STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF LEELANAU

POLICE OFFICERS ASSOCIATION OF MICHIGAN,

Plaintiff,

v

File No. 07-7669-CL
HON. PHILIP E. RODGERS, JR.

LEELANAU COUNTY and LEELANAU COUNTY SHERIFF MICHAEL OLTERSDORF, in his official capacity only,

Defendants.
_____/

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DECISION AND ORDER REGARDING
DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

Plaintiff Police Officers Association of Michigan ("POAM") filed this action against Defendants Leelanau County and Leelanau County Sheriff Michael Oltersdorf (hereinafter collectively referred to as "Sheriff"), seeking enforcement of the arbitration award in an underlying employment dispute involving Bruce Beeker ("Beeker"), who is an employee of the Leelanau County Sheriff's Office. The POAM claims that the Defendant violated the arbitration award by refusing to delegate law enforcement authority and duties to Beeker, by refusing to pay Beeker the entire amount awarded and by refusing to pay "its contractual share of the arbitration costs."

In their motion for summary disposition, the Defendants contend that the arbitrator does not have the authority to compel the Defendants to delegate law enforcement authority and duties to Beeker. The Defendants further contend that the arbitrator exceeded his authority when he awarded the Plaintiff statutory interest on back wages because the Michigan

Employment Relations Commission ("MERC") has exclusive jurisdiction over an unfair labor practice charge under the Public Employment Relations Act, MCL 423.201, *et seq*. and no such grievance has been filed. And, finally, the Defendants contend that the Arbitrator has no authority to require them to pay for his continuing exercise of jurisdiction and issuance of a supplemental opinion because they did not consent to it. Instead, the POAM chose to obtain these services after the Sheriff advised it that he considered the matter closed.

Factual Background

The undisputed facts in this case are as follows:

Beeker was a Leelanau County deputy sheriff. In May of 1997, he received a three-day suspension for writing derogatory remarks in public places about another law enforcement officer. Two years later, he received a three-week suspension for sexually harassing a co-worker and he was sent for psychological counseling at the Sheriff's expense.[1] In February of 2001, he received a letter of recognition for the time and effort he spent updating and organizing arrest warrants and he received a letter of commendation for making a traffic stop that resulted in the arrest of a drug trafficker. In May of 2001, he received a letter of appreciation from the Grand Traverse County Sheriff's Department for assisting with "a very successful multi-agency dive training." In January of 2002, Beeker was disciplined and filed a grievance requesting that he be allowed to replace the "lost article" and have the disciplinary letter removed from his file. In 2003, Beeker was involved in a major TNT investigation which resulted in an arrest, but, contrary to policy, he failed to notify the Leelanau County Sheriff's department of such a major event occurring within Leelanau County. In February of 2002, Beeker was selected to represent the Leelanau County Sheriff's department on the Traverse Narcotics Team ("TNT"). In January of 2003, he received a letter of commendation from the Grand Traverse County Sheriff for his performance on an effort to recover some snowmobilers who had fallen through the ice on Long Lake. In March of 2004, he received a written reprimand for publicly criticizing orders of his supervisors. He received another written reprimand in June of 2004 for conducting an unlawful search. In August of 2005, he received a letter of appreciation for participating in the attempted recovery of a drowning victim. In January of 2006, the Sheriff received a letter from a mother who praised Beeker for his

[1] He saw a psychologist by the name of Dr. Haskin for an evaluation and counseling.

response to an incident that saved her boy's life and his thoughtfulness in visiting the boy in the hospital a week later. In April of 2006, he received a letter of recognition for doing an excellent job at the scene of an overturned kayak complaint.

The underlying incident in this case occurred on March 18, 2006. Beeker was on duty and responded to a report of an assault and the malicious destruction of property. Beeker and his junior partner interviewed the complaining witness, who reported that Shari Prevost ("Prevost"), his ex-girlfriend, struck him in the face and kicked the side of his truck. The complaining witness had minor injury to his face. Beeker and his partner proceeded to Prevost's home where they interviewed her and she admitted striking the complainant in the face. The junior deputy wanted to arrest Prevost, but Beeker overruled him and told him that, if there was a problem over not arresting her, he would "take the heat." At some time during this encounter, Beeker made the statement to Prevost that "perhaps we can go four-wheeling together when this is over."

Prevost was charged with domestic violence. After her booking, she sent an email to a neighbor that contained the following: "I am hoping to only get probation ... we will see. The booking was humiliating. Although my arresting officer asked me out! haha Think that I'll have as much luck with the judge?" That email was forwarded to the Sheriff and prompted an internal investigation by Under-sheriff Wooters ("Wooters").

Wooters learned that Prevost was not arrested on the night of the domestic violence incident and the reason for not arresting her was not explained in writing. He further learned that Beeker told the junior deputy that he would "take the heat" for not arresting Prevost and that he commented to the junior deputy that the complainant was "an absolute asshole" and Prevost was "getting the raw end of this deal" and that he should "[k]eep that taste in your mouth while you are doing your report".

During his investigation, Wooters also learned that Beeker had 110 contacts with Prevost by cell phone, Prevost visited Beeker at his home on at least three occasions, Prevost hugged Beeker outside his home and expressed gratitude for his support, and Beeker attended Prevost's arraignment and plea appearances in court and spoke with her and her counsel even though he was not subpoenaed to be there. Wooters further learned from a Conservation Officer that Beeker had commented that Prevost was "hot." He learned that Beeker had given Prevost the names of the Leelanau County probation officer and other court personnel whom

she contacted, naming Beeker as her referral. He learned that Beeker told the prosecuting attorney who was handling Prevost's case that Prevost "should have hit him with a shovel."

During the investigation, Wooters stumbled upon a taped telephone conversation between Beeker and a male dispatcher in which Beeker made a loud screaming noise into the phone and then the dispatcher made a comment about his ear feeling good. Beeker then said, "probably not as good as your tongue feels seeing how you've been using it all night long on your partner." The dispatcher responded, "you gotta do what you gotta do."

When Beeker was interviewed about these matters, he admitted that he did not arrest Prevost nor document his reason for not arresting her. He denied knowing that a departmental policy required him to document his reason for not arresting her.[2] When asked about how many times he had had contact with Prevost since the incident, he admitted having telephone contacts with Prevost, but estimated there had been only about 12 such contacts. He did not mention being present at her court appearances or her visiting at his home until he was confronted with that information. He admitted commenting about four-wheeling sometime, but did not consider it a "date." He equivocated on whether he made the statement to the male dispatcher and what he meant by it, but finally admitted he "should not have said it." In short, Beeker did not challenge or deny any of the conduct that Under-Sheriff Wooters discovered during his investigation. Based on that information, the Sheriff terminated Beeker's employment.

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[2] The Sheriff Department's policy in domestic violence cases provides:

B. Arrest

1. Officers may arrest when probable cause exists that one of the following crimes has been committed by one household member against another household member. Arrest is the preferred response to domestic violence because arrest offers the greatest potential for the ending of violence.
   a. Assault; (MCL 750.81)
   b. Assault and Battery; (MCL 750.81)
   c. Assault; infliction of serious injury (MCL 750.81A)

* * *

3. Reminder - Officer must fully document his/her response to every domestic violence call on a standard incident report regardless of whether or not a crime has been committed or an arrest has been made. In those instances where probable cause exists and no arrest has been made, the officer must document his/her reason for not making an arrest.

Procedural Background

The Plaintiff and Defendants are parties to a labor contract that governs Beeker's employment at the Sheriff's Office. The dispute in this case arose under that contract which contains the following applicable provisions:

Article V contains the following internal dispute resolution procedure:

5.1: Grievance Procedure. It is mutually agreed that all grievances, disputes or complaints arising under this Agreement shall be settled in accordance with the procedure herein provided. Every effort shall be made to adjust controversies and disagreements in an amicable manner between the Union and the Employer.

* * *

5.6: The sole remedy available to any employee for any alleged breach of this Agreement will be pursuant to the Grievance Procedure.

* * *

5.9 The jurisdiction of the Arbitrator shall be limited to the case presented before him. The Arbitrator shall have no power to substitute his judgment for that of the County . . .

* * *

5.10: The Arbitrator's powers shall be limited to the application and interpretation of this Agreement as written. The Arbitrator shall be at all times governed wholly by the terms of this Agreement, and he shall have no power or authority to amend, alter, or modify this Agreement in any respect. **By accepting a case from the parties, the Arbitrator acknowledges his limitation of authority** and agrees not to decide an issue which is outside of his jurisdiction under this Agreement. The Arbitrator shall not imply obligations or conditions binding upon the County from this Agreement, it being understood that any matter not specifically set forth herein remains with the reserved rights of the County. The Arbitrator shall have no power to substitute his/her discretion for the counties in cases where the County is given discretion by this Agreement. However, the Arbitrator shall be empowered to return an employee to full duty if his decision is to make the employee whole. **The Arbitrator shall have no power to interpret any state or federal law or state or federal administrative rule or regulation.** [Emphasis added.]

* * *

5.15: The decision of the Arbitrator, if within the scope of his/her authority as set forth above, shall, subject to the judicial review, be final and binding on both parties.

Article VI provides, in pertinent part, as follows:

> 6.3: Loss of Seniority. An employee shall lose his seniority and the employment relationship shall end for any of the following reasons:
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> * * *
>
> B. If he is discharged or terminated and is not reinstated pursuant to the terms of this agreement.
>
> * * *
>
> H. Knowingly falsifies his/her employment application or other employment related report.

Article XV provides, in pertinent part, as follows:

> 15.1: Discipline. No seniority employee shall be discharged or otherwise disciplined except for just cause. Any claim for an employee that he has been unjustly discharged or otherwise disciplined shall be processed through the Grievance Procedure.
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> * * *
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> 15.2 Progressive Discipline. The Employer acknowledges the desirability of use of the principles of progressive and corrective discipline where appropriate. The Union acknowledges, however, that progressive discipline need not be utilized for major or chronic offenses. Progressive discipline would typically be applied using the following format:
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> 1st offense - verbal warning
> 2nd offense - written reprimand
> 3rd offense - suspension
> 4th offense - discharge

Article XXIV provides, in pertinent part, as follows:

> 24.1: The County may require that employees submit to physical and medical tests and examinations by a County appointed doctor when such tests and examinations are considered necessary to the County in maintaining a capable work force, employee health and safety, etc., provided, however, that the County will pa the cost of such tests and examinations. In the event there is a disagreement between the employee's physician and the County's physician concerning the employee's ability to do his job or return to his job, at the written request of the employee, the employee will be referred to a mutually agreeable physician for examination whose decision shall govern the matter. The County and the employee shall share the cost of the physician.

After Beeker's employment was terminated, the parties were unable to resolve their dispute over whether the Sheriff had just cause to terminate his employment, and the matter was submitted to arbitration.

In his original opinion, dated February 23, 2007, the arbitrator found that Beeker was not discharged for just cause. On his own initiative, the arbitrator ordered that Beeker undergo a psychological evaluation, if possible, by the psychologist who evaluated him in 1999. The Sheriff had not claimed that Beeker was fired due to a psychological condition. Beeker's psychiatric state was not an issue in the arbitration. Nevertheless, the Arbitrator ruled that if Beeker was determined to be fit for duty, he was to participate in counseling.[3] In addition he was to be put back on the payroll and to be made whole, including back pay, benefits, seniority, and any other emoluments of employment which he would have enjoyed had he not been terminated. If he was finally determined to be unfit for duty, then he was to be treated as terminated as of the date of that final determination. The arbitrator retained jurisdiction to resolve any issues which might arise over the implementation of his award.

Beeker was examined by Dr. Haskin, the psychologist who examined him in 1999. Dr Haskin determined that Beeker was not fit for duty. His employment was again terminated. Beeker notified the Sheriff that he was seeking a second opinion and the POAM demanded that Beeker remain employed while he did so. The Sheriff advised the POAM that it had complied with the arbitrator's ruling and would take no further action on the matter.

The POAM then sent a letter to the arbitrator attacking Dr. Haskin and his clinical findings. As a result of the second evaluation, a psychiatrist found Beeker fit for duty. After a third psychological evaluation which also found Beeker fit for duty, Beeker was reinstated and put back on the payroll, but he was not given law enforcement powers or duties. He was paid all of his back pay, but not interest. The Sheriff refused to pay the final bill for the arbitrator's services.

After receiving this report, the Arbitrator gratuitously issued a supplemental opinion. He found that the Sheriff again terminated Beeker's employment without just cause and that § 24.1 of the labor contract, entitled Physical Examinations, covered psychological examinations and provided for a third evaluation by a mutually agreed upon examiner that would control. The arbitrator ordered that Beeker be put back on the payroll, a third examiner be selected, Beeker be evaluated, and the report sent simultaneously to the POAM, the Sheriff and the arbitrator; the parties share the cost of the examination; and the Sheriff pay one-half of the

[3] Not only did the Arbitrator provide an arm chair psychological diagnosis, he also established a counseling schedule.

continuing costs of the arbitration. The arbitrator again retained jurisdiction to resolve any issues which might arise over implementation of his award.

The POAM chose to file this action to enforce the arbitration award. The Defendants filed a motion for summary disposition pursuant to MCR 2.116(C)(7), (8) and (10). The Defendants contend that the arbitrator exceeded the scope of his authority as set forth in the collective bargaining agreement. More specifically, the Defendants contend that the Arbitrator impermissibly interpreted state and federal law; ruled on matters not properly before him, awarded relief he was not authorized to award and otherwise exceeded his authority. Therefore, pursuant to Article V, Section 15, the Arbitrator's decision is not final and binding.

The Arbitrator's Opinions

"[W]hen considering the enforcement of an arbitration award, [this Court's] review is narrowly circumscribed." *Lenawee Co Sheriff v Police Officers Labor Council*, 239 Mich App 111, 117; 607 NW2d 742 (1999). In *Police Officers Assoc of Michigan v County of Manistee*, 250 Mich App 339, 343-344; 645 NW2d 713 (2002), the Court described the reviewing Court's responsibility as follows:

> The necessary inquiry for this Court's determination is whether the award was beyond the contractual authority of the arbitrator. Labor arbitration is a product of contract and an arbitrator's authority to resolve a dispute arising out of the appropriate interpretation of a collective bargaining agreement is derived exclusively from the contractual agreement of the parties. It is well settled that judicial review of an arbitrator's decision is limited. A court may not review an arbitrator's factual findings or decision on the merits. Rather, a court may only decide whether the arbitrator's award "draws its essence" from the contract. If the arbitrator in granting the award did not disregard the terms of his employment and the scope of his authority as expressly circumscribed in the contract, judicial review effectively ceases. [*Lincoln Park v Lincoln Park Police Officers Ass'n*, 176 Mich App 1, 4; 438 NW2d 875 (1989) (citation omitted).]
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> > [W]hile the powers of an arbitrator are not unlimited, his awards should be upheld so long as he does not disregard or modify plain and unambiguous provisions of a collective bargaining agreement. *General Telephone Co of Ohio v Communications Workers of America, AFL-CIO*, 648 F 2d 452, 457 (CA6, 1981).
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> In *Monroe Co Sheriff v Fraternal Order of Police, Lodge* 113, 136 Mich App 709, 718-719; 357 NW2d 744 (1984), this Court stated:

> Federal courts have taken the view that an arbitrator to whom a claim of discharge without just cause is submitted may, in the absence of language in the collective-bargaining agreement clearly and unambiguously to the contrary, determine that, while the employee is guilty of some infraction, the infraction did not amount to just cause for discharge and impose some less severe penalty. An arbitrator's imposition of a less severe penalty is without authority and contrary to the terms of the collective-bargaining agreement where the agreement clearly reserves to the employer, without being subject to review by an arbitrator, the power to discharge for the infraction found by the arbitrator to have been committed. We adopt this approach as our own. [Citations omitted.]

In this case, the Arbitrator was asked to determine whether the Leelanau County Sheriff had just cause to terminate Beeker's employment. Rather than address the issue before him, the arbitrator went to great lengths to find that either Beeker did not do that which he had already admitted doing or to minimize the significance of Beeker's conduct. He declined to believe Beeker asked Prevost on a date even though Beeker and Prevost admitted that he suggested they "go four-wheeling together when this is over" because Prevost eventually "flatly denied that [he] or any police officer had asked her out" which is nothing more than a mere matter of semantics. The Arbitrator minimized the significance of the contacts between Beeker and Prevost. He chose to ignore the list of 81 cell phone calls between them. He relied on his supposition that Prevost initiated all of the contacts. He similarly discounted the hug between them because it was not a "torrid lovers' embrace" and he concluded that there was "nothing of substance, most assuredly nothing illicit." The Arbitrator relied heavily on the fact that the Sheriff could not prove hat Beeker and Prevost were "romantically involved."

The Arbitrator also minimized the significance of Beeker's attendance at the arraignment and plea proceedings by naively concluding that her "attorney had no problem with contacts between [Beeker] and his client" and it was her attorney's job to protect her rights. He further minimized the significance of the contacts by concluding "no harm, no foul." The Arbitrator gives full credence to Beeker's claims that he only maintained contact with Prevost to learn about her ex-boyfriend's criminal exploits even though Beeker never reported this to the Sheriff even after he was advised of the internal investigation into what the Sheriff perceived as inappropriate contact with Prevost. Beeker could have obtained authorization for an undercover investigation, but instead chose to place a band aid over an unprofessional

infatuation with a criminal suspect. One has to wonder why Beeker did not report that he was investigating criminal activity by the ex-boyfriend. Common sense dictates that he did not report it because such an investigation was, in fact, "a fabrication concocted for arbitration" and "a drug investigation fable" as surmised by the Sheriff rather than a case of Beeker getting to "know the enemy" as surmised by the Arbitrator.

It is apparent from the Arbitrator's opinions that he missed the point. Beeker was the investigating officer in a criminal case in which Prevost was the suspected perpetrator. He had a responsibility to conduct himself consistent with his position as an employee of law enforcement. By virtue of his employment he was aligned with the prosecution. He had no business providing "support" for a suspect who was charged with domestic violence. It is not surprising that her counsel did not have a problem with Beeker befriending his client. Why would a defense attorney object to the investigating officer taking his client's side in the investigation and prosecution of a criminal offense? To do so would be a disservice to his client who is either trying to beat the charges or interested in leniency. Just because Prevost admitted she assaulted her ex-boyfriend does not mean that she had nothing to gain by befriending Beeker. As she wrote in her email to her neighbor, she was "hoping to only get probation." Whether he meant to or not, Beeker certainly could have influenced the sentencing by openly supporting Prevost. Offering support to a criminal suspect is totally inappropriate for a *law enforcement* officer who is supposed to investigating and assisting the prosecution in making its case.

The Arbitrator minimized Beeker's inappropriate supporting role, in part, by concluding that he was only expressing his personal opinion of "the abuse of domestic violence allegations." Even worse, the Arbitrator endorsed Beeker's opinion, calling the underlying domestic violence case "an inconsequential ex-lovers' quarrel." And, he maligned the Special Assistant Attorney General who was assigned to this area specifically to prosecute domestic violence cases because "[i]t is indeed difficult not to wonder what all the fuss was about" because "[Beeker's] misconduct, in the end, did not result in an adverse impact upon the criminal case."

While it may be that Prevost pleaded guilty, there was certainly harm done. While the underlying incident was labeled a domestic violence incident, the conduct in question was actually reported as an assault and malicious destruction of property. By perpetuating the

primitive notion that an assault in the domestic context is nothing more than "an inconsequential ex-lovers' quarrel", the Arbitrator dealt a significant blow to all victims of domestic violence. An assault is an assault no matter who commits it or in what context. It has taken many years for the victims of domestic assaults to realize this and to take action to protect themselves. To refer to such assaults as "inconsequential" under any circumstances is moronic and wrong. The Arbitrator's opinion belittles domestic violence and sexual harassment in the workplace. He enables behavior which is both inappropriate and illegal.

The Arbitrator also set back the cause for sexual equality in the workplace by several decades. He took the sexually explicit, derogatory comment that Beeker made to the male dispatcher about "using tongue on his partner" and whisked it aside as an "offhand quip", a comment "made to amuse, entertain, evoke a response, or for some such innocuous purpose," "playful banter" and "mischief." He could see no harm in such a comment being made to a fellow employee since the female *object* of the comment did not hear it and, therefore, could not be offended by it and the comment was consistent with various television shows that he posited "accurately portray contemporary female sexual appetites." Here, the Arbitrator not only missed the point, but he also demonstrated that he is just as base as Beeker. To think for even a moment that such comments in the workplace are "innocuous" is absurd. For an employer to tolerate such "banter" establishes the kind of intolerable workplace that ultimately leads to charges of sexual harassment for which the Sheriff (taxpayers) may be liable. For the Arbitrator to chastise the Sheriff for taking such a comment seriously is unconscionable. The Arbitrator has done a disservice to the employer who could justifiably conclude from the Arbitrator's opinion that such comments are acceptable workplace "banter."

In his supplemental opinion, the Arbitrator goes even further off the rail. The Arbitrator had no authority to retain jurisdiction after he rendered his first opinion and he would not have had any reason to retain jurisdiction if he had not violated the labor contract by spontaneously ordering a psychological evaluation unrelated to the issues before him and that he had no authority to order. The Sheriff did not initially agree to participate in continuing arbitration and the supplemental opinion was not based on any continuing arbitration, but rather on correspondence and a review of psychological reports that the Arbitrator was not authorized to order in the first place, much less review.

The sole issue that the Arbitrator was supposed to address was whether the Sheriff had just cause to terminate Beeker's employment. *Black's Law Dictionary* defines "just cause" as "a fair and honest cause or reason, regulated by good faith."

While the Arbitrator agreed with the POAM that Beeker's fate was sealed before the internal investigation began because the Sheriff had an agenda to get rid of Beeker, there is absolutely nothing in the record to support this contention. Instead, the record shows that Beeker befriended a criminal suspect in a case that he was investigating. Beeker either failed to report his interest in the suspect as a source of information about the criminal activities of her ex-boyfriend or he lied about his reasons for befriending her. In either event, by what he said and did, Beeker made his personal opinion about the domestic violence charges known to the suspect and to the attorney who was representing her, to his partner who was writing the incident report, to the prosecutor who was prosecuting the case, to the court that arraigned Prevost and accepted her plea, and to the probation officer who would be supervising her if she was placed on probation. The only possible purpose for letting everyone know that Prevost was "getting the raw end of the deal," was to influence the outcome of the process. Whether he actually influenced it or not is irrelevant. It was his duty to uphold the law, not advocate for the defense.

In Michigan, the state's duty of law enforcement for the protection of its citizens has been constitutionally delegated to the county in the person of the sheriff. The sheriff is a peace officer charged with enforcing the laws enacted by the Legislature under the police power and, thus, the sheriff's powers and duties comprise a part of the police power of the state. *National Union of Police Officers Local 502-M, AFL-CIO v Board of Comm'rs of Wayne County*, 93 Mich App 762; 86 NW2d 242 (1979). A Sheriff has to be able to rely on his deputies to uphold the law, to apprehend offenders and to cooperate with the prosecution of offenders. An employee of the Sheriff's Department who does not accept that role has no business being a deputy sheriff.

Pursuant to Article IV § 4.1 of the collective bargaining agreement, the Sheriff has the right to "take whatever action is necessary to carry out the duty and obligation of the Employer to the taxpayers." The Sheriff's termination of Beeker's employment was consistent with his obligation to carry out the duty and obligation of his office. The Arbitrator disagreed and the Sheriff has accepted the finding of a termination without cause.

The Arbitrator further violated the collective bargaining agreement by pseudo-diagnosing Beeker as having psychological issues and requiring Beeker to submit to a psychological evaluation. There is absolutely no provision in the Agreement that gave the Arbitrator that authority. There is also nothing in the Agreement that gave the Arbitrator the authority to retain jurisdiction to review the psychological evaluation and substitute his opinion of Beeker's fitness for duty for that of the psychological professional. The Arbitrator also exceeded his authority when he spun off on tangents, hypothecating about various federal and state laws that might offer Beeker recourse against the Sheriff's Department. The bias the Arbitrator exhibited throughout was most evident in these pages of his voluminous opinions.[4]

The Instant Action to Enforce the Arbitration Award

The POAM claims that the Defendant violated the arbitration award by refusing to delegate law enforcement authority and duties to Beeker, by refusing to pay Beeker the entire amount awarded, e.g., statutory interest on back wages, and by refusing to pay "its contractual share of the arbitration costs."

Law Enforcement Authority and Duties

The POAM wants this Court to order the Sheriff to delegate law enforcement duties and responsibilities to Beeker. The POAM quotes the 1988 unpublished case of *POAM v Livingston County* out of the Court of Appeals, Docket No. 102138 wherein the Court said: "when a deputy is returned to his position as detective, he should be paid per the contract as a deputy." The POAM cut this quotation short and out of context. The quote actual concludes with "even if the Sheriff refuses to grant his law enforcement powers." Obviously, being paid as a deputy is quite different than being given law enforcement duties and responsibilities.

In the *Livingston County* case, the POAM made the same argument that it is making here: "when the arbitrator ordered that Cooper be reinstated, he meant for Cooper to be reinstated in his previous position, as a detective" with law enforcement duties and responsibilities. The Court rejected this argument, holding as follows:

> . . . we agree with defendant that the arbitrator did not have the authority to restore Cooper's full law enforcement powers. This Court has held in three cases that a collective bargaining agreement executed under the Public Relations Act

[4] The Arbitrator's original opinion consists of 52 pages and his supplemental opinion consists of another 22 pages.

("PERA"), MCL 423.201, et seq; MSA 17.455(1), et seq., such as the one at bar, does not abrogate the sheriff' exclusive authority to determine which of his deputies shall be delegated the power of law enforcement. [Citations omitted.] In these cases, this Court held that an arbitrator has no authority to order a sheriff to restore deputies' full law enforcement duties.

In addition, the Arbitrator in the instant case did not order the Sheriff to delegate law enforcement duties and responsibilities to Beeker. He simply ordered the Sheriff to put Beeker "back on the payroll," which the Sheriff did.[5]

Contrary to the POAM's position here, no one has the authority to dictate the type of work that the Sheriff assigns to one of his deputies. That is a discretionary function reserved exclusively to the County Sheriff. See, *National Union of Police Officers Local 502-M, AFL-CIO v Wayne County Board of Comm'rs*, 93 Mich App 76; 286 NW2d 242 (1979) ("...although the sheriff's power to hire, fire and discipline may be limited by the Legislature, the matter of which of his deputies shall be delegated the powers of law enforcement entrusted to him by the constitution is a matter exclusively within his discretion and inherent in the nature of his office, and may neither be infringed upon by the Legislature nor delegated to a third party." [Citations omitted.]

Furthermore, under Article IV of the collective bargaining agreement, the Sheriff "reserves and retains solely and exclusively, all of the inherent and customary rights, powers, functions and authority of management to manage [the Sheriff's Department] operations, and [his] judgment in these respects shall not be subject to challenge." He also has the "right to direct, hire, promote, transfer, *assign* and retain *employees in positions within the County consistent with the employee's ability to perform the assigned work.*" [Emphasis added].

This being so, the Arbitrator did not have the authority under the collective bargaining agreement to order the Sheriff to restore Beeker's law enforcement powers. Nor does this Court have the authority to enter such an order.

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[5] The POAM also relies on *POAM v County of Mecosta* out of the circuit court of Mecosta County and cites that case in support of its position that the Sheriff acted irresponsibly, arbitrarily or capriciously by not delegating law enforcement authority to Beeker. However, the Court noted that such a decision may be sustained if the Sheriff could demonstrate "some reasonable basis for the exercise of that particular authority." This Court is not familiar with the facts of that case, but in this case, Beeker has demonstrated a lack of common sense and judgment that militate against his exercising law enforcement duties. Based on the fact that he received a psychological evaluation in 1999 followed by counseling and was again suspected of having mental health issues not only by the Sheriff but also by the Arbitrator and he was found not fit for duty by the first examiner makes the Sheriff's decision not to assign him law enforcement duties anything but irresponsible, arbitrary or capricious.

Statutory Interest on Back Pay

In his supplemental opinion, the Arbitrator awarded Beeker "statutory interest on all back pay" because he found that the Sheriff "acted unreasonably in terminating [Beeker] for a second time without just cause."

Again, the only question for the Arbitrator to decide during the initial arbitration was whether the Sheriff had just cause to terminate Beeker's employment. If the Arbitrator found that there was no just cause for the termination of his employment, he had the authority to "return [Beeker] to full duty" and award him the pay and other emoluments of employment that he would have received if he had not been terminated. See Article 5, Sec. 10 of the collective bargaining agreement. Nothing in the agreement, however, gave the Arbitrator the authority to sanction the Sheriff for acting unreasonably.

Additional Arbitration Costs

After the first psychologist found Beeker unfit for duty, the POAM was advised by the Sheriff's office that it had "complied with its legal requirements" and was "taking no further action." The POAM wrote to the Arbitrator "invoking the Arbitrator's continuing jurisdiction."[6]

In response, the Arbitrator advised counsel as follows:

> . . . the immediate issue which must be addressed is the arbitrator's compensation. If the Employer truly has closed its books on this matter, presumably that means it will contribute nothing further toward the costs of arbitration.
>
> There appear to be at least two possible courses of action; if you can think of other, please do suggest them.
>
> (I) The Union could agree to pay the arbitrator's bills in full as soon as they are submitted and seek recourse against the Employer at a later date. If the Union elects this alternative, I would require a written promise from a duly authorized Union official.
>
> (II) The Union could commence litigation against the Employer at once, in a federal or state court of competent jurisdiction, seeking to compel the Employer to comply with the award and to continue to participate in the arbitration process until it is finally concluded and to pay its share of the arbitration costs.

The POAM chose option (I) by letter dated May 14, 2007.

[6] The Arbitrator had retained jurisdiction "to resolve any issues which arise over implementation of his award."

The issues that arose were issues surrounding the psychological evaluation that the Arbitrator ordered Beeker to undergo. As noted above, the only issue that was initially before the Arbitrator was whether the Sheriff had just cause to terminate Beeker's employment. Beeker's psychological fitness for duty was not at issue until the Arbitrator, going well outside the scope of his authority, made it an issue.[7] Therefore, the Arbitrator had no authority to retain jurisdiction to deal with issues he did not have the authority to address in the first place.[8]

For this reason, the Court declines to order the Sheriff to share in the expense associated with the Arbitrator's continued involvement.

Conclusion

The Arbitrator exceeded the authority vested in him by the collective bargaining agreement. The sole issue before the Arbitrator was whether the Sheriff had just cause to terminate Beeker's employment. Rather than limit his inquiry accordingly, the Arbitrator exceeded his authority by creating issues that did not exist and awarding relief that was not authorized by the agreement.

For the reasons discussed herein, the Court declines to restore Beeker to law enforcement duties. If the Arbitrator's award is determined to require such, then this Court refuses to enforce the arbitration award. Instead, the Court grants the Defendants' Motion for Summary Disposition and dismisses this case.

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: 4/14/08

[7] "In the short time the arbitrator had to observe Grievant's demeanor at the hearing, he came across as distant, detached, spacey, note quite all there. His sometimes erratic behavior and inconsistent job performance seem almost bipolar or schizoid. . . Grievant is in need of counseling." February 23, 2007 Opinion of the Arbitrator at p 50.

[8] By letter dated May 24, 2007, the Arbitrator advised counsel that the arbitration would continue and he requested copies of the psychologist's report, Grievant's doctor's report, and the booklet explaining benefits under the medical plan described in the collective bargaining agreement, and the name of a mutually agreeable physician to make the ultimate decision as to Grievant's fitness for duty. The Employer was also asked to answer several questions regarding Beeker's 1999 psychological evaluation and the recent evaluation by Dr. Haskins, the criteria used by the Sheriff to determine "fitness for duty," and where those criteria are addressed in the psychological report. The Arbitrator was clearly setting an agenda for the continuing arbitration that was not related to the initial grievance and that was outside the scope of his authority under the collective bargaining agreement.