

**IN THE MATTER OF ARBITRATION BETWEEN**

CATHY HAMM,	)	
	)	<b>ARBITRATION</b>
Grievant,	)	<b>AWARD</b>
	)	
and	)	
	)	<b>HAMM DISCHARGE</b>
	)	<b>GRIEVANCE</b>
	)	
STATE OF MINNESOTA,	)	
Department of Natural Resources,	)	
	)	
Employer.	)	

Arbitrator: Stephen F. Befort

Hearing Dates: August 17 – 21, 2009

Post-hearing briefs received: September 21, 2009

Date of decision: October 21, 2009

**APPEARANCES**

For the Grievant: James Kaster  
Sofia Andersson-Stern

For the Employer: Carolyn Trevis  
Rebecca Wodziak

**INTRODUCTION**

The Grievant, Cathy Hamm, brings this grievance pursuant to Chapter 11 of the Managerial Plan adopted by the State of Minnesota. The Grievant contends that the State of Minnesota, Department of Natural Resources (Employer), violated the Managerial Plan by discharging the Grievant without just cause. The grievance proceeded to an

arbitration hearing at which the parties were afforded the opportunity to present evidence through the testimony of witnesses and the introduction of exhibits.

### **ISSUES**

1. Did the Employer have just cause to discharge Cathy Hamm?
2. If not, what is the appropriate remedy?

### **GOVERNING PRINCIPLES**

Chapter 11 of the Managerial Plan provides that disciplinary action of a permanent manager “may be taken only for just cause as provided in Minn. Stat. § 43A.33, subdivision 2 . . . .” Just cause is defined in Minn. Stat. § 43A.33, and “includes, but is not limited to, consistent failure to perform assigned duties, substandard performance, insubordination, and serious violation of written policies and procedures, provided the policies and procedures are applied in a uniform, nondiscriminatory manner.”

### **FACTUAL BACKGROUND**

Cathy Hamm has worked for the Department of Natural Resources (DNR) since 1975. She worked her way up the ladder from a clerk typist position to become one of the state’s first licensed female correctional officers. In 2004, she was appointed to serve as Central Regional Manager in the department’s Division of Enforcement. This division enforces state laws relating to parks and wildlife management and is organized on a paramilitary basis. In her position as a regional manager, Ms. Hamm served both as a licensed peace officer and as a supervisor with the rank of captain.

At the time of her discharge, Captain Hamm reported to Major Allen Heidebrink, who, in turn, reported to Enforcement Division Chief Colonel Mike Hamm. Colonel Hamm and Captain Hamm are husband and wife. Ultimate managerial authority over department matters is vested in the Commissioner's office which, at the time of the discharge, was under the direction of Commissioner Mark Holsten. Colonel Hamm and the other division heads reported to the Commissioner's office.

The Employer terminated Cathy Hamm in October 2008 for her involvement in the planning and implementation of the 2007 North American Wildlife Enforcement Officers Association (NAWEOA) conference. The annual NAWEOA conference is an educational and social event for Canadian and U.S. game wardens. The 2007 conference was held in Minnesota and was co-hosted by the DNR and the Minnesota Conservation Officer's Association (MCOA), the union that represents conservation officers employed by the department. In his letter of intent to discharge, dated October 13, 2008, Commissioner Holsten listed four conference-related reasons for her termination:

1. Her failure to establish a time tracking code;
2. Her decision to establish registration fees for Minnesota attendees that were higher than those from other jurisdictions and at levels that ensured a profit for the MCOA;
3. Her violation of DNR Operational Order 101 and DNR Gift Acceptance Policy; and
4. By personally using and authorizing others to use state time, property and equipment in order to provide benefits to the MCOA.

**A. The NAWEOA Conference**

Representatives of the DNR and the MCOA began exploring the possibility of hosting the 2007 NAWEOA conference as early as 2004. For the DNR, the incentive for hosting such a conference was to showcase the agency's work and to commemorate the agency's 120 year anniversary. For the union, sponsorship of the conference offered the additional potential for making a profit as had sponsors in other North American cities.

Colonel Mike Hamm testified that he discussed the prospect of hosting the conference early on with Assistant Commissioner Brad Moore. Mike Hamm testified that he discussed the potential advantages of hosting the conference and explained that it would require considerable time and resources to make it a successful venture.

According to Mike Hamm, Assistant Commissioner Moore approved the effort and responded by saying, "let's make this work." NAWEOA subsequently awarded the 2007 conference to Minnesota.

On January 20, 2005, Mike Hamm sent an email message to all Enforcement Division staff members indicating that Minnesota was to serve as host for the 2007 NAWEOA conference. The email went on to state:

We are ready to move into the next phase of the planning for the conference. As part of that planning, a steering committee and several subcommittees will be set up. The steering committee will be made up of CAPT Cathy Hamm as the Project Leader, MCO Chris Vinton representing the MCOA, LT John Hunt, and MCO Dean Olson. We will be looking for Committee chairs as well as committee participants to assist in this lengthy process. . . . This is truly going to have to be a statewide effort for this conference to succeed and for MN to shine. . . .

. . . Work done on this conference is authorized to be on state time and with the use of state vehicles.

This email message was copied to Assistant Commissioner Brad Moore.

Mr. Vinton subsequently was removed from the steering committee due to health and attendance issues. The remaining three steering committee members played an integral role in planning the conference. They met frequently to plan and coordinate activities. In addition, each committee member supervised six or seven subcommittees. Cathy Hamm, for example, oversaw the hotel/banquet/auction, exhibits, marketing, hospitality, fundraising, and registration committees. Cathy Hamm testified that she was one of three equals on the committee, while others testified that she served as the principal planning agent for the conference.

The steering committee members initially were confident in their ability to raise funds for the conference. In December 2005, the Commissioner's office approved a fundraising letter over Colonel Mike Hamm's signature for the purpose of soliciting donations for the conference. The MCOA created a 501(c)(3) organization called the Minnesota Game Warden's Foundation to receive conference-related gifts. Eventually, however, the committee became concerned that private fundraising efforts would fall short. Mike Hamm approached Jerry Hampel, Assistant Administrator of Management and Budget for DNR to explore other funding possibilities, and Hampel explained that the DNR could provide a grant of state funds to support a conference that was in furtherance of the agency's mission. The DNR eventually provided the MCOA with a \$35,000 grant for conference support.

Over the next two years, more than 150 department employees worked on conference planning activities. The conference took place during July 16-21, 2007 at the Crowne Plaza hotel in St. Paul, Minnesota. Approximately 450 individuals attended the conference.

## **B. The Aftermath**

The department initially considered the conference to be an important and successful event. In his annual evaluation of Cathy Hamm's work performance, Major Heidebrink praised Cathy Hamm for her "exceptional" work in helping to plan and implement the conference. In February 2008, Commissioner Holsten presented several employees, including Cathy Hamm, with awards for their conference-related service.

In May 2008, newspaper articles began to appear questioning the propriety of the amount of state time and funds devoted to the NAWEOA conference. Commissioner Holsten responded by placing Mike and Cathy Hamm on investigatory leave. He also retained the services of attorney Tammy Pust for the purposes of undertaking an independent investigation into the circumstances surrounding the Hamms' involvement in the conference. Meanwhile, the Office of the Legislative Auditor (OLA) initiated its own investigation which was not targeted at any specific individual.

Ms. Pust delivered separate investigatory reports with respect to Mike Hamm and Cathy Hamm on September 24, 2008. These reports made numerous findings of fact, but did not make recommendations concerning discipline. On the following day, Commissioner Holsten initially fired Mike Hamm, but then agreed to allow him to retire.

Commissioner Holsten did not take any action with respect to Cathy Hamm until he received a separate investigatory report on October 3, 2008 concerning allegations that Cathy Hamm had engaged in actions constituting discrimination and harassment. On October 13, 2008, Commissioner Holsten issued a letter noticing his intent to discharge Cathy Hamm for conduct related to both the conference and to the discrimination and harassment allegations. Cathy Hamm also asked for permission to retire, but

Commissioner Holsten declined to permit such a resolution without a release of claims. Commissioner Holsten issued a formal discharge notice on October 16, 2008. Shortly before the arbitration hearing, on August 14, 2009, Commissioner Holsten issued an amended discharge letter that deleted all reference to the discrimination and harassment charges.

**C. Facts Concerning the Discharge Allegations**

In the sections that follow, additional facts are presented as they relate to the four reasons alleged as grounds for termination.

**1. Time Coding**

DNR employees are required to record time spent on various work tasks. The department utilizes a time-tracking system by which employees record working periods with time-tracking codes that correlate with the substantive objectives of the activities undertaken. The ultimate purpose of this system is to maintain departmental fund integrity. Since the department receives funds from more than 40 dedicated sources, the time-tracking system is meant to ensure that dedicated funds are expended for their intended purposes.

Commissioner Holsten testified at the arbitration hearing that Cathy Hamm should have requested the creation of a time code to keep track of time spent on conference-related activities. The record establishes that only employees at the rank of major and above have the authority to create a new tracking code, but that other employees, including captains, may request those at a higher rank to create a new code. According to Commissioner Holsten, the lack of such a code made it difficult to ascertain the amount of employee time spent on conference activities.

Colonel Mike Hamm testified that he made the decision not to establish a specific conference-related time code because time spent working on conference matters generally mirrored the variety of work normally performed by enforcement officers. Captain Cathy Hamm testified that once the Division chief made the decision not to create a new tracking code, it was not appropriate for anyone at a lower rank to countermand that decision by requesting the creation of a tracking code. She also testified that there was no need for such a code since no separate funding source was dedicated to conference-related activities.

## **2. Registration Fees**

As a second basis for dismissal, the Employer maintains that the registration fees for the conference were set at inappropriate levels and that Cathy Hamm was principally responsible for establishing those fee levels.

The amount of the fees assessed to conference attendees is uncontroverted. The base registration fee for conservation officers attending from other jurisdictions was \$175. Minnesota conservation officers, however, paid a higher \$260 per person fee. In addition, DNR non-licensed staff attending the conference paid a fee of \$200 while Minnesota volunteers who assisted at the conference paid a \$110 fee. The DNR budget paid the registration fees for all Minnesota attendees.

Both investigative reports found this fee structure to be problematic. The OLA report concluded that:

Because these [unlicensed] employees were not conservation officers and could not directly benefit from the training aspects of the conference, and because these employees worked at, rather than attended the conference, the department should not have paid a registration for them.

The Pust report stated that “the payment of the conference fee [for Minnesota attendees] served mainly to provide additional financial resources for the conference.” In her OLA interview, Cathy Hamm acknowledged that it “was pretty evident that if we didn’t pay our registration fees, that the costs of the conference could not be met.”

In her investigatory report, Ms. Pust found that “Cathy Hamm was in charge of determining the appropriate level of the planned conference registration fees.” This finding was based, in part, on the fact that Ms. Hamm oversaw the conference Registration Committee. In addition, it is undisputed that Cathy Hamm prepared the special expense forms asking the Commissioner’s Office to approve the registration fees in question. These forms were submitted to Assistant Commissioner Laurie Martinson who signed off her approval.

Cathy Hamm acknowledges that, along with the other members of the steering committee, she played a role in determining the overall level of registration fees for the conference. She denies, however, that she established the higher fees for Minnesota attendees. She testified that Major Heidebrink provided her with the data concerning the specific registration fee levels, and that she merely inserted this data onto the special expense forms.

Colonel Mike Hamm testified that he made the decision to charge Minnesota officers a higher registration fee after consulting with Jerry Hampel, Assistant Administrator of Management and Budget Services. He stated that Mr. Hampel expressed the opinion that the higher fees were appropriate due to the fact that the Minnesota officers would receive credit for the training that they received at the conference, and that such would obviate the need for funding a separate in-service

training event for that year. During this meeting, Mike Hamm and Hampel also discussed the fact that the higher registration fees would reduce the amount of the state grant that the agency was planning to make in support of the conference.

### **3. Fund Raising and Gift Reporting**

Cathy Hamm acknowledges that she engaged in fundraising activities for the conference while on state time and in uniform. While the record establishes that the Commissioner's Office approved a fundraising letter for the conference on MCOA letterhead over Mike Hamm's signature, the record does not establish that the Commissioner's Office expressly authorized DNR employees to engage in conference fundraising activities during working time. On the other hand, Mike Hamm sent an email message to all Enforcement Division employees, with a copy to Assistant Commissioner Moore, stating, "work done on this conference is authorized to be on state time and with the use of state vehicles." The Commissioner's Office did not disseminate any communication providing any contrary instructions. Cathy Hamm testified that she believed that she was engaged in an authorized work function when she undertook fundraising activities while on work time.

Although the Commissioner's office issued no explicit directive to division employees prohibiting fundraising activities on state time, the Employer points to an email exchange during January 2006 that conveyed somewhat similar information. Major Bill Spence sent an email message to finance officer Jerry Hampel inquiring whether it would be appropriate to approve an expense report submitted by an Enforcement Division employee (Chick Niska) seeking reimbursement for expenses

incurred while engaged in fundraising efforts for the NAWEOA conference. Hampel responded several days later with the following message:

Sorry I took so long but I needed to find out where the Commissioner's office is on this. It is now clear, [Assistant Commissioner] Brad [Moore] told me [Commissioner] Gene [Merriam] said after a discussion of the issue. This expense is not a DNR obligation. If it gets reimbursed it should be by the Conservation Officers Association. State time should not be used for fund raising. This is state policy and we must follow the rules. Mike [Hamm] is aware of the commissioner's position.

Assistant Commissioner Moore testified that he assumed that Mike Hamm, who received a copy of this message, would relay this directive to his subordinates. Mike Hamm testified that he did not interpret the denial of reimbursement as a directive to cease conference-related fundraising efforts. Mike Hamm did not issue any directive banning fundraising activities on state time.

The DNR's Gift Acceptance Policy provides that the DNR Commissioner must approve all gifts received of over \$10,000 in value. It is undisputed that Cathy Hamm received two gifts for the NAWEOA conference valued at more than \$10,000 that were not submitted for approval by the Commissioner. Captain Hamm testified that these gifts were donated to the MCOA, acting as the conference's fiscal agent, rather than to the DNR. She also testified that she reported all gifts received on the DNR's NAWEOA website and sent email messages describing each gift to her supervisor, Major Heidebrink.

#### **4. Use of State Time and Property**

The Minnesota Code of Ethics provides that an employee "shall not use or allow the use of state time, supplies, or state-owned property for the employee's private interests or any other use in the interest of the state." The record shows that Cathy Hamm

devoted considerable work time to conference activities. Indeed, Ms. Hamm estimated in January 2007 that she was spending about 95% of her work time planning the conference. As a member of the steering committee and Project Leader, Cathy Hamm also directed the work of many other division employees on conference activities.

The record establishes that the MCOA made a profit of approximately \$27,000 on the conference. Cathy Hamm is a former member of the MCOA, and, as a supervisor who now is ineligible for membership, she continues to be an “associate” member of the union.

Cathy Hamm testified that she believed that her work on the conference was a DNR-related work assignment directed by her supervisors. She points out that her conference activities were specifically referenced in her job description as well as in performance evaluations. Colonel Mike Hamm expressly authorized division employees to work on conference activities during work time, and approximately 150 employees did so. No division employee, other than Cathy Hamm, was disciplined for this activity.

### **DISCUSSION AND OPINION**

In accordance with the terms of the State of Minnesota’s Managerial Plan, the Employer bears the burden of establishing that it had just cause to support its disciplinary decision. This inquiry typically involves two distinct steps. The first step concerns whether the Employer has submitted sufficient proof that the employee actually engaged in the alleged misconduct or other behavior warranting discipline. If that proof is established, the remaining question is whether the level of discipline imposed is appropriate in light of all of the relevant circumstances. *See Elkouri & Elkouri, HOW ARBITRATION WORKS* 948 (6<sup>th</sup> ed. 2003).

## **The Alleged Misconduct**

Commissioner Holsten's letter of intent to discharge Cathy Hamm listed four conference-related reasons for termination. Each is discussed below.

### **1. Time Tracking**

One of the articulated reasons for discharging Cathy Hamm was her failure to establish a time tracking code for the NAWEOA conference. Commissioner Holsten's letter set out the allegation as follows:

The time tracking code is a requirement within all DNR Divisions. Its purpose serves a variety of reasons, which include designating and thereby ensuring the appropriate funding source for the amount of compensated time by DNR employees for each coded activity. Your decision not to establish a tracking code was deliberate on your part, which obfuscated the hundreds, if not thousands, of hours spent by DNR employees on the Conference from 2005 through 2007 and resulted in improper charges to the state's Game & Fish Fund.

The evidence submitted at the hearing is undisputed on two points. First, while only an employee at the rank of major or higher can *establish* a time tracking code, lower-ranked supervisors, such as captains, may *request* the creation of such a code. Second, Colonel Mike Hamm is the individual who decided not to establish a time-tracking code for activities related to the NAWEOA conference.

The record indicates that the time-tracking issue was discussed at a number of Enforcement Division supervisory meetings and conference calls. Mike Hamm, as Chief of the division, eventually decided that there would be not be a specific conference-related code. He concluded that such a tracking device was not needed since the conference was not financed out of a particular dedicated fund and because the conference-related activities mirrored the broad range of conservation-enforcement

activities generally performed by division employees. Colonel Hamm communicated his decision during a conference call for Enforcement Division supervisors.

Although it is clear that Mike Hamm made the decision not to establish a time-tracking code and that such was beyond Captain Cathy Hamm's zone of authority, the Employer nonetheless contends that Cathy Hamm committed misconduct by not *requesting* the creation of a conference-specific time code. This is an unrealistic charge under the circumstances. Ms. Hamm should not be expected to request the creation of a code while that issue was actively being discussed in supervisor meetings. And, once the Chief of the division made his decision not to utilize such a code, a subsequent request would have bordered on insubordination in a paramilitary organization. Finally, no other steering committee members or division supervisors requested the creation of a conference tracking code, yet only Cathy Hamm was disciplined for this omission.

In the end, the Employer's allegation that Cathy Hamm deliberately decided not to establish a time-tracking code for the conference is not supported by the evidence. The record shows that the decision was not hers to make and that, indeed, she did not make it.

## **2. Registration Fees**

As a second reason for discharge, the Employer claims that Cathy Hamm set registration fees for the conference at an inappropriate level. In this regard, Commissioner Holsten's letter stated as follows:

You established registration fees, to be paid by the state, at levels that ensured that NAWEOA and the Minnesota Conservation Officers Association (MCOA) received a profit from the conference. These registration fees resulted in the unnecessary and inappropriate expenditure of public funds. These fees included:

- a registration fee for Minnesota DNR Conservation Officers that had been waived by the Host Agreement between NAWEOA and the Minnesota Conservation Officers Association (MCOA), but

was also in excess of the registration fee paid by all other attendees;

- a registration fee for non-licensed Minnesota DNR staff, who performed duties in support of the conference but did not receive any job-related training;
- a registration fee for volunteers who provided support for such conference activities as children’s programming and warden skills games.

As the two investigative reports determined, the level of registration fees established for the conference appears problematic. Conservation officers from Minnesota were assessed higher registration fees than officers from other jurisdictions. Other Minnesota attendees were assessed sizeable fees even though they attended the conference primarily as support staff and received no training. The DNR picked up the tab for all Minnesota attendees.

Colonel Mike Hamm offered two justifications for this fee structure. First, he testified that the DNR Office of Management and Budget approved the higher fees for Minnesota conservation officers since the conference training would displace the cost of the division’s annual training event at Camp Ripley. Second, he noted that the higher fees would decrease the size of the DNR grant commitment to the MCOA for underwriting the cost of sponsoring the NAWEOA conference. In other words, the higher registration fees simply represented an accounting shift with respect to expenditures that would have been the agency’s responsibility in any event.

Regardless of whether the registration fees were set at inappropriate levels, the question remains whether Cathy Hamm was responsible for establishing those fees. Once again, the evidentiary support for such an allegation is scant. The Employer points to the fact that Cathy Hamm was Project Leader, that she oversaw the Registration

Committee, and that she prepared special expense forms that were submitted to the Commissioner's Office. There is no direct evidence, documentary or otherwise, however, showing that Cathy Hamm actually determined the fee structure for the conference.

To the contrary, Colonel Mike Hamm testified that he determined the level of registration fees after conferring with Jerry Hampel from the Office of Management and Budget. Documentary evidence of a March 16, 2007 meeting attended by Mike Hamm, Jerry Hampel, and others supports this contention. Cathy Hamm was not present at this meeting.

Cathy Hamm, in addition, testified that while she and other steering committee members discussed the matter of registration fees on various occasions, the ultimate decision setting registration fee levels was made by those on higher rungs of the DNR supervisory chart. While acknowledging that she prepared special expense forms that referenced registration fee levels, she testified that she merely inserted registration fee data into the forms as provided to her by Major Heidebrink, her direct supervisor. Major Heidebrink did not testify at the hearing.

The Employer bears the burden of persuasion to substantiate its allegation that Captain Hamm was responsible for setting conference fees at an unacceptable level. The evidence presented by the Employer fails to satisfy that burden.

### **3. Fundraising and Gift Reporting**

As a third ground for the termination decision, Commissioner Holsten's discharge letter stated:

You violated the DNR Operational Order 101 and Gift Acceptance Policy by failing to properly report to the Commissioner “gifts” donated in support of the Conference, which you accepted, kept track of, and stored.

**a. Operational Order 101**

DNR Operational Order 101 provides, in pertinent part, as follows:

DNR employees work with a variety of external parties to accomplish common goals regarding the protection and management of Minnesota’s natural resources. In the exchange of related activities, DNR staff is required to follow legal, ethical and fiscal policies. . .

The guidelines presented are operational standards that should be followed when working with others. The guidelines apply to . . . provisions for fair and equal opportunities; the receipt and giving of gifts or donations . . .

**Project manager**

In any DNR project or activity that involves external partners the DNR project manager is responsible for ensuring that the policies and guidelines in this operational order are followed.

The Commissioner’s office should be involved in the review of the prospective corporations or foundations prior to fundraising efforts.

In its post-hearing brief, the Employer maintained that the grievant violated Operational Order 101 by 1) engaging in fundraising activities on state time and while in uniform, and 2) without obtaining approval from the Commissioner’s office as to the manner and targets of fundraising efforts. On balance, neither of these assertions survive scrutiny.

First of all, Operational Order 101 does not prohibit fundraising on state time or in uniform. The Order, instead, provides that fundraising efforts by state employees in coordination with external parties is permissible in order to accomplish common goals. The fact that the DNR and the MCOA were jointly hosting the NAWEOA conference provides a proper purpose for undertaking a coordinated fundraising drive.

Second, the Commissioner's office was consulted and gave its approval to the general fundraising efforts proposed by the Enforcement Division. Colonel Mike Hamm submitted a draft fundraising letter in December 2005 which was intended to be distributed widely to potential donors. The letter as approved by the Commissioner's office sought funds for a conference to be jointly sponsored by the DNR and the MCOA. The letter was on MCOA letterhead, but was signed by Mike Hamm and noted an agency address. In effect, by approving this letter, the Commissioner's Office gave its permission to the Enforcement Division to raise funds on behalf of the MCOA to defray the cost of the conference. In addition, the Commissioner's office was copied on an email sent by Mike Hamm informing division staff that "work done on this conference is authorized to be on state time and with the use of state vehicles." If the Commissioner disagreed with the natural import of these documents, he should have issued a directive to the contrary. Although the Employer contends that it sent such a message by copying Mike Hamm on the email message denying reimbursement for Chuck Niska's fundraising expenses, nothing in the record indicates that Cathy Hamm was ever informed that she should not engage in fundraising activities during her regular work hours.

**b. Gift Acceptance Policy**

The DNR Gift Acceptance Policy provides that the DNR Commissioner must approve all gifts received by the agency of more than \$10,000 in value. While it is true that Cathy Hamm received two gifts for the NAWEOA conference valued at more than \$10,000 that were not submitted for approval by the Commissioner, these gifts were donated to the MCOA, acting as the conference's fiscal agent, rather than to the DNR.

As such, the Gift Acceptance Policy is not applicable. As a matter of policy, it also is significant to note that Cathy Hamm was not attempting to hide information concerning these gifts. She reported all gifts received on the DNR's NAWEOA website and sent email messages describing each gift to her supervisor, Major Heidebrink.

#### **4. Use of State Time and Property**

As a final basis for the termination decision, Commissioner Holsten's letter alleges:

You violated the Minnesota Code of Ethics contained in Minn. Stat. Ch. 43A.38, by personally using, and authorizing others to use, state time, property, and equipment in order to provide benefits to NAWEOA and the MCOA, in ways which are not available to the general public.

The Minnesota Code of Ethics states that:

- (a) An employee shall not use or allow the use of state time, supplies, or state-owned or leased property and equipment for the employee's private interests or any other use not in the interest of the state, except as provided by law.

Minn. Stat. § 43A.38, subd. 4.

It is certainly true that Cathy Hamm used state time and property to work on the NAWEOA conference. Of course, that also is true of virtually every other employee of the division as well. Cathy Hamm, as a steering committee member, just happened to spend more time on the conference than most other division employees. That is because the Chief of the Enforcement Division assigned her to that task. She was designated to work on the conference during working time because the conference was deemed to be an activity that furthered the interests of the DNR. Indeed, the January 20, 2005 email from Mike Hamm to all Enforcement Division staff explicitly stated that "work done on this conference is authorized to be on state time and with the use of state vehicles." The

Commissioner's office never sent any communication countermanding that directive in spite of the fact that conference-related work time activities undertaken by division employees were open, widespread, and continued for more than two years.

The ethics policy provides that a state employee should not use state time for personal benefit or for the benefit of a non-state entity. The record contains no evidence suggesting that Cathy Hamm gained any personal benefit from her work on the conference. The Employer suggests that her efforts may have been motivated by a desire to see the MCOA benefit financially from the conference. This is not a plausible argument. She is not a current member of the union and, as a supervisor, her interests often do not coincide with those of the union representing the employees that she supervises. Most telling is the fact that once it became clear that the MCOA would make a profit on the conference, Cathy Hamm urged the MCOA to forgo the DNR grant in support of the conference. If Cathy Hamm was motivated by a desire to see that the union reaped a large financial benefit, she would not have argued for a rejection of the state grant. Under the circumstances, it seems clear that Captain Hamm was motivated by a desire to see that the conference was not a financial bust, rather than by a desire to see that the union obtained as large a profit as might be possible.

### **A Postscript**

In retrospect, the NAWEOA conference proved to be a troublesome venture in a number of respects. These troubling hot spots, in turn, carved a path leading to the present controversy.

First of all, there is ample room for debate as to whether the substance of the NAWEOA conference was a worthy purpose for the expenditure of agency time and

money. The agency sought to co-host the conference to showcase its conservation leadership and to commemorate its 120th anniversary. The conference also included a number of training events of value to Minnesota conservation officers. But, the conference also had a considerable social agenda, and some criticized it as more of a party than a training event. Given the amount of time and energy needed to put the conference together, it is not surprising that a growing chorus of critics, both within and without the agency, concluded that the conference simply was not worth the resulting diversion of resources.

Second, the DNR and the MCOA never made clear the details of their respective responsibilities concerning the conference. The two entities agreed to co-host the conference, but the details of their partnership were not clearly delineated. At times, representations were made that the MCOA was the primary host of the conference and that the agency was playing only a secondary role. As time went on, however, the agency became the chief player in bringing the conference to fruition.

A vivid illustration of this lack of demarcation is demonstrated in the initial fundraising letter approved for the conference by the Commissioner's Office. Colonel Mike Hamm submitted a letter that the agency intended to widely disseminate in seeking funding for the conference. The Commissioner's office approved the letter with the proviso that the letter should go out on the letterhead of the MCOA. Thus, with the Commissioner's approval, the steering committee sent out a letter signed by Enforcement Chief Mike Hamm with a DNR address asking recipients to donate money to the MCOA for a conference jointly sponsored by the two entities. This diffuse and intertwining approach certainly did not facilitate accountability.

Given these circumstances, the DNR Commissioner's office needed to communicate clear directives detailing expectations and limitations. Its failure to do so is the principal contributing factor to this controversy.

### **The Appropriate Remedy**

In accordance with the applicable statutory provision, an employee who has been dismissed without just cause "shall be reinstated to the position or an equal position in another division within the same agency, without loss of pay." Minn. Stat. § 43A.33, subd. 3(c). Accordingly, the appropriate remedy in this matter is to order the reinstatement of Cathy Hamm with full back pay. Since the statute does not authorize an award of attorney's fees, the Grievant's request for that particular remedy is denied.

### **AWARD**

The grievance is sustained. The Employer is directed to reinstate the grievant and to make her whole for any resulting loss in pay and benefits less any compensation earned in mitigation. The Employer also is directed to correct the grievant's personnel file to reflect this determination. Jurisdiction is retained for a period of sixty (60) days from the date of this award to address any remedial issues as may be necessary.

Dated: October 21, 2009

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Stephen F. Befort  
Arbitrator