

IN THE MATTER OF GRIEVANCE ARBITRATION BETWEEN

Brooklyn Park Police Federation

Union

and

BMS Case No. 09PA0022

City of Brooklyn Park, Minnesota,
Employer

NAME OF ARBITRATOR:

George Latimer

Assistant Faith Latimer

DATE AND PLACE OF HEARING:

November 25, 2008

Brooklyn Park, Minnesota

BRIEFS RECEIVED:

None

DATE OF AWARD:

December 12, 2008

APPEARANCES

FOR THE UNION:

Gregg M Corwin, Attorney

Detective Robert Roushar, BPPF

Tony Weeks, Grievant

FOR THE EMPLOYER:

John M LeFevre, Jr., Attorney

Lt Steve Pearson

Captain Jeff Ankerfelt

Chief Michael Davis

INTRODUCTION

This is a grievance arbitration between the Brooklyn Park Police Federation and the City of Brooklyn Park. Arbitration hearing was held on November 25, 2008 in Brooklyn Park. Both parties had full opportunity to present evidence and examine witnesses. The parties chose not to submit closing briefs, and the record was closed November 25.

STATEMENT OF THE ISSUE

Did the Employer have just cause to issue the discipline imposed? If not, what shall the remedy be?

APPLICABLE CONTRACT LANGUAGE

Article X Discipline

10.1 The EMPLOYER will discipline EMPLOYEES for just cause only.

APPLICABLE BROOKLYN PARK POLICE DEPARTMENT DIRECTIVES

Directive 301

301.3 Principles Governing Conduct of Sworn Officers

1. Members of the Brooklyn Park Police Department will conduct themselves, whether on or off duty, in accordance with the Constitution of the United States; the Minnesota Constitution; all applicable laws, ordinances and rules enacted or established pursuant to legal authority; and the General Orders, Rules and Regulations of the City of Brooklyn Park and the Brooklyn park Police Department. Members of the Brooklyn Park Police Department will refrain from any conduct in an official capacity that detracts from the public's faith in the integrity of the criminal justice system, the law enforcement profession, the City of Brooklyn Park and its Police Department.

3. Members of the Brooklyn Park Police Department will not, whether on or off duty, exhibit any conduct that discredits themselves, the law enforcement profession, the City of Brooklyn Park and the Department. Members will not exhibit any conduct that impairs their ability, or that of other members of the Department, to provide law enforcement services to the community.

5. Members of the Brooklyn Park police Department will not compromise their integrity, nor that of the Department or law enforcement profession, by accepting, giving or soliciting any gratuity that can influence their official acts or judgment, or by using their status as a police officer for personal, commercial, or political gain.

Directive 302

18. Solicitation of Special Privileges – No member shall use his badge, uniform, identification card or official position to solicit special privileges for himself or others. An officer may use his badge or other official credential to obtain admission to any public gathering when such use is in the course of official duty. Members shall not accept any gift, gratuity or reward in money or other consideration for services rendered in the line of duty to the community or to any person, business or agency except lawful compensation unless approved by the Chief of Police.

59. Violation of any Criminal Law – Whenever a member of the department shall be guilty of a crime defined as a misdemeanor, he shall be subject to such disciplinary action as may be compatible with the nature of the offense. Any member of the Police Department guilty of a crime defined as a gross misdemeanor or felony may be subject to immediate dismissal from the department. Any member of the police department who is arrested, issued a court date, or cited for any crime shall notify the Chief of Police in writing within 24 hours of release or by telephone when release is not within 48 hours.

Directive 377

348.3 Notification

2. Employees of the Brooklyn Park Police Department whose driver's license has been restricted may not operate a City owned vehicle until and unless authorized by the Chief of Police. In addition, employees whose driver's license has been restricted, and whose primary duties require driving a City vehicle may be placed on unpaid administrative leave. Those who have been placed on unpaid leave may not return to work until approved by the Chief of Police and after having shown written documentation that their driver's license is no longer restricted.

UNDISPUTED FACTS

1. The Grievant is an 8 year veteran of the Brooklyn Park Police Department. He has consistently received “exceeds expectations” ratings on his performance evaluations, and has received commendations for his work. He has no disciplinary history. (Union Notebook tabs 1-4, Employer Notebook tab 9)
2. On March 17 2008 while off duty, Grievant was arrested for Driving While Intoxicated and Open Bottle. He tested .14 alcohol concentration on a breath test at the time of arrest. The following day he reported this event to his supervisor, Lt. Steve Pearson and to Chief Michael Davis. (Testimony of Lt Pearson and Captain Jeff Ankerfelt, and Emp Notebook p.50)
3. Chief Davis ordered an investigation of the incident. The investigation was conducted by Lt. Pearson. Lt. Pearson’s report was presented to the department’s Administrative Investigation Review Panel, consisting of three captains of the Brooklyn Park Police Department.
4. During the investigation Grievant acknowledged that he had violated Minnesota’s DWI and open bottle laws. He also acknowledged he had identified himself as a police officer during his arrest. He was fully cooperative with the Employer’s disciplinary investigation. (Emp Notebook pp 39-42 and testimony of Lt Pearson)
5. In connection with his arrest, Grievant’s driver’s license was revoked for about three weeks. During this time, he was not permitted to report for duty. He was permitted to use paid vacation time. The revocation of his license was rescinded by the District Court May 8, 2008. (Emp Notebook p 33 and pp 44-46)
6. After completion of the disciplinary investigation, the Administrative Investigation Review Panel found that Grievant violated Department Directive, General Order 301.3, Subd. 1 and recommended that the Grievant be issued a 24 hour unpaid suspension for his conduct on March 17... Chief Davis concurred with this recommendation and the suspension occurred July 7-8, 2008. (Emp Notebook pp 50-53)
7. The DWI and open bottle charges were dismissed by the District Court on July 17, 2008. (Union tab 5)

8. Grievant's suspension was grieved by the Federation and appealed through the contractual grievance process. It was appealed to Arbitration July 10, 2008. (Emp Notebook pp 54-58)

EMPLOYER POSITION

The Employer disciplined the Grievant for violation of Police Department Directive #301.3 Subd. 1:

Members of the Brooklyn Park Police Department will conduct themselves, whether on or off duty, in accordance with...all applicable laws, ordinances and rules enacted or established pursuant to legal authority; and the General Orders, Rules and Regulations of the City of Brooklyn Park and the Brooklyn Park Police Department. Members of the Brooklyn Park Police Department will refrain from any conduct in an official capacity that detracts from the public's faith in the integrity of the criminal justice system, the law enforcement profession, the City of Brooklyn Park and its Police Department.

. Chief Davis testified that he had put in place the current disciplinary investigation system when he came to the Brooklyn Park Department about a year ago. He instituted the system based on best practices used by departments around the country. The Chief understood that Grievant had been cooperative and truthful in the investigation. He also testified that he takes ethical violations and the damage they do to public trust, very seriously. He also understood the disciplinary panel had taken Grievant's past service record into account before making its recommendation to him. Employer witnesses indicated that all the management employees involved were conscientious in following the investigation process. The Grievant was given full due process rights, and the disciplinary panel gave consideration to his past excellent service, when making its recommendation.

Captain Ankerfelt testified that he initially believed a 60 hour suspension would be appropriate for this violation. He testified he later lessened his recommendation based on input from Federation representatives, and discussion with the panel. While believing Grievant's behavior is unlikely to recur, Chief Davis and Captain Ankerfelt testified that deterrence is not the only function of discipline. For a serious infraction like this one, a disciplinary action is also an important message to the public and within the department.

With respect to the Union's argument that Grievant had already served a suspension during the time his license was revoked, the Employer points to department policy that officers are required to hold valid drivers licenses as a condition of the job. While the policy allows an employee to be placed on unpaid leave during a period of license revocation, the Employer permitted Grievant to use accrued vacation time to minimize the financial hardship to his family. (Emp Notebook pp 33 & 36-7, testimony of Captain Ankerfelt)

As to the question of hours of suspension versus days, Chief Davis stated that in his experience with the Minneapolis Police Department, hours are always used as the measure of work time for officers, since the length of shifts frequently vary. Captain Ankerfelt also testified that the definition of 'day' has varied over time, and that the department tries to speak in terms of hours worked.. In this case, the Employer arranged for Grievant to schedule the suspension near a holiday weekend, over two 12 hour shifts. The Employer argues there was clear just cause for the 24 hour suspension.

UNION POSITION

The Union points out that Grievant was fully cooperative and always honest with his Employer throughout the investigation process. He did not dispute that what he did was wrong. He voluntarily underwent evaluation regarding his alcohol use. This evaluation showed no indication of an on-going problem. As the Employer acknowledges, there is no likelihood that Grievant's misjudgment will be repeated. Therefore the Union argues there is no deterrent value in imposing a long suspension. In addition, the Grievant in effect served a suspension in April 2008, during the time of his license revocation. Given that this employee has an exemplary work record, the Union argues that the punishment imposed was too severe, and that a letter of reprimand would be sufficient and fair.

ARBITRATOR ANALYSIS AND AWARD.

The procedure implemented in this case was a "best practice" introduced by the Police Chief. The internal investigation was conducted by a senior officer who submitted the facts to the Administrative Investigation Review panel. The panel had the responsibility to review the investigative facts and make findings and recommendations to the Chief. In this case the panel found the allegations to be "Sustained With Qualifications" and the Chief accepted and executed

accordingly. The Union does not dispute the Grievant's due process rights were observed in the investigation process.

Following the incident on March 17, 2008 the Employer alleged violations of department policies 301 and 302. After careful investigation of the off duty conduct of the Grievant, the reviewing panel exonerated Grievant of solicitation of special privileges.. As to violations of any criminal law (302.0 Section 59), that section specifically covers: "Any member of the police department *guilty of a crime...*" (emphasis added) and states : "Any member of the police department who is arrested...shall notify the Chief of Police in writing.". Regarding the latter provision, the Employer acknowledges that Grievant complied with the notice requirement with a full and candid statement. Regarding the first part of this section, it is axiomatic that an arrest does not constitute a finding of guilt. Therefore, the Arbitrator specifically finds the Grievant has not violated the provisions of section 302.0.

As to provision 301.3 the Arbitrator concurs with the panel's conclusion that the Grievant's admissions, including the possession of an open bottle of an alcoholic beverage while driving a vehicle, constituted conduct which "detracts from the public's faith in the integrity of the criminal justice system, the law enforcement profession, the City of Brooklyn Park and its Police Department." (Emp Notebook pp 50-52)

The Arbitrator is not persuaded by the Union's assertion that Grievant had already served a suspension during his license revocation. While involuntary, this was paid time off which was not recorded as disciplinary in the Grievant's record.

The remaining question is whether the 24 hour suspension is a fair penalty. The Employer offered a summary of disciplinary actions issued to other officers from 2002 to 2008. Past actions on similar conduct can be useful in measuring fairness. In this case, the Arbitrator does not find the summary dispositive. First, unlike the instant case, it was not clear what procedures were followed in the past disciplines. Secondly, personnel histories were not evident, therefore mitigation for exemplary previous service, as evidenced in this case, is unknown.

The facts in this case were clear and the positions of the parties well presented. It is evident that the Grievant is highly valued. It is equally clear that the Employer has managed this

matter fairly and humanely, treating the incident as serious but highly unlikely to recur. The Arbitrator finds there was just cause for the discipline imposed.

Grievance denied.

Signature

12/12/2008

Date