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BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE CITY OF MILWAUKEE

In the matter of the appeal of
Police Officer
GREGORY KOESTERING

SUMMARY OF PROCEEDINGS,
FINDINGS OF FACT
AND DECISION

MPD Personnel Order No. 2005-155

SUMMARY OF PROCEEDINGS

A hearing was held regarding the appeal of Police Officer Gregory Koesterling on September 27, 2006 before Commissioners Richard Cox, Ernesto Baca and Robert Welch with Steven Fronk acting as Hearing Examiner on behalf of the Board. Gregory Koesterling appeared in person and by Attorney Michael Hart of Kohler & Hart LLP. Police Chief Nannette Hegerty appeared by Assistant City Attorney Michael Tobin and Police Sergeant David Arnold of the MPD Professional Performance Division (PPD). The appeal was from a decision by Chief Hegerty to discharge Gregory Koesterling for unnecessarily striking a prisoner in violation of Milwaukee Police Department Rule 4, Section 2/455.00.

Testimony of Sergeant David Arnold: Sergeant Arnold was the chief investigator for the Professional Performance Division regarding this incident and reviewed initial incident reports, PPD reports and dispatch records before conducting an interview of Gregory Koesterling. During that interview Koesterling admitted striking Michael Ramos but stated that this was only in response to resistance by Ramos and that he (Koesterling) utilized was only so much force as was necessary.

Testimony of Michael Ramos: Ramos testified that on the February 13, 2005 he had been involved in a physical altercation with his wife and the police were called. When Officer Koesterling attempted to arrest him Ramos fled out the door, but he eventually came out of hiding because he was cold. Ramos testified that while on the ground he was kicked twice in the ribs by a police officer other than Officer Koesterling

and was then handcuffed with his hands behind his back and placed on a bench in the police van. Almost immediately thereafter Officer Koesterling entered the van, grabbed Ramos by the head with two hands, and said "I should kill you" before kneeling Ramos in the chest 4 or 5 times and then striking Ramos in the stomach with his fist 4 or 5 more times. Koesterling then said "remember my face" and exited the van. Ramos denied that he attempted to kick or strike Koesterling at any time.

Testimony of Sergeant Pamela Holmes: Sergeant Holmes responded to a report of a foot chase involving police officers and a suspect. At the conclusion of the chase the suspect was being placed in a police van and Koesterling entered the van behind the suspect. The doors closed and, according to Sergeant Holmes, the van "started rocking." Holmes could hear physical activity in the van and she yelled to the van driver (Hernandez) to "get his ass out of there" meaning Officer Koesterling. As the doors to the van opened Holmes heard Koesterling say "I'll fuckin' kill you" (to Ramos) and then as he exited (to Holmes) "sorry, he pissed me off" and "I fuckin' can't work with Perez anymore." Sergeant Holmes told Officer Hernandez to close the van doors and drive to the district station. Holmes followed closely behind to make sure that there was no further incident. At the district station Sergeant Holmes reported the incident to Lieutenant Jensen and then reported it to the Professional Performance Division. Sergeant Holmes wrote a report (Exhibit 4) regarding the incident and was interviewed by PPD.

Testimony of Police Officer Randall Perez: Officer Perez was Koesterling's partner on the day of the incident and remained behind when Ramos fled. Koesterling later returned to the Ramos apartment, and Perez and Koesterling then drove to the district station. As they neared the station Perez saw medical response units and said "I hope our suspect doesn't have jailitis." Koesterling responded by saying "I beat him up in the back of the van" or words to that effect.

Testimony of Police Officer James Hernandez: Hernandez drove the police wagon and assisted in searching Michael Ramos. Ramos was cooperative, offered no physical resistance and entered the wagon just ahead of Officer Koesterling. Shortly

after the doors were closed Hernandez heard a commotion in the wagon and it "started rocking". Hernandez walked to the back and opened the doors as Sergeant Holmes pulled up in her vehicle. Hernandez saw Officer Koesterling standing over Ramos, who was seated and handcuffed. Hernandez heard Koesterling say something about Officer Perez, but does not recall him making any comment about any altercation with Ramos. Holmes said "get him out of here" and Hernandez transported Ramos to District 3. Ramos complained of being kicked and/or beaten, and Hernandez advised Sergeant Holmes. Hernandez later overheard Ramos telling Holmes that a black officer had kicked him in the chest during the arrest and that later in the van he had been beaten.

Testimony of Gregory Koesterling: Koesterling testified regarding the attempt to handcuff Ramos and the fact that Ramos fled shirtless and with Koesterling's handcuff on one wrist. Ramos was arrested by other officers and Koesterling went to that location. Koesterling could not identify the black male by his face since he had only viewed Ramos for a few seconds, and entered the van in order to determine if his handcuffs were on the individual who had been arrested. When someone closed the van door, Ramos said "fuck you" and kicked Koesterling. Koesterling delivered two "focused strikes" to Ramos's abdomen with his knee and Ramos stopped resisting. When the doors opened Koesterling exited and told Sergeant Holmes "Sorry but he got what he deserved" and "I'm not working with that fucking Perez any more." Koesterling testified that rode back to the district station with Perez but never heard any statement by Perez about Ramos having "jailitis" as they neared District 3. Koesterling also denied making any statement to Perez or anyone else at any time that he had beaten Ramos while in the police wagon. Koesterling filed a complaint against Officer Perez alleging cowardice for Perez's failure to assist in the arrest.

FINDINGS OF FACT re: Alleged Violation of MPD Rule 4 Section 2/455.00

Based upon testimony and evidence received, as to that charge alleging that Police Officer Gregory Koesterling mistreated a prisoner (Michael Ramos) by unnecessarily striking him after his arrest on February 13, 2005, the Board does hereby make the following Findings of Fact.

1. Gregory Koesterling, on February 13, 2005 and at all other times pertinent hereto, was a member of the City of Milwaukee Police Department and bound by the rules, regulations and procedural requirements thereof.
2. Gregory Koesterling, on February 13, 2005, struck a prisoner unnecessarily in violation of MPD Rule 4, Section 2/455.00.
3. Gregory Koesterling could reasonably be expected to have had knowledge of the fact that unnecessarily striking a prisoner was in violation of MPD Rules. Every member of the Milwaukee Police Department has received extensive training regarding the rules they are expected to obey, including those regarding the use of force. Rule 4, Section 2/455.00 specifically states that "Members of the police force guilty of unnecessarily striking or manhandling a prisoner or mistreating them in any way shall be subject to dismissal." Gregory Koesterling knew full well that force which was unnecessary could lead to discipline, including discharge.
4. Rule 4, Section 2/455.00 is reasonable and necessary on its face. Law enforcement officers must be granted the right to use an appropriate amount of force when necessary, but it cannot allow those same law enforcement officers to use force unnecessarily, or to threaten violence or initiate an altercation with a prisoner in order to abuse that individual or excuse the use of physical force.
5. Chief of Police Nannette Hegerty, or those acting on her behalf, made a reasonable, fair and objective effort to discover if in fact a rule violation had occurred prior to charges being issued in this case. The incident took place on February 13, 2005 and interviews were immediately conducted. Subsequent follow-up interviews were conducted and Officer Koesterling was given an

opportunity more than once to give his side of the story.

6. Chief of Police Nannette Hegerty, or those acting on her behalf, did in fact discover substantial evidence that Police Officer Gregory Koesterer violated Rule 4, Section 2/455.00 as described in the complaint on file herein. The evidence presented outlines a thorough investigation and includes testimony from Mr. Ramos and more than one member of the Department which supports the contention that Officer Koesterer unnecessarily struck, manhandled and/or mistreated Michael Ramos, a cooperative, handcuffed prisoner, on February 13, 2005 as outlined in the charges.
7. Chief of Police Nannette Hegerty is applying Rule 4, Section 2/455.00 fairly and without discrimination in this instance. There is a substantial amount of evidence which would indicate that Officer Koesterer unnecessarily initiated the physical altercation with his prisoner. The amount and nature of the force utilized thereafter were also unnecessary. The Chief has clearly indicated that such conduct will not be tolerated, and has disciplined a number of individuals who were excessive.
8. The proposed discipline reasonably relates to the seriousness of the alleged rule violation and Officer Koesterer's record of service with the Milwaukee Police Department. The force used by Koesterer was, in our opinion, a blatant attempt to punish a handcuffed subject who had fled during the course of an arrest. Koesterer's performance while a member of the Department has, for the most part, been satisfactory but it has been pointed out that his decision-making is questionable at times. We would agree. We cannot have officers on the Department who respond as did Gregory Koesterer on this date. Discharge is the only appropriate remedy.

DECISION

Police officers must frequently deal with uncooperative, combative or resistive suspects, and the use of appropriate force by officers to defend themselves and overcome resistance is something that is a focus of training for members of the Milwaukee Police Department throughout their careers. We support the use of appropriate force when circumstances require such force. That, however, is not what took place in this instance.

In addition to prohibiting *unnecessarily* striking or manhandling a prisoner, Milwaukee Police Department Rule 4, Section 2/455.00 prohibits department members from arguing with prisoners, speaking to them unnecessarily, addressing them in obscene or profane language, or threatening them. An individual who is in handcuffs and facing the prospect of a jail cell is almost certainly upset. Any *unnecessary* act of aggression by a department member which could further provoke such an individual, whether verbal or physical, greatly increases the prospect of *unnecessary* conflict which often results in injury to officers and/or prisoners. The intent of Rule 4, Section 2/455.00 is to emphasize the need to avoid *unnecessary* conflict with prisoners in order to reduce the risk to officers and prisoners alike, and we strongly support that intention.

We believe that the evidence presented must result in reaching the conclusion that Gregory Koestering entered the police van for the sole purpose of teaching Michael Ramos a painful lesson: *If you run from me, I will cause you pain*. We do not believe that Koestering utilized only so much force as was reasonable and necessary under the circumstances because we do not believe that any force was necessary.

As to disposition, we have been supplied with information relative to Officer Koestering's record with the Department which would appear to indicate that his performance has, for the most part, been acceptable. There is no indication of any shortcoming or infraction related to the use of excessive force, but there is more than one suggestion that Gregory Koestering has, on more than one occasion, made poor decisions. This is just such an occasion. The decision to utilize force unnecessarily is among the worst decisions that a law enforcement officer can commit, and in this case Gregory Koestering had several minutes to cool down and make a better decision. We have considered this, together with Koestering's record of service, and we all agree that the actions of Gregory Koestering leave us no alternative but to discharge him from the Milwaukee Police Department. We do so Order.

Signed and dated at Milwaukee, Wisconsin, this 2nd day of November, 2006.

Board of Fire and Police Commissioners
Of the City of Milwaukee

By



Ernesto Baca, Commissioner



Richard Cox, Commissioner



Robert Welch, Commissioner

Board of
FIRE AND POLICE COMMISSIONERS
City of Milwaukee, Wisconsin

SUMMARY OF PROCEEDINGS,
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1: FPC, Keating, Atty. Gen., Chief Justice, Atty. Gen., PPD, Val Williams
(also present)