

**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

On February 13, 2005, Police Officer Gregory Koesterling came in contact with Michael Ramos and attempted to place him in custody. Mr. Ramos fled, only to be apprehended a short time later and placed in a patrol wagon by other members of the Milwaukee Police Department. Officer Koesterling arrived on the scene and, according to all accounts, entered the patrol wagon and had a physical and verbal encounter with Mr. Ramos. Former Chief of Police Nannette Hegerty subsequently discharged Officer Koesterling in large part for actions that Officer Koesterling was alleged to have taken during this encounter in the patrol wagon.

Officer Koesterling appealed his discharge to the Board and a hearing was conducted on September 27, 2006. During the course of that hearing a number of witnesses were called to testify, In addition, Officer Koesterling attempted to introduce a videotape of Mr. Ramos in the Milwaukee Police Department booking room on February 13, 2005. The Board was able to see the videotape, but the audiovisual equipment was not operating properly and the Board could not hear what was said. Based upon the testimony and evidence the Board upheld the discharge.

Officer Koesterling appealed the decision of the Board to Milwaukee County Circuit Court and the Honorable Jean DiMotto, in a Decision dated October 4, 2007, remanded the matter for further hearing with the specific instruction that the Board view and listen to the February 13, 2005 videotape of Mr. Ramos in the booking room. More than one pretrial was conducted by the Board's hearing examiner with Officer

Koestering, Attorney Cheryl Ward (Koestering's his legal counsel) and Assistant City Attorney Heidi Galván on behalf of the Chief present on each occasion. As a result of these pretrials Officer Koestering was eventually able to provide a DVD of the booking room incident which was at audible together with a transcript of the booking room conversation(s) which all parties agreed was the best available record of what was said in the booking room on February 13, 2005. It was also agreed that the Board, in reaching a decision, would consider the booking room DVD, transcript and testimony from witnesses concerning the events in the booking room along with the evidence received at the earlier hearing on September 27, 2006.

On June 11, 2008 a hearing was conducted before Commissioners Richard Cox, Ernesto Baca and Earl Buford. Prior to this hearing each commissioner had been provided with and had reviewed a copy of Judge DiMotto's Decision and Order, a transcript of the proceedings conducted on September 27, 2006 and the agreed-upon transcript of the booking room on February 13, 2005. At the hearing on June 11, 2008, Gregory Koestering appeared in person and by Attorney Cheryl Ward. The Milwaukee Police Department appeared by Assistant City Attorney Heidi Galván. The DVD (Exhibit 11) was played in its entirety at least twice while the commissioners watched and followed along on the transcript (Exhibit 12). While in the booking room it would appear that Mr. Ramos was very upset and complained of being physically abused by more than one member of the Milwaukee Police Department. One of the officers about whom Mr. Ramos complained is the officer whom he identified while in the booking room as having tripped down the stairs "because of his gooney-assed boots" and whom he also identified at the trial on September 27, 2006 as the same officer who struck him repeatedly in the patrol wagon. Based upon the evidence presented in this case, that was Gregory Koestering.

Testimony of Police Officer James Hernandez: Officer Hernandez

testified at the hearing on June 11, 2008 that he transported Michael Ramos from where he was arrested to the booking area and was present in the booking area when Ramos said that he had been kicked by a "bald headed black man." Hernandez reported this to Sergeant Pamela Holmes who then interviewed Ramos. Officer Hernandez also testified at the hearing previously held on September 27, 2006 that Ramos was placed in the patrol wagon just before Koesterling entered it and that a "commotion" ensued in the wagon immediately thereafter. Hernandez transported Ramos to the booking room where Ramos "claimed that he had gotten kicked in the chest when he was being taken into custody" by a black officer and "that he was also beaten in the back of the wagon." (see transcript of September 27, 2006; page 157).

Testimony of Police Sergeant Pamela Holmes: At the trial on September 27, 2006, Sergeant Holmes testified that she was at the scene of the arrest of Michael Ramos and saw Officer Koesterling enter the wagon behind Ramos and the doors of the wagon close. Almost immediately the wagon started shaking and Sergeant Holmes told Officer Hernandez to "get his ass out of there" meaning Koesterling. As the wagon doors were opened Sergeant Holmes heard Officer Koesterling say "I'll fucking kill you" to Ramos. (transcript of September 27, 2006; pages 75-78). At the trial on June 11, 2008, Sergeant Holmes testified that once she arrived at District 3 on February 13, 2005 she reported to Lieutenant Jensen that Officer Koesterling "had gone overboard" when dealing with Michael Ramos. Holmes then went to talk to Mr. Ramos in the booking room and take photos (Exhibit 13A-K) of injuries that Ramos claimed to have sustained at the hands of his wife and members of the Milwaukee Police Department.

As a result of reviewing the booking room video/DVD, the transcripts of the booking room videotape, the transcript and evidence from the hearing conducted on September 27, 2006, and additional testimony and exhibits received at the hearing on June 11, 2008, the Board thereafter deliberated and reached the decision set forth below.

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 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 unnecessarily initiate an altercation with a prisoner in order to justify 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 Koesterling 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 Koesterling unnecessarily struck, manhandled and/or mistreated Michael Ramos, a handcuffed prisoner, on February 13, 2005 as outlined in the charges.
7. Chief of Police Nannette Hegerty applied Rule 4, Section 2/455.00 fairly and without discrimination. There is a substantial amount of evidence which would indicate that Officer Koesterling unnecessarily initiated a physical altercation with the prisoner. The amount and nature of the force utilized thereafter were also unnecessary. The Chief 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 Koesterling's record of service with the Milwaukee Police Department. The force used by Koesterling was, in our opinion, a blatant attempt to punish a handcuffed subject who had fled during the course of an arrest. Officer Koesterling's performance while a member of the Department has been satisfactory, but his evaluations indicate more than once that his decision-making is questionable at times. We would agree. We cannot have officers on the Department who respond as did Gregory Koesterling on this date. Discharge is the only appropriate remedy.

DECISION

We have carefully reviewed the videotape of the booking room on February 13, 2005 as instructed by the Court. We have watched and listened to the videotape while reading the transcript which all parties agree is the most accurate rendition of what was said in the booking room on that date. We have taken testimony from additional witnesses called on behalf of Gregory Koesterling regarding their recollections of what took place on February 13, 2005. As a result of this, and after carefully considering this record in its entirety, we have reached the conclusion that it is more likely than not that Michael Ramos was struck, quite possibly unnecessarily, by one or more member of the Milwaukee Police Department during the course of his arrest on February 13, 2005. We have also reached the conclusion, and we believe that it is fully supported by a preponderance of the evidence in this case, that Gregory Koesterling utilized force against Michael Ramos in the patrol wagon which was unnecessary and in excess of that permitted by Milwaukee Police Department rules and procedures.

As we have stated previously, 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 throughout their careers. We support the use of appropriate force when circumstances require such force but that is not what we believe the record indicates 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.

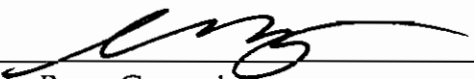
We believe that the preponderance of evidence presented in this case necessarily results in our reaching the conclusion that Gregory Koesterling entered the police van for the sole purpose of teaching Michael Ramos a painful lesson. Testimony indicates that Officer Koesterling arrived on the scene before Michael Ramos was placed in the patrol wagon and could have identified him and the handcuffs on his wrists if that was indeed Koesterling's intention. Instead, Officer Koesterling entered the patrol wagon with Michael Ramos and waited until the doors of the wagon were closed for an entirely different purpose: to punish Ramos for running from him. We do not believe that Koesterling utilized only so much force as was reasonable and necessary under the circumstances because we do not believe that any force was necessary. There was no need whatsoever for Officer Koesterling to enter the wagon or to have physical contact with Michael Ramos once Ramos was arrested by other officers.

As concerns disposition, we have again been supplied with information relative to Officer Koesterling's record with the Department and it again appears 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 Koesterling 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 make, and in this case Gregory Koesterling had several minutes to cool down and make a better decision. We have considered this, together with Koesterling's record of service, and we are unanimous in our belief that the actions of Gregory Koesterling leave us no alternative but to discharge him from the Milwaukee Police Department. We do so Order.

Signed and dated at Milwaukee, Wisconsin, this 10th day of July, 2008.

Board of Fire and Police Commissioners
Of the City of Milwaukee

By



Ernesto Baca, Commissioner



Richard Cox, Commissioner



Earl Buford, Commissioner