

IN THE MATTER OF GRIEVANCE ARBITRATION BETWEEN

St. Louis County, Minnesota

Employer

and

BMS Case No. 09-PA-0654

Law Enforcement Labor Services, Inc.

Union

NAME OF ARBITRATOR: George Latimer
Assistant Faith Latimer

DATE AND PLACE OF HEARING: February 23, 2010
Duluth, Minnesota

BRIEFS RECEIVED: March 22, 2010

DATE OF AWARD: April 16, 2010

APPEARANCES

FOR THE EMPLOYER:
Janilyn K. Murtha, Assistant County Attorney
Steven Steblay, Supervising Deputy Sheriff
Ryan Bridge
Dana Fall
Shannon Schultz, Supervising Deputy Sheriff
Ross Litman, Sheriff

FOR THE UNION:
Isaac Kaufman, General Counsel
Sergeant Bill Evans
Deputy Bill Dolentz
Sergeant Scott Hollman, Cloquet Police Department
Deputy Ryan Paulson

INTRODUCTION

This is a grievance arbitration between St. Louis County, Minnesota (Employer) and Law Enforcement Labor Services, Inc. (Union). They had collective bargaining agreements in effect for January 1, 2006 to December 31, 2007, and for January 1, 2008 to December 31, 2009, executed August 2009 (Employer Ex 1, Union Exhibits 1&2). There were no jurisdictional disputes, and this matter properly came before the Arbitrator pursuant to Article 26 of the collective bargaining agreement (contract). There were originally two grievances filed by the Union on these matters, one filed January 6, 2009 and the other on July 10, 2009. The parties agreed to have both matters decided in this arbitration proceeding, as stipulated below in the Statement of Issues. The arbitration hearing was held in Duluth Minnesota on February 23, 2010. Both parties had full opportunity to present written evidence and to examine witnesses. Post hearing briefs were received March 22, 2010, and the record was closed.

STATEMENT OF THE ISSUES

At hearing the parties stipulated to the following statement of issues:

1. Did St. Louis County have just cause to issue a 45-day unpaid suspension to Deputy Ryan Paulson on or about January 2, 2009 (later reduced to a 28-day unpaid suspension), and if not, what is the appropriate remedy?
2. Did St. Louis County have just cause to issue a 5-day unpaid suspension to Deputy Paulson on or about August 17, 2009, and if not, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

ARTICLE 26 Section 5 The arbitrator shall have no right to amend or modify, nullify, ignore, add to or subtract from the provisions of this Agreement. The arbitrator shall consider only the specific issues submitted in writing by the Employer and the Union and shall have no authority to make decisions on any other issue not so submitted....

RELEVANT POLICIES AND PROCEDURES

St. Louis County Sheriff's Office Policy and Procedure Manual Conduct Unbecoming a Deputy

Policy: Law Enforcement effectiveness depends upon community respect and confidence. Conduct which detracts from this respect and confidence is detrimental to the public interest and should be prohibited. The policy of the St. Louis County Sheriff's Office is to investigate circumstances suggesting an officer has engaged in unbecoming conduct,

and impose disciplinary action when appropriate. Conduct not mentioned but which violates a principle is prohibited.

Principles: This policy provides behavioral guidelines for St. Louis County Sheriff's Office employees. Each principle is followed by specific prohibitions and orders that are to be interpreted broadly and not to be considered all inclusive...

Deputies shall refrain from any conduct in an official capacity that detracts from the public's faith in the integrity of the criminal justice system.

Deputies shall carry out their duties with integrity, fairness and impartiality...

Deputies shall truthfully, completely and impartially report, testify and present evidence, including exculpatory evidence, in all matters of an official nature...

Deputies shall perform their duties and apply the law impartially and without prejudice or discrimination...

Deputies shall not, whether on or off duty, exhibit any conduct which discredits themselves or their office or otherwise impairs their ability or that of other deputies or the office to provide law enforcement services to the community...

Deputies shall not commit any acts which as defined under Minnesota law, constitute domestic abuse, or the violation of a court order restraining the deputy from committing an act of domestic abuse or harassment, having contact with the petitioner, or excluding the deputy from the petitioner's home or workplace...

Deputies shall treat all members of the public courteously and with respect...

Deputies shall not compromise their integrity, nor that of their office or profession, by accepting, giving, or soliciting any gratuity which could be reasonable interpreted as capable of influencing their official acts or judgements.

Deputies shall not use their official position, identification cards or badges for obtaining privileges not otherwise available to them or another person except in the performance of duty, or for avoiding consequences of unlawful or prohibited actions...

Deputies shall not compromise their integrity nor that of their office or profession, by taking or attempting to influence actions when a conflict of interest exists...

Deputies shall not use the authority of their position as a deputy or information available to them as deputies for any purpose of personal gain...(Emp. Ex 4)

Training

Continuous education and training is essential...It is further the policy of the Sheriff's Office that it is the responsibility of each deputy to take advantage of training opportunities and to fulfill the educational requirements to maintain their P.O.S.T. Board license. (Emp. Ex 3)

St. Louis County Board Resolution #620

St. Louis County Principles of Conduct

In order to provide a framework for the attainment of the St. Louis County mission and to provide the environment for the values to be upheld, the following principles of conduct are established. These principles are set down as a guide to each employee's conduct concerning the affairs of St. Louis County.

Impression of Influence. Officials/Employees of the County should conduct their official and personal affairs in a manner which gives a clear indication they cannot be improperly influenced in the performance of their official duties.

Public Confidence. Officials/employees of the County should conduct themselves so as to maintain public confidence in their professional abilities.

Equal Treatment to All Citizens. It is the obligation of each official/employee of the County to grant no special consideration, treatment or advantage to any citizen beyond that which is available to all others...

Use of Official Position. Employees/officials of St. Louis County should not use their official position to secure benefits, privileges, exemptions or advantages which are different from those available to the general public. (Emp Ex 5)

Issue #1 Background

The suspension issued to the Grievant in January 2009 stemmed from a series of incidents which occurred in October, November, and December 2008. The following facts are undisputed. In October 2008 the Grievant had reason to believe that an individual named Ryan Bridge was romantically involved with the mother of Grievant's two children, Dana Fall, with whom he had an on and off relationship. After obtaining Mr. Bridge's phone number from Ms. Fall's cell phone, he called Mr. Bridge on more than one occasion. They spoke on the phone. Grievant asked him to terminate his relationship with Ms. Fall, because he and Ms. Fall were trying to reconcile and had children together. Mr. Bridge agreed to do that. However shortly thereafter Grievant believed Fall and Bridge were seeing one another. Sometime in October Grievant learned from a Cloquet police officer who was an acquaintance, that Mr. Bridge had a criminal history. He also learned that his driver's license was revoked.

On October 31, 2008 while on duty the Grievant parked his squad car near Mr. Bridge's home, where he lives with his three young children. When Mr. Bridge got into his vehicle with his children and started driving, Grievant pulled him over. Prior to pulling over Mr. Bridge the Grievant had accessed traffic and other records concerning Mr. Bridge from data bases including Department of Vehicle Services (DVS), 'Shield', and court records. After a verbal exchange between Grievant and Mr. Bridge, the Grievant issued a citation for driving after revocation and no proof of insurance.

Grievant's Supplemental Police Report states:

"This is with regard to a traffic stop in which the driver, Ryan David Bridge, was stopped for speed, illegal window tint and it was subsequently discovered his driver's license status was revoked...I approached the driver's side window and I spoke with the

male driver and asked him for his driver's license and proof of insurance. Subsequently through conversation it was discovered the driver's driving license status was revoked..." (Union Exs 11-14, 16, test of Ryan Paulson, Ryan Bridge and Scott Holman, Emp Ex 12)

Grievant ultimately dismissed the citation, on November 20, 2008. The Grievant stated he did this in response to repeated requests from Ms. Fall. (test of Mr. Paulson, Emp Ex 17/Union 14, Emp Ex 12)

It is undisputed that on December 3, 2008 Grievant again pulled Mr. Bridge over, just after he left the Copper Top Church where two of Bridge's children attend daycare. Mr. Bridge told Grievant that he had gotten his driver's license back, but he had left the paperwork at home. Grievant attempted to verify the driver's license status by computer in his squad car. He stated that dispatch told him the DVS records indicated the license was valid, but their computers indicated it was expired. Meanwhile Mr. Bridge made one call to DVS and was told his license was active. He also called friends in an effort to find someone to come and pick up his child, who remained in his vehicle. After argument back and forth between them, Mr. Bridge called the Sheriff's department and described what was taking place. After a short time Supervising Deputy Shannon Schultz arrived, and ordered Grievant to return to the Sheriff's office. (Union Exs 11, 13, 14, testimony of Ryan Bridge, Grievant, Scott Holman, Shannon Schultz)

Subsequently, Supervising Deputy Schultz conducted an investigation into Grievant's conduct, which included interviews with Ms. Fall, Mr. Bridge and others. He conducted a Garrity interview with Grievant on December 23, 2008, at which his Union representative was present. Grievant had opportunity at that interview to respond to the four points in the complaint against him:

1. Ryan Paulson made a traffic stop on Ryan Bridge on 103108 and issued a citation for driving after revocation and no proof of insurance. Paulson used his position of authority for personal benefit by then offering to dismiss the citation in exchange for a personal favor from Bridge. This conduct violated the St. Louis County Sheriff's Office "Conduct Unbecoming a Deputy" policy.
2. Ryan Paulson used his position of authority on 112008 by dismissing the citation issued to Ryan Bridge with the expectation of receiving a personal benefit, and, subsequently soliciting Dana Fall to drop/reduce Paulson's court ordered child support. This conduct violated the St. Louis County Sheriff's Office "Conduct Unbecoming a Deputy" policy.
3. Ryan Paulson stated to Dana Fall that he would use his position of authority to locate Ryan Bridge and issue Bridge another citation because Fall refused to

drop/reduce Paulson's child support obligation. On 120308 Ryan Paulson stopped Ryan Bridge in a vehicle for the second time and was issuing Bridge another Citation when a supervisor intervened. This conduct violated the St. Louis County Sheriff's Office "Conduct Unbecoming a Deputy" policy.

4. Ryan Paulson falsified information contained in his report of the 103108 traffic stop. This conduct violated the St. Louis County Sheriff's Office "Conduct Unbecoming a Deputy" policy. (Emp Ex 16).

On about December 31, this complaint was amended by Schultz to include two additional points. These related to District Court proceedings in neighboring Carlton County involving a request from Ms. Fall for a harassment restraining order against the Grievant:

5. During a court hearing in Carlton County on December 22, 2008, Ryan Paulson stated, while under oath, that he had direct phone contact with Dana Fall. On December 3, 2008, under Sheriff Phillips and I gave Ryan Paulson a direct order to not have direct contact with Dana Fall or Ryan Bridge. Direct contact was defined to be in person, by phone, or texting. Ryan Paulson stated he understood this order. Ryan Paulson Committed insubordination.
6. During a court hearing in Carlton County on December 22, 2008, Ryan Paulson, while off duty, walked out of the court hearing while being spoke to by a Judge. Ryan Paulson showed disrespect for an official court hearing. This conduct violated the St. Louis County Sheriff's Office "Conduct Unbecoming a Deputy" policy. (Union Ex 4)

The court transcripts, Order for Continuance, and Harassment Restraining Order which resulted from these proceedings are a part of the record as Employer Exhibits 18, 19 & 20, Union Exhibits 18 & 19.

On December 4 Ms. Fall petitioned for and obtained a Temporary Restraining Order against Grievant which provided inter alia:

There are reasonable grounds to believe that Respondent(s) has/have harassed Petitioner(s) as alleged in the petition:

Followed, pursued or stalked the Petitioner(s);
Made uninvited visits to the Petitioner(s);
Made harassing phone calls to the Petitioner(s);
Made threats to the Petitioner(s);
Frightened Petitioner(s) with threatening behavior;
Called the Petitioner(s) abusive names;

Damaged the Petitioner's property;
Took pictures of the Petitioner(s) without permission of the Petitioner(s) (Emp Ex 18)

The TRO was to remain in effect for two years. On December 22 a court hearing resulted in a permanent harassment order affirming the restraints placed on Grievant by the TRO. The Order provided in part that "Every police department and sheriff's office in Minnesota is responsible for enforcing this order." The December 22 Order also provided that the Grievant "Shall have no contact, direct or indirect, through a third party, in writing, by letter, email, or any other electronic means with Petitioner and shall not harass her." (Emp Ex 18)

EMPLOYER POSITION

The County imposed the suspension based on its belief that Deputy Paulson was guilty of conduct unbecoming a deputy, and insubordination. The County's Corrective Action Report Form states as follows:

On October 31, 2008, Ryan Paulson used his position (Deputy Sheriff) to effect a traffic stop on Ryan Bridge of Cloquet, MN. Paulson issued Bridge a citation for driving after revocation and no proof of insurance. Subsequent investigation indicated that Paulson did this as a retaliation for Bridge having contact with Dana Fall and Paulson's children. Investigation also indicated that Paulson falsified his police report by stating that he discovered Bridge was revoked during the stop, when in fact, Paulson knew Bridge was revoked prior to the stop. Paulson later dropped the citation, but this matter came to the attention of Paulson's supervisors when Paulson again performed a traffic stop on Bridge on 12/3/08. On 12/3/08, Paulson was given an order by Supervising Deputy Schultz and Undersheriff Phillips not to have any contact with Dana Fall or Ryan Bridge, unless through third party in regards to visitation. Paulson testified in a harassment order hearing that he had direct contact with Dana Fall after 12/3/08: this in violation of the supervisory order...Ryan Paulson abused the position of Deputy Sheriff and confidence and trust of his supervisors and members of the public. Ryan's enforcement action and subsequent dismissal of a court document (citation) was clearly related to his dismay with the cited individual who allegedly was seeing Dana Fall. Additional contact with Dana Fall was clearly done despite orders to the contrary. Behavior in court during the Harassment Order hearings reflected poorly on the Sheriff's Office. Paulson's actions have exposed the Sheriff's Office to liability and has brought his ability to perform his duties into question. (Emp Ex 7)

Following Mr. Bridge's call to the Sheriff's Office on December 3, Supervising Deputy Shannon Schultz conducted an investigation which included an interview with

Mr. Bridge. Mr. Bridge described phone conversations during the month of October, in which Grievant asked him to stop seeing Dana Fall, and Mr. Bridge agreed to do so. He also received angry phone calls following these, which he believed came from Grievant. At the time of the October 31 traffic stop, Mr. Bridge did not yet know who Grievant was. In the course of the stop, Grievant revealed that he was the individual of the earlier phone calls. Mr. Bridge stated:

“...then he says, all right, he says, cut the shit, you know we know where we’re going here. He said you know who I am, you know. Okay, he’s Ryan and see this ticket right here, he said, he’s holding this ticket and he says see this ticket. Now this ticket I can wreck your whole life, he said you can go to jail I can wreck your whole life he said now that’s what you’re doing to me. He says I’m trying to get my family back here and he says and I can fuck with your family just as well. I mean this guy was irate. He was shaky, he was, I mean he was worked up...He goes, uh, I want you to stay, he goes I want you, I want you the fuck away from her and he says, and another thing he says you know my kid, he says you know my kids know the situation’s going on because it’s not good with us and he goes and I don’t want you there and you know he said clearly he says I don’t want you around my damn kids. He says I don’t want you, I don’t want you in their, in their life...So he says, tell you what, he says this is what I’m going to do. He says I got this ticket, he says, I don’t want you to talk to her, he says you, you can let her know that hey I can’t do it no more. Whatever it is, he said you just stop all contact he says and I’ll make this ticket go away. He says on the 20th, he said you have ‘til the 20th, cause the court date was on the 21st on the ticket...I’ll make this go away, no bullshit. I said fine, done, deal. I said hey that’s cool. So in the meantime I’m trying to keep an eye on my kids cause they’re getting irate and he wouldn’t even let me go over there to check on my kids that are sitting in the car so this is a conversation you know, this is a halfhour or more and my kids are alone sitting in the truck with no dad.” (Emp Ex 13, Union Ex 11)

Mr. Bridge’s testimony at this proceeding was consistent with the above statement. Ms. Fall also alleged during Supervising Deputy Schultz’s investigation that Grievant had asked for a reduction/elimination of his child support obligation, in exchange for dismissing the citation against Mr. Bridge. (Emp Exs 14 & 15, test of Ms. Fall)

Mr. Schultz did not conclude there was adequate proof to ‘sustain’ this allegation.

However Deputy Paulson acknowledged both the act of conducting the traffic stop, and the decision to dismiss the citation, were made for personal reasons:

RP: October 31st was the day that ahh...we were closing on our house. That we were supposed to close on our house and move in...it was just stewing in me that you know,...it was on my mind...so I went to ahh by his house and I ran,...stationary radar...

DP: So, what was your purpose that morning?

RP: My purpose was I was pissed off and I wanted to give him a ticket for Driving after Revocation...just the whole deal that he told me he was gonna let, let me try to work things out with my family. He didn't do it...

DP: Okay, and what did you hope to gain by writing the citation?

RP: Just a little gratification that I wrote him a ticket. (U Ex 14, Emp Ex 17)

The Employer argues the Grievant “allowed his personal feelings to cloud his professional judgment in a case where he had a conflict of interest”. (Employer Brief)

The Employer further argues the Grievant falsified his police report of the October 31 traffic stop. In his report Grievant stated

“This is with regard to a traffic stop in which the driver, Ryan David Bridge, was stopped for speed, illegal window tint and *it was subsequently discovered* his driver’s license status was revoked...I approached the driver’s side window and I spoke with the male driver and asked him for his driver’s license and proof of insurance. *Subsequently through conversation it was discovered* the driver’s driving license status was revoked...Since Bridge was close to his home I had his vehicle parked there.” (Emp. 12, emphasis added)

Investigation revealed that the Grievant knew before stopping Mr. Bridge that his license was revoked, and had also used his position as a Deputy to access information about Mr. Bridge’s history, including the use of ‘Shield’, a law enforcement rather than public data base. His statement that he learned of the license revocation after stopping him was false. In addition his statement that he ‘had his vehicle parked’ was false, as he permitted Mr. Bridge to drive the car away.

Besides being a per se violation of policy, the Employer argues a false police report could cause problems in the prosecution of future cases, “Deputy Paulson has placed into the public domain an item which can be used to attack his credibility in any subsequent investigation in which he participates.” (Emp Brief and testimony of Mr. Schultz, Sheriff Litman)

The County contends Grievant is also guilty of insubordination. On December 3 Grievant was directed by Supervising Deputy Schultz and Under Sheriff Dave Phillips to have no contact with either Mr. Bridge or Ms. Fall “unless through third party in regards to visitation” (Emp 7) In a December 22 Carlton County District Court hearing, Grievant stated that he had called Ms. Fall on December 21 to make arrangements for dropping off/picking up their children. (Emp 20) This violated a direct order given by his superiors.

The Employer also contends that Grievant was guilty of conduct unbecoming an officer by his behavior in the courtroom on December 22. The transcript from this court proceeding includes the following:

The Court: I'm going to provide that it be at the youth shelter, it's a civil order. You can always by agreement modify the agreement, that means both people, but, you know, if you mom agrees to be put in the middle and then if she gets frustrated, it's because she's agreed to be put in the middle. It could be done in a way that doesn't put the kids in the middle. They're very experienced at doing it at the youth shelter, they know how to do it and that's going to be my order. Again, you can agree to do something different if you both agree to do something different.

The other thing that I'm going to say is I'm not stuck on my order. It's going to stay in place until it's modified, and I'm open to considering if the parties in the custody proceeding need to modify the order, I'm certainly open to having it modified.

Mr. Paulson: You know, if I didn't have children with her, I wouldn't care because I don't want to see her again.

The Court: But pending—

Mr. Paulson: It's just frustrating.

The Court:--pending any agreement that the parties have to modify the order, the order is going to stay in full force and effect, and we'll reduce the order to writing and we'll certainly make sure that you're both served with copies of it. Okay.

Ms. Johnson: Your Honor, Dana has full custody of their children right now and until that changes—

(Mr. Paulson proceeds to exit the courtroom.)

The Court: Mr. Paulson?

Mr. Paulson: We can go to custody court and I'll see them then.

Ms. Johnson: You don't want to see them on Christmas? She said noon on Thursday she's willing to take the kids until Sunday.

The Court: Mr. Paulson? Mr. Paulson? I don't know if you want to hear this—

Mr. Paulson: No, I'll just see them.

(Mr. Paulson exits the courtroom.)

The Court: All right.

Ms. Johnson: Thank you, Your Honor.

Ms. Fall: Thank you.

(Emp Ex 20)

The County maintains this conduct showed disrespect for a judge; that deputies are expected to behave with respect and decorum toward officers of the judiciary, whether on or off duty, and that since Carlton is a neighboring county, there are some occasions where court business crosses counties, and a Carlton County judge may even fill in for St. Louis County judges from time to time. The Employer concludes that Grievant's conduct in walking out of the courtroom while the judge was trying to get his attention was conduct unbecoming a deputy. (Emp brief, test of Sheriff Litman, S. Schultz)

UNION POSITION

The Union argues that allegations contained in points 2 and 3 of the Employer's original complaint are not properly before the Arbitrator, since they were 'not sustained' by the Employer. These points relate to allegations that Grievant offered to dismiss the traffic citation against Mr. Bridge and/or threatened to issue another citation in exchange for personal gain.

With respect to allegations contained in points 5 and 6 of the Employer's amended complaint (U Ex 5), the Union argues first that Grievant's due process rights were ignored. At his investigatory interview on December 23, the Grievant did not know of these allegations, nor did he have the opportunity to respond to them. The Employer essentially added the additional charges and found them to be sustained, at the same time. Therefore the County did not meet its obligation for a full and fair investigation regarding those allegations. (testimony of S. Schultz, U brief)

In addition to the due process problems, the Union also argues the allegations in points 5 and 6 fail on their merits for a number of reasons. It argues both the 'no contact' directive given by Grievant's supervisor, and his conduct in the Carlton County courtroom are related to off duty conduct, not subject to regulation by his employer.

With respect to the 'no contact' allegation, this directive was given verbally. During the counseling session with Grievant on January 2, there appeared to be confusion on management's part about whether the directive included 'third party' contacts or not. In addition Mr. Paulson's contact with Ms. Fall was in compliance with the court's order for continuance, which states "Contact shall be limited to issues related to the parties

minor children.” In fact the Carlton County Judge did not find Grievant to be in violation of the courts orders regarding contact with Ms. Fall. (U brief, testimony of Sheriff Litman, U Exs 15 & 18)

With regard to item 6, Grievant testified that while he was upset, he did not intend any disrespect to the judge. He left the courtroom only after the judge had made his ruling. Ms. Fall was talking with her advocate, and the judge said “Mr. Paulson? Mr. Paulson? I don’t know if you want to hear this—“. Grievant responded “no, I’ll just see them”. The judge did not instruct Grievant to stay in the courtroom, nor did he direct the bailiff to detain him (Emp Ex 20 and test of Mr. Paulson)

Regarding the traffic stop on October 31, the Grievant acknowledges his motivation for stopping Mr. Bridge was in part personal. Grievant’s relationship with Ms. Fall had been ‘on and off’ for some time. In the fall of 2008, they were in the process of reconciling, and had even put earnest money down on a house purchase. This is the time period when Grievant learned of Ms. Fall’s relationship with Mr. Bridge, which she had been lying to him about. He then learned of Mr. Bridge’s significant criminal history. Deputy Paulson was both upset about the relationship and understandably concerned about Mr. Bridge having contact with his children.

The Union points out that while part of his motivation for pulling over Mr. Bridge was personal, it is also true that he was driving without a driver’s license, and speeding. The Union maintains Grievant was not ‘loud or threatening’ to Mr. Bridge, and the alleged promise that the citation would be dismissed if Mr. Bridge stopped seeing Ms. Fall, did not occur. He decided to dismiss the citation in response to Ms. Fall’s persistent request that he do so.

The Grievant admitted that in his police report he made a poor word choice. Instead of reporting that he learned of the license being revoked during the stop, he should have written ‘confirmed’ or ‘substantiated’. This was not done with the intent to deceive. (U brief, test of Mr. Paulson, Emp Ex 12, U Ex 15)

The Union also points out that the Employer was aware of some personal connection between Grievant and Mr. Bridge prior to the December 3 traffic stop, yet management failed to take any action to investigate, or prevent potential problems. This suggests the Employer was “engaging in a game of ‘gotcha’, waiting for Deputy Paulson

to make contact with Mr. Bridge again before springing into action.” (U brief, test of S. Schultz) Further, Grievant testified that he did not seek out Mr. Bridge at the time of the December 3 stop. The Union argues there is no substantial evidence of anything improper about that traffic stop.

ARBITRATOR’S ANALYSIS

The final disposition of this case (numbered 120308) included six findings related to complaints about Grievant’s conduct. Two complaints were not sustained. Both the unsustained complaints related to whether the Grievant offered to dismiss charges against Ryan Bridge in exchange for lowered support payments to his children. The four remaining complaints were sustained. Two of the sustained complaints arose out of the Carlton County Court appearances by Grievant.

For reasons which follow, the Arbitrator finds for the Union on Complaints number 5 & 6. As to the substance of the charge that Grievant disobeyed a direct order, against Grievant having contact with Ms. Fall, the issue is confused by the Court Order for Continuance issued in mid December, which permitted contact regarding the parties’ minor children. The record is clear Grievant made good faith effort to comply with his supervisor’s directive, using his mother and a friend to communicate necessary information to Ms. Fall concerning the children. The only direct contact which occurred was minimal, a one time phone contact limited to pick-up arrangements for the children, for which the court did not hold him in violation. Under these circumstances, the action does not rise to the level of insubordination. In addition the Arbitrator agrees that the Employer failed to show that it had made a full and fair investigation, other than having read the transcript of the court proceedings. Likewise, the transcript was the sole basis of Employer’s sustaining the complaint that by leaving the court hearing, Grievant showed disrespect for an official court hearing, constituting violation of the “conduct unbecoming a deputy” policy. The testimony of the Grievant was that he viewed the hearing as ended with the Court’s statement that, “pending any agreement that the parties have to modify the order, the order is going to stay in full force and effect, and we’ll reduce the order to writing and we’ll certainly make sure that you’re both served with copies of it. Okay.” Grievant testified the Judge looked directly at him when he said ‘Okay?’, confirming that

he understood the Order. Grievant stated that when the judge asked him if he wanted to hear the conversation between Ms. Johnson and Ms. Fall, he declined, but this was after the Court's ruling. The Judge responded "All right." (Emp Ex 20) Although clearly disappointed and by his own description frustrated, Grievant reasonably concluded that the Court had issued its order and made its decision. This testimony was un rebutted, and in the absence of any showing by the Court that he viewed the conduct as disrespectful, the Employer has failed to carry its burden of proof on this issue.

The more significant allegations against the Grievant are those concerning the misuse of his position as Deputy, and allowing his emotions and personal life to interfere with the impartial performance of his duties. The power of law enforcement carries with it the duty to use that power in an even handed and fair manner, free of personal malice or gain. The question in this matter is whether the conduct of the Grievant conformed to that standard of duty. The Supervising Deputy concluded that Grievant failed that standard. As to the Oct. 31 stop, grievant admitted his prior knowledge of Bridge's criminal record, and his anger upon learning that Bridge was seeing Ms. Fall contrary to Bridge's agreement to stay away from her. The evidence is also clear that in accessing Mr. Bridge's records, Grievant used "information available (to him as a deputy)" for a "purpose of personal gain" as prohibited by County policy. Contrary to proper procedures, he permitted Bridge to drive the vehicle after issuing a citation for driving without a license. Bridge testified that Grievant was very angry and threatened him with the ticket even after stating he could make the ticket 'go away'. Grievant testified that he did not offer to dismiss the ticket, and stated he did not raise his voice, and spoke calmly. The circumstances do not give credence to Grievant on that point. Although Grievant denied the allegation of a direct 'trade' regarding the citation, he did admit that his later dismissal of the ticket was because of Ms. Fall's persistent requests. The conclusion is inescapable that Grievant's conduct arising out of the October 31st incident was driven by personal animosity and personal gain, as correctly described by finding #1 of the final disposition by Supervising Deputy Schultz. Sheriff Litman persuasively testified that this clear violation of a deputy's obligation to be impartial damages public perception of the Sheriff's Office.

With respect to the allegation that Grievant falsified his report of the October 31 traffic stop, the Union argues, and offered testimony from Grievant suggesting that use of the words 'subsequently discovered' was inadvertent, and that the Grievant was not attempting to conceal the evidence that he knew the license had been revoked before he stopped the car driven by Ryan Bridge. The Grievant admitted this foreknowledge at his Garrity interview, and again admitted it in his testimony. It is not credible that the Grievant twice used the words 'subsequently discovered' in any way but the purposeful intent to mislead. Thus the Arbitrator concludes that indeed the Grievant falsified his police report.

It is axiomatic that public trust and even-handed enforcement of the law is central to a sworn peace officer's duty. By failing this duty, Deputy Paulson was guilty of conduct unbecoming a deputy. The extremely painful personal domestic stress suffered by the Grievant explains but does not justify his conduct. Nor does it justify a reduction of the suspension ordered by the Sheriff.

ISSUE #2 BACKGROUND

It is undisputed that on July 6, 2009, while Grievant was on vacation Sheriff Litman received notice from Minnesota Board of Peace Officer Standards and Training (POST Board) that Grievant's peace officer license had expired on June 30, 2009. County management checked records and verified that Deputy Paulson's training was up to date, but he had failed to send the required paperwork and payment to the POST Board for his license renewal. County management also verified that he had not performed any law enforcement duties or activities during the days that his license was lapsed.

Supervising Deputy Steven Steblay left phone and e-mail messages for Grievant, but was unable to reach him until July 8. Grievant was not aware that his license had expired, and promised to contact the POST Board and send the required fee. On July 9, 2009 the POST Board faxed notice to the County that Deputy Paulson's license had been restored. (Emp Exs 6, 9-11, test of Mr. Steblay)

EMPLOYER POSTION

The Employer contends that each deputy is obligated to make sure his/her license is current. This is the 'number one requirement for the deputy job'. If a deputy does not have a current license, every law enforcement action (issuing tickets, arrests, etc) would be unlawful. "This incident has impacted the confidence that this office has in Ryan Paulson's ability to perform his duties as Deputy Sheriff." (Test of Sheriff Litman, Emp Ex 6)

UNION POSITION

The Grievant acknowledged that in spring 2009 the POST Board had sent him notice that his license would be up for renewal. The failure to renew it was just an honest mistake. Since he was on vacation at that time, he was out of cell phone range during the time his supervisor tried to reach him. When Grievant did get the message, he called his supervisor immediately, and took action to process the license renewal. (test of Mr. Paulson)

The Union argues Grievant did not violate the section of Minnesota Rules cited by the Employer (Section 6700.0800), since that applies to newly appointed peace officers. "To the extent that the rule applies to a license-renewal situation like Deputy Paulson's, the record is clear that he did not 'exercise peace officer powers' while his license was inactive, and therefore did not violate the rule." (U brief)

ARBITRATOR ANALYSIS

There was testimony in this proceeding concerning Grievant's original vacation request and request for additional vacation days in July 2009. The Arbitrator declines to comment on that evidence, since the stipulated statement of the issue states the question before the Arbitrator is whether there was just cause for the 5-day suspension.

The Arbitrator is not persuaded by the Union argument that the failure to renew his license was technically not a violation. The Training Policy language states "it is the responsibility of each deputy to take advantage of training opportunities and to fulfill the educational requirements to maintain their POST Board license." (Emp Ex 3) While the policy does not go on to say 'and to process appropriate paperwork for license renewal', the Arbitrator finds the intent of this language to be unambiguous. Further, testimony of the Sheriff and the relevant documents demonstrate the importance of deputies having

current licenses. This is clearly a reasonable and essential requirement on the Employer's part.

As to the questions of proper investigation and adequate proof, testimony of the Grievant and Employer witnesses was essentially consistent. It is undisputed that one, the Grievant had completed required training for his license renewal; two, he failed to timely renew it; and three, he did not perform any law enforcement duties while the license was lapsed. The Grievant's action was a serious infraction, but done without bad intent. The severity of the penalty was a judgment call for the Employer. There was un rebutted testimony from Sheriff Litman that he was aware of only one other occasion of a deputy failing to timely renew his license, and in that case his suspension matched the number of days he lacked the license, as it does in this case. In determining the penalty, it is also legitimate for the Employer to take in to account an employee's past record of discipline. In this case, the Grievant received a significant suspension in 2006, which can reasonably influence the length of this suspension.

AWARD

The Arbitrator finds for the Employer on both Issue #1 and Issue #2.

The Grievance is denied.

George Latimer, Arbitrator

April 16, 2010