

**STATE OF MINNESOTA
MINNESOTA BUREAU OF MEDIATION SERVICES
IN THE MATTER OF GRIEVANCE ARBITRATION BETWEEN:**

TODD COUNTY, MINNESOTA,
EMPLOYER

-and-

LAW ENFORCEMENT LABOR SERVICES,
INC., LOCAL 156,
UNION.

ARBITRATOR'S AWARD
BMS Case No. 14PA0071
Employee Termination

ARBITRATOR:	Rolland C Toenges
GRIEVANT:	Mark Grinstead
DATE OF GRIEVANCE:	May 31,2013
DATE ARBITRATOR NOTIFIED:	August 12, 2013
DATES OF HEARING:	October 29 & 30, 2013
DATE POST HEARING BRIEFS RECEIVED:	November 15, 2013
DATE HEARING CLOSED	December 15, 2013
DATE OF AWARD:	January 9, 2014

ADVOCATES

FOR THE EMPLOYER:

Kristi A. Hastings, Attorney
Sara C. Duffy, Attorney
Pemberton, Sorlie, Rufer
& Kershner, P.L.L.P.

FOR THE UNION:

Isaac Kaufman, General Counsel
Law Enforcement Services, Inc.

ISSUE¹

1, Did Todd County violate the Collective Bargaining Agreement by terminating Mark Grinstead without just cause?

2. If so, what is the appropriate remedy?

WITNESSES**FOR THE EMPLOYER:**

Jon T. Sarago, Chief Deputy Sheriff
Douglas T. Brown, Sergeant, MN State Patrol
Christine M. Pelzer, MIS Director
Peter J. Mikkelson, Sheriff

FOR THE UNION:

Chad Gulbranson, Osakis Chief
Lonnie Marcyes, Deputy Sheriff
Don Asmus, Deputy Sheriff
Travis Winter, Deputy Sheriff
Mark Grinstead, Deputy Sheriff

JURISDICTION

The matter at issue, termination of Mark Grinstead (Grievant), comes before this arbitration proceeding pursuant to the Collective Bargaining Agreement (CBA) between the Parties. Said Agreement, in compliance with the Minnesota Public Employment Labor Relations Act, includes a Grievance Procedure that provides for unresolved grievances to be submitted to binding arbitration. The CBA, in relevant part, provides as follows:²

“ARTICLE 12 – DISCIPLINE

12.1. Employees shall be disciplined for just cause only. Discipline will be in one of the following forms:

1. Oral reprimand,
2. Written reprimand,
3. Suspension,
4. Demotion, or
5. Discharge.”

¹ The issue statement was jointly stipulated to by the Parties.

² Employer Exhibit #57.

ARTICLE 13 – GRIEVANCES

13.1. Definition of a Grievance: A grievance is defined as a dispute or disagreement as to the interpretation or application of the specific terms and conditions of this Agreement.

Step 4. A grievance unresolved in Step 3 and appealed to Step 4, will be submitted to arbitration subject to the provisions of the Public Employment Labor Relations Act of 1971 as amended. The selection of an arbitrator will be made in accordance with the “Rules governing the Arbitration of Grievances” as established by the Bureau of Mediation Services.

13.5. Arbitrator’s Authority.

1. The arbitrator will have no right to amend, modify, nullify, ignore, add to or subtract from the terms and conditions of this Agreement. The arbitrator shall consider and decide only the specific issue(s) submitted in writing by the Employer and Union, and will have no authority to make a decision on any other issue not so submitted.
2. The arbitrator will be without power to make decisions contrary to or inconsistent with, or modifying or varying in any way the application of laws, rules or regulations having the force and effect of law. The arbitrator’s decision will be submitted in writing within thirty (30) days following close of the hearing or the submission of briefs by the parties, whichever is later, unless the parties agree to an extension. The decision will be binding on both the Employer and the Union and will be based solely on the arbitrator’s interpretation or application of the express terms of this contract and to the facts of the grievance presented.
3. The fees and expenses for the arbitrator’s services and proceedings will be borne equally by the Employer and the Union provided that each party will be responsible for compensating its own

representatives and witnesses. If either party desires a verbatim record of the proceedings, it may cause such a record to be made, providing it pays for the record. If both parties desire a verbatim record of the proceedings, the cost will be shared equally.

The Parties selected Rolland C. Toenges as the Arbitrator to hear and render a decision in the interest of resolving the disputed matter.

The Arbitration Hearing was conducted as provided by the terms and conditions of the CBA and the Public Employment Labor Relations Act (MS 179A.01 – 30). The Parties were afforded full opportunity to present evidence, testimony and argument bearing on the matter in dispute. Witnesses were sworn under oath and were subject to direct and cross-examination.

The Parties jointly stipulated to the “Issue” statement. The Parties also stipulated to filing Post Hearing Briefs. The Briefs were to be submitted to the Arbitrator electronically on November 15, 2013 and accordingly were so received. The Hearing was held open for 30 days pending the filing of reply briefs. Receiving none, the hearing was closed on December 15, 2013.

BACKGROUND

Todd County (Employer) is located in a mostly rural area of central Minnesota. Todd County covers an area of 979 square miles and has a population of approximately 25,000. There are some 40 communities in Todd County, consisting of Cities and Townships, the largest city being Long Prairie, which is also the County Seat. The Sheriff’s Office provides a number of law enforcement related services. The most visible service is the Patrol Division, wherein the Grievant in the instant case was employed. The Patrol Division is responsible for patrolling the County and Contract Cities, answering citizen complaints, enforcing traffic laws, conducting

accident investigations, serving civil papers and responding to emergency calls for service.

Law Enforcement Labor Services, Inc. (Union) is a labor organization that is the exclusive bargaining representative of Todd County Deputy Sheriffs. The Employer and Union are Parties to a Collective Bargaining Agreement (CBA) that sets forth the terms and conditions of employment for the Todd County Deputies. Said Labor Agreement includes a Grievance Procedure that provides for appeal of alleged CBA violations. This Grievance procedure provides a structured process for the resolution of grievances, the final step being binding arbitration.

The Grievant was employed by Todd County in 1996. He previously worked part time as an Officer for the City of Osakis and a jailer/transport for Douglas County. He continued working part time for Osakis until 2005. The Grievant's background includes a BA degree from St. Cloud University. He received skills training at Alexandria Technical College, which included driving a police squad vehicle.

The Grievant was certified as a Field Training Officer (FTO) in about 2007 and served in this capacity until some time before his termination in 2013. Field Training involves working with less experienced Deputies familiarizing them with such duties as operation of squad cars under different conditions. The Grievant was also certified as an emergency vehicle (EVOC) instructor at Brainerd College.

Over the period of his employment with Todd County, the Grievant was involved in a number of crashes involving the squad cars he was driving. In the last several years prior to his termination, the frequency of the Grievant's squad car crashes increased notably, which along with other concerns, led to the Employer's decision to terminate his employment on May 30, 2013.

The Union appealed termination of the Grievant on the basis it was not for just cause. Thereafter meetings were held between the Parties, including “Loudermill” hearings, but the Employer’s decision to terminate the Grievant was sustained.

The matter of the Grievant’s termination now comes before the instant arbitration proceeding for resolution.

EXHIBITS

EMPLOYER EXHIBITS:

E-1. Notice of Loudermill Hearing, 4/30/2013.

E-2. Transcript of Loudermill Hearing, 5/21/2013.

E-3. Email to Scott Higbee regarding 5/28/2013 special meeting, 5/21/2013.

E-4. Transcript of 5/28/2013 Closed Session.

E-5. Termination Notice to Grievant, 5/30/2013.

E-6. Grievant’s Employment File.

E-7. Written reprimand, RE: Misconduct, speech, expression, social networking, posting evidence and photos on Facebook, 10/24/2012.

E-8. Verbal Reprimand, RE: Driving conduct (hitting deer too many crashes and claims). 10/17/2011.

E-9. Written Reprimand. RE: Employee misconduct, policy and constitutional rights violations, 10/17/2011.

E-10. Oral Reprimand, RE: Improper use of sick leave, 8/8/2011.

E-11. Written Reprimand, RE: Tampering with another officer’s property, 12/9/2000.

E-12. Oral Reprimand, RE: Tampering with another officer’s property & retaliation, 5/30/2000.

E-13. Memo from Chief Deputy Sarago – incomplete work, reminder of attention to detail, 2/13/2013.

- E-14. Written reprimand – driving conduct - two days unpaid suspension, 3/4/2013. Agreement – suspension lessened from two days to one day, 3/25/2013.
- E-15. Summary of Grievant's crashes.
- E-16. Car/deer crash, 2/28/2013.
- E-17. Car/deer crash, 3/5/2013.
- E-18. Car/deer crash , responding to domestic, 4/13/2013.
- E-19. In-squad video, 4/13/2013.
- E-20. Car/deer crash, 9/1/2011.
- E-21. Car/deer crash, 10/1/2011.
- E-22. Car/deer crash, 11/10/2011.
- E-23. Car/deer crash, 11/11/2011.
- E-24. Property damage Accident (PDA) – struck yellow lab dog, 11/29/2011.
- E-25. PDA – struck pheasant - no damage, 9/17, 2012.
- E-26. PDA – hit hard-packed snow in driveway while en route to call, 2/16/1997.
- E-27. Two vehicles PDA, minor damage, 11/13/1997.
- E-28. Car/deer crash, 11/30/1999.
- E-29. Car/deer crash – no damage, 10/9/2000.
- E-30. Car/deer crash – damage to push bar, 10/22/2000.
- E-31. PDA – struck tree before striking a garage while trying to avoid two deer, minor injury, 10/4/2001.
- E-32. Car/deer crash, minor damage, 6/30/2002.
- E-33. Car/deer crash, 4/26/3003.
- E-34. PDA – hydroplaned into ditch flooded with water, 6/24/2003.
- E-35. Car/deer crash, damage to push bar, 6/25/2003.

E-36. PDA – slid into ditch after hitting snow and slush on roadway (poor road conditions), struck several trees and a field approach while trying to catch up with a speeding vehicle, 2/28/2005.

E-37. PDA – struck a pheasant, 5/14/2005.

E-38. Car/deer crash, 10/11/2006.

E-39. PDA – bumped another vehicle while backing up – no damage, 11/19/2006.

E-40. PDA – struck fence post, minor damage, 7/24/2007.

E-41. PDA – struck farm animals (cows), which were loose on the roadway, 9/15/2008.

E-42. Car/deer crash, 10/13/2008.

E-43. PDA – struck large raccoon, 7/28/2009.

E-44. Car/deer crash, 9/4/2009.

E-45. Car/deer crash, 1/1/2010.

E-46. PDA – Impact frozen snow, drove over large chunk of snow after area was plowed, 1/1/2010.

E-47. Car/deer crash, 11/23/2010.

E-48. Car/deer crash, 11/26/2010.

E-49. PDA – struck farm animal (cow), 4/30/2013.

E-50. Grinstead Insurance Claim Information, no date.

E-51. Paid administrative leave letter, 4/30/2013.

E-52. Training file

E-53. Chats related to deer – weather conduct.

E-54. Accident Summary – other deputies.

E-55. Todd County Sheriff's Office Policies.

E-56. Summary Exhibit – Grinstead Timeline.

- E-57. Contract Between the Board of County Commissioners, Todd County Minnesota and Law Enforcement Labor Services, Inc., Deputies Local 156.
- E-58. Memo from Chris Pelzer to Sheriff Mikkelson, 5/18/2013.
Memo from Chris Pelzer to Sheriff Mikkelson, 5/28/2013.
Memo from Chris Pelzer to Sheriff Mikkelson, 5/28/2013 – verification of computer findings.
- E-59. Snapshot of GPS Log File, 5/18/2013.
- E-60. Snapshot of IEHV Log, 4/30/3013.
- E-61. Log of computer usage, 5/1-30/3013 and 2/27-28/2013.
- E-62. CV of Sergeant Douglas T. Brown.
- E-63. Vehicle Data
- E-64. Crash Reconstruction Report of Sergeant Douglas T. Brown.
- E-65. Transcript of May 21, 2013, Closed Session.
- E-66. Transcript of May 28, 2013, Closed Session.
- E-67. Photo of Screen
- E-68. Email from Mark Grinstead to Sheriff Mikkelson and Chief Deputy Jon Sarago – car/deer crash, 11/11/2011.
- E-69. Domestic Report, AVL , Report, 3/4/2013.
- E-70. Letter from Kristi Hastings to Scott Higbee, 5/13/ 2013.
- E-71. Email correspondence to/from Kristi Hastings and Scott Higbee, 5/24/2013.

UNION EXHIBITS:

- U-1. Accident Report, 4/30/2013.
- U-2. Letter from Todd County Sheriff's Office to Mark Grinstead, regarding paid administrative leave, 4/30/2013.
- U-3. Letter from Todd County Sheriff's Office to Mark Grinstead, Notice of Loudermill Hearing, 4/30/2013.

- U-4. Todd County Loudermill Hearing Transcript, 5/8/2013.
- U-5. Todd County Board of Commissioners Closed Session Transcript, 5/28/2013.
- U-6. Letter from Todd County Sheriff's Office to Mark Grinstead, regarding notice of termination, 5/30/2013.
- U-7. Mark Grinstead Employee Evaluations.
- U-8. Accident Log.
- U-9. Training Courses and Certificates for Driving.
- U-10. Emails/notes/letters of recognition.
- U-11. National Weather Service – weather history on 4/30/2013.
- U-12. Mark Grinstead Resume'.
- U-13. Minnesota State Patrol – Crash Reconstruction Specialist.
- U-14. Deer – Vehicle Safety.
- U-15. Correspondence between Law Enforcement Labor Services Inc., Todd County Sheriff and Todd County Human Resources Manager.

POSTIONS OF THE PARTIES:

THE EMPLOYER SUPPORTS ITS POSITION WITH THE FOLLOWING:

- There is just cause to terminate the Grievant based on his longstanding history of vehicle accidents, mostly due to excessive speed, driving unreasonably in light of conditions, and distracted driving.
- A number of disciplinary actions culminated when the Grievant was involved in his fourth vehicle crash in four months (his 33rd vehicle crash on record), which involved hitting a 500-pound cow on April 30, 2013.

- The Grievant's vehicle crash record exceeds that of any other Todd County Deputy.
- The Grievant's crashes were much more severe when looking at specific circumstances.
- It is evident that the Grievant could have taken action(s) to mitigate and/or prevent crashes by safer driving.
- In the Grievant's own words, he acknowledged that he learned that he has to slow down, that his crashes put a burden on the TCSO with bad publicity and made it necessary to swap squad cars with other Deputies.
- Subsequent to the above acknowledgement, the Grievant has had 20 additional crashes, many involving speeding and driving too fast for weather conditions.
- Simply put, the liability that the Grievant puts on the County, due to his unsafe driving, is far too great for the County to bear.
- The County has counseled, disciplined, trained and discussed at length with Grievant the need for him to be a safer driver, but time and time again he goes back to his "business as usual" risky driving.
- Grievant's rogue attitude of doing things his own way is not compatible with how the Todd County Sheriff's Office is managed.
- Deputies are expected and required to follow managerial orders and County policy, but time and time again Grievant proved that he is not willing to do so.
- Ultimately, the risk that Grievant performance placed on the County finally became too great and the County discharged him on May 30, 2013.
- The County established that it has met the tests of just cause in its discharge of the Grievant.
 1. The County's rules, policies and managerial orders are reasonably related to the orderly, efficient and safe operation of the Sheriff's Office.
 2. The Grievant was provided ample warning that if his driving performance did not improve the consequences would result in discipline, including discharge.

3. The County conducted an investigation prior to a determination that discharge was warranted and placed the Grievant on administrative leave while completing the investigation.
4. The County's investigation was fair and objective having involved factual data sources and a recognized crash reconstruction expert.
5. The evidence includes substantial proof the Grievant violated Todd County's reasonable managerial order to follow Todd County policies while driving, including driving the speed limit when on regular patrol and driving safely and appropriately under the conditions when responding to emergency calls.
 - a. Grievant violated the Todd County Sheriff's Office reasonable managerial order to follow Todd County policies while driving and to drive appropriately under the circumstances in his crash on April 30, 2013.
 - b. Grievant violated the Todd County Sheriff's Office reasonable managerial order to follow Todd County policies while driving and to drive appropriately under the circumstances in his crash on April 13, 2013.
 - c. The distracted driving and speeding evident in the April 13 and April 30 crashes are substantial proof Grievant violated multiple reasonable rules and his managerial order to drive safe.
6. The evidence shows that the Todd County Sheriff's Office applied all the rules, orders and penalties evenhandedly, without discrimination, to its employees.
 - While other Deputies have been involved in accidents, no other Deputy has the volume and severity of the Grievant's accident record.
 - The evidence clearly distinguishes Grievant's driving record from the record of any other Deputy.
 - The County has given Grievant more than a fair chance to change his behavior and he has over and over again failed to do so. There is no reason to believe that given another chance his behavior will change.

THE UNION SUPPORTS ITS POSIITON WITH THE FOLLOWING:

- Todd County has terminated the Grievant, an employee with a 17-year work record, without just cause.
- The evidence does not support the conclusion that the Grievant was at fault in any of the crashes that took place in March and April of 2013, due to inattentive or reckless driving.
- Although the County alleges that the Grievant was using his computer at the time of the April 30, 2013 crash, the record clearly establishes that he was not using his computer, and that he has been truthful at all times regarding that incident.
- The County has not afforded the Grievant due process. The County's allegations have changed continuously throughout the discharge proceedings, including entirely new charges raised for the first time at the arbitration hearing.
- The Grievant has never been provided proper notice of the supposed reasons for his termination or the policies that he is alleged to have violated.
- The County notified the Grievant within 12 hours or less after the April 30 crash that it would proceed to a *Loudermill* hearing – this without taking a formal statement from him or otherwise conducting a thorough investigation.
- The record shows that the Grievant has been subjected to disparate treatment – while other deputies have been involved in numerous crashes, none have ever been investigated or disciplined in any way.
- The only discipline the Grievant had received prior to his termination was a one-day suspension following a crash in February 2013.
- The evidence shows that this suspension had the desired corrective effect, and that the Grievant took conscious measures to reduce his speed while on patrol.
- The County has not sent the Grievant for any remedial training in squad car operations.
- Following the principles of progressive discipline, the County has provided no justification for skipping all the way from a one-day suspension to termination.
- For the above reasons, the Union asks that the Grievance be sustained and that the Grievant be reinstated to his former position and be made whole.

- The Grievant has extensive experience and training in law enforcement:
 1. The Grievant has approximately 20 years experience in law enforcement. In addition to his service at Todd County, he worked as a jailer/transport officer for Douglas County and as a part time officer in Osakis until 2005.
 2. The Grievant has a four-year Bachelor's degree from St. Cloud State University, peace officer skills training at Alexandria Technical College, which included driving skills.
 3. The Grievant was certified as a field-training officer (FTO) about 2007 and served as a FTO for Todd County up and until his termination.
 4. As FTO, the Grievant trained new deputies in various aspects of law enforcement, including operation of squad vehicles under varying driving conditions.
 5. The Grievant was also certified as an emergency vehicle operator (EVOC) and served as an EVOC instructor at Brainerd College from 2000 to 2004.
 6. The Grievant's most recent driving training was a night EVOC/Precision Immobilization Technique (PIT) in 2009.
- The Grievant's work record does not provide a sufficient basis for termination:
 1. A verbal reprimand in October 2011 was the first discipline the Grievant ever received pertaining to his driving record.
 2. Prior to February 2013, the Grievant had received no discipline above the level of a reprimand.
 3. The Grievant's last two performance evaluations contained some critical comments, but made no mention of his driving conduct or the frequency of crashes.
 4. The Grievant's 2009 performance evaluation mentioned vehicle accidents, but also stated that he had "good potential for future management positions."
 5. In a prior evaluation, the Grievant was described as a "good veteran officer, a "leader of {the] department" who "makes good decisions," and a "good teacher for younger officers" who "continues to excel at his job."

6. The testimony of fellow deputies describe the Grievant as trustworthy, can be relied upon as a back up, and more reliable than most.
 7. The testimony of fellow deputies was that they do not consider him a reckless or careless driver.
- The Grievant was not afforded due process:
 1. There was lack of proper notice.
 2. There was lack of thorough investigation.
 - a. On the dates that are relevant to this proceeding, the Grievant did not commit misconduct as alleged by the County. Accidents prior to February 28, 2013 are irrelevant.
 - b. The Grievant was not at fault for the squad car accidents after February 28, 2013.
 3. The Grievant has not been untruthful.
 4. The Grievant did not drive improperly on March 4, 2013.
 5. The County has not applied its rules and penalties consistently or evenhandedly.
 6. Termination is not the appropriate penalty.
 7. Despite the County's supposedly mounting concerns over the Grievant's driving conduct, the Sheriff never sent him for any remedial training.
 8. The Grievant's special assignments contradict the County's assertion that he was not a safe or competent driver. If the concerns over the Grievant's driving were so serious, why was he allowed to continue in these special assignments?
 - The termination of the Grievant was without just cause and therefore violated the CBA. Accordingly, the grievance should be sustained and the Grievant reinstated to his position as County Deputy and made whole.

DISCUSSION

The record in the instant case is voluminous and provides much evidence and detailed arguments by the Parties in support of their respective positions. The

record includes 86 exhibits. When Post Hearing Briefs are added, the page total is approximately 740.

The Grievant's employment history with Todd County spans some 17 years and provides considerable insight into his driving record, which is the primary subject of inquiry. The record also shows a number of non-driving related conduct issues that involved counseling or discipline.³

The record shows that patrolling rural areas poses an inherent risk of colliding with animals on the roadway and such incidents have involved most deputies performing this function. The inquiry in the instant case requires a determination of whether the driving (vehicle crash) record of the Grievant is sufficiently greater than that of other deputies to support the Employer's argument that it is excessive and cannot be explained merely by coincidence.

The record shows that the Grievant was involved in over 30 crashes during the 17-year period employed by Todd County. These crashes primarily involved collisions with animals, but also included collisions with buildings, vehicles, trees, water and snow banks. If these crashes were averaged over the Grievant's 17-year employment, it would be about two crashes per year. However, the record shows that crash incidents were not evenly spread through out the Grievant's tenure. Some years there were no crashes and other years there were multiple crashes. The greatest number of incidents occurred in 2011 and 2013. Although the record shows concern over the Grievant's driving record extended over much of his employment, the Sheriff's concern intensified in 2013, when the Grievant was involved in four crash incidents within a period of several months.

³ Employer Exhibit #7, 9, 10, 11, 12, 13, 55.

The evidence includes the record of twelve (12) other Todd County Deputies, with a history of crashes.⁴ These Deputies have a combined total of 190.5 years service with a total of 93 vehicle crashes. This is an average of about five (5) vehicle crashes per year among these twelve 12 Deputies. The average vehicle crash rate per year per Deputy is 0.5 and ranges from a low of 0.03 to a high of 1.9. Only two Deputies (not including the Grievant) averaged a vehicle crash rate per year over 0.9 (1.5 & 1.9 respectively).

The Union argues disparate treatment with another Deputy (Badge #1211) having a record similar to the Grievant (Average of 1.9 vehicle crashes per year). A close examination of the record shows some similarities and differences between these Deputies. Deputy #1211 averaging 1.9 crashes per year works the same shift as the Grievant. They served as back up for each other. Deputy #1211 testified that he knows the Grievant has more crashes than other Deputies and acknowledged that, "if we screw up we got it coming." Deputy #1211 also testified that the Sheriff wants Deputies to obey the speed limit – "this is one of his pet peeves." Deputy #1211 testified that, "most of his incidents have been relatively minor" and "although one of his squad cars was totaled, it was not his fault." The record shows that known losses due to the Grievant's crashes are in the range of \$100,000.00.⁵

A review of the Grievant's recent crash history reveals a number of major crashes and considerable property damage to his vehicle and the property of others. On November 10, 2011, the Grievant was involved in two separate deer crashes on the same shift.⁶ On February 28, 2013, the Grievant was involved in a deer crash. Although not injured himself, the squad car sustained considerable damage. At the time of his March 5, 2013 crash the Grievant was driving on a

⁴ Union Exhibit #8.

⁵ Employer Exhibit #50.

⁶ Employer Exhibits #22 & #23.

snow packed surface with a “loaner car” because his squad was not available due to damage from his previous crash. The Grievant struck a deer and claimed that the condition of the loaner was partly or fully responsible due to tire and braking deficiencies.

It is axiomatic among professional drivers, and a DOT legal requirement in commercial vehicles, that the driver make an inspection prior to operation to insure the vehicle is road worthy and safe. Had the Grievant made an inspection prior to operating the vehicle he would have known of its deficiencies and could have operated the vehicle accordingly.

On April 13, 2013, the Grievant was involved in another deer crash while responding to a domestic call. The Grievant acknowledged driving at a very high rate of speed in blowing snow. The Grievant’s squad was severely damaged. The urgency of the domestic situation was lessened when it was learned that a gun was not involved. This information was communicated to the Grievant prior to the crash, but he does not recall receiving it.

On April 30, 2013, the Grievant was involved in another crash while driving the squad of another Deputy, as his was unavailable due to his previous crash. This crash involved colliding with a farm animal. The Grievant described the driving condition as light rain with cruise control on at about 57 miles per hour.⁷ The crash caused the airbag to deploy and the squad was inoperable requiring a tow. At his point, the Grievant had not only disabled his own squad, but two other vehicles as well. At this time, the Grievant acknowledged he “might be subject to discipline.”⁸

⁷ Testimony of Grievant.

⁸ Testimony of Grievant.

Considerable evidence and argument was presented regarding whether the Grievant was distracted at the time of the April 30, 2013 crash due to use of his laptop computer. The Employer presented evidence that the computer was on within seconds of the crash. Evidence shows that the Grievant's laptop computer was accessed at 2.37.12 a.m. The evidence shows that the collision with the animal occurred at about 2.36.38 a.m., some 26 seconds latter. The Grievant denies that the computer being on was deliberate and argues that it was likely caused by normal shutdown time or actuated by interference from his personal screen. There are also issues about whether the vehicles onboard electronic systems were working at the time of the crash.

The Employer arranged for Sgt. Douglas T. Brown, an Accident Reconstruction Specialist with the Minnesota State Patrol, to conduct an investigation into the April 13 and April 30, 2013 crashes.⁹ Sgt. Brown's findings were that, in the April 13, 2013 crash, the Grievant should have been able to take some [evasive] action prior to striking the deer. Brown concluded that, there was no evasive action because the Grievant was distracted and not watching the roadway ("If he had applied the brakes, he would have slowed adding more time and the deer may have cleared the roadway and the collision would not have happened"). Brown noted that the there was light snow falling; the roadway was covered with light snow and the vehicle was traveling at 99 MPH.

Regarding the April 30, 2013 crash, Sgt. Brown's findings were that, considering all relevant factors, the Grievant should have been able to take some [evasive] action prior to hitting the animal, but there was no indication of evasive action taken ("Given all this information, he should have been able to take some action prior to hitting the cow"). Sgt. Brown confirmed that the crash occurred at night with no streetlights, light rain, at a speed of 55-60 MPH with the cruise control on.

⁹ Employer Exhibit #64 and testimony of Sgt. Brown.

The union argues that the Grievant's termination was not for "just cause" and he was not afforded due process. The Union references Article 12, Discipline, of the CBA, which provides employees shall be disciplined for just cause only. Article 12 provides that discipline will be in one of the following forms:

1. Oral reprimand,
2. Written reprimand,
3. Suspension,
4. Demotion, or
5. Discharge.

The evidence shows that the Grievant was involved in discipline and related actions in the following form and occasions prior to his notice of termination:

1. 05/30/2000 – Oral reprimand – tampering with another officer's property, retaliation.
2. 12/09/2000 – Written reprimand - tampering with another officer's property.
3. 03/08/2005 – Letter from Grievant to Sheriff – "What have I learned from my latest squad car crash."
4. 06/16/2011 – Letter from Sheriff – return to work 06/19/2011 (put on paid administrative leave 06/15/2011 pending an investigation into incident on 06/14/2011).
5. 08/18/2011 – Oral reprimand – improper use of sick leave.
6. 09/07/2011 – Written complaint and supervisory investigation, allegation of employee misconduct – policy and constitutional rights violations.
7. 10/17/2011 – Written reprimand – employee misconduct – policy and constitutional rights violations.
8. 10/17/2011 – Verbal reprimand – driving conduct (after hitting deer, too many accidents and claims.

9. (Undated) – Car/deer matter – rebuttal from Grievant.
10. 10/24/2012 - Written reprimand – employee speech, expression and social networking – putting evidence photos on Facebook.
11. 02/13/2013 – Memo, supervisors file – incomplete work.
12. 03/04/2013 – Written reprimand – driving conduct, two days unpaid suspension.
13. 03/07/2013 – Clarification of 03/04/2013 written reprimand – correct policy, vehicle damage, abuse and misuse.
14. 03/15/2013 – Agreement – suspension lessened from two days to one day.
15. 04/30/2013 – Notice of paid administrative leave after 04/30/2013. Loudermill Hearing scheduled for 05/08/2013.
16. 05/08/2013 – Loudermill Hearing
17. 05/21/2013 – Closed meeting on termination before County Board of Commissioners – Grievant and representative present.
18. 05/28/2013 – Second Loudermill Hearing.
19. 05/28/2013 – Closed Board meeting regarding Grievant’s termination.
20. 05/30/2013 – Grievant issued notice of termination.

The record shows that the Grievant has received numerous disciplinary actions concerning his driving record and other matters. The record shows that speeding was a standing concern of the Sheriff, which was acknowledged by testimony of the Grievant and all Deputies serving as witnesses. Witness, Badge #1203, testified that he has been talked to about his driving and that, “The Sheriff has told Deputies to slow down multiple times.” Witness, Badge #1212, testified that he has been, “Talked to by Sheriff about speeding.” Badge #1212 testified that, “He drives about the same number of miles as the Grievant, but has never totaled a car.” Witness, Badge #1213, testified that he was instructed to “Travel within the speed limit and would decrease his speed if in heavy rain or in snow.”

The Grievant was afforded two Loudermill Hearings including an opportunity to defend his actions to the County Board of Commissioners prior, to receiving notice of termination. It is clear from the record that the Grievant realized as early as 2005 that his driving record could lead to his termination. This is evident from his statement following a crash on November 11, 2011, when he emailed the Sheriff and stated, "It's been a pleasure working for you."

Further evidence that the Grievant realized his driving record could lead to termination was his testimony regarding the April 30, 2013 crash, "I knew I might be subject to discipline." The Grievant was warned on October 17, 2011, in conjunction with a verbal reprimand that, "Should you continue to violate departmental rules, you may be subject to further discipline up to and including termination of your employment with the Todd County Sheriff's Department."

On cross-examination, the Grievant acknowledged:

- "The Sheriff has become a stickler about driving over [speed] limit;"
- "I would slow down at times and then return to speeding;"
- "Agreed that he has driven too fast for weather conditions and it would be appropriate for the Sheriff to be concerned."

On direct examination, the Grievant testified:

- "when talked to or disciplined for speed, he reduced it for a while and then resumed [speeding] after a while."

Of particular note is the Grievant's acknowledgement via a letter to the Sheriff, dated March 8, 2005.¹⁰ The Sheriff asked the Grievant to share what he had learned from a recent crash where he slid into a ditch, struck several trees and ended in a field while trying to catch up with a speeder. Among the things acknowledged by the Grievant was:

¹⁰ Employer Exhibit #6, pg. 208.

1. I have to slow down
2. Issuing a speeding ticket is not worth risking ones life.
3. I am not invincible and subject to being hurt.
4. There are times when conditions are not appropriate for a safe stop of a violator.
5. I need to think ahead more.
6. Being a pursuit-driving instructor, I have to set the example, not be the example.
7. I have learned that my crashes put a burden on the Todd County Sheriff's Office, are bad publicity and I should not need to swap squad cars with other Deputies.
8. I have learned that you [Sheriff] are a fair and understanding boss.

The Union argues that the Grievant should have been provided remedial driver's training. The record shows the Grievant has received considerable training in driving techniques and safety. When asked during his Loudermill Hearing if he felt he had been properly trained on how to drive safely, the Grievant responded, "I feel I have. I used to be an EVOC Instructor in the early 2000s."¹¹

FINDINGS

Considering the economic and operational consequences of the Grievant's driving and his general conduct, the Employer had "just cause" for termination. Although the record reveals some of the Grievant's good qualities, they are over shadowed by his unfavorable qualities.

¹¹ Employer Exhibit #2, pg. 7.

The Employer's rules and policy regarding driving conduct, which is designed to minimize property damage and ensure human safety, are reasonably related to the mission and purpose of the Sheriff's Office.

The Grievant was afforded reasonable "due process" via numerous warnings, progressive disciplinary, two Loudermill Hearings including a hearing before the County Board of Commissioners prior to the termination decision.

The record shows that the Grievant's conduct violated the policies and standards of the Sheriff's Office and is supported by ample evidence.

The evidence shows that the Grievant's conduct and impact of his conduct differs sufficiently from that of other Deputies to warrant different treatment.

There is ample evidence that the Grievant knew his conduct could lead to termination.

It is inconclusive whether it was his laptop computer that distracted the Grievant, when involved in the crash of April 30, 2013. Although it is known that the computer was accessed some 26 seconds before the crash, there is no proof that the Grievant was actually on the computer between then and the time of the crash. It is safe to conclude that whatever contributed to the crash of April 30, 2013, was the same driver conduct that contributed to earlier crashes.

AWARD

The grievance is denied.

There is no violation of the Collective Bargaining Agreement.

The termination was for "just cause" and the Grievant was afforded adequate "due process."

CONCLUSION

The Parties are commended on the professional and thorough manner with which they presented their respective cases. It has been a pleasure to be of assistance in resolving this grievance matter.

Issued this 9th day of January, 2013 at Edina, Minnesota.

Rolland C. Toenges, Arbitrator