

COMMONWEALTH OF MASSACHUSETTS

BEFORE ARBITRATOR MARY ELLEN SHEA

In the matter of the arbitration between:

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NORFOLK SHERIFF’S OFFICE

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#21-006

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Coughlin

*

-and-

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N.E. POLICE BENEVOLENT ASSOCIATION

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LOCAL 575

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INTRODUCTION

A demand for arbitration was filed by the New England Police Benevolent Association, Local 575, pursuant to the parties’ collective bargaining agreement. The parties jointly selected Mary Ellen Shea to act as single neutral arbitrator in the matter. A hearing was held on March 3, 2022, in Quincy, Massachusetts.

The Norfolk Sheriff’s Office (Employer/NSO) was represented by Attorney Dan V. Bair, II, and was assisted by Attorney Courtney Madden, General Counsel. Appearing for the Employer were William Casteel, Assistant Deputy Superintendent for Investigations; David Donaghy, Senior Fiscal Specialist; James Dunn, Correction Officer; Kyle McKay, Correction Officer; William O’Donnell, Fiscal Specialist; and Lieutenant Robert Sugrue.

The New England Police Benevolent Association, Local 575 (Union), was represented by Attorney Thomas E. Horgan. Appearing for the Union was Alicia Coughlin, the Grievant. Jay DeAngelis, the Local President, also attended.

The parties submitted post-hearing briefs by May 27, 2022, at which time the record was closed.

THE ISSUES

The parties agreed upon the following statement of the issues:

Whether the Norfolk Sheriff's Office had just cause to impose a three (3) day suspension against the Grievant on October 25, 2021?

If not, what shall be the remedy?

RELEVANT CONTRACT PROVISIONS

The parties' collective bargaining agreement includes the following relevant provisions:

ARTICLE II
UNION REPRESENTATION

C. Discipline and Discharge:

1. It is agreed that the Sheriff will have the right to discipline or discharge an employee for just cause.

ARTICLE XXXII
DUTIES AND RESPONSIBILITIES

It is the responsibility of all Sheriff's Office employees to read all logs, notices, reports and bulletin boards within any Sheriff's Office facility or ancillary programs or areas which are pertinent to their jobs.

The Employer will provide every new employee with an orientation pamphlet.

It is further the employees' responsibility to familiarize themselves with all applicable facility Post Orders, Policies, and practices of the Labor Agreement and all relevant facility rules and regulations, notices, CSDs, bulletins or other employer notices.

The following are among the "notices" referenced in Article XXXI, above.

Norfolk Sheriff's Office
Employee Rules & Regulations

CSD 220A.41: Investigations:

3. Activities within the Correctional Center may, on occasion, include incidents, which require thorough and complete investigation and inquiry.

(a) Employees must respond fully and promptly to any questions or interrogatories relative to the conduct of an offender, a visitor, another employee, or themselves.

CSD 405.11: Lobby Operations:

1. The Lobby Officer shall retrieve the offender money from the locked drop box located in the lobby. The lobby officer shall enter all new commitment money

into the computerized offender account or add to an existing account. The lobby officer shall secure checks in the locked cash box located in the lobby closet. The lobby officer shall make the deposit, balance the account, and forward the money to the business office.

2. The NSO will only accept government checks and checks from other institutions. (a) The lobby officer, in conjunction with the fiscal specialist, is responsible for the accurate accounting of monetary transactions of all deposited offender funds.
3. Only authorized personnel shall be allowed to conduct monetary transactions with regard to offender funds.

CSD 405.13: New Commitments:

The Lobby Officer shall work in conjunction with the Booking Officer to ensure the accurate accounting and processing of offender funds for each new commitment and return from court in accordance with CSD 403.07.

CSD 522.12: Categories of Employee Misconduct Investigations:

3. Category II-Investigation by Investigative Services Unit
(b) The following are examples of some, but not necessarily all, Category II Staff Complaints to be investigated by Investigative Services Unit:
(xvi) disobedience/insubordination.

CSD 522.13: Investigations:

4. The investigator shall instruct the person interviewed of his/her obligation to cooperate in the investigation and that failure to cooperate may lead to disciplinary action, up to and including termination.

BACKGROUND

Alicia Coughlin has been employed as a Correction Officer by the Norfolk Sheriff's Office since 1995. Officer Coughlin had held the position of Lobby Officer for six years and received a good performance evaluation in January 2020. Her prior disciplinary record included one written reprimand dated August 20, 2021. On October 25, 2021, Superintendent Michael Harris, issued the following suspension notice:

This letter shall serve as notice of a three (3) day unpaid suspension for violation of Norfolk Sheriff's Office (NSO) policy relative to your actions and inactions on Tuesday, September 28, 2021.

On September 28, 2021 while assigned to the Lobby Officer, you ignored a direct order by FSC Lt. Sugrue to attend an interview with ADS William Casteel

regarding an ongoing investigation. Upon refusing this order, you were relieved of duty for the day.

As you know, NCSO CSD 220 governs employee rules and regulations and sets forth a binding employee rulebook to guide employee conduct and actions. Specifically, 220A.41 Investigations states that "Employees must respond fully and promptly to any questions or interrogatories relative to the conduct of an offender, a visitor, another employee or themselves."

During the course of this investigation, which you ultimately did cooperate with, it was confirmed that there was a \$720.00 discrepancy with an inmate deposit transaction that you initiated. This investigation also confirmed that you (1) failed to properly account for this cash transaction and (2) at one point, left the cash unattended and unsecured. These actions and inactions, are clear violations of NSO policies:

- CSD 405.11 (2 (a) states "the lobby officer, in conjunction with the Fiscal Specialist is responsible for the accurate accounting of monetary transactions of all deposited funds."
- CSD 405.13 also states "the lobby officer shall work in conjunction with the Booking Officer to ensure the accurate accounting and processing of offender funds for each new commitment."

Your failure to initially comply with the investigation into this matter coupled with your failure to properly fulfill the requirements of your post assignment, regardless of circumstance, are not acceptable for an officer affiliated with the Norfolk Sheriff's Office. Accordingly, in consideration of the multiple policy violations noted above, you are hereby suspended for a period of three (3) days. This suspension is to be served on the dates designated below. Please be aware that further instances of misconduct will result in more significant discipline up to and including termination.

Joint Exhibit #2

The Lobby Officer's duties include processing people in and out of the facility, including inmates' attorneys or visitors and contractors hired to perform work. The Lobby Officer also handles phone calls, processes inmate mail, and deposits inmate funds to their individual accounts using an automated kiosk (somewhat similar to an ATM).

The circumstances leading to an investigation and the discipline of Officer Coughlin related to a new inmate ("new commitment") who had cash on him when he was brought to the jail. On September 17, 2021, Officers James Dunn and Kyle McKay were assigned to transport the new inmate (Soones) from Quincy District Court to the Norfolk County jail in Dedham.

Upon arrival at the court, the officers received the inmate's personal property, which included an envelope filled with cash. Officer McKay testified he counted the cash in Officer Dunn's presence and the amount totaled \$5700. The new inmate told the officers the envelope had \$5900 in cash. Officers Dunn and McKay then re-counted the cash a few times, arriving at the same amount each time: \$5700. They explained this to the new inmate who conceded that \$5700 must be the correct amount. The cash was placed in a manilla property envelope, closed, stapled, and marked "\$5700." The new inmate signed the envelope. The officers arrived at the jail with the new inmate late on Friday, September 17, where the envelope was placed in the lobby safe.

The following Monday morning (September 20, 2021), Officer Coughlin was assigned as the Lobby Officer on the 7 am - 3 pm shift. After retrieving two cash envelopes from the safe, Officer Coughlin confirmed that the names on the envelopes were on the list of current inmates. She then took both envelopes to a kiosk in an area adjacent to the lobby so she could deposit the cash to each inmate's account.¹ Officer Coughlin testified the machine stopped accepting cash from inmate Soones' envelope and issued a receipt for \$2420. She went to a second kiosk, located in the visitor's waiting room, where she was able to deposit another \$300 (the maximum deposit allowed at that machine).

Officer Coughlin returned to her desk and, at about 8:00 a.m., called Fiscal Specialist William O'Donnell who was responsible for dealing with the kiosks. O'Donnell was out that day, so she called his backup, Senior Fiscal Specialist David Donaghy, and asked for his help. Donaghy arrived at the lobby at 10:24 am. Mr. Donaghy found the machine had an error message indicating the kiosk was full. Mr. Donaghy told Officer Coughlin he could not resolve the problem and she needed to address it with Mr. O'Donnell the next day when he returned.

¹ The kiosk operates like a cross between an ATM and a bank counting machine. A user identifies an inmate whose account is to be credited and then inserts cash. The kiosk issues a receipt showing the total cash received and the inmate whose account is to be credited.

The next morning, Officer Coughlin called Mr. O'Donnell explaining the kiosk was not working and she needed to make deposits. Mr. O'Donnell came to the lobby and removed the cash from the kiosk. At that point, Officer Coughlin was able to deposit the remaining cash for inmate Soones. The kiosk issued a receipt for \$2260. Officer Coughlin realized the three receipts for the kiosk deposits (two dated September 20 and the third dated September 21) totaled \$4980, which was \$720 less than the \$5700 marked on the envelope. Officer Coughlin explained the discrepancy to Mr. O'Donnell who returned to his office with the receipts and the cash he had removed from the machine. Officer Coughlin also filed a report about the discrepancy to Lt.

Robert Sugrue at 7:30 am:

Incident ID: 21-0921-168

On 9-20-21 I, Officer A. Coughlin assigned to the Lobby Post was depositing the monies into the new commitments canteen accounts. There was an envelope that Inmate Soones, Michael name on it with an amount of \$5700 written on it. I was able to deposit \$2260 into Inmate Soones, Michael account when suddenly the kiosk stopped responding and I could no longer deposit any more into his account. I then proceeded to the visitor waiting kiosk to try and deposit the rest of his monies into Inmate Soones account. I was only able to deposit \$300. That reached the cash limit for the visitor waiting kiosk. After that I proceeded back to the lobby kiosk to try to deposit the rest of his money into his account hoping that the kiosk would be responding which it was not. At that time Dave Donaghy from Fiscal had entered the lobby as I was trying to deposit his money and he also witnessed the Lobby Kiosk in error and was not responding. On 9-21-21 I, Officer A. Coughlan began to deposit the rest of Inmate Soones monies into his canteen account. The total of that deposit was \$2420. The total of all three deposits from 9-20-21 & 9-21-21 comes to \$4980. This total amount that was deposited into Inmate Soones canteen account does not match the total of \$5700 written on the currency envelope that the money came in. End of report. ADS Gannon, Captain Campbell, FSC Lieutenant Sugrue notified.

Joint Exhibit #12

The Sheriff's Office instructed ADS William Casteel to investigate the matter which included conducting interviews. Investigator Casteel interviewed Alicia Coughlin, William O'Donnell, David Donaghy, James Dunn, Kyle McKay, Danielle Reynolds, and the inmate whose funds were involved. Investigator Casteel testified that the interviews were not recorded

but he prepared written summaries of each (Joint Exhibits #15 a-h). He also reviewed written statements and video footage from the lobby camera as part of the investigation.

On September 28, ADS Frane instructed Lt. Sugrue to order Officer Coughlin to meet with ADS Casteel at 1:00 pm. Lt. Sugrue testified that he and ADS Thomas Brady approached Officer Coughlin about 12:55 pm. Lt. Sugrue testified he told Officer Coughlin she needed to see Casteel, "with or without a Union representative." Officer Coughlin responded she did not want to meet with Casteel or be represented by the Union steward on duty at that time. Lt. Sugrue advised the Grievant, "If you don't want to do that, you need to leave for the rest of the day." Officer Coughlin opted to leave. Lt. Sugrue and ADS Brady submitted reports about the encounter the same day at about 2 pm:

(Sugrue) ...At approximately 1300 hours ADS Tom Brady and I met with Officer Coughlin in the mail room. At this time, I informed officer Coughlin that she was being "ordered" to meet with Investigations William Casteel in his office. I informed her that she could have union representation, or she could go in on her own unrepresented. I also informed her if she refused this directive she would be sent home for the remainder of her shift. Office Coughlin refused this directive to meet with investigations and was sent home for the day.

Employer Exhibit #1

(Brady) At 1300 hours, I was asked by Assistant Superintendent Frane to accompany Lt. Sugrue out to the Lobby and act as a witness to his conversation with Officer Coughlin. Lt. Sugrue and I proceeded out to the Lobby. Lt. Sugrue asked Officer Coughlin to step into the mail room to have a private discussion to which she complied. Officer Coughlin then stated that she will be "recording" the conversation with her cell phone. Lt. Sugrue ordered Officer Coughlin to go in and see Investigator Casteel, who wanted to ask her some questions regarding an investigation that he was conducting. Officer Coughlin refused. Lt. Sugrue informed Officer Coughlin that if she refused his direct order to go in and see Investigator Casteel, then she would be dismissed from duty for the rest of the day with pay and if she continued to refuse to see investigator Casteel again tomorrow, it could change to unpaid status. Officer Coughlin again refused the direct order and Lt. Sugrue ordered her to leave the facility.

Employer Exhibit #2

The following day, Officer Coughlin agreed to meet with ADS Casteel after reaching an agreement for an accommodation during the interview. Due to a hearing disability, Officer

Coughlin relies on lip reading to effectively communicate with others, and during the period in question, all employees were required to wear masks due to the Covid pandemic. Officer Coughlin explained that during an earlier interview, ADS Casteel refused to remove his mask so she could read his lips, which resulted in poor communication. Officer Coughlin stated this was one reason she left early the day before rather go to the interview. Upon learning of her concern, the parties agreed that Investigator Casteel would provide Officer Coughlin with his questions in writing, and he would conduct the interview without a mask. Officer Coughlin was interviewed by Casteel on September 29, 2021, with Union Representative Jay DeAngelis present.

During the interview and, in response to Casteel's questions about the inmate funds, Officer Coughlin stated she did not count the inmate's cash by hand, either before making deposits to the kiosk or before returning the remaining cash to the safe after the kiosk stopped working. ADS Casteel also asked the Grievant questions about how she handled the remaining cash while she waited for Donaghy to come check the kiosk the morning of September 20, 2021.

According to Casteel's notes, Officer Coughlin responded:

I either put it back in the safe or left it on my desk. I may have left it on my desk if I was going to keep trying to put it in the machine. I don't know.

Casteel also asked whether she had left the lobby and gone outside and the Grievant said:

I may have...I do not remember what I did that day.

Joint Exhibit #15F

ADS Casteel prepared an Executive Summary of the investigation, which includes the following allegations:

Officer Coughlin without counting the contents of the Envelope, began placing the Cash in the Kiosk, until it failed to accept any more Cash...

Coughlin placed the Envelope containing approximately \$2260.00 on her Desk. The Envelope remained on the Lobby Desk until approximately 10:24 am when

David Donaghy informed her that the Kiosk was inoperable. During this time, Office Coughlin is observed leaving the Envelope containing the Cash unattended on several occasions either to process Visitors, and on one occasion, where she exited to the Main Parking Area for approximately (9) minutes.

ADS Casteel concluded the investigative report saying:

As a result, several Policy Violations were observed and documented regarding Officer Alicia Coughlin during this investigation:

- 1) CSD 405.11 (2 (a) states "the lobby officer, in conjunction with the Fiscal Specialist is responsible for the accurate accounting of monetary transactions of all deposited funds.
- 2) CSD 405.13 also states "the lobby officer shall work in conjunction with the Booking Officer to ensure the accurate accounting and processing of offender funds for each new commitment."

After receiving the investigator's report, Superintendent Michael Harris issued the suspension notice dated October 25, 2021 (see Joint Exhibit #2, above). The Union grieved the suspension on November 8, 2021:

Nature of Grievance Complaint: On or about November 4, 2021, the Norfolk Sheriff's Office (NSO) notified the Grievant, Officer Alicia Coughlin ("Grievant"), by way of written correspondence dated October 25, 2021, that she was receiving a three (3) day unpaid suspension for alleged violations of NSO policy relative to actions/inactions on September 28, 2021. It is the position of the Union that the three (3) day unpaid suspension was without just cause in violation of Article II section C (1), as well as any and all other relevant provisions of the Parties' Collective Bargaining Agreement.

Resolution Desired: That the Grievant be made whole and her suspension be rescinded; that she be awarded full backpay and other benefits under the CBA, including but not limited to Overtime pay, that any and all written documentation pertaining to this matter be removed from the Grievant's personnel file; and any and all other remedies deemed appropriate.

Joint Exhibit #3A

The initial grievance was denied and appealed to Superintendent Michael Harris, who also denied the grievance. Thereafter, the parties were unable to resolve the matter, which was submitted to arbitration on March 3, 2022.

POSITIONS OF THE PARTIES

THE EMPLOYER

The Norfolk Sheriff's Office argues there was just cause to suspend Officer Coughlin for three days. According to the Employer, the evidence and testimony established that the Grievant failed to fulfill the requirements of her assigned duties in two ways. First, the Grievant ignored a direct order to attend an investigatory interview. Second, she did not comply with established NSO rules and regulations by failing to properly receive, process and account for inmate funds.

Regarding the first charge, the Employer asserts the Grievant was on notice of the rules regarding her duty to comply with direct orders and, as an employee in a para-military organization, she was well aware of the possible consequences of refusing the order of a superior officer.

Regarding the second charge, the Employer points to ADS Casteel's testimony that he reviewed video of the lobby area from September 17 through September 21, 2021, and observed that:

- No one accessed the lobby safe except the Grievant; and
- The Grievant left the envelope of cash unattended on the desk while she went outside for 9 minutes.

The Employer notes that the Grievant had recently received a written reprimand for violating NSO policies and was on notice that any further violation of NSO policies could result in further discipline up to and including termination. The Employer asserts the established rules and regulations regarding inmate funds and the prohibition against insubordination are reasonable and were previously made known to the Grievant.

For these reasons, the Employer argues there was just cause to suspend Alicia Coughlin for three days and urges the arbitrator deny the grievance in its entirety.

THE UNION

The Union argues that the Norfolk Sheriff's Office has not met its burden of proving there was just cause to suspend Alicia Coughlin for three days. The Union contends the Employer has failed to prove that Officer Coughlin was insubordinate or that she violated rules or regulations when she processed inmate funds on September 20 and 21, 2021.

Officer Coughlin did not intentionally or knowingly refuse a direct order. The Employer could have rescheduled the interview until Officer Coughlin's preferred Union representative was available, without causing any undue burden on the investigation. In fact, Officer Coughlin cooperated fully with the investigative interview the following day when the parties agreed to accommodate the Grievant's hearing disability.

Officer Coughlin did not fail to properly account for inmate funds on September 20 or September 21, 2021. The Employer offered no evidence of any rule or regulation requiring Officer Coughlin "to account" for inmate funds any differently than she did in September 2021. Officer Coughlin testified that she processed inmate funds on the dates in question the same way she always processed such funds and that she had never been instructed to process inmate funds any differently.

The Union concludes the Employer did not have just cause to suspend Alicia Coughlin for three days. The Union urges the arbitrator sustain the grievance and, as remedy, order the Employer to rescind the suspension and make the Grievant whole for lost wages and benefits and any other remedy deemed appropriate.

DISCUSSION

The question before me is whether the Norfolk Sheriff's Office had just cause to impose a three (3) day suspension against the Grievant on October 25, 2021. Officer Coughlin was

disciplined for two distinct reasons. She was disciplined for allegedly ignoring a direct order to attend an investigatory interview on September 28, 2021 and for allegedly failing to secure and properly account for inmate funds. The Employer has the burden of proving each of these charges and, for this reason, the two charges must be addressed separately.

The first charge against the Grievant is that she ignored a direct order to attend an investigatory interview. The Employer has the burden of proving that the order was clear and that the consequence (or penalty) for failing to comply with the order were communicated to the Grievant:

An employee must receive clear notice of both what the employer expects as well as the range of penalties that may be imposed for failing to meet the employer's expectations.

See How Arbitration Works, Elkouri (Ch. 15.3 Knowledge of Rules)

The Employer proved that Officer Coughlin was on clear notice of the Employer's expectation (order) that she meet with ADS Casteel. Testimony and documentary evidence also established that the Grievant was given clear notice of the specific penalty to be imposed if she failed to comply with the order, namely she would be sent home for the rest of the day. Being sent home with pay may seem to be a minor penalty, but this was the specific penalty the Employer chose; it was the only penalty the Grievant was on notice about; and it was the penalty the Employer actually imposed when the Grievant refused to attend the interview. The Grievant was not on notice that she might be subject to any additional penalty for refusing to meet with Casteel that day. ADS Brady submitted a witness report within an hour of the encounter:

...Lt. Sugrue informed Officer Coughlin that if she refused his direct order to go in and see Investigator Casteel, then she would be dismissed from duty for the rest of the day with pay and if she continued to refuse to see Investigator Casteel again tomorrow, it could change to unpaid status.

Employer Exhibit #2

According to ADS Brady, who was assigned to witness the encounter, Officer Coughlin was only on notice that an additional penalty might be imposed if she did not meet with Casteel the following day. When Officer Coughlin did not meet with Casteel on September 28, 2021, the Employer sent her home, which was consistent with its notice to her of the consequence (penalty) for refusing to attend the interview on September 28, 2021.

Once discipline for a given offense is imposed...it cannot thereafter be increased.

See How Arbitration Works, Elkouri, Ch. 15.3.F.vi: Double Jeopardy

There was no testimony or evidence that the Grievant was on notice that she might be subject to additional consequences (beyond being sent home) for refusing to meet with Casteel on September 28, 2021. The following day, Officer Coughlin was provided a written memo ordering her to meet with ADS Castell and putting her on notice that she would be disciplined if she refused. The Grievant complied with this order and so the Employer had no basis for imposing discipline for allegedly ignoring a direct order.

The Employer has not met its burden of proving there was just cause to suspend Officer Coughlin for "ignoring a direct order" on September 28, 2021, because the Employer had already imposed the threatened penalty (being sent home) when the Grievant refused to meet with Casteel.

The second charge against the Grievant is a "failure to properly fulfill the requirements" of her post and violating NSO policies regarding the accurate accounting and processing of inmate funds":

CSD 405.11: Lobby Operations:

1. The Lobby Officer shall retrieve the offender money from the locked drop box located in the lobby. The lobby officer shall enter all new commitment money into the computerized offender account or add to an existing account. The lobby officer shall secure checks in the locked cash box located in the lobby closet. The lobby officer shall make the deposit, balance the account, and forward the money to the business office.

2. The NSO will only accept government checks and checks from other institutions.
 - (a) The lobby officer, in conjunction with the fiscal specialist, is responsible for the accurate accounting of monetary transactions of all deposited offender funds.

CSD 405.13: New Commitments:

The Lobby Officer shall work in conjunction with the Booking Officer to ensure the accurate accounting and processing of offender funds for each new commitment and return from court in accordance with CSD 403.07.

According to the Employer, Officer Coughlin violated these policies by not counting the inmate's cash by hand after she removed it from the safe or when she returned the undeposited cash to the safe; and 2) by leaving the envelope of cash unattended in the lobby area between 7:55 and 10:24 am on September 20, 2021.² The Employer has the burden of proving that Officer Coughlin was on notice of the expectations she allegedly failed to meet and that she was guilty of the charges against her. I find the Employer has not met its burden of proof.

First, there is no evidence that Officer Coughlin was on notice that inmate funds must be counted by hand. The policies cited by the Employer do not say or imply that cash must be counted by hand. The policies allegedly violated do not describe how the lobby officer should "ensure the accurate accounting and processing" of inmate funds, although the rules and regulations at CSD 405.11, specifically require that:

1. The Lobby Officer shall retrieve the offender money from the locked drop box located in the lobby, [and]
2. The lobby officer shall enter all new commitment money into the computerized offender account or add to an existing account.

The Employer does not dispute that Officer Coughlin 1) "retrieved the offender money from the locked drop box" and then 2) entered the "money into the computerized offender account," which is consistent with the rules at CSD 405.11.

² The specific charges were not articulated in the suspension notice (Joint Exhibit #2) but were detailed in the investigative report (Joint Exhibit #9).

An employee may be held accountable for violating a rule that is self-evident even if it is not specifically mentioned or posted.³ That is not the case here. The assertion that inmate cash must be counted by hand is not self-evident nor is it required by the rules. The established policies and rules require the Lobby Officer to 1) retrieve inmate funds from the safe and then 2) enter the funds into the automated kiosk. The function of the kiosk is to count the cash and nothing in the cited rules or policies (including CSD 405.11, CSD 405.11, and/or CSD 405.13) suggests the lobby officer must also count the money by hand. The Employer has not demonstrated how the failure to count inmate funds by hand or how the Grievant's reliance on the computerized kiosk to count the cash violated any NSO rules or policies. In addition, there is no testimony or evidence that the Grievant was otherwise instructed to count cash by hand when processing inmate funds.

Officer Coughlin testified that she has always processed inmate funds from the lobby safe the same way. She testified she does not count cash by hand because the kiosk automatically counts the cash and issues a receipt. Officer Coughlin testified that for the six years she has held the position of Lobby Officer, she has never been told to process inmate funds any differently. The Employer has not met its burden of proving that Officer Coughlin was on notice that she was required to count inmate cash by hand or that her failure to do so on September 20 and 21, 2021 violated NSO policies or rules.

The Grievant was also charged with leaving an envelope of cash unattended in the lobby area for periods of time between 7:55 and 10:24 am on September 20, 2021:

Coughlin placed the Envelope containing approximately \$2260.00 on her Desk. The Envelope remained on the Lobby Desk until approximately 10:24 am when David Donaghy informed her that the Kiosk was inoperable. During this time, Office Coughlin is observed leaving the Envelope containing the Cash unattended

³ Such as an expectation that employees will not strike their supervisor or steal from inmate funds.

on several occasions either to process Visitors, and on one occasion, where she exited to the Main Parking Area for approximately (9) minutes.

Joint Exhibit #9

The allegation that the Grievant left an inmate's cash unattended for any amount of time in a public area is a serious charge. While not explicitly stated in the policies or rules, the expectation that the Lobby Officer must protect inmate funds from loss or theft is self-evident. The next question is whether the Employer has met its burden of establishing that Officer Coughlin is guilty of the charges that, from about 7:55 a.m. until 10:24 a.m. on September 20, 2021, she left the cash unattended while she processed visitors and when she left the building for nine minutes. ADS Casteel testified he reviewed the lobby camera video footage for the entire period in question and observed the Grievant leave the cash unattended on the lobby desk during this time. The Employer submitted two video clips from the lobby camera (Joint Exhibit #19) totaling about 15 minutes of the 2½-hour period on the morning in question.

The first video clip starts at 7:57 am and ends at 8:01 am. In this first clip, the video begins with the Grievant walking from the kiosk to the lobby desk with papers and two manilla-colored items in hand. It is assumed these items include the cash envelope in question. The Grievant goes to the lobby desk where she places the items on the desktop and immediately makes at least two phone calls. The calls are very brief. After making the phone calls, the Grievant remains at her workstation where she appears to sort, paperclip, and mark the paper items, replacing them back on the desktop in front of her. For the entirety of this first clip, Officer Coughlin remains standing at the same location with the paperwork and envelopes at hand. In this first clip, the Grievant does not leave her workstation at any time. In this first clip, there is no evidence that any visitor entered the lobby or was "processed" by her or anyone else. The video does capture people moving in or out of the lobby area. They all are assumed to be employees: most appear to

be in uniform and they all walk around the metal detector when entering or exiting the lobby area.

The second video clip runs from 8:35 to 8:45 am and begins with a view of the Grievant, now seated at her workstation. She does not have any papers or envelopes in hand. The papers and envelopes she had in the first clip are not visible during this second recording. When the second clip begins, the Grievant rises from her chair; walks out from behind the lobby desk; and goes out the front door carrying a beverage. She does not return until about nine minutes later. During her absence from the lobby, other people (who appear to be employees) are observed coming and going, but none approaches the Grievant's workstation or removes anything from her workstation. This second clip ends when the Grievant re-enters from outside and returns to her workstation.

The Employer's video evidence (Joint Exhibit #19) fails to prove the charges that Officer Coughlin left the envelope of cash unsecured and unattended. According to the Employer, the Grievant was observed leaving the envelope of cash on the lobby desk from 7:57-10:24 am and, during that time, she left it unattended while she processed visitors and when she left the building for nine minutes. Neither video clip supports either allegation.

According to the Employer, footage from the lobby surveillance camera was reviewed from the time the cash envelope was first deposited on Friday evening through the following Tuesday. ADS Casteel testified about his observations from reviewing the video. He testified he observed the Grievant remove the cash envelope from the safe and observed her leave it unattended while she processed visitors and when she left the building. He also testified he observed Mr. Donaghy's arrival to the lobby at 10:24 am and observed the Grievant put the cash back in the safe sometime thereafter. Despite ADS Casteel's observations, the Employer did not

explain why only 15 minutes of video recordings were submitted into evidence, particularly since the video footage in evidence does not prove either allegation against Officer Coughlin. The Employer is the custodian of the cameras and the surveillance footage. Its failure to provide more of the video evidence in its possession is significant and suggests it did not support the charges against the Grievant. I find the Employer has not met its burden of proving that Officer Coughlin left inmate cash unsecured and unattended while she processed visitors or when she took a break outside.

In conclusion, the Norfolk Sheriff's Office did not have just cause to impose a three (3) day suspension against the Grievant because the Employer did not meet its burden of proving that the Grievant ignored a direct order to attend an investigatory interview on September 28, 2021, or that she failed to secure and properly account for inmate funds. The Norfolk Sheriff's Office is hereby ordered to immediately rescind the three-day suspension, remove any reference to it from the Grievant's record, and make her whole for all wages and benefits lost as a result of the wrongful discipline.

AWARD

The Norfolk Sheriff's Office did not have just cause to impose a three (3) day suspension against Officer Alicia Coughlin on October 25, 2021.

The Norfolk Sheriff's Office is hereby ordered to immediately rescind the three-day suspension, remove any reference to the suspension from her record, and make Officer Coughlin whole for all wages and benefits lost as a result of the wrongful discipline.



Mary Ellen Shea, Arbitrator
July 1, 2022