

In the Matter of the Arbitration

Between

SHERIFF'S DEPARTMENT,

**Case: Franklin #1**

Employer,

And

Supervisory Unit

Union.

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Attorney for Employer

Attorney for Union

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### **Opinion and Award**

The arbitration of Lt. Mike Green's 2005 disciplinary grievance against the Someplace County Sheriff's Department took place on May 30, 2006, at the Someplace County facilities in Newplace, Michigan.

The Employer was represented by David Moon, Esquire. It presented Captain Jack Sun and Under Sheriff Gail Cake as witnesses. The Union was represented by Thomas Flower, Esquire, and presented Stanley Pin, Esquire as its witness. UNION Labor Representative Duane Bike and the Grievant, Lt. Mike Green, were present, but did not testify.

There were three joint exhibits:

The collective bargaining agreement was Joint Exhibit 1;

The booklet entitled "Rules and Regulations of the Someplace County Sheriffs Office was Joint Exhibit 2; and

The grievance claim was Joint Exhibit 3.

The grievance chain includes: The Sheriffs Office Discipline Form, dated August 29, 2005 (the written warning); the August 29, 2005 UNION Grievance here at issue; the August 31, 2005 Sheriffs written response to the UNION; a September 16, 2005 memorandum from Sheriff Lawrence Cook, Jr. to the UNION regarding Lt. Mike Green; and the UNION's September 22, 2005 response, notifying the Sheriff of its intent to arbitrate.

There was one Employer's Exhibit, an unsigned August 23, 2005 Memorandum which gave Captain Sun's version of the incident at issue.

The text of Sheriff Cook's August 31, 2005 response to the UNION encapsulates the Employer's version of the facts and its position. (Jt. Ex. 3, p. 3, *supra*):

On August 16, 2005, Sgt. Mike Pace was arrested for Assault. Sgt. Pace is a corrections supervisor. Lt. Mike Green is his supervisor and has disciplined him in the past. On this date, Lt. Green booked Sgt. Pace into the Jail computer and represented him as a Union Steward. Under Sheriff Cake advised Lt. Green this was not a good idea for him to represent Sgt.



Cake advised him someone from the Union needs to come down or the alternate should represent him.

On Monday, August 22, 2005, a Determination Hearing was held at the Someplace County Sheriffs Office. In attendance were Under Sheriff Cake, Sgt. Pace and his representative Duane Bike, for the UNION and Lt. Mike Green.

On Tuesday, August 23, 2005, Capt. Sun advised that Lt. Green shared information about the ongoing criminal case on Sgt. Pace with Pace's defense attorney, Stan Pin. He gave his opinion that the bruise on the back of Inmate Bobby Clark could not have been made by Sgt. Pace's shoe and drew a diagram indicating why he thought the bruise was not made by Sgt. Pace's shoe. This is inappropriate contact with the defense attorney. Any comments about the case should go through the investigating officer, Detective Magee.

The Union recognizes and agrees that the employees covered by this Agreement are supervisory. Lt. Green is first and for most [sic] a Command Officer for the Someplace County Sheriffs Office. His Captain submitted an investigation to the department's detective division and the prosecutor issued a warrant for Sgt. Pace.

If Sgt. Pace felt the information from the Determination Hearing needed to be revealed to his attorney, Stan Pin, then it is his responsibility and surely not his Command Officer. Will Lt. Green become a defense witness, and did he jeopardize the Prosecutor's case?

The Rule (3.18) Lt. Green was charged with violating and for which he received

a written warning reads:

Members and employees shall not reveal Department information outside of the Department except as provided elsewhere in this manual or as required by law or competent authority. Specifically, information contained in Department records, other information ordinarily accessible only to members and employees, and names of informants, complainants, witnesses and other persons known to the office are considered confidential. Silence shall be employed to safeguard confidential information. Violation of the security of this type of information reflects misconduct and disciplinary action may be initiated.

The Statement of Grievance reads:

On August 29, 2005 the aggrieved was given a written warning without just cause. The aggrieved was providing information to defense counsel, who was unable to attend a determination hearing, due to his being required to appear in court. The shared information was privy to the aggrieved acting as a union representative. The aggrieved was acting under the scope of his duties as the union steward.

With these preliminary matters to set the stage, it is time to move onto "the main stage". The discussion, opinion and award which follow are predicated upon my review of the record, its exhibits, and the parties' post-hearing briefs.

### **Background Facts**

As Employer's counsel noted at the inception of the hearing, there is no huge dispute about the facts. On August 23, 2005, Grievant Lt. Mike Green, had a conversation with Sgt. Pace's attorney, Stanley Pin, Esquire, wherein Grievant Lt. Green expressed his opinion that Mr. Pin's client, Sgt. Pace, could not have made the bruises on a prisoner's back and sketched a diagram to explain his theory. Captain Jack Sun then joined the pair (Lt. Green and Attorney Pin). According to Captain Sun, he corrected "a fact". This was the fact upon which Captain Sun believed that Lt. Green had predicated his opinion. Captain Sun then left the two of them.' Lt. Green received a written warning for violating Section 3.18 of the Rules, *supra*.

As this grievance challenges discipline, the Employer bears the burden of proof. I accept the Employer's version of the controlling incident. However, I reject any theory that camaraderie, friendship or union position prompted the Pin-Green conversation at issue.

I reach that conclusion because of the following excerpt from the third page of Joint Exhibit 3:

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<sup>1</sup> The case against Sgt. Pace was, according to testimony, eventually "nolle prosequed".

On August 16, 2005, Sgt. Mike Pace was arrested for assault. Sgt. Pace is a corrections supervisor. *Lt. Mike Green is his supervisor and has disciplined him in the past.... (Emphasis added) supra.*

Since Grievant has not hesitated to discipline Sgt. Pace in the past, I will not make the assumption that Lt. Green compromised his status as a supervisor to assist Pin in defending Sgt. Pace. There was no nefarious motive in Grievant's conversation with Pin. Grievant gave only an opinion — not "information" as prohibited by the Rule.

Captain Sun, according to his own Memorandum (Employer Exhibit 1), said:

I indicated to them [Atty Pin and Lt. Green] that the bruise was much lower on his body than the drawing. I then told Mr. Pin and Lt. Green that it really didn't matter what either of us thought. Certainly I would have said something prior to now if I thought there was no evidence to prove the allegation....

Captain Sun was not disciplined for speaking with Attorney Pin.

Attorneys who practice criminal law, of necessity, speak with law enforcement officers, from the "cop on the beat" to the highest supervisory personnel. This necessary communication created the basis for the Rule (3.18, *supra*). The definition of information is phrased in the negative. That information which cannot be revealed is that which is ordinarily not accessible to those with no need to know. Those who need to know are named in the Rule. The undefined word is "information." The



Someplace County Sheriff's Office defines "information" as fact(s). This is consistent with Webster's definition, which begins:

The communication of news, knowledge, etc., a  
*fact told or communicated...* (Emphasis added.)

Lt. Green gave his opinion. He divulged no "information", i.e., no fact. He did not violate the Rule.

The Employer did not carry the burden of proof, with which it was charged, in order to uphold the challenged discipline. Accordingly, the grievance is granted.

### **AWARD**

The August 29, 2005 written warning given to Lt. Mike Green shall be removed from any and all Someplace County records and files, including any and all references thereto, wherever they might appear.

Dated: July 12, 2006

  
LEE R. FRANKLIN, Arbitrator