergeants like the Grievant) have an elevated duty to ensure the safety of their subordinate employees. Grievant testified that on the night of February 13, 2013, she was the only command staff on duty. However, the County argues that this should not have hampered her ability to abide by Rule 5.20's requirement that she inform supervisors before the end of her shift. The conversation she had with Robinson was essential information because the statement was made by a violent inmate and specifically targeted CO Valley.

The County contends that the context of the communication between Robinson and Grievant is important. First, Robinson had been a part of a violent attack on two correctional

officers just five days prior to this statement being made to Grievant. Second, the statement that Robinson was solicited by Goodwin (a Native Mob member who had also been part of the February 8th assault) to shank Valley for something to do was not a general threat that correctional officers hear in the jail. This threat came from a dangerous inmate (Robinson) and related to another dangerous inmate (Goodwin). Third, CO Valley was specifically identified as a target of violence by two inmates who were just involved in an assault. Lastly, and most important, a very dangerous shank was found in Robinson's cell that same day the statement was made. Given these circumstances, the County believes that Rule 5.20 and common sense dictate that the information should have been immediately passed on to the next shift's relief staff, and Grievant's supervisor, and CO Valley. It would be difficult to find a statement of that caliber to not be "essential."

Regarding the Grievant's email communication sent at 5:46 AM on February 14, 2013, the County rejects the Union's argument that this email discharged her of any responsibilities under Rule 5.20. Moreover, the email itself was deficient in four ways.

1. The email was not timely. Rule 5.20 requires that essential information be provided to relief staff and/or a supervisor during the employee's "tour of duty," not the following morning.
2. The essential information was not appropriately highlighted in the email. The information regarding the threat was buried within seven points made in the email. Furthermore, the format of the email and the font in which it was written could lead to the critical information being missed by the reader. The Grievant stated that the statement could be "very easily" misread and that "its kind of in the middle there." (Emp. 10, p. 13).

3. The essential information was not accurately or adequately explained. In her email, Grievant wrote that Goodwin solicited Robinson to shank Valley “(before Kipka assault).” However, at the hearing Grievant testified that she merely inferred that Goodwin’s solicitation of violence against Valley was before the assault that happened on February 8th. Therefore, the statement in the email was inaccurate and lacked a reasonable factual basis.

4. The email was insufficiently distributed. The email was sent to two jail captains (not all of them) and five jail sergeants (not all of them). The email was not sent to CO Valley, the identified target of the threat, nor did it alert Sheriff’s Administration about the threat. Given the nature of the threat, the Employer argues that the seven employees who received the email was inadequate.

Given the fact that CO Valley was not on the email sent by Grievant the following morning, he was unaware of the situation until February 17, when he and the Grievant were working together. Grievant’s explanation for her delay in telling her subordinate employee of this threat was that it was the first day the two worked together, since she had been off since the incident. The County argues that this explanation ignores the fact that she could have emailed him or called him so that he knew he had been targeted instead of working four days amongst inmates who had threatened to shank him.

The investigation conducted by Chief Deputy Starry resulted in him recommending a one-day suspension for the Grievant for violating Rule 5.20. Chief Deputy Starry testified that the one-day suspension was the lowest amount of discipline that he felt was appropriate. The Collective Bargaining Agreement between the parties states that “appropriate action will be taken based on the circumstances of each situation.” (Emp. Ex. 1.). Progressive discipline is

not required under the CBA. Moreover, of the two captains who received the email, the one who acknowledged that he read it (Captain Bloom) received a one-day suspension. The County contends that Captain Bloom's statement during his investigatory interview that Grievant should not be disciplined was interpreted by Sheriff Brott and Chief Deputy Starry as a good leader taking responsibility for a subordinate's shortcomings. They do not, however, speak to Grievant's failure to timely and effectively provide essential information required by Rule 5.20.

The County argues that Grievant's account that she did not believe that Valley was threatened is unreasonable for a number of reasons. First, Grievant testified that Robinson never told her when Goodwin had solicited him to shank Valley. As a result, Grievant should not have assumed that the threat had passed, but rather should have assumed the opposite; that the threat could have been immediate. Second, jail staff should never trust inmates. Sheriff Brott testified that inmates lie to staff frequently. It would be a serious error to assume that a threat of violence had passed just because an inmate suggested that was the case (even though, in this case, that did not happen, but was assumed). Third, the same day that Robinson told Grievant about the threat, a large shank was discovered in Robinson's cell. Grievant testified that she did not even consider the fact that a shank was found in Robinson's cell that day. She testified that because the shank had been taken from Robinson's cell and he was moved to another cell that she felt the threat had been abated. However, the County argues that this explanation is further evidence of Grievant missing the most important point of the exchange: the fact that her subordinate, CO Valley, was identified as the target of violence by inmates who have a violent history and had just attacked two other correctional officers.

The County contends that Grievant's interpretation of the phrase "shank Valley first" as a reference to the previous assault does not make sense. The previous assault did not involve a

shank, but was instead one that involved punching and kicking. Therefore, to make that logical leap is unreasonable. It would make more sense that the phrase “shank Valley first” meant that he would be the first correctional officer to be stabbed with a shank.

Lastly, the County argues that Grievant’s failure to communicate the essential information was a breach of trust. The Union offered evidence at the hearing that Valley had written an email prior to this incident in which he expressed his concerns about his supervisors’ seeming lack of care for the well-being of correctional officers. The County rejects the Union’s position that this shows that Valley already had a diminished sense of trust. On the contrary, Grievant’s failure to report this threat is just another example of his lack of trust for supervisors.

UNION ARGUMENT

The County did not have just cause to discipline the Grievant by giving her a one-day suspension. The Grievant was neither negligent nor inefficient in the completion of her job duties. In fact, she went above and beyond her duties in how she responded to the February 13th situation and her notification of the events.

The Union argues that the Grievant reasonably construed Robinson’s comment to be a reference to an event that had already taken place, not as a direct and immediate threat against CO Valley. The Grievant reasonably believed that Robinson was telling her that Valley had been a potential target for the assault that took place on February 8th. She based this belief on the fact that both Robinson and Goodwin had been involved in the assault. Furthermore, when Robinson used the word “first,” in stating “he wanted me to shank Valley first,” the logical conclusion for the Grievant was that the original plan for the earlier assault was to attack Valley, but that the plan changed. It is unreasonable and illogical to make the leap from the word

“shank” to a new and immediate threat. Therefore, the Union argues, there was no threat made in the first place.

In addition, the Grievant was, from the start, consistent in her description of the comment as a reference to something that had already occurred. In her initial email send at 5:46 AM on February 14th she wrote, “You should also be aware that Robinson informed me last night that Goodwin was trying to talk him in to shanking Valley for something to do. (before Kipka assault) Robinson told Goodwin no, because he liked Valley.” (Union Ex. 14). The Grievant clearly indicated in this email that the comment referred to the prior assault. In the Incident Report filed on February 18th the Grievant described the conversation with Robinson and writes, “I believe from this conversation, I/M Robinson was informing me that him and I/M Goodwin originally spoke about assaulting LCO Valley and then changed their minds.” (Union Ex. 13). Lastly, during the Grievant’s investigatory interview on February 20th she stated that when she went to Robinson’s cell he said “you know he [Goodwin] wanted me to shank Valley first.” (Union Ex. 8, p. 8). Later in the interview the Grievant stated, “I took it as the threat might have been on him at first but then since Robinson said he likes Valley then that’s why they decided to go with Overlie and Kipka.” (Union Ex. 8, p. 9). Therefore, since the time Robinson made the comment, Grievant perceived it as a reference to a past event. As a result, there was no direct or immediate threat for her to report.

The Union contends that the Grievant did not violate any policy requiring the reporting of inmate threats against jail staff. Even if Robinson had made a direct threat against Valley, at the time of the incident, there was no such policy requiring the reporting of inmate threats against staff. Moreover, section 5.20 of the Sherburne County Sheriff’s Department General Operations Manual, regarding neglect and inefficiency, makes no reference to threats. Even in Chief

Deputy's Investigative Report he admits, "The investigation revealed that the jail does not have a sufficient policy to address staff notification in regard to inmate threats." (Emp. Ex. 12).

In addition to having no written policy, the Union argues that there was no consistent unwritten policy for reporting inmate threats. In Captain Bloom's interview, he stated that usually a report would be written, but never stated that a sergeant or CO would be required to notify a supervisor about the threat. (Union Ex. 7, p. 5). In the Grievant's statement, she stated that she would "pass it on to Administration and let them tell us what they would like us to do with it." (Union Ex. 8, p. 12). In CO Valley's interview he stated that the response would "depend on how the threat is generated." (Union Ex. 9, p. 8). Valley did not state that the subject of the threat would be personally notified. Even at the hearing Valley testified that he believed the way the Grievant handled the situation was the common practice and that she had been taught by the administration to handle it that way. Therefore, because there was no written or consistent unwritten policy regarding the reporting of inmate threats, there was no just cause to discipline the Grievant.

As a result of this incident, the County created a policy to address the reporting of inmate threats. The policy requires the staff member who becomes aware of the threat to "notify a supervisor immediately or as soon as practicable." The policy does not state that the notification has to be before the end of the staff member's shift. The Grievant did notify her supervisors as soon as practicable. To discipline her for violating Section 5.20 of the Operations Manual for failing to notify her supervisor of the comment prior to the end of her shift seems unreasonable, especially considering the fact that not even the new policy has such a requirement.

The Union argues that no evidence was presented that Section 5.20 had ever been applied to situations involving inmate threats against staff. The policy requires that the employee

“attempt to reasonably...transmit all essential information to relief staff and/or a supervisor.”

Grievant made this attempt to transmit information to her supervisors when she wrote her email at 5:46 AM the following morning after completing a 13 hour shift. By sending this email she was notifying Captains Zerwas and Bloom. The County’s attempt to argue that the Grievant “buried” the Robinson comment in the email is unfounded. Captain Bloom states in his interview “I did see this,” in reference to the comment about Robinson. (Union Ex. 7, p. 3). Bloom even responded to the email, addressing points that she made directly before and after the Robinson comment. (Union Ex. 14). Therefore, the Grievant’s email more than qualifies as a reasonable attempt to notify her supervisors of essential information.

After receiving Grievant’s email send on February 14th, the Union contends that the responsibility for acting on Robinson’s comment fell solely on the Captains. However, the Captains did not take any action after reviewing the email. Captain Zerwas stated that he only skimmed the email the morning of the 14th when he woke up. Captain Bloom read the email between 6:15 and 6:30 that morning as well. (Union Ex. 7, p. 2). CO Valley did not start work until 2:00 PM on February 14th. As a result, both captains had more than seven hours to notify him and the rest of the staff about the comment. Moreover, the responsibility of the captains remains the same whether the Grievant emailed them prior to the end of her shift or ten hours after. Once Captains Zerwas and Bloom received the email, the Grievant had satisfied any notification requirement that may have existed.

Lastly, the Union argues that it was not the Grievant’s fault that Valley’s trust in the administration had been shaken. In an email sent on February 12th or before, Valley expressed his frustration with the administration following the February 8th assault. In his email Valley writes, “It is sad to say but my level of trust is not what it should be because I don’t feel our best

interests are taken into consideration when decisions are made.” (Union Ex. 16). Therefore, Valley was clearly disappointed with the administration before the incident surrounding this arbitration.

ANALYSIS AND AWARD

Section 5.20 of the Sheriff’s Operating Manual mandates that employees “shall in every event attempt to reasonably conclude an assignment during a tour of duty and transmit all essential information to relief staff and/or a supervisor.” The Union argues that this mandate was in fact not the routine practice followed and was not enforced by management. The Union assertion finds support in the testimony of CO Valley who stated that Grievant’s failure to conform to that mandate reflected the practice and expectations of management, which he referred to as “the white shirts.”

The Union additionally argues that the threat referred to had passed. The Grievant made the same point at her grievance hearing with Chief Deputy Starry. In this environment, fraught with the threat of violence, parsing Robinson’s comment as past rather than present is unpersuasive.

The Employer suggests that Grievant altered her story in the face of possible discipline. This Arbitrator finds no support in the record to support the Employer’s claim on this point. From her demeanor as a witness and her record of exemplary service the Arbitrator finds that the Grievant believed that inmate Robinson’s references were to conversations previous to the assaults of February 8, 2013. For its part, the Employer argues that the email report to her supervisors was tardy and failed to properly underscore the threat to her subordinate. As to the latter objection, this Arbitrator finds that the placement of the language concerning the threat to

CO Valley, though not prominently placed at the beginning of the email, was nonetheless sufficient to impart the information to the readers of the email.

The above findings do not conclude the Arbitrator's task of judging whether the discipline levied in this case was for just cause.

The context of this dispute was anything but routine or ordinary. On February 8, 2013, felonious assaults were committed resulting in grievous injuries to a correctional officer. Five days later a total sweep and shakedown of the prison was ordered by the Sheriff. Weapons were found during that sweep, including one in the cell then occupied by inmate Robinson. On the same day the Grievant confronted Robinson who was attempting to flood his cell. Her confrontation ended his flooding attempts and resulted in eliciting the information concerning the threat to Valley. Grievant's coolness and courage in confronting Robinson reflects well on her professionalism and confirms Chief Deputy Starry's description of her as an exemplary officer.

However, the naming of Valley as a target for violence was extraordinary and certainly would constitute "essential information" within the terms of section 5.20 and placed upon Grievant the duty to inform those in charge on the following day's tour. An email sent the following morning in this case fails to satisfy the requirements of section 5.20.

This Arbitrator is unpersuaded by the Union argument that the Employer's addition of policy language as to the event was an admission that the Grievant had no duty to report the threat earlier than she did. Given the facts of this case, I conclude that the duty would have existed with or without policy 5.20.

Securing safety is central to the mission of any correctional institution. In this instance the Grievant failed in one crucial part of her responsibility as a Sergeant; that part being directly

related to securing the safety at Sherburne County jail. I find that there was just cause for the discipline imposed.

AWARD: Grievance denied.

George Latimer, Arbitrator

Date