

American Arbitration Association

VOLUNTARY LABOR ARBITRATION TRIBUNAL

Case No. 01-22-0003-6495

James S. Cooper, *ad hoc*, Arbitrator

In the Matter of the Arbitration between:

NATIONAL CORRECTIONAL EMPLOYEES UNION,
Union

-and-

SHERIFF'S DEPARTMENT OF HAMPDEN COUNTY,
Employer

Introduction

The National Correctional Employees Union (“Union”) and the Sheriff’s Department of Hampden County (“Employer” or “Sheriff”) are parties to a collective bargaining agreement dated September 22, 2022 provides in Article 6 for a grievance procedure to resolve disputes between the parties and, if the dispute cannot be resolved, the parties agreed to submit the matter to arbitration under the rules of the American Arbitration Association. The Union, represented by attorneys John Connor and Chelsea K. Choi, and the Employer, represented by attorney Dan V. Blair, presented this matter in arbitration on November 8, 2023 and January 19, 2024 and filed post-hearing Briefs on March 22, 2024.

Issues

The parties stipulated to the following issue for resolution and award:

1. Did the Employer have just cause to issue Corrections Officer Chase Laporte a five day suspension on July 1, 2022?
2. If so, what shall be the remedy?¹

¹ The Union’s proposed remedy includes: (1) vacating the discipline; (2) pay Officer Laporte all lost pay; and, (3) reinstate Officer Laporte to the position of Deputy Sheriff. The Employer claims item (3) of the Union’s requested remedy is statutorily prohibited.

Facts

The dispute in this case centers around the appearance of Officer Chase Laporte's name and personal telephone number on a form used by the Sheriff's Department ("Department") for screening permissible telephone numbers for an inmate to call. If Laporte provided an inmate with this information, such would amount to a serious breach of security and discipline would be appropriate. Laporte denied that he provided his personal cell phone information and had no idea how an inmate obtained this information. This case examines the evidence surrounding the preparation of the inmate's telephone calling list, the trail of the document, the discovery of the information and a forensic analysis of the handwriting on the document. A summary of the evidence follows.

Inmate Telephone Protocol

Inmates are allowed a limited amount of time to make telephone calls and those calls are strictly regulated by the Sheriff. The telephone calls must be to an approved number and the process requires the inmate to fill out a Telephone Number Request Form (hereinafter "Telephone Form") listing the name of the recipient, the recipient's telephone number and the inmates relationship to the recipient. The process is fairly simple and straight forward. The inmate fills out and signs the form and provides the above information. The form is handed to a correction officer ("CO") or a correction case worker ("CCW") who places in an inbox for an Administrative Assistant who reviews the form and if completely filled out, the form is delivered to outside vendor who reviews the form and authorizes the inmate to make the telephone call. If the form is missing required information, the Administrative Assistant highlights the missing information and returns the form to the appropriate CO or CCW who returns it to the inmate to complete.

Inmate Gonzalez's Telephone Request Form dated March 25, 2022

At about 2 p.m. on Saturday, March 26th,² CCW Michael Ford found a Telephone Form from inmate Daniel Gonzalez in his mailbox indicating it had been returned to him by Administrative Assistant Maria "Nellie" DeCarvalho because it was missing information. The form had Nellie DeCarvalho's initials on the bottom of the form but Gonzalez's had started to write his name, but had crossed off what had been written. Ford noticed that the form had listed on "Name of Called Party" Chase LaPorte. Ford knew that Chase LaPorte was a CO who was

² All dates refer to 2022 unless others stated.

assigned to the cell block which included Daniel Gonzalez's cell. Ford recognized immediately that listing a CO on the permissible calls list was a serious problem and brought the matter to his supervisor, who in turn submitted it up the chain of command eventually reaching the attention of Joaquin Suttles, Assistant Deputy Superintendent of the facility who directed an investigation into Laporte's name appearing on Gonzalez's form.

On Monday, March 27th after roll call, Laporte reported to Assistant Superintendent Suttles and Captain Anderson who questioned LaPorte about his name appearing on inmate Gonzalez's Telephone Form. LaPorte denied that he had written his name and personal telephone number on the form. LaPorte's name and telephone number were written in blue ink, all the other writing was in black ink. LaPorte said that he had two pens using blue ink, but that he noticed that one of them was missing. The supervisors instructed LaPorte to write an incident report, which LaPorte did immediately and denied writing his name and number on the sheet and was concerned because it was unclear how much of his personal information was known by Gonzalez or other inmates. His report also indicated that he had called a Code White³ on Gonzalez and that he treated Gonzalez the same way he treated all inmates directly with little interaction.

Upon reviewing the incident reports, Suttles directed a full investigation by Sheriff Investigators Daniel Soto and Michael Joslyn, investigators with over thirty years of experience working for the State Police and District Attorneys. Since the Telephone Form was discovered by CO Ford on Saturday, March 26th and LaPorte did not work the previous day, Friday, March 25th, and the Telephone Form was dated March 25th, the investigators focused their attention on tracking down and interviewing all individuals who had access to the Telephone Form from the end of LaPorte's shift on the night of March 24th to Ford's discovery of it on the morning of March 26th. Soto and Joslyn interviewed LaPorte three times, March 29th, April 20th and May 4th. They also interviewed four COs who had access to the pod where Gonzalez turned in his Telephone Form: Corporal Charles Ramos, Sergeant Ryan Salvador, Corporal Angel Trinidad and CO Matt Donaldson.

During the Soto and Joslyn's first interview of LaPorte on March 29th, he told them he did not write his name and phone number on the Telephone Form and that he would never do

³ A Code White is call for CO assistance when an inmate refuses a CO's directive. As a result of the Code White, Gonzalez was placed in insolation for an unspecified amount of time.

such a thing. He advised that such would put him and his family in jeopardy because he did not know what other of his personal information was known by the inmates. When asked about the pen used, LaPorte informed the investigators that he had two blue pens and that one of them had gone missing. He also told the investigators of the list of colleagues who had access to Telephone Form, only officer Ramos would have known his cell phone number. During this interview, LaPorte spoke to them without Union representation. Prior to this interview, the investigators spoke to inmate Gonzalez who told them that he handed the Telephone Form to LaPorte, but denied adding LaPorte's name and that his "pink sheet" did not have LaPorte's name.⁴ Rosa, Gonzalez's cell mate, also denied adding LaPorte's name to the document. LaPorte stated he did not recall Gonzalez handing him the form and when shown the Telephone Form, LaPorte stated that the handwriting was comparable to his, but that he absolutely did not do such a thing and that such would put him in jeopardy for his safety. The Telephone Form is dated March 25th, a day that LaPorte did not work and Soto and Joslyn informed LaPorte that "it was probably staff" and that they wanted to follow-up with interviews because if so, it was "a screwed up prank."⁵ During the interview, since the inmate's pink sheet did not have LaPorte's name and cellphone number, it was added after the sheet was turned in. Joslyn opined that "I have a hard time believing that ... I mean I don't know how... lax some staff may be. But if this [the Telephone Sheet] is in the basket on the desk, it would be pretty ballsy for an inmate to go in, pull it out, take a pen, PUT something on and then put it back in. I don't see how they would." [Exhibit K, p. 10].

During the March 29th interview the investigators informed LaPorte that it did not appear that the inmates had his cell phone number because it only appeared on the single sheet and that "we don't have any indication that it is anywhere else."⁶ Nevertheless LaPorte said "I'm probably going to change it [LaPorte's cell number], jut to be safe." [Exhibit K, pp. 15-16]

⁴ Gozalez also informed them that he could not find his pink sheet. The Telephone Form was one with multiple no carbon required sheets attached.

⁵ LaPorte rejected the notion that it was staff, telling the investigators: "I would hope it's an inmate rather than staff just because I would think that we have professionalism enough to know that that's not okay. 'Cause I don't even like giving my first name to inmates...." [Exhibit k, p. 7].

⁶ Joslyn told LaPorte: "So my point is to put your mind at ease. This number's on this sheet, but only this sheet. We don't have any indication that it's anywhere else. We don't have any indication that any ...

The investigators thereafter interviewed all of the staff who had access to the Telephone Form between the end of LaPorte's shift on March 24th to the morning of March 26th when it was found by CO Ford. In all instances, Soto and Joslyn reported that each staff member denied adding LaPorte's name and cell phone to the Telephone Form. Soto and Joslyn concluded that each officer "Denied any knowledge. Believable." [Exhibit F].

Soto and Joslyn recalled LaPorte for a second interview on April 20th. As Joslyn escorted LaPorte down the hallway, he commented that he "hoped to hear some good news." However once he got into the room, he requested Union representation which was immediately arranged. Soto informed LaPorte that between he and Joslyn, had thirty years as investigators and that they were "pretty thorough in doing investigation." [Exhibit L, p. 3] After doing all of the interviews, the investigation "leads us back to you." [Exhibit L, p. 4]. Soto continued: "We sat down with a trooper who's a forensic scientist, so to speak... and he looked over your signature... and there's no doubt that it's your signature." Soto continued, "Maybe it was a mistake. Was it a mistake that you signed in the wrong spot?" To which LaPorte replied "[t]here's no chance that I would do that.... I have no desire or motive." Joslyn: "[L]ook at the signature again." Soto: "It is your signature based on that... We're trying to give you an out. Was it a mistake? I don't think you intentionally did it... This is your signature." LaPorte answered: "I just straight-up wouldn't do this. I don't know what else you would want from me, because I just wouldn't do it." [Exhibit L, pp. 6-7].

Soto and Joslyn reported that they "tossed" Gonzalez's cell and took all his and Rosa's paperwork and found that "It [LaPorte's name and telephone number] wasn't written on the pink copy." [Exhibit L, p. 10]. Soto showed LaPorte a document with his writing which LaPorte acknowledged was his writing and thereafter showed him the Telephone Form, and stated that the two were comparable stating: "I'm not a forensic scientist, but I would trust his judgment that it is comparable." [Exhibit L, p. 12].

Soto turned to another subject:

Soto: I called you yesterday on your phone.

LaPorte: Yes

Soto: And you answered it and we spoke.

LaPorte: Yes, sir.

inmate knows it or anything like that. Angel [Gonzalez] swore up and down that he had nothing to do with it." [Exhibit K, p. 15].

Soto: Today we come in here, you have a different number.

LaPorte: During the past few weeks, several of my online things hacked, and I couldn't recover ... without my phone number, my previous one.... So I did change my number yesterday because IT brought it up again...AND my job is more important than social media... And while you said I have nothing to worry about last time, there's still my family is the most important...

...

Soto: You hadn't changed it before .

Joslyn: That day we spoke to you last time, you were adamant that you GOING DOWN [to change the number].... So that's three weeks that you had to change your number. Then all of a sudden we call you for a second interview and bingo, you're changing the number.

....

LaPorte: While I knew this was pending ... I was trying to recover everything...'cause you guys called me back, this is more serious than any of that. So I changed it.

At the end of the interview, LaPorte informed Soto and Joslyn that he was willing to take a polygraph. To which Soto replied: "I believe that's your signature, okay. That's your writing based on our investigation. What we won't be able to prove is motive, 'cause we don't know why you, you would put your name like that. We don't believe you." [Exhibit L, p. 16]

Shortly after the April 20th interview, Soto and Joslyn arrange for Applied Forensics to perform a handwriting analysis and sent Dennis J. Ryan, Forensic Document Examiner the Telephone Form and four known samples of LaPorte's handwriting. Ryan reported to Soto that the handwriting on the Telephone Form was LaPorte's and that for \$1,000 he would certify his identification and send a report. Before requesting Ryan's written certification and spending \$1,000, Soto and Joslyn interviewed LaPorte a third time on May 4th. During this interview Soto told LaPorte that he was not being honest and that "being untruthful is grounds for termination." [Exhibit M, p. 4] LaPorte repeated his prior contentions: "I didn't write it. I know LIKE, LIKE, there's no way, absolutely not. [Exhibit M, p. 4]. Joslyn added: "You should know that actually your supervisors, they're the ones who looked at that, has told us right OFF THE bat that was your writing. [Exhibit M, p. 5]. Soto informed LaPorte that a forensic handwriting expert has confirmed that the Telephone Form contains his handwriting and is willing to certify his opinion. LaPorte insisted that he had not done this. Soto recited the evidence, that the form was found after LaPorte's shift, that the pen used was like the one you had coincidentally lost, that after

stating you were worried sick about your safety, you waited two weeks to change your cell phone number and we had forensic handwriting experts tell us they would certify it was you if we sent them \$1000. LaPorte remained adamant that it was not his handwriting. [Exhibit M, pp. 8 to 10].

Soto returned to the subject of a polygraph test and asked if LaPorte was willing to take such a test. LaPorte asked if Soto was compelling him to take such a test. Soto informed him that he could compel him to take such a test, but asked if LaPorte was willingly to take a polygraph test as he said previously, to which LaPorte responded: "At the time I was willing to take one....Right now ... honestly I'm not really feeling the need to...." [Exhibit M, p. 11]. When pressed by Soto, as to whether LaPorte would take a polygraph test, LaPorte said "no." [Exhibit M, p. 24]

Soto and Joslyn completed their investigation and filed a report with Sheriff Cocchi and Assistant Deputy Superintendent Suttles. In this report, the investigators reported the summarized their interviews with all involved as set forth above.⁷ On June 21st Ryan's Report to Soto included the following:

The range of variation in the questioned writing "Chase LaPorte" and in the known writing of "Chase LaPorte" contains substantial significant similarities.... There are no significant dissimilarities. Ryan's Findings stated "It is highly probable (virtually certain) that Chase LaPorte wrote his name on the Q-1 Telephone Number Request Form. [Exhibit X]."⁸

Discipline of Chase LaPorte

On July 1st, Assistant Deputy Superintendent Suttles suspended LaPorte for five days for improper conduct in that he wrote his name and cell phone number on the Telephone Form based upon the fact that LaPorte admitted that the writing of his name as it appeared on the Telephone

⁷ The Soto and Joslyn's report to the Sheriff included the following:

March 31st Interviewed [CO] Donaldson. Denied and believable. However, did admit that while he was working IM Dany Rosa (#...), IM Gonzalez's cellmate, came to desk and asked to add a telephone number to his request sheet. Donaldson stated that because he was busy dealing with another inmate he allowed Rosa to retrieve his own sheet, write on it, and then put it back in the box with he, himself, checking it."

⁸ Accompanying Ryan's Report was a blown up version of the writing "Chase LaPorte" on the Telephone Form and four known writing samples of LaPorte's name. This included a page entitled "Writing Comparison" with numbered examples of "Significant Similarities" between the questioned writing and the known writing. [Exhibit Y].

Form as compared to the known writing of his name on other document “appeared to match but you were unable to explain how that is possible other than one of the two pens you use while on duty had gone missing.” The handwriting expert determined that the Telephone Form was written by you. Three weeks after receiving his suspension Sheriff Cocchi removed LaPorte from his position as a Deputy Sheriff.⁹ The Union grieved and when it could not be resolved under the grievance procedure, the Union demanded arbitration as set forth above.

Testimony of Dennis J. Ryan

At arbitration the Sheriff produced the testimony of Ryan in support of his conclusion that LaPorte’s name, as written on the Telephone Form, was written by LaPorte. In Ryan’s testimony and report, he observe similarities in five respects between the questioned writing and the four exemplars. These included the size of the letter “a” in Chase; the relative spacing of “te” combination; the raised baseline orientation of the letter “e” in Chase; the short “t” cross; and the relative size of the letter “e” in LaPorte.

On cross-examination, Ryan gave no consideration to the dissimilarities between the questioned writing and the samples. The letters “h a s” in Chase in the questioned writing are squeezed together with no space between the letters, while none of the exemplars has those letters squeezed together. The “rte” in LaPorte of the questioned writing are touching while only “t” and “e” are touching in three of the four exemplars and none of the exemplars includes the “r” touching the “te.” In the questioned writing, the letter “t” extends below the signature line, while in the two exemplars which have a signature line the letter “t” is above the line and in the two exemplars which have no line, the letter “t” does not extend below where such a line would be drawn. All of the letters in the name “Chase” in the questioned document are squeezed together with no space between any of the letters. In all of the exemplars the letters C h a s e have space between them indicating they were each independently formed.

Arguments of Counsel

The Employer argues that the investigators did a thorough and complete job for many weeks during this investigation including interviewing over a dozen witnesses and interviewing CO LaPorte three times. None of the witnesses admitted to knowing LaPorte’s telephone number or writing his name on the Telephone Form. On the other hand, LaPorte conveniently

⁹ Appointments to Deputy Sheriff permit COs to serve on police details and perform other Sheriff related duties. This appointment is separate and apart from employment as a CO and provides supplemental income, as such work is assigned from time to time.

claims his pen was stolen but was the same pen that wrote his name on the Telephone Form. LaPorte, admittedly afraid for the safety of his family, informed investigators he was immediately going to change his cell phone number, but he waited three weeks to do so. LaPorte sought Union representation for his second interview on April 17th even as he assumed that the investigator were going to have good news for him. Similarly Chase initially informed investigators that he would voluntarily submit to a lie detector test, but later reneged on such a commitment telling investigators that if they wanted such a test administered, they would have to compel him. These indicia, the Sheriff argues, are attributes of someone attempting to avoid the truth. The Sheriff, recognizing that lying is a terminal offense, chose to issue extremely mild punishment, a five-day suspension, which signals to LaPorte that he better not engage in such misconduct in the future, but otherwise left him in his position and trusted that the progressive discipline would serve its purpose. The grievance should be denied.

With respect to the Sheriff's removal of LaPorte from the position of Deputy Sheriff, the Employer argues that such action is not governed by the Agreement and the Sheriff's authority under M.G.L. c. 37, §3 is non-delegable and non-arbitrable citing to *Sheriff of Middlesex County v. International Brotherhood of Correctional Officers, Local R-1*, 62 Mass. App. Ct. 830, 832 (2005). The Agreement with the Union does not mention or concern Deputy Sheriffs.

The Union argues that the investigators took the word of every witness as gospel but refused to credit Chase LaPorte who had no motive to engage in the prohibited conduct and who could only put himself in danger if inmates knew his cell phone number. Instead the investigators took the absolute word of an inmate, Gonzalez, who had every reason to make trouble for LaPorte, the one officer who sent him to segregation commonly referred to as "the hole." Moreover there was no thoroughness to an investigation wherein Gonzalez informed them that his "pink" sheet did not have Laporte's name on it and the investigators took his word for such even when the sheet could not be found. The Union also argues that the Telephone Form does not contain a "pink sheet" but only a second no carbon required yellow sheet. At no point did the investigators seek a copy of Rosa's Telephone form, which according to CO Matt Donaldson, Rosa removed from the pile of Telephone Forms on his desk while he was dealing with another inmate. As the Union points out Investigator Joslyn dismissed such a possibility, claiming such an action would be "ballsy" for an inmate to engage in such conduct and a CO lax for allowing such to happen.

The Union argues that the investigators did not review the video for the period of LaPorte's shift on March 24th or the three shifts on March 25th from which they could have traced the entire trail of the Telephone Form. Soto testified that the video was "grainy" and he only reviewed a small part of it. This claim was rebutted by Union witness Nicholas Kirchner who worked in the Employer's Central Control Room which records videos for all of the PODs and officer desks. The video would not show words on a document, but it would show who and where CO's moved throughout the facility. Soto told LaPorte that he "tossed" Gonzalez and Ramos's cell, but testified at arbitration that he did not recall doing that or ordering that it be done. The Union argues that this was not a thorough investigation in the least, with Soto and Joslyn missing obvious leads to relevant evidence. The Union further claims that there clear bias against LaPorte who steadfastly refused to admit wrongdoing when such was not the case despite the investigators threats of impending termination for lying. Finally the Union argues that the testimony of the handwriting expert, Daniel Ryan, should be wholly discarded based on his unwillingness to consider the dissimilarities between the question Telephone Form and the exemplars. The Union also urges the arbitrator to order the Sheriff to reinstate LaPorte to his position as a Deputy Sheriff.

Discussion

A careful review of the evidence in this case reveals that Chase LaPorte did not write his name on Gonzalez's Telephone Form. The investigators admitted that they could not prove a motive for LaPorte doing so or that he engaged in the alleged activity or that he lied when he denied writing his name and phone number on the Telephone Form in question. More importantly there is no evidence that any Sheriff employee did such a thing and insufficient evidence to find that inmates Gonzalez or Rosa did it. The inmates were certainly motivated to get LaPorte in trouble with his job because he sent Gonzalez to segregation. The inmates admitted that they did not like LaPorte and claimed that LaPorte was gay demonstrating a seriously pejorative opinion of him. When CO Donaldson told the investigators that Rosa approached him at his desk and retrieved his Telephone Form on March 25th, wrote on it and returned it to the desk, this should have triggered an awareness that something could be amiss. During the March 29th interview of LaPorte, Joslyn stated that such an action would be "ballsy" and suggested lax staff involvement. But that is precisely what could have happened and it

should have motivated the investigators to examine the video of CO Donaldson's shift and thereafter a review of Rosa's Telephone Form. None of this was done.

The three interviews of LaPorte revealed progressive frustration by Soto and Joslyn. In the first interview, the investigators focused on Sheriff employees playing a stupid prank on LaPorte. In the second interview they find fault with LaPorte for not being able to account for this pen and for his failing to change his cell phone number, hardly evidence of anything but frustration on their part for failing to find someone responsible for writing LaPorte's name on the Telephone Form. The investigators were also influenced by others within the Sheriff's office who looked at the Telephone Form and identified it as LaPorte's signature, including an officer who has forensic evidence investigation training. By the third interview they were convinced that LaPorte was lying and attempted to get him to admit wrongdoing by threatening him with his job and proving he was lying based on a professional handwriting expert. Through it all LaPorte remained steadfast and refused to admit doing anything as stupid as what the investigators claimed. None of this made any difference to the investigators; they were hide-bound to conclude a successful investigation in line with their thirty plus years of investigating criminal activity.

The investigator's final straw was Dennis Ryan's Applied Forensic analysis. It is difficult not to believe that Ryan fully understood that he was being paid for concluding that the handwriting on the questioned document was written by the person who wrote the four exemplars. Why would Ryan tell Soto to send him four additional exemplars and \$1,000 and he would certify that result? Ryan did not need the additional exemplars; he knew where he was going with his report and as the devastating cross-examination showed, he completely ignored the dissimilarities. This analysis was hocus pocus and the Sheriff got taken for \$1,000. LaPorte was not a liar; he is a hard working and competent CO who maintained his integrity throughout this ordeal. The Sheriff should have exonerated LaPorte, apologized for the investigators insistence that he was lying and be proud that he has an employee with utmost integrity.

Reinstatement as a Deputy Sheriff

The Employer argues that Mass. G.L. c. 37, §3¹⁰ prohibits reinstatement of LaPorte as a Deputy Sheriff citing *Sheriff of Middlesex County v. International Brotherhood of Correctional*

¹⁰ Mass. G.L. c. 37, §3 provides: "A sheriff may appoint deputies who shall be sworn before performing any official act."

Officers, Local R-1, 62 Mass. App. Ct. 830, 832 (2005) [hereafter simply *Sheriff of Middlesex County*]. That case involved a CO who replied to an invitation to seek appointment as a Deputy Sheriff but who was denied appointment. The Union grieved and sought to arbitrate the Sheriff's denial of appointment claiming that the Sheriff's denial was based on the employee's service as a member of the Union's Executive Board. The Sheriff sought a stay of the arbitration in Superior Court which the Court granted. The Union appealed. The Appeals Court held that "where a statute confers upon the public employer a particular managerial power, an arbitrator is not permitted to direct the employer to exercise that power in a way that interferes with the discretion granted to the employer by statute" citing *Berkshire Hills Regional School District Committee v. Berkshire Hills Education Association*, 375 Mass. 522, 526-527 (1978).

The Court noted that under G.L. c. 37, §3 the Sheriff is vested with the discretion to appoint deputies who have law enforcement powers unrelated to their service as correction officers but provides them with additional earning potential when serving as a deputy sheriff. The Court also noted that there was a narrow exception to the non-delegable authority rule which permitted arbitrators to curtail a public employer's non-delegable authority, namely impermissible discrimination based on gender, citing to *Blue Hills Regional District School Committee v. Flight*, 38 Mass. 642, 644 (1981). The Court determined that in the case before it, the Union's reliance on discrimination as set forth in the parties' collective bargaining agreement prohibiting discrimination based on union membership was "insufficient to trigger the exception to the nondelegability doctrine established in *Blues Hills Regional District v. Flight*."¹¹ The Appeals Court sustained the stay of arbitration granted by the Superior Court.

The Employer urges a broad interpretation of *Sheriff of Middlesex County*. The current case does not concern an appointment to the position of Deputy Sheriff. LaPorte testified that he was told by his supervisors that the Sheriff gave him only a five-day suspension, an insignificant level of discipline, and that he should "take it on the chin" and not "make waves" by filing a

¹¹ The non-discrimination clauses of the collective bargaining agreement before the Court provided as follows:

Article XIII, Section One: "The Employer and the Union agree that neither the Employer or the Union, nor any representatives thereof, will discriminate in any way against employees covered by this [CBA] because of membership or non-membership in the Union."

Section Two: "It is the continuing policy of the Employer and the Union that, as required by law, there shall be no discrimination with regard to race, color, religious belief, national origin, age, sex, and/or disability, except for where a bona fide occupational qualification exists."

grievance. It was only a very short time after he filed his grievance because the discipline characterized him as a liar that the Sheriff revoked his appointment as a Deputy Sheriff, a position he held for a few years and which provided him with additional work opportunities outside his shifts as a correction officer. He was provided no reason and did nothing to deserve the Sheriff's pulling the position out from under him.

While the Sheriff may have great statutory authority for appointing a Deputy Sheriff, the removal of an employee from Deputy Sheriff status deserves greater scrutiny. The Agreement in this case provides a very strong non-discrimination clause in Article 5, Section 1 b.¹² including a prohibition against discrimination "for *exercising any right under this Agreement* or applicable state law." (*italics added*). Article 6 of the Agreement contains a very broad grievance clause: "*Any grievance or dispute* which may arise between the parties shall be processed in accordance with the following procedure:" (*italics added*). The grievance procedure is not limited to an interpretation of the terms of the agreement but allows the processing of "any...dispute." Article 6, Section 4, arbitration, also incorporates a broad arbitration provision: "If the grievance remains unresolved"¹³ the Union may submit the matter to arbitration.

I find that the Sheriff revoked LaPorte's status as Deputy Sheriff because he exercised his right under the Agreement to have the Union file and pursue his grievance and that, beyond the relatively mild, but without just cause, five-day suspension, the real penalty in this case was the revocation of LaPorte's status as a Deputy Sheriff. The remedy shall include rectification of this penalty.

Award

For these reasons, the following is ordered:

1. The Employer did not have just cause to issue Officer Chase Laporte a five-day suspension on July 1, 2022.

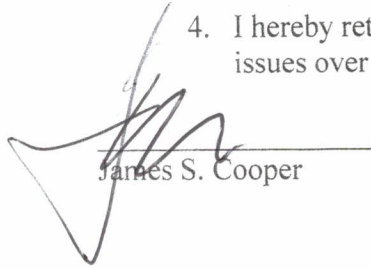
¹² Agreement, Article 5, Section 1 b. :

The Employer and the Union agree not to discriminate against any employee based on his/her status with respect to Union membership or for exercising any right under this Agreement or applicable state law.

¹³ Agreement, Article 6, Step 4 provides in relevant part:

In the event the grievance remains unresolved, the Union shall notify the Employer, in writing within thirty (30) calendar days ..., that it intends to submit the grievance to arbitration...

2. The Employer shall pay Chase Laporte all back pay as a Correction Officer and reinstate any lost benefits and shall remove any and all reference to this discipline from the Sheriff's records and request expungement of this discipline with any agency of the Commonwealth of Massachusetts to which this record of discipline was submitted.
3. The Employer shall reinstate Chase LaPorte to his position as a Deputy Sheriff and compensate him for loss of pay which he would have earned by compensating him in an amount equal to what LaPorte earned as a Deputy Sheriff for a period equal to the time he was removed until the date of his reinstatement as a Deputy Sheriff.
4. I hereby retain jurisdiction of this arbitration case solely for the purposes of resolving issues over the remedy awarded.



James S. Cooper

April 2, 2024